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I Introduction

Access to justice is a vital part of the fundamental right of a person to a fair trial. All people deserve to access the resources of the justice system in order to resolve their legal issue. Unfortunately, this is not always the case.

This paper will discuss some of the access to justice issues surrounding a lack of funding for court services and other alternative resources. It will begin by setting out the criteria for eligibility to legal aid, and how some of the recent cuts to this service have affected the legal community. It will then show how much it costs to file in different courts. Next it will examine some of the alternative resources for resolving disputes, and how effective these are. Finally, it will highlight some of the problems that self-represented litigants face.

II Legal Aid Eligibility and Entitlements

The purpose of legal aid is to help people to resolve legal problems, recognising that they may need to go to court, so that they are not denied justice if they cannot afford a lawyer. The main relevant legislation regarding legal aid is the Legal Services Act 2011, the Legal Services Amendment Act 2013 and the Legal Services Regulations 2011.

Eligibility for legal aid can be separated broadly into two categories: family and civil legal aid, and criminal legal aid. Each category has different eligibility criteria.

A Eligibility for Civil and Family Legal Aid

To qualify for legal aid, four key criteria must be met.

1 Eligible Proceedings

Proceedings for which legal aid may be granted for civil matters are numerous. These include a range of courts and authorities. The full list can be found under the Legal Services Act, section 7.

Other eligible forums are those where the aid is for a victim and the proceedings are to be heard by the Parole Board or a court.

However, legal aid is not available in the proceedings listed in Section 7(5) of the Act. These include election petitions, the Waitangi Tribunal, the Social Security Appeal Authority and the Tenancy Tribunal. Furthermore some administrative tribunals/judicial authorities are also not eligible, such as the United Nations Human Rights Committee, Arbitration proceedings and the Disputes Tribunal.

There are three requirements for gaining legal aid at a proceeding:

1. Legal representation and argument;
2. A specific process to be followed at hearing;
3. The applicant's personal involvement in the substantive matters

It must also be shown that successful resolution would have a real impact.

Additionally, if substantial hardship would result where legal aid is not given, that can be considered. Examples of situations where hardship may apply are:

- If legal aid were denied, it would cause suffering or create a difficult situation to endure (for example, it would put the applicant under considerable strain and it would have a long term impact caused directly by not granting legal aid);

- This would be partially or fully mitigated by a grant of aid to undertake legal proceedings, and;
- There must be an assessment of all the circumstances contributing to the applicant's current situation including personal factors such as medical conditions, disability and social considerations such as family arrangements and employment.

Section 10 (3) of the Act states that the Commissioner must refuse to grant legal aid if the applicant has not shown the applicant has reasonable grounds for taking or defending the proceedings.

2 Eligible Applicants

Key sections regarding eligible applicants can be found in sections 10, 11, 12, and 15 in the Legal Services Act. The assumption is that aid is for an applicant who is a living individual and is an interested party.

Section 10 (1)(b) allows for trustee corporations, such as the Public Trust and the Maori Trustee, which are concerned in a representative, fiduciary, or official capacity to apply.

If the application is made on behalf of a minor aged under 16 years then the representative must be a natural person aged 20 years or older, with full mental capacity, who is the person's parent/guardian/custodial parent or friend/guardian *ad litem*.

However, if the proceedings are in the representative's name, then the grant will be made in the representative's name and the minor's details will appear in the correspondence. If the proceedings are in the name of the minor then the grant will be in the minor's name and communication will be with the representative including the minor's details.

If the application is made on behalf of a minor over 16 years then they can apply for legal aid in their own right.

Legal aid is not available if the application and proceedings involve a group of people and the applicant does not have a direct and personal interest over and above any direct collective interest of the group.[1] If the applicant does have a direct and personal interest over and above the group interest, then aid can be considered as if the applicant were applying on their own behalf.

If the application is on behalf of another kind of group of people, not covered by the previous definitions, or there are numerous persons with the same interest, or the applicant has the right to be joined with other parties as plaintiffs, legal aid may be available if it meets the requirements of ss12(3) to (6) of the Act. These types of applications will be referred to a specialist adviser.

[1] Legal Services Act 2011, s 11.

3 Financially Eligible

The Legal Services Regulations 2011 sets out some financial criteria in regulations 5, 6, 7, 8 and 9. These include such criteria as the maximum levels of income, maximum levels of disposable capital, and resources that have been disposed of.

Aid will be refused if the applicant's income or disposable capital exceeds the thresholds (and if there are no special circumstances) set out in section 5 and 6 of the Legal Services Act.

An exception to this regulation can be found in s10(2) of the Legal Services Act, where special circumstances involving the likely cost of proceedings and applicant's ability to fund proceedings may been considered by the Commissioner.

Legal aid can also be refused under s10(3A) of the Act when there have been previous legal aid grants.

Aid can also be refused by the Commissioner under certain circumstances under s 10(4) of the Act. Other factors that might allow refusal of aid can include if insurance covers applicants cost, insufficient information and if the repayment is greater than likely costs.

4 Sufficient Merit

Merit is assessed according to the objective standard of "reasonable grounds". If the applicant can show that they have reasonable grounds for taking/defending the proceedings or being party of the proceedings then that qualifies.[2] There must be significant personal interest in the outcome to justify pursuing the matter.

Refusal of aid under sufficient merit can be found in section 10(5) of the act. The Commissioner may refuse to grant aid on the basis that it is not justified under s 10(6). Situations where s 10(6) may apply are where there have been previous proceedings in the matter to which the application relates; and whether it is in the public interest that legal aid be granted.

B Eligibility for criminal legal aid

Similarly, there are also four key decisions in determining eligibility for criminal legal aid.

1 Eligible proceedings.

Legal aid is available for proceedings pursuant to s 6 of the Act if they are heard in the District Court, High Court, Court of Appeal and Supreme Court.

[2] Section 10(3).

The Parole Act 2002 provides for criminal legal aid in matters before the Parole Board if it is a postponement order,[3] recall (breach of parole),[4] or a non-release order.[5] In September 2013, criminal legal aid also became available for certain other situations if heard before the New Zealand Parole Board and the offender is entitled, under s 49(3)(c) of the Parole Act 2002, to be legally represented. These can include conditions on release at statutory release date,[6] compassionate release,[7] and variation or discharge of conditions.[8]

Criminal legal aid is available for matters before the High Court or Court of Appeal if it is an application for an extended supervision order under ss 107F-107I, 107M, 107N of the Parole Act 2002, appeal from certain decisions of the Parole Board under s 68, or an appeal from the sentencing court re extended supervision under s 107R.

Aid is usually available for hearings regarding conditions on release at the final release date. Consideration will be given to the nature and length of any alternative custodial sentence, potential consequences if the applicant were not represented and potential impact on the applicant's family.

2 Eligible Applicants

Section 8 of the Legal Services Act sets out the eligibility of the applicant. They must be a natural person charged with or convicted with an offence, and either i) the offence is punishable by maximum term of imprisonment of 6 months or more or ii) it is in the interests of justice that the applicant receive legal aid.

If the applicant is a child or young person charged with a serious offence and will be tried or sentenced in the District Court, then legal aid will be available subject to the remaining criteria being met.

3 Interests of justice

Aid may be given under s 8(2) of the Act where the Commissioner must take into account a list of relevant factors, including any previous convictions, whether the matter involves a substantial question of law, complexity, and so on. Consideration will also be given to the impact of ss 24 and 25 of the New Zealand Bill of Rights Act 1990, which covers the applicant's rights. This also takes into account provisions of the International Covenant on Civil and Political Rights, and whether the matter can be dealt with in one day.

[3] Parole Act 2002, s 27.
[4] Section 65.
[5] Section 107.
[6] Sections 17-19.
[7] Section 41.
[8] Sections 56-58.

4 Sufficient Means

Gross income, disposable capital, availability of income and other relevant factors are used to access sufficient means. Availability of income requires looking at the disposable income, relative family size and also serious hardship. Capital refers to whether funds can be raised by loan or selling an asset for the applicant. The Ministry of Justice Eligibility Criteria document sets out a brief of income and capital assessment used for legal aid.[9]

C Loan or grant?

Although the legislation refers to legal aid as a grant, most applicants are actually required to repay some or all of the funds given. In terms of applying for civil aid, the legal aid repayment depends on the applicant's gross income and total assets.

The Commissioner considers all assets for the purposes of repayment, except for equity in a person's home, first car and household possessions.[10] A beneficiary with no assets is unlikely to be required to repay legal aid.

Repayments can be made through regular installments, a lump sump, or out of damages won in Court.[11] The Commissioner, with the agreement of the applicant, may make whatever arrangements the Commissioner considers appropriate for the payment.[12] On top of the grant given, the Commissioner may require security for the debt. For example, if the applicant owns a house or valuable property, and the debt is more than $300, the Commissioner will put a charge over the property. So if the property is sold, the repayment of debt will come out of the sale.[13]

Legal aid applicants are now required to pay $43.48 ($50 including tax) as a user charge for family and civil grants.[14] This was designed to encourage applicants to settle the matter out of court if possible.

In addition to the grant given, legal aid clients are required to pay simple interest on all outstanding finalised legal aid debt at 8% per annum.[15] However, to encourage prompt payment, s14A allows for a six-month interest-free period before interest is applied.

Finally, the Commissioner has the ability to make deductions of a client to repay the grant or

[9] "Eligibility for Legal Aid" Ministry of Justice < http://www.justice.govt.nz/services/information-for-legal-professionals/information-for-legal-aid-providers/documents/grants-manual/Eligibility%20September%202011.pdf>.
[10] "How to Obtain Civil Legal Aid" (2014) HowToLaw <http://www.howtolaw.co/obtain-civil-legal-aid-39208>.
[11] Legal Services Act 2011, above n 1, ss 33-35, 39.
[12] Section 34(3).
[13] Section 18(3).
[14] Legal Services Regulations 2011, cl 9A.
[15] Clause 14.

could decide to write off the debt.[16]

D Is aid granted sufficient for lawyers?

Prior to 2011, lawyers were paid on an hourly basis for the legal work done with clients. Lawyers sent the bill to the Legal Aid Tribunal so that clients did not need to pay the lawyer directly. However, due to the increasing hours charged per case and uncertainty over final costs, the Ministry of Justice has now introduced fixed fees to most legal work.[17] The subsequent costs can now be found on the Ministry of Justice site under Legal Aid: Fixed fees for family and civil (ACC) legal aid.[18]

There are varying accounts of whether the fixed charges are sufficient to compensate lawyers. Anecdotal evidence is very cautious of the new changes. For example during the proposal of the fixed fee, the chair of the Law Society's Family Law Section stated there would be an exodus of family lawyers.[19] He said reducing funding and legal representatives would result in a two-tier justice system, which is contrary to the intent of the Family Court System. He also states the Government should take a more holistic approach.

On a similar point, the Law Society in 2011 came out to say new fixed rates may drive senior lawyers out because it was no longer financially viable to take on legal aid cases. On the other hand, a recent article discussed a London-based firm, Nabarro, which uses fixed prices on a regular basis. The article discussed whether this might be viable in New Zealand. Simpson Grierson's head of litigation expects this to be an increasing trend in firms, which implies the new legal aid scheme could work. However, the question remains whether the fixed remuneration is set at the correct level, and whether client expectations, time costs, viabilities and other unforeseen difficulties could affect the work. The Ministry, evidently, believes the new measures strike the right balance.

[16] Legal Services Act 2011, above n 1, s 42.
[17] Ministry of Justice "Legal Aid- Some common questions and their answers" (Retrieved 28 September 2014) Ministry of Justice <http://www.justice.govt.nz/media/in-focus/topic-library/legal-aid-some-common-questions-and-their-answers>.-legislation reference?
[18] Ministry of Justice "Legal aid: Fixed fees for family and civil (ACC) legal aid" (Retrieved 28 September 2014) Ministry of Justice http://www.justice.govt.nz/publications/global-publications/l/legal-aid-fixed-fees-for-family-and-civil-acc-legal-aid.
See also: http://www.justice.govt.nz/services/information-for-legal-professionals/information-for-legal-aid-providers/documents/proceedings-steps/Family%20Fixed%20Fee%20Schedules%20FINAL.pdf, http://www.justice.govt.nz/services/information-for-legal-professionals/information-for-legal-aid-providers/documents/proceedings-steps/Fee%20Schedules%20-excl.%20CMM-%20v2.0.pdf.
[19] New Zealand Law Society "Major exodus of family legal aid lawyers will follow fixed fee introduction" (Retrieved 28 September 2014) Family Law Section <http://www.familylaw.org.nz/public/media-releases/2012/major-exodus-of-family-legal-aid-lawyers-will-follow-fixed-fee-introduction>.

II Filing: fees and requirements

In New Zealand court fees are arranged in statutory regulations, specific to the court in which a litigant wants to file. They are payable at various steps in civil proceedings. The most common fees are those payable when documents are lodged with the Court. However, it should be noted that extra fees are required for other services, for example, for hearings, sealing documents and providing copies of documents.

Disputes tribunals have the jurisdiction to hear disputes of up to $15,000.[20] The fees payable for the Disputes Tribunal are dependent upon the total amount sought under the claim. If this is under $2,000, payment is only $45.[21] In between $2,000 and $5,000, it is $90.[22] When the claim sought is above $5,000, it is $180.[23]

The Family Court Fees vary from approximately $200 to $700 depending on the application a person is filing for. The cheapest are applications for the Family Proceedings Act 1980 for an order to dissolve marriages,[24] and under the Care of Children Act 2004 in regards to parenting orders,[25] which cost $211.50 and $220 to file respectively. At the other extreme, it costs $700 to file a claim for an order or declaration under the Property (Relationships) Act 1976.[26]

The District Court has jurisdiction to hear almost all civil disputes where the amount in dispute is up to $200,000.[27] To file an original document commencing any proceeding costs $200, while filing subsequent amendments and statement of defence or counter-claims cost $75 and $200 respectively.[28]

Filing in the High Court for an application for judicial review or to put a company into liquidation costs $540. Commencements for other proceedings cost $1350. Note also that filing a statement of defence and counterclaim together, costs another $1350 if not in the case of a concession rate proceeding (this is $540). Moreover, individual statements of defence, amendments of statement of defence/claim, a third party notice, statement of defence/claim between defendants and notice of opposition against other applications cost $110 each.[29]

Filing applications for leave to appeal to the Court of Appeal and the Supreme Court costs $1,100;[30] filing for an interlocutory application in these Courts cost $400.[31] Scheduling a

[20] Disputes Tribunal Act 1988, s 10(1A)(b).
[21] Disputes Tribunal Rules 1989, cl 5(1)(a)
[22] Clause 5(1)(b)
[23] Clause 5(1)(c).
[24] Family Court Fees Regulations 2009, Schedule 1, item 1.
[25] Schedule 2, item 1.
[26] Schedule 3, item 1.
[27] District Courts Act 1947, s 29.
[28] District Court Fees Regulations 2009, Schedule 1, items 1, 5-7.
[29] High Court Fees Regulations 2013, Schedule.
[30] Court of Appeal Fees Regulations 2001, Schedule, item 1; Supreme Court Fees Regulations 2003, Schedule, item 1.

hearing date for an application or proceedings costs $2,700 in the Court of Appeal and $1,000 in the Supreme Court.[32]

There are no set procedures that an applicant has to meet before filing a case, other than meeting the requirements for which they are filing in regards. For example, to apply for a restraining order, a person have to be over 17 years old (unless married) and be applying for a restraining order against who is over 17 years also (unless they are married or in a de facto relationship). Moreover if the applicant is in a domestic relationship with the person against whom they are seeking an order, they have to apply for a protection order instead of a restraining order.[33]

Nevertheless, alternative processes such as dispute resolution or mediation can be more suitable than court procedures as the parties have greater control in deciding upon the issues themselves and they are more cost and time effective.

[31] Court of Appeal Fees Regulations 2001, Schedule, item 3; Supreme Court Fees Regulations 2003, Schedule, item 3.
[32] Court of Appeal Fees Regulations 2001, Schedule, item 2; Supreme Court Fees Regulations 2003, Schedule, item 2.
[33] "Applying for a Restraining Order" Ministry of Justice < http://www.justice.govt.nz/publications/global-publications/a/applying-for-a-restraining-order>.

III Alternative Dispute Resolution Resources (ADR)

Alternative dispute resolution processes can be a cost-effective and flexible way to resolve disputes without going through the state legal system. There are several bodies that undertake ADR in New Zealand and this is by a range of processes including mediation, arbitration and expert determination. One such body is the Arbitrators and Mediators Institute of New Zealand Inc (AMINZ). AMINZ provides several ADR services ranging from negotiation, an informal and often preliminary process where the parties and potentially their representatives communicate directly with each other, to arbitration, where an independent arbitrator oversees the settlement of a dispute and makes a decision that is often binding.[34] Other bodies include LEADR and the New Zealand Dispute Resolution Centre (NZDRC). All three bodies have websites providing information to guide people in choosing which ADR process best suits their dispute, as well as directories of ADR practitioners. When pursuing negotiation processes, ADR bodies can be bypassed altogether as an independent party is not required and the process is often informal, even compared to other ADR processes.[35]

For ADR processes requiring a third party, ADR bodies can connect people to ADR practitioners that can oversee their dispute resolutions. While the appeal of ADR processes is often due to their cost effectiveness and efficiency compared to dispute resolution through the state legal system, this is not always the case. When it comes to cost, arbitration processes can be as expensive as litigation.[36] Arbitration is the most formal of ADR procedures, however, and comparable to a court hearing as the arbitrator's decision is often agreed between the disputing parties to be binding.[37] There is a wide range of less formal ADR procedures that are less costly.

One criticism of the effectiveness of ADR processes is that in pursuing a speedier and less formal dispute resolution, procedural fairness and adherence to due process are deprioritised.[38] The assertion is that due to their informality, there are fewer safeguards in ADR processes to ensure a fair resolution. The privacy of ADR proceedings, while possibly an appealing factor to the parties involved, can also affect the fairness of a resolution as accountability is reduced, whereas openness is a fundamental tenet of the state legal system.[39] Also, the issues at hand in a dispute may be complex and it's not always clear whether a dispute is suitable for ADR, or whether it is better addressed through the state legal system.[40]

One particular benefit of ADR, however, is the flexibility of informal processes. The cultural context and setting of a dispute resolution can be adapted to suit the needs of the parties

[34] Lorraine Skiffington "There Must be a Better Way: Alternative Dispute Resolution" [1997] ELB 23 at 26.
[35] "Dispute Resolution Services" (2010) New Zealand Dispute Resolution Centre http://www.nzdrc.co.nz/DISPUTE+RESOLUTION/SERVICES.html.
[36] Skiffington, above n 34, at 26.
[37] At 26.
[38] Yoshitaka Wada "Merging Formality and Informality in Dispute Resolution" [1996] NZACL Yearbook 45 at 50.
[39] Berry Zondag "Family law and court administration: access to justice and getting the organisational basics right" (2009) 6 NZFLJ 223 at 234.
[40] Wada, above n 38 , at 53.

involved or the nature of the dispute.[41] The state legal system is less adaptable to or cognizant of the cultural nuances that may be involved in a dispute. The lack of rigidity in the rule systems of some ADR processes can be beneficial in facilitating a fairer and more appropriate resolution.

[41] Zondag, above n 39, at 233.

IV Referrals and resources available to courts

Courts have the ability to refer parties to a wide range of resources and services. This is particularly useful in cases involving parties suffering from addiction, parties with mental health issues, and family court proceedings.

The Alcohol and Drug Treatment Court Pilot programme is one which has received media attention in recent years. Offenders are referred to this programme and participate in it prior to a sentencing hearing. Whilst this programme is not an alternative to a conviction or a sentence, successful completion of the programme is a mitigating factor during sentencing.[42] This programme is currently in a two-year pilot phase which began in late 2012. The programme caters to 100 participants per year, roughly 50 participants in each of the Auckland and Waitakere District Courts. The programme is estimated to cost approximately $2 million per year for the first five years with funding provided by the Ministry of Justice with support from the Ministry of Health.[43] Whilst the programme has been effective overseas, it has not yet been operating long enough to determine the effectiveness of the programme. One factor that is significant in the effectiveness of the programme is that it requires a high level of commitment and determination by the participants.[44] One particular area that has been identified as an area for improvement is that of providing counselling and support services to assist female participants with dealing with a history of sexual and physical abuse. There is also a present need for more culturally specific services to be provided.[45]

The ability of the Court to refer victims of crime to various resources to help with coping with their experience and providing support is something crucial in supporting the rights of victims within the criminal justice system. One service that is particularly noteworthy is that of the ability for victims of domestic abuse who are covered by a protection order, to request to attend a domestic violence support programme. The right to request such support is provided for by statute under the Domestic Violence Act 1995.[46] Upon a request by a victim, the Court will then refer the party to a provider of such a programme which is fully funded by the Government, as provided by the Act.[47]

Another type of resource to which Courts can refer parties is that of counselling and mediation in the form of Family Dispute Resolution mediation. In conjunction with this, parties are often first referred to preparatory counselling prior to undergoing these mediation

[42] Ministry of Justice "Alcohol and Other Drug Treatment (AODT) Court Pilot" <http://www.justice.govt.nz/courts/district-court/alcohol-and-other-drug-treatment-aodt-court-pilot-1>.
[43] Litmus Ltd "Formative Evaluation for the Alcohol and other Drug Treatment Court Pilot" (31 March 2014) Ministry of Justice <http://www.justice.govt.nz/courts/district-court/documents/alcohol-and-other-drug-treatment-court-formative-evaluation> at [1.1].
[44] At [1.1].
[45] At [9.5].
[46] Domestic Violence Act 1995, s 29.
[47] Ministry of Justice "Free domestic violence support programmes" <http://www.justice.govt.nz/family-justice/about-us/documents/publications/brochure-and-pamphlets/free-domestic-violence-support-programmes>.

services. Both services are government funded, subject to eligibility. If parties do not meet the criteria for funding eligibility they will be required to pay for these services themselves. The mediation service alone costs close to $900. Being required to pay for this can result in extra stress and pressure in an already stressful situation.[48]

The final resource that the courts may refer parties to is that of mental health treatment, which can be a compulsory order under the Mental Health (Compulsory Assessment and Treatment) Act 1992. This legislation allows the Court to make orders for a person to be detained for assessment and treatment of mental disorders, for both the benefit of the individual and the wider public.

There are also a range of other services available which are provided by charitable organisations such as the Salvation Army, particularly for victims of crime and those suffering addiction.

[48] Ministry of Justice "Family Dispute Resolution mediation" <http://www.justice.govt.nz/family-justice/about-children/making-decisions-about-children/getting-help-outside-the-court/family-dispute-resolution-mediation>.

VI Self-Represented Litigants

A Why self-representation?

The most commonly given reason that a litigant would choose to self-represent is an economic one: having an income which is not low enough to qualify for legal aid, but where the litigant feels that they still could not afford a lawyer.[49] There are many and various other reasons given in New Zealand, which include distrust of or bad experiences with lawyers, a desire to get a case over quickly, or that the case seemed sufficiently straightforward to proceed without a lawyer.[50] Sometimes the litigant has no choice. There are some litigants who are unable to find lawyers to take their case either due to a shortage of lawyers or because they have a reputation for being a 'vexatious' litigant. [51]

B What kinds of cases might a self-represented litigant do well in?

In general a self-represented litigant will do better in a straightforward case. In summary criminal cases there may be advantages for self-litigants who intend to enter guilty pleas, and who feel that by avoiding legalistic focus on the technicalities of the case they may gain a faster resolution and the moral satisfaction of owning up to their crime of their own volition, standing for themselves.[52] In turn they may get credit from the judge for their early guilty plea and if their contrition appears more genuine because of the way they represented themselves.[53]

Often in family law cases, litigants who represent themselves feel that they know their situation better than the lawyer and are more invested in a favourable outcome.[54] However these cases may be more complicated legally than they appear at first to the litigant.

C Disadvantages for the litigant and the system:

There are some general disadvantages for the litigant who represents themselves; they may have little experience with the legal system and may even completely misjudge the seriousness of their case.[55] In addition, self-representation complicates, lengthens and intensifies an already stressful experience, and it is difficult to maintain a lawyerly objectivity.[56] There may be a question left at the end of the case of whether the litigant has received as favourable an outcome as a represented litigant in the same situation.

Furthermore, the increase of self-represented litigants creates various pressures for the legal system. There is an administrative burden, as the legal administration is designed for a process where experienced lawyers know how to move cases through the system, and so self-

[49] Melissa Smith, Esther Banbury and Su-Wuen Ong "Self-Represented Litigants: An Exploratory Study of Litigants in Person in the New Zealand Criminal Summary and Family Jurisdictions" (Research Report for the Ministry of Justice, New Zealand, July 2009) at 11.
[50] At 11.
[51] Law Commission *Dispute Resolution in the Family Court* (NZLC R82, 2003) at 911.
[52] Smith, Banbury and Ong, above n 49, at 103 and 104.
[53] At 104.
[54] At 46.
[55] At 44.
[56] Law Commission, above n 51, at 920.

represented litigants are likely to find the system confusing and difficult. This means that they need to ask more questions about court procedures, and are likely to be less organised in presenting their cases.[57] This slows down the entire Court, with additional waits for all involved.[58]

An ethical dilemma is also created for judges. Judges are required to remain impartial to all parties, but it is difficult for them to determine how they should do this when one party is self-represented. Some judges interpret the need for impartiality as a "prohibition on providing self-represented litigants with assistance".[59] If this interpretation is taken it may result in a less fair trial for the self-represented litigant, as they suffer for their lack of legal knowledge and experience. On the other hand the judge might assist the litigant to meet technical requirements for the trial, in order to 'level the playing field'.[60] The other party and their counsel may feel in such a circumstance that the judge is not holding the self-represented litigant to the same rigorous standards as themselves. This may create further issues for the lawyers themselves, as clients may feel that they are wasting their money to pay for representation if the judge will see a self-represented litigant through the process.[61] This starts to go against the most basic principles of the adversarial system.

D How does the legal system respond to the issues in self-represented litigation?

Courts in New Zealand, Australia, the United States and Canada are trying to improve the system for self-represented litigants by making more information and instructions available for these litigants, through handouts and websites. This aims to help with the knowledge and experience which these litigants lack, without giving legal advice in the role of a lawyer. In New Zealand self-represented litigants also receive help from men's groups such as Union of Fathers, Men's Centre and the Men's Coalition, as well as from individuals acting as McKenzie Friends who assist in court.[62] In the United States there have been various Self-Help Centers set up to facilitate the research and preparation of litigants, in states such as California and Arizona, as well as specific facilitator roles within the courts themselves.[63] Overall these steps to improve the education and capability of the self-represented litigant are essential in helping the self-represented litigant to fit within the legal system.

[57] At 916.
[58] Zorza "An Overview of Self-Represented Litigation Innovation, Its Impact, and an Approach for the Future: An Invitation to Dialogue" (2009) 43 Fam.L.Q. 519 at 521.
[59] Paula Hannaford-Agor and Nicole Mott "Research on Self-Represented Litigation: Primary Results and Methodological Considerations" (2003) 24 Just.Sys.J. 163 at 165.
[60] Randall T. Shepard "The Self-Represented Litigant: Implications for the Bench and the Bar" (2010) 48 Fam Ct Rev 607 at 607.
[61] Zorza, above n 58, at 519.
[62] Smith, Banbury and Ong, above n 49, at 82.
[63] Hannaford-Agor and Mott, above n 59, at 166 and 167; Law Commission, above n 51, at 941, 942 and 943.