The Rules Committee | Consultation Paper

Costs for Litigants-in-Person

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Introduction

1. The Rules Committee is seeking feedback on potential amendments to pts 14 of the High Court Rules 2016 (HCRs) and the District Court Rules 2014 (DCRs) that may alter the ability of litigants-in-person who successfully bring or defend a claim to obtain an award of costs.

2. In *McGuire v Secretary for Justice*,[1] every member of the Supreme Court noted or made criticisms of the present position. That is that most litigants-in-person are not entitled to an award of costs. However, lawyers who currently hold practicing certificates, and parties who are represented by in-house lawyers (employed lawyers), can obtain costs. The majority, however, considered it better for Parliament or this Committee, rather than the Court, to effect any reform.

3. In exploring the issues raised by the decision in *McGuire*, the Committee has identified four questions as to the nature and purpose of the costs regime on which it is appropriate to consult at this early stage in the reform process. The answers to these questions will guide any future reforms. These are:

[1] [2018] NZSC 116, [2019] 1 NZLR 335, noted (2019) 25 Auckland U L Rev 263.

a. One: Should the concept of "costs" be expanded beyond allowing partial recovery of amounts paid for legal services, thereby allowing litigants-in-person to receive an award of costs?

b. Two: If so, how should the costs of litigants-in-person be determined?

c. Three: If not, should costs be narrowed further, so that they must be out of pocket expenses, thereby preventing self-representing lawyers from recovering costs beyond disbursements?

d. Four: Should an exception nonetheless still be made for employed lawyers acting for a party, and, if so, on what basis should their costs be determined?

The present position

What are "costs"?

4. Costs are an amount awarded by a court to the party that has succeeded in litigation in addition to any damages or other relief that party receives. These are awarded to allow the party to off-set the expenses they have incurred in engaging (a) lawyer(s) to take the steps (such as filing proceedings, collating evidence, and appearing in court) necessary to succeed in making or defending a claim. The underlying policy is that a party who has been put to the expense of defending their rights should not be left substantially out of pocket.

5. The current costs model in place in New Zealand is based on the schedule of time allocations and daily recovery rates found in the HCRs and DCRs.[2] It may be summarised as the "reasonable contribution" model. The idea is that winning parties should receive a realistic contribution towards the costs they have incurred in engaging lawyers to bring or defend their claim. This is meant to be two-thirds of what, in the Committee's view in setting the time allocations and daily recovery rates, is a reasonable amount for a proceeding of a particular complexity and scope.[3] This is subject to various qualifications and the potential for uplifts or reduction in costs.[4] The most important of these is the rule that the award of costs cannot exceed a party's actual costs.[5] Generally, the "reasonable contribution" approach represents a middle ground position between the American "no costs" model and the English "full costs" model.[6]

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2 High Court Rules 2016, schs 2 and 3; District Court Rules 2014, schs 4 and 5. The same approach applies in the Court of Appeal and the Supreme Court, and the Supreme Court has said it is generally desirable that the same approach applies at all levels: *Prebble v Huata* [2005] NZSC 18, [2005] 2 NZLR 467 at [10].

3 Rachael Schmidt-McCleave "Costs" in Peter Blanchard (ed) *Civil Remedies in New Zealand* (2nd ed, Brookers, Wellington, 2011) 763 at [21.2.1]. See also *Nomoi Holdings Ltd v Elders Pastoral Holdings Ltd* (2001) 15 PRNZ 155 (HC); *Mansfield Drycleaners Ltd v Quinny's Drycleaning (Dentice Drycleaning Upper Hutt) Ltd* (2002) 16 PRNZ 662 (CA) at 668.

4 See High Court Rules 2016, rr 14.2, 14.6, 14.7, 14.11; District Court Rules 2016, rr 14.2, 14.6, 14.7, 14.11.

5 High Court Rules 2016, r 14.2(f); District Court Rules 2014, r 14.2(f).

6 Schmidt-McCleave, above n 3, at [21.2.1].

6. The key point is that the current reasonable contribution costs model assumes that the parties to litigation have engaged (a) lawyer(s) to represent them. The costs awarded represent a partial contribution by the losing party or parties towards the winning party's or parties' cost of legal services provided to them by their lawyer(s). The scale approach is based on identifying the steps (a) lawyer(s) would have to take to successfully make or defend a claim on their client's or clients' behalf.

The "primary rule" and the exceptions

7. However, there is an increasingly large number of litigants-in-person (ie unrepresented parties) appearing before the Courts.[7] Where these parties succeed in bringing or defending their claim, they will have to have taken many of the same steps as a successful represented party.

8. The Supreme Court has confirmed the "primary rule" that disqualifies successful unrepresented litigants from obtaining an award of costs. Litigants in person may receive an award of disbursements,[8] including any sums paid to a solicitor for helping in preparing their case,[9] and possibly the travel costs of McKenzie friends.[10]

9. The majority in *McGuire* also affirmed the exceptions to that rule as they applied before the Court of Appeal's decision in *Joint Action Funding*.[11] The first of these allows a litigant-in-person who is also a lawyer (that is, an enrolled barrister and solicitor presently holding a practicing certificate)[12] to recover costs in respect of most steps on the scale. The excluded steps are those made unnecessary by the fact they are representing themselves, such as attending on the client. The majority in *McGuire* called this the "lawyer in person exception".[13]

10. The majority also upheld the rule that allows parties to conduct litigation using an employed lawyer (such as in-house counsel) to recover costs; the so-called "employed lawyer rule".[14]

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7 See Justice Stephen Kós "Civil Justice: Haves, Have-Nots, and What to Do About Them" (Arbitrators' & Mediators' Institute of New Zealand and International Academy of Mediators Conference, Queenstown, March 2016), available at https://www.courtsofnz.govt.nz/speechpapers/HJK2.pdf, or (2016) 5 JCivLP 178 at [21].

8 *Re Collier (A Bankrupt)* [1996] 2 NZLR 438 (CA).

9 *Knight v Veterinary Council of New Zealand* HC Wellington CIV-2007-485-1300, 31 July 2009 at [6].

10 At [6] 3, but compare *McGuire*, above n 1, at [55] fn 42.

11 *Joint Action Funding Ltd v Eichelbaum* [2017] NZCA 249, [2018] 2 NZLR 70.

12 See *Dow v Cameron* HC Dunedin A56/84, 8 March 1995.

13 *McGuire*, above n 1, at [55].

14 At [55].

Question One: Should the concept of "costs" be expanded beyond allowing partial recovery of amounts paid for legal services?

11. The practical effect of this "primary rule", ultimately, is to not allow successful litigants-in-person an award of costs for doing the same work, to a sufficient standard to win in court, that, if that work had been done by a lawyer employed by a represented party, would have been off-set by a costs award.

12. As the majority in *McGuire* said, the ultimate rationale for this "primary rule" is that the costs regime is based on valuing, and allowing partial recovery for, the cost of the work done by lawyers.[15] Put another way, the "primary rule" exists because of "costs" having been historically defined as referring to compensation for lawyers' fees. This has been taken to justify not adopting approaches based on comparing the value of the work done by litigants-in-person to the value of the done by lawyers or compensating lay-litigants for their opportunity costs.[16] Part of this reluctance is the perceived practical difficulty of quantifying costs awards based on these alternative measures: lawyers' fees providing an attractively simple basis for determining the value of costs awards.

13. In Canada, in contrast, the courts have recognised that costs now serve a number of policy objectives in addition to their historical compensatory purpose, and that these are compromised by maintaining a stern "primary rule".[17] In Australia, various rules now have an expanded definition of "costs" that undermines the primary rule, such as provisions that "the whole or a part of the expenses or losses incurred by the self-represented party in or in connection with conducting the case be included in the costs."[18]

14. The High Court of Australia, in *Bell Lawyers Pty Ltd v Pentelow*, did not accept that any practical difficulties in measuring the value of costs awards were a principled reason to preserve the present position. At most, the Court thought, these difficulties mean legislative revision (which would include rules-making), rather than common law development, is a more appropriate way to proceed.[19]

15. Another justification for the rule is that given by the High Court of Australia in its 1994 decision in *Cachia v Hanes*. That is that the presence of litigants-in-person in the Courts is not to be encouraged, given the delays associated with their presence.[20] That, however, is inimical to the fundamental right of all persons to represent themselves in court

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15 At [82]. See also G E Dal Pont *Law of Costs* (4th ed, LexisNexis Butterworths, Sydney, 2018) at [7.24] and following.

16 At [82]-[88].

17 *Sherman v Minister of National Revenue* (2003) 226 DLR (4th) 46 at [46]. See also *Fong v Chan* (1999) 181 DLR (4th) 614 (Ontario CA) at 623.

18 See *Northern Territory v Lands and Mining Tribunal* [2002] NTSC 57, (2002) 12 NTLR 139; *Aussie Invest Corporation Pty Ltd v Hobsons Bay City Council* [2004] VCAT 2188, (2004) 22 VAR 212; Magistrates Court (Civil Proceedings) Act 2004 (WA), s 25(9).

19 *Bell Lawyers Pty Ltd v Pentelow* [2019] HCA 29 at [55].

20 *Cachia v Hanes* [1994] 120 ALR 385, (1994) 179 CLR 403 (HCA) at 410.

proceedings. It also does not reflect the fact that empirical studies suggest most litigants-in-person would prefer to be represented but cannot afford the cost of representation.[21] As one such person has put it: "You can't pay $500 per hour when you earn $500 per week."

16. The question is whether the meaning of "costs" should be revised to allow successful lay-litigants to recover the expenses they incur in doing this work. Put another way (using the language from *McGuire*), the question is: should the "primary rule" preventing the award of costs to self-represented parties be abrogated?

Question Two: If so, how should the costs of litigants-in-person be determined?

17. If question one is answered "yes", how should the practical difficulties in assessing costs awards to lay-litigants identified in *McGuire* be resolved? The current regime assumes a reasonable contribution to off-setting cost of the work done by lawyers. Allowing an award of costs to self-represented parties may, therefore, require a fundamental change to the way the costs regime operates.

18. An important consideration is that, ideally, the award of costs should be predictable and expeditious.[22] Ideally, parties and the courts should not have to expend a significant amount of time or expense in fixing costs. Toohey and Gaudron JJ, dissenting in *Cachia v Hanes*, suggested a way of minimising disruption while allowing for more equitable treatment of self-represented litigants.[23] Basically, this involved allowing a litigant-in-person to recover costs according to the scale by presenting proof the various relevant steps were actually carried out, subject to the requirement (which already applies to represented parties under the current New Zealand rules) that those steps were reasonably necessary to preparing and presenting their case.[24]

19. Toohey and Gaudron JJ considered this preferable to adopting an approach under which litigants-in-person could receive costs compensating them for the value of the time spent preparing the case, subject to a cap meant to ensure this amount did not exceed the costs that would have been available had a lawyer been retained.[25]

20. Responding to the decision in *Cachia v Hanes*, the Australian Law Commission recommended a lay-litigant be able to recover disbursements and costs for work

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21 Dr Bridgette Toy-Cronin "Keeping up appearances: accessing New Zealand's Civil Courts as a litigant in person" (PhD thesis, University of Otago, 2015) at [87].

22 High Court Rules 2016, r 14.2(g); District Court Rules 2014, r 14.2(g).

23 Cachia v Hanes [1994] 120 ALR 385, (1994) 179 CLR 403 (HCA) at 424-425.

24 At 424-425, citing British Columbia Law Reform Commission *Report on Civil Procedure (Part 1 – Costs of Successful Unassisted Lay Litigants)* (1975) at 19.

25 At 424, referring to Law Reform Committee of South Australia *Report Relating to the Award of Costs to a Litigant Appearing in Person* (Report No 29, 1974) at 5.

reasonably necessary to preparing and conducting their case, subject to four guiding principles. Dal Pont summarises these as being:[26]

a. the litigant-in-person's costs should not exceed those allowed under a schedule to be set out providing for lump sums related to the type and complexity of the matter (as under the current New Zealand rules);

b. subject to the fourth point below, the costs obtainable by a litigant-in-person on this measure should not exceed those available to a party represented by a lawyer doing the same work;

c. subject to the fourth point below, litigants-in-person should not be able to obtain any costs not recoverable by a represented litigant; and

d. the Court should have discretion to allow lay litigants costs exceeding the relevant lump sum in appropriate circumstances, provided that the amount awarded does not exceed the costs incurred.

21. Several other matters would need to be decided if such an approach was adopted. One is the application of the increased and indemnity costs regime to litigants-in-person. The need for fairness as between represented and unrepresented parties suggests the same rules should apply to both parties. Current rules also permit reduction in costs to a successful party where they have failed in part, or where they have unnecessarily or unreasonably caused costs to be incurred.[27] As it is, unrepresented parties are more likely to mishandle cases and trigger that provision.

22. The approach that has been adopted in Canada, since the abrogation of the primary rule in that jurisdiction,[28] attempts to avoid the difficulty of establishing a general measure of lay-litigants' costs. The Canadian approach is instead being premised on referring the question of costs to the registrar where a litigant-in-person succeeds. The goal is to produce "an equitable result between the parties while balancing the various policy objectives of costs."[29]

23. In practice, costs are awarded only where lay-litigants demonstrate their investment of time and effort resulted in work being done that was as valuable as the contribution a lawyer would have made to the proceeding. They are awarded a payment in respect of the

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26 Dal Pont, above n 15, at 188, referring to *Australian Law Commission Cost Shifting – Who Pays for Litigation* (ALCR 75, October 1995) at 177.

27 High Court Rules, r 14.7.

28 See *Skidmore v Blackmore* (1995) 122 DLR (4th) 330 at 340 (BCCA); C(LL) v C(AR) (1999) 180 DLR (4th) 361 at 369 (Alberta QB); *KT v DCP* [2015] BCSC 1179; *Turner v Canada* [2003] FCA 173; *MLR v British Columbia Ministry of Education* [2018] BCSC 980.

29 *Dechant v Law Society of Alberta* (2001) 203 DLR (4th) 157 (Alberta CA) at [18].

opportunity costs they incurred in taking those steps.[30] The Court of Appeal of Alberta has suggested that the inquiries relevant to establishing the measure include the following:[31]

a. Was the matter complicated?

b. Was the work performed of good quality (that is, sufficiently comparable to that which would have been produced by a competent lawyer as to assist the court)?

c. Did the self-representation result in unnecessary delays?

d. Did the lay litigant take up an unreasonable amount of opposing parties' or the courts' time?

e. Did the lay litigant lose time from work?

f. What would the lay litigant have earned if not required to prepare and conduct their case?

g. Did the opponent take advantage of the fact that he or she was facing a lay litigant by taking frivolous and unnecessary steps to thwart the litigant?

h. Did the opponent refuse to entertain reasonable requests to discuss settlement?

i. What is an appropriate amount for the issues involved?

24. Three potential objections arise to this approach:

a. First, this model would likely make the quantification of costs significantly less expeditious than the current approach; increasing the expense faced by both the parties and the courts in determining costs.

b. Secondly, the portion of costs attributable to the party's opportunity costs will depend largely on the party's income. That is, a well-paid or otherwise well-off litigant will have incurred a greater opportunity cost than a poorer litigant in bringing their own matter to court. This means that in many cases an unemployed person's costs will be significantly lower than an employed person's costs.[32]

c. Thirdly, determining the opportunity costs of a company director, whose loss (in real terms) is not just the loss of a salary or wage during a given period but rather the cost of being able to advance their company's or companies' business during that time may prove quite difficult to assess, compared to identifying lost wages.

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30 *Fong v Chan* (1999) 181 DLR (4th) 614 (Ontario CA) at 624.

31 *Dechant*, above n 29, at [18].

32 At [19].

25. In England and Wales, s 1(1) of the Litigants in Person (Costs and Expenses) Act 1975 (UK) provides:

> Where, in any proceedings to which this subsection applies, any costs of a litigant in person are ordered to be paid by any other party to the proceedings or in any other way, there may, subject to rules of court, be allowed on the taxation or other determination of those costs sums in respect of any work done, and any expenses and losses incurred, by the litigation in or in connection with the proceedings to which the order relates.

26. Subject to this limitation, litigants can obtain costs in respect of financial loss incurred during the amount of time reasonably spent doing the work.[33] Where the litigant cannot prove financial loss, they are entitled to the prescribed amount for each hour spent doing the work, if they will be entitled to pay for only as many hours as should have reasonably be spent on that work.[34] Furthermore, litigants-in-person are only entitled to:

    a. the same categories of work and disbursements that would have been allowed if the work had been done, or the disbursements made, by a legal representative on their behalf;[35]

    b. the payments reasonable made by them for legal services related to the conduct of the proceedings;[36] and

    c. the costs of obtaining expert assistance in assessing the costs claim.[37]

27. The amount of costs thereby available is limited to two thirds of the amount the litigant could have achieved if they had been represented.[38] This reflects a view that it is desirable as a matter of public policy to disincentivise litigants who could attain representation from not doing so by creating costs implications for that decision.

28. It is also worth repeating that the 'starting point' in England was a "full costs" model concerned with providing an indemnity to the successful party. Accordingly, this approach represented a less radical departure in principle and practice for England than would be the case if a similar approach was adopted in New Zealand.

29. The question is, if the primary rule is abrogated, which of these approaches, if any, should be applied to govern the award of costs to litigants-in-person? Each represents a different answer to balancing the objective of treating represented and unrepresented parties

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33 Civil Procedure Rules (UK), r 46.5(4)(a). The burden of proving loss falls on the litigant-in-person making the claim: *Mainwaring v Goldtech Investments Ltd* [1997] 1 All ER 467 (EWCA).

34 Civil Procedure Rules (UK), r 46.5(4)(b). The prescribed rate is 19 GBP per hour. In *R (ex parte Wulfsohn) v Legal Services Commission* [2002] EWCA Civ 250, [2002] All ER (D) 120 a litigant in person was allowed 10,000 GBP in costs for 1200 hours of research (8.33 GBP per hour).

35 Civil Procedure Rules (UK), r 46.5(3)(a).

36 Rule 46.5(3)(b).

37 Rule 46.5(3)(c).

38 Rule 46.5(2).

equally against the practical difficulties of assessing lay-litigants' costs and the desirability of awarding costs remaining an efficient process. The positions overseas also give different answers to the question of whether lay-litigants' costs, if available, should be awarded on a 'modified scale' approach, or an indemnity approach. Alternatively, are the existing rules essentially satisfactory, enabling reduction in the costs awarded in some cases?

Question Three: If not, should costs be narrowed further, so that they must be out of pocket expenses?

30. If the primary rule is maintained (ie if question one is answered "no") the question remains whether the current exceptions in favour of lawyer-litigants-in-person and in-house counsel should continue to apply.

31. In terms of lawyer-litigants-in-person, one way of viewing the problem is to ask whether the meaning of "costs" should be altered to limit costs to out-of-pocket expenses. This, essentially, was the effect of the "invoice required" approach of the Court of Appeal in *Joint Action Funding*. Under that approach, because lawyers who represent themselves have not been billed for legal services they cannot receive any costs, only disbursements, as they have not incurred costs and, under the rule that costs awarded cannot exceed actual costs, their "costs" are nil.[39]

32. The Court of Appeal's approach in *Joint Action Funding* emphasises that the practical effect of the lawyer-litigant-in-person exception is to allow lawyers some recovery for their opportunity costs, even as other litigants-in-person are denied such an award. This is the aspect of the lawyer-in-person exception that the High Court of Australia has identified as "anomalous"[40] and has now found to be indefensible.[41] Arriving at the same conclusion as Ellen France J in her dissent in *McGuire*, the High Court considered the exception to be an unjustifiable "affront to the fundamental value of equality of all persons before the law."[42]

33. The majority in *McGuire*, while acknowledging there is force in that submission, did not consider the exception so irrational as to be borne away by the "invidiousness" point.[43] The majority noted that the work done by a lawyer in person is the same work that a third-party lawyer would have done if instructed, and that the costs exposure of the other party "will probably be lower than if a third-party lawyer is retained."[44] However, as Ellen France J noted, not all lawyers are litigators, and it cannot be assumed that any person holding a practicing certificate will necessary do better work than other professional persons.[45]

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39 *Joint Action Funding Ltd v Eichelbaum* [2017] NZCA 249, [2018] 2 NZLR 70 at [58].

40 Cachia v Hanes [1994] 120 ALR 385, (1994) 179 CLR 403 (HCA) at 411.

41 *Bell Lawyers*, above n 19, at [55].

42 At [3] and [24].

43 *McGuire*, above n 1, at [84].

44 At [83].

45 At [91] per Ellen France J (dissenting), citing G E Dal Pont *Law of Costs* (4th ed, LexisNexis Butterworths, Chatswood (NSW), 2018) at [7.31]–[7.38].

34. In arriving at their preferred view, the majority in *McGuire* did not engage with Robin Cooke J's reservations regarding the involvement of employed lawyers in litigation, as noted in *Henderson Borough Council*.[46] Cooke J expressed the view that a significant part of the value of counsel to the Court is the independent nature of counsel and counsel's role in offering detached and objective advocacy. These concerns would also be present, presumably, in respect of lawyer litigants in person. As the High Court of Australia recently noted, "the view that solicitors should be encouraged to act for themselves is contrary to the modern orthodoxy that it is undesirable, as a matter of professional ethics, for a solicitor to act for himself or herself in litigation."[47]

35. The strongest argument identified by the Committee for preserving the lawyer in person exception is that, if not allowed to recover their own costs, lawyers will be incentivised to obtain representation to increase the amount recoverable.[48] However, unlike in England (from where that rationale was originates), recovery in New Zealand is limited to scale costs. It follows this concern is less pressing here than it would be in England.

36. The question is, if the primary rule is maintained, and given these concerns, whether the definition of "costs" should be narrowed to limit costs to out-of-pocket expenses, with the effect that lawyers appearing in person will be unable to recover costs beyond disbursements.

Question Four: Should an exception be made for employed lawyers and, if so, on what basis should their costs be determined?

37. If question three is answered "yes" employed lawyers representing their employer could not claim an award of costs.[49] This is because the employer is being compensated for the opportunity cost associated with having their employee engaged in the piece of litigation in question, as opposed to other work. That would run afoul of the primary rule.

38. Gageler J has recently taken another view. His Honour said that the employed lawyer rule is an application of the general principle, rather than an exception to it.[50] He applied Cooke J's observation in *Henderson Borough Council* that "the time of a salaried employee has been occupied". Gageler J took the view that this is a real cost to a corporate party who has, as a matter of economic reality, incurred the expense of engaging a lawyer in a manner hard to distinguish from a party who obtains external counsel. This is different also from the position of a lawyer who represents themselves.

39. Equally however companies (and government departments) that use employed lawyers will still be able to obtain compensation for the opportunity cost of having staff engaged in

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46 *Henderson Borough Council v Auckland Regional Authority* [1984] 1 NZLR 16 (CA) at 23.
47 *Bell Lawyers*, above n 19, at [68].
48 *London Scottish Benefit Society v Chorley* (1884) 13 QBD 872 (CA) at 875.
49 *McGuire*, above n 1, at [55], [85], and [87(c)].
50 *Bell Lawyers*, above n 19, at [68].

litigation-related work that companies that retain external counsel will not. This is even though those other companies will incur significant lost staff time due to the need to, for example, have executives involved in consulting with lawyers, have staff retrieve and provide documents, and will otherwise have to make staff available to lawyers.

40. The Committee is aware that any change to the employed lawyer rule may result in "serious inconvenience" to government entities and corporations as the primary users of in-house counsel in New Zealand. The Committee is also aware of concerns that have been expressed that such a change would interfere with business' and government departments' autonomy in structuring their business affairs by diminishing "the value of in-house counsel in comparison to external counsel" in terms of the recovery of costs.[51]

41. The question that arises is whether there is enough justification for treating employed lawyers in a different manner to lawyer-litigants-in-person. This could arise either from accepting that employed lawyers are materially like external counsel or from another policy justification (such as respect for corporate parties' freedom as to how to structure their affairs.)

42. If a distinction is to be made, a further question arises as to the basis on which employer lawyers' costs should be determined and whether, for instance, this should differ from the approach taken to other lay-litigants' costs. One approach would be the modified application of the scale to employed lawyers, as is done presently, while giving clearer recognition to the fact these awards of costs provide some off-setting of, in effect, the employer's opportunity costs. This might be achieved by, say, awarding a set percentage of scale costs to parties represented by an employed solicitor. This would provide a rough means of ensuring that employers may not improperly profit from litigation by somewhat closing the gap between scale costs and the actual cost associated with employing counsel.

Return of Submissions

43. The Committee invites submissions and comments addressing each of these questions and the points raised under each. The Committee is interested in receiving submissions addressing related points and questions not identified in this paper. The Committee would particularly welcome further suggestions as to how, if the primary rule is abrogated, the costs of litigants-in-person can be justly but expeditiously determined.

44. Submissions or comments should be directed to Sebastian Hartley, Clerk to Committee, by 2 September 2020, using the details the first page of this document. Inquiries regarding this document may, in the first instance, be directed to the Clerk by post, phone, or email.

45. Submitters are requested to please include their name, any firm or professional organisation affiliation relevant to their submission, contact telephone or mobile number,

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[51] See Herman Visagie "The Vexed Issue of Court Costs for In-House Counsel" *In-House Insider* (online ed, New Zealand, 30 July 2018).

and one of either their email address and postal address. The Committee may contact submitters regarding their submissions.

46. Please be aware that all submissions received:

    a. may, at the Committee's discretion, be posted on the Rules Committee's website;

    b. may form part of the Committee's response to any future request made under the Official Information Act 1982; and

    c. will be retained indefinitely as part of the Committee's records pursuant to the Public Records Act 2005 and may be subject to public inspection under the provisions of that Act.

47. If you would prefer that your submission, or any part of your submission, not be made publicly available or released in this manner, please indicate this in a letter or email covering your submission.

The Rules Committee would like to take this opportunity to remind members of the profession that feedback from the profession is a valuable way of ensuring that the rules are working well.

If you have any concerns about any rule or its application, please raise this with the Committee by writing to the Clerk at PO Box 60, Auckland, or RulesCommittee@justice.govt.nz.
