

SELF-HELP CENTRES IN THE UNITED STATES AND CANADA

In the course of my visit to the US and Canada to study case management, I observed the operation of self-help centres in a number of courts. These centres seem to me to have considerable potential for use in our system, given the large, and seemingly increasing, number of unrepresented litigants which we have. The increasing numbers of unrepresented litigants prompted North American courts to embrace the concept of self-help centres some years ago.

I have set out some observations of four of the self-help schemes which I observed in operation. I have selected these as they represent the variations in self-help formats, from least to greatest levels of assistance. The fourth and final scheme which I have discussed, Maricopa County, Arizona, is interesting in that Phoenix largely pioneered self-help centres and has, in effect, come full circle in its thinking as to the best approach to such centres.

I do not suggest that self-help centres are the answer to the difficulties posed by unrepresented litigants. They may be worth trialling, particularly if one looks at “delivery of justice” in terms of the broader considerations. A more informed litigant is likely to appreciate the court’s processes better and be able to participate more effectively in those processes, hopefully with a resultant increase in the level of both satisfaction with the outcome and acceptance of such outcome. Rather than approach the issue of compliance with court orders from the perspective of enforcement, we might do well to go back to the start of the process and look to litigants knowing more about what happens and being able to have a more meaningful involvement in the process which leads to the ultimate outcome. At its simplest level, an informed litigant may well take up less of the court’s time, both in terms of final hearings and interlocutory court events. This must have savings for court resources as well as represented litigants. The latter aspect seems to me particularly relevant where the represented litigant is funded by legal aid. The effect of self-help centres may well be that more litigants can receive a share of the legal aid dollar, without the overall expenditure on legal aid being increased. A related aspect of self-help centres, with particular potential implications for legal aid, relates to what are described in the US as “unbundled legal services”. In its simplest form, the process involves simply providing help from stage to stage. With an effective self-help centre, legal representation can be less critical at some stages of litigation than at other stages. If legal aid funding is not depleted on

lesser events, there is clearly the potential for more litigants to receive the benefit of discrete grants of legal aid for the purposes of more significant events.

If there is any enthusiasm for exploring self-help centres, whether within the Attorney-General's department, the Court or Legal Aid, I would be very interested in giving whatever assistance I could in that regard. I have considerable relevant documentation in my chambers which I was given in North America.

SUPERIOR COURT OF WASHINGTON, SEATTLE

In the Superior Court of Washington at Kent, there is a self-help centre. This was set up some years ago, largely from funding and assistance from government and the private profession. It was based on the Maricopa County Self Help Centre, as it then operated.

The facility has a large amount of source material, together with simplified, understandable, explanatory material. The centre is run by a "facilitator" who is a para legal, and has an awareness of the distinction between giving advice as to which forms to use and how to use them (which is permissible), and giving legal advice (which is not). As a service, the facilitator of the self-help centre checks forms for completeness prior to their being filed. This assists the court to a considerable extent. The service has videos of aspects of how to conduct motions and other proceedings in the court.

Judges and Commissioners report that the impact of the self-help centre has been enormous. Though not having authorities exactly like our *Johnson v Johnson* decision, Judges have a similarly difficult task ensuring that, so far as possible, litigants understand the processes and procedures in court. Judges report that discharging this duty is less onerous when unrepresented litigants have had the benefit of assistance at the self-help centre.

Clearly, the training of the facilitator is of great importance in this scheme. The facilitator must know how far he or she can go in giving guidance without transgressing by giving anything akin to legal advice. Not surprisingly, litigants are generally anxious to secure whatever advice they can from someone in an official position such as a facilitator. The general experience at Kent has been that the availability of the instructional videos as well as the written material limit the difficulties which are

encountered in this area. This does however point to a fundamental philosophical aspect of self-help centres, namely how much or how little assistance and guidance can properly be given at a self-help centre. At its simplest level, there need be no more assistance than videos and written material. The experience in North America has been that some facilitation or assistance at least needs to be available if litigants are to be pointed in the right direction and thereby potentially benefit from the scheme.

THE SUPERIOR COURT OF CALIFORNIA, LOS ANGELES

This is a huge court by our standards, with a high volume of cases and, as with each of the other jurisdictions referred to in this paper, a very high rate of unrepresented litigants. The scheme in Los Angeles represents a significant movement beyond that which I observed in Washington State.

The Los Angeles Self-Help Centre has a “facilitator”. The service is currently limited to child support and spouse maintenance claims. The facilitator occupies court-provided premises but, together with the facilitator’s staff, is federally funded. The function of the centre is to advise parties of options having regard to what they tell the centre staff, to advise them of their obligations and duty, and to assist them in the preparation of court papers and documents. The self-help centre does not exist to provide legal advice and does not represent a particular party in an action. No confidentiality or attorney/client relationship is created nor intended between the officers and the party. It is not uncommon for the service to help both sides of the dispute. The parties may be urged to seek legal advice or to otherwise attempt to procure legal representation. The service has been in operation for two years and is regarded as a success.

Where a litigant is referred to the centre by a judge on a day when that person has a matter in court, the centre will give such assistance as it is able without formally representing any party. The facilitator is a lawyer, and must be.

Appointments take about one month to make, unless the parties are referred to on the day by a judge for some assistance. The spacing of those appointments accords well with the scheduling of matters in the court.

There are 24 staff of whom 3 are support personnel, 3 lawyers and 18 para-legals. They are spread around the various courts within the county. The centre sees between 5,500 and 6,500 people per month. It refers matters to the general bar, legal aid funding being then a matter for application by lawyers and parties referred. It is hard to average the times which consultations take. Ninety minutes represents the longer time which tends to be taken whilst short consultations may take as little as three minutes.

The rationale behind this scheme is that all the stakeholders in litigation benefit from having educated parties where those parties cannot, for whatever reason, be represented by lawyers. The view is that the litigants are more meaningfully able to participate in their own cases, the cases do not take as long, and that what is presented is more relevant and helpful, both to litigants and the court. The centre aims at advising litigants how to conduct themselves, both in terms of preparation and presentation of their case. The centre finds that so doing, enables the parties to feel empowered in ways that they do not when representing themselves and that the court's task in ensuring that all parties get a fair go, is made easier by having litigants who are better prepared for the ordeal which awaits them when they go to court. It is felt by the centre that litigants respect court decisions more, and are more accepting of those decisions when they have a greater understanding of the processes and principles of the court.

It would be apparent that this scheme operates on a very large scale. There are some aspects of its operation which would cause us disquiet, particularly the notion of advising both parties. There are significant funding implications as would be obvious, as well as potential issues of professional indemnity, none of which has proved, to date at least, a concern or difficulty in Los Angeles county. It may be that, resources permitting, of a scheme of this kind would work well in our country, but I can see considerable scope for difficulties with the private profession as well as legal aid itself inherent in such a scheme, assuming, which one could not, that resources permitted anything as ambitious as this project to be seriously contemplated.

SUPERIOR COURT OF ONTARIO, HAMILTON

The Unified Family Court of Ontario in Hamilton has a self-help centre which is quite highly developed and heavily resourced. There is a quite high commitment of legal aid to the court at Hamilton. The self-help centre consists of a facilitator whose involvement is limited to the actual filling out of forms

rather than to the giving of any legal advice. For that, an advice lawyer is provided, the advice lawyer being a private practitioner who attends for the day, is paid legal aid rates, and gives a minimum of twenty minutes time to those who seek advice. The twenty minutes is given to all persons but no more than twenty minutes will be given to those whose means place them outside the scope of legal aid's services. The third member of the self-help centre is the referral coordinator whose task is to direct people towards further legal aid, to support services, to counselling and the like. The self-help centre has the usual videos, self-help guides and information that all such centres have.

Legal aid has a duty solicitor present full-time in the court. The legal aid solicitor refers matters, when they are before the court, to private practitioners who accept legal aid referrals as well as giving some advice and appearing in court. This is very much like the old duty solicitor scheme which Legal Aid had in our court more than a decade ago.

The scheme clearly operates at several levels, the first, and simplest, being the completion of court forms, the second, giving of advice "on the spot" for litigants in court on the day they attend, the third, as a filter for legal aid and related services. The scheme is still very much in its infancy in Hamilton. A scheme of this magnitude would, I think, require very careful consideration before one could contemplate adopting it. I suspect that it will become hugely resource intensive. Whether the level of resourcing which the scheme requires can and will be maintained is a matter about which I have reservations. I have concerns that the scheme could engender resentment amongst the profession.

SUPERIOR COURT OF ARIZONA, PHOENIX

I conclude this paper with reference to the Maricopa County Self-Help Centre, mainly because Phoenix was, as I understand it, the first place to have a self-help scheme and has, over the years, adopted a number of variations, some of which are currently featured in other schemes to which I have referred in this paper. It is interesting that, having trialed various approaches, Phoenix has ultimately opted for the comparatively simple scheme which they now have. Having seen the scheme in operation, and looked closely at the documentation available, it is apparent that a very considerable amount of time and effort has gone into refining the materials which are made available to users of the scheme in Phoenix.

The self-service centre in Phoenix has undergone modification, the service itself having existed for some years in its current form for the last four years. The service differs from some of the later forms of self-service centre in that it does not have a facilitator, nor does it have any legal or para legal staff. The staff perform as counter clerks. It is court-funded. The judges regard the self-service centre as something of a godsend.

About one-third of all cases in the court in Maricopa feature two unrepresented litigants, a further third involve one unrepresented litigant whilst not more than a third feature two represented parties. To attempt to minimise the potential for service personnel being drawn into inadvertently advising litigants, the court has endeavoured to prepare packets to enable litigants to deal with almost every kind of litigation which could be undertaken or defended in the court. This has been done by presenting the packets in a sequential way so that litigants identify the general area, then go to the packet which meets their need, whether that be presenting an application or responding to one. The packets only deal with one stage in the process so that litigants are not so overburdened with material to read and understand. A kind of flow chart enables litigants to follow the steps, packet by packet. Packets are available in English and Spanish.

Staff at the centre, who are trained in this regard, only advise litigants as to the completion of court forms, declining to advise litigants as to how a particular entry should be completed. From looking at the packets, much of the guesswork is taken out of the process by virtue of the way the packets are designed. All of the facilities of the centre are available on the internet and the internet is used very extensively by the public.

The centre is visited extensively and the material there, including court forms, widely availed of. If para legals or others engaged to give advice in relation to completion of forms and/or legal matters generally were employed, it would be extremely expensive and become an unending "black hole" for resources. The Phoenix experience has been that the more the service did, the more people wanted to use it, hence more resources which had to be committed to it.

The Phoenix experience was that, the court providing a service which involved any form of representation resulted in increasing numbers of people wishing to access the service, the resultant effect on court's resources being obvious and substantial. The private profession were unimpressed by these developments. These were matters which played a part in the court's decision to revert to the simpler format of the scheme as it now operates. The scheme in its current format has seen an increase in the provision of unbungled legal services by the private profession who are now supportive of the service.

CONCLUSION

I feel that it is worth considering the operation of self-help centres in Australia, particularly in areas where there is a high level of unrepresented litigants and where the cases which provide the bulk of the court's work involve, comparatively, simpler legal issues. Without suggesting that children's cases lack complexity, the complexity is more often factual than legal. In those cases that people have chances to "tell their story", without their doing so tying up courts for excessively long and unproductive periods. If litigants could learn, prior to completing their affidavits, the sorts of things that are relevant to the proceedings in which they are engaged, the content of their material might be improved and the bulk reduced. If they could see videos on how to present or defend a case, that would help. The Phoenix packet system would help these people enormously. I see self-help centres as having the potential to benefit all stake holders in family law, courts, legal aid agencies, the private profession and, perhaps most importantly, the litigants themselves.

The availability of space for the establishment of a self-help centre in many registries means that issues of premises and security do not arise. Fitout is not substantial – save in relation to computer terminals and internet facilities, many of which already exist. A facilitator would probably be an ASO3 level employee. The scope for part-time staffing at the self-help centres is obvious, particularly in the early trial stages.

The time needed to prepare the packets, and translate in some instances, would probably be the greatest component of setting up the facility. The preparation of videos would take time. I would think that we have all relevant expertise within the court to undertake all necessary tasks, although involving university faculties to minimise the imposition on our own resources could be a consideration. The potential benefits appear to me to comfortably outweigh the start up costs.

I offer these thoughts in the hope that the court, the government and/or Legal Aid will give the matter further consideration. There seems little to lose and much to be gained – by all the players.

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Chambers