

Case Management: persuading the sceptics

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Delay is not inevitable in the judicial system, according to international caseload management expert, Maureen Solomon, who visited New Zealand recently to give a second series of workshops aimed at judges, court administrators and lawyers.

Ms Solomon said although some participants approached the previous workshop programme with scepticism, once they had had the chance to examine the underlying principles and goals of case management they were able to view it as a justice enhancement mechanism – a way of organising work and effort for the benefit of the litigants.

After 25 years of cajoling and persuading sceptics within the American justice system her work in the caseload management area is now more and more directed to implementation techniques and training in the "how" rather than convincing people of the merits of caseload management. She believes that New Zealand has reached further, faster than America or Canada in terms of widespread acceptance of CFM principles. Court administrators appear to be the strongest advocates and although she feels some judges may not fully understand or support the concept – some are concerned about how they can integrate case management responsibilities with their responsibilities for adjudicating – the scepticism appears to come mainly from within the ranks of the legal profession.

"But I would attribute to the fact that they have had less opportunity to really consider the concepts and underlying principles."

Her main message to workshop attendees is to forge a partnership between the bench and members of the legal profession in moving cases to a timely disposition at minimal cost. That includes exploring appropriate methods for settlement.

"We have to realise that most cases

are not tried – they are settled. And the best settlement is between two well-prepared lawyers."

The courts have an important role in helping to ensure early, effective preparation by lawyers. Such a role involves early intervention, setting time limits for completion of key case activities and enforcing those deadlines.

"The longer a case takes for disposition the more it costs. The court has to be mindful that every new conference it creates, every new procedure, every new form, is potentially a billable event.

"We want to make sure that every scheduled event is meaningful with a

to 1500 cases and the time for disposition of newly filled cases reduced from about two years to 15 months.

She also worked with a Californian court which, within nine months of adopting a caseload management programme, cut its inventory of serious criminal cases in half.

Ms Solomon says its important that the courts aren't faced with concentrating judicial resources in the criminal area, due to a Bill of Rights Act constraints, at the expense of civil cases. Case management provided the mechanism to resource the courts so that they could deal with both in a timely and cost effective manner.

While New Zealand appears to have taken quickly to the concept of caseload management Maureen Solomon says the real challenge will be to sustain the change – by, for instance, enforcing deadlines, ensuring that lawyers do what they are supposed to do and seeing that they and

judges alike are adequately prepared.

Caseload management programmes "are not little tweaks to the old system," she says, but rather they represent "transformational change" – a major transformation of the court system. To this extent it becomes harder to slip back into old habits.

Although the financial costs of reforming the system are difficult to measure Ms Solomon responds: "How do you measure the cost to people having to wait three years, two years to have resolution in their case?"

Moreover, she suggests that such are the efficiency gains brought by case management programmes that courts can reduce delays without extra judicial resources. In the US one chief judge with whom she is working said five years ago the only answer to the increasing backlog of cases in his court was more judges. Today he confides that due to CFM the court is working more effectively and efficiently with even fewer judges.

JUSTICE

The goal of caseload management is to assure that justice is achieved in each case in a fair, timely and efficient manner.

Effective caseload management pursues the following objectives:

- *Equal access to court processes for all litigants*
- *Timely disposition consistent with the circumstances of the individual case*
- *Enhancement of the quality of the litigation process*
- *Enhancement of public confidence in the court as an institution.*

very specific purpose – that, is that it either disposes of the case or contributes substantially towards disposition".

Case management is not a "steamroller approach" but directed rather to providing individual justice in individual cases – tailoring the process to individual needs.

Various forms of alternative dispute resolution techniques can also usefully be incorporated into a case management scheme, but cases should be screened early to determine the appropriate ADR mechanism, Ms Solomon says.

As examples of how caseload management can ease pressure on the court system, Maureen Solomon cites a Michigan court which introduced a system similar to that now operating in the High Court pilots in Auckland and Napier where cases were assigned to different tracks depending on their complexity. An inventory of 7000 cases more than three years old was within three years of introducing a CFM programme reduced