EFFECTIVE INVOLVEMENT IN A CASE IN THE ENVIRONMENT COURT

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Preliminary

[1] It has been explained to me that there is quite a wide range of experience with RMA cases, across all participants in this workshop. Those who are more familiar with the Environment Court processes than others will forgive me for spending some time on the basics.

[2] Views and opinions expressed in this paper should be taken as my own, and each Judge brings his or her own style to the Court's work. Nevertheless, the Judges and Commissioners of the Environment Court operate on a collegial basis, and administer Practice Notes that are in operation nation-wide. So, by and large there is a lot of consistency amongst the several divisions of the Court when it comes to procedure, whether in the courtroom or in the lead-up to hearings.

The Court

[3] By s247 of the Resource Management Act 1991 ("RMA"), the Environment Court is a Court of record.

[4] "Court of record" means that the whole of the proceedings of the Court comprise a record that is, by and large, publicly accessible. With exceptions that I shall describe, that means that all documentation filed with the Court, including evidence and exhibits in cases, and transcript of proceedings heard in open Court, are fully available to parties in the case, members of the Court, and superior Courts on appeal, and to some degree for access by the public.

[5] Exceptions include that a Judge of the Court may make an order for confidentiality of certain aspects of proceedings, usually on the grounds of commercial sensitivity (but with carefully prescribed rights of access by parties in the case or their representatives); and Judges in all Courts have rights to limit the searchability of materials that have not been aired in Open Court.

[6] By section 250RMA the Court has, at any time, up to 10 full-time Environment Judges (presently 7) and an unlimited number of alternate Environment Judges, the latter generally being former full-time Environment Judges, or Judges of the District Court especially warranted for particular tasks.

[7] Environment Commissioners are appointed to the Court under s253 RMA, as "persons possessing a mix of knowledge and experience in matters coming before the Court, including knowledge and experience in:

(a) Economic, commercial and business affairs, local government and community affairs.

(b) Planning, resource management and heritage protection.

(c) Environmental science, including the physical and social sciences.

(d) Architecture, engineering, surveying, minerals technology, and building construction.

(da) Alternative dispute resolution processes.

(e) Matters relating to the Treaty of Waitangi and kaupapa Mäori".

[8] There are presently 10 Environment Commissioners. There are also 3 Deputy Environment Commissioners who participate in the work of the Court to a lesser extent, but also have specialist skills that are of considerable use in the work of the Court.

[9] The Court is based 3 Cities, Auckland, Wellington and Christchurch. It has a Registrar overseeing the administration on a national basis, and a Deputy Registrar in each of the 3 centres.

[10] The Court maintains courtrooms in each of those 3 centres, and a high percentage of the business of the Court is conducted at those 3 bases. Nevertheless, a considerable amount of the hearings and mediation work of the Court is conducted at circuit locations around the country. For instance the Court often sits in courthouses of the District Court and the Mäori Land Court, and also in hotel conference rooms, community halls, and similar venues. Such places are used for both Court sittings, and for the mediation function of the Court, the latter being the subject of another paper from me. For my part, I will concentrate on offering thoughts about effective presentation of cases at sittings of the Court, and will offer a paper written by Commissioner Russell Howie which will offer advice about involvement with mediations and other alternative dispute resolution.

[11] It might be worth saying to you that a very small proportion of the cases filed in Court (I think it is less than 5%) are ever the subject of a hearing on the merits. The vast majority of cases are settled during the process of mediation, or by direct negotiation amongst parties, or are simply withdrawn for one reason or another.

The Nature of the Court and an Introduction to its Processes

[12] The Court has extremely wide powers of procedure. It is worth my setting out s269 RMA in its entirety, before commenting on it:

> 269 Environment Court Procedure
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> (1) Except as expressly provided in this Act, the Environment Court may regulate its own proceedings in such a manner as it thinks fit.
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> (2) Environment Court proceedings may be conducted without procedural formality where this is consistent with fairness and efficiency.
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> (3) The Environment Court shall recognise tikanga Mäori where appropriate.
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> (4) The Environment Court may use or allow the use in any proceedings, or conference under s267, of any telecommunication facility which will assist in a fair and efficient determination of the proceedings or conference.

[13] The Judges of the Court have interpreted s269 as meaning that the Court is considered publicly accessible or "user friendly", commensurate nevertheless with efficiency, fairness to all, and due respect to the institution.

[14] This means that Court sittings will to quite some degree follow the format found in other NZ civil Courts, but at times to a lesser extent. For instance, rules about hearsay

of factual evidence are often less rigidly applied. So, while reasonable decorum will attach to the running of hearings, there may be less formality and legalism than can be found in other Courts.

[15] Court hearings are most often about appeals from decisions of councils. These hearings are almost invariably conducted "afresh", so that the Court will be wanting to receive the evidence and submissions presented to it, and will be little interested in what was said by any of the parties in the earlier hearing before the council. (The Court is however, by s290A RMA, required to have regard to the decision of the council or its hearing commissioners).

[16] The Court is there to provide a fully independent system of appeals from decisions of councils. The Court has no links whatever with other bodies, political or otherwise. Hence it has no links with councils, government departments, requiring authorities, infrastructure providers, and the like. It should also be remembered that Courts are a constitutionally separate arm of our system of government, and once set up by Parliament through relevant statutes such as the RMA, are generally free from intervention and direction by Central Government Executive.

[17] It must therefore be stressed that there is no presumption in favour of any earlier decision being appealed against. No party has any particular legal burden of proof as often occurs in other Courts, although each party will have the evidential burden of establishing matters of fact and expert opinion which are advanced by it, and should adduce a proper evidential basis to support the contentions and submissions that it makes.

[18] We find that we must take quite some care with these issues. Some parties who are not represented by a lawyer or another professional, come to Court with some level of expectation that the Judge will offer them some high level of assistance in the presentation of their case, because of a perceived imbalance of money and power between themselves and those who are represented by professionals. This is a tricky area for us. We recognise the imbalance, and will often offer advice of one kind or another. However, this must not be regarded as a right or even an expectation, because there are issues working in several directions here. Fairness and natural justice must rule. We will often offer advice in the interests of keeping hearings moving forward effectively and without undue delay. The advice is not being provided as some kind of free legal aid service, and the reason for that needs to be understood. Fairness is at work once again. Other parties will often have committed considerable financial resource to representation

in the bringing of their cases, and we must not be seen as advantaging other parties who have not made that sort of commitment.

The Environment Court Practice Note

[19] Over the years the Environment Court (and its predecessor the Planning Tribunal) has issued Practice Notes. These were all consolidated in 2006, and updated in 2011. (We are just starting a consultative process to refresh them further). Various of the speakers today will be referring to them. It is important that you make yourself familiar with them in their entirety, and refresh your knowledge of them from time to time. They are available on the website of the Environment Court at :

http://www.justice.govt.nz/courts/environment-court/legislation-and-resources/practice-notes/Practice%20Note%202011%20-%20DRAFT.pdf

Case management by the Judges

[20] Part 2 of the Practice Note concerns case management.

[21] Case management is a relatively modern concept in courts internationally, and has been strongly embraced in the New Zealand Environment Court in the interests of prompt and efficient resolution of cases, and cost efficiency. The Judges, with the support of Registry staff, operate a closely diarised system by which the various steps and stages in a case will be the subject of directions from the Judge, and required actions by parties. Long gone are the days when someone could file an appeal in the Environment Court and put the file away in a drawer for a significant period of time. Hopefully also long gone are games of pure prevarication and delay as a strategy.

[22] Clause 2.1 of the Practice Note provides:

> **2.1 Objectives**
> The objectives of case management by the Court are to –
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> - ensure the just treatment of all parties;
> - promote the prompt and efficient disposal of cases;
> - improve the quality of the litigation process;
> - maintain public confidence in the Court; and

- efficiently use available judicial, legal and administrative resources, and achieve the purpose of the RMA (where that is the relevant controlling legislation).

[23] The Court operates case management tracks, a Standard Track for straightforward cases, a Complex Track, the name of which is self-explanatory, but also happens to include all appeals concerning plan changes and other statutory instruments; and a Parties' Hold Track, where a case may be adjourned by agreement of the parties or direction of a Judge, for other proceedings to catch up, or for other purposes.

[24] Every case filed in the Court will be allocated to one or other of these tracks as soon as it arrives. A case can be moved from one track to another during the life of the proceeding.

[25] Greater detail concerning the three tracks can be found in paragraphs 2.5, 2.6 and 2.7 of the Practice Note.

Judicial conferences

[26] Clause 2.8 of the Practice Note covers Judicial or "pre-hearing" conferences. These are usually conducted by telephone at an appointed time, or in a courtroom if the parties are too numerous for a phone conference, or the issues are particularly complex.

[27] Virtually all aspects of judicial conferences are designed to keep proceedings moving fairly and efficiently, particularly if it appears that there will be a need for a hearing.

[28] Some of the business conducted in judicial conferences can almost amount to the conduct of an interlocutory hearing. An interlocutory hearing is held to enable determination of a preliminary point that will assist the course of the proceeding overall. For instance, it might concern somebody's application for a time waiver, or an application to strike out a party or a topic, or determination of a legal jurisdictional point.

[29] Sometimes interlocutory arguments will be dealt with "on the papers," which means no hearing or conference, but instead parties filing submissions, and a Judge considering those submissions and issuing a written decision.

The role of expert witnesses

[30] The majority of cases in the Environment Court these days involve consideration of many topics in respect of which specialist professional advice is available, and evidence offered by practitioners in many fields. A handful of examples include engineering in its many branches, landscape, economics, Maori cultural issues, ecology in its many branches, social issues, and many others.

[31] The Court has high expectations concerning the quality of work by expert witnesses, and there is an entire section on the Practice Note setting these out.

[32] In addition, entire papers have been written about the topic, and most professionals in New Zealand who are regular expert witnesses before the Environment Court, are familiar with both the relevant provisions of the Practice Note, and these writings. I will therefore provide only a summary here.

[33] The Court has an expectation that an expert called by a party will be independent, objective, and entirely professional. Questions will also arise as to the extent of relevant expertise and experience in relation to any given topic in the case. Experts are required to avoid being advocates, and to provide their own professional opinions, not that of the party who hires them. Conflicts of interest are to be closely watched.

[34] Expert witnesses have an overriding duty to assist the Court impartially, free from direction from the client.

[35] Increasingly, as touched on in Russell Howie's paper, groups of expert witnesses are required to conduct a conference, often facilitated by an Environment Commissioner, for the purpose of reaching professional agreements where possible, and narrowing issues to limit the scope of any necessary hearing, and thereby lessen cost.

[36] Processes for the conferral of groups of expert witnesses are becoming more refined and sophisticated. Last year the Court conducted workshops in eleven centres around New Zealand for the purpose of refreshing the Practice Note and issuing some guidelines about process for expert conferencing. A paper on that subject can be found on the Court's website.

The conduct of hearings

[37] I will be referring to Part 4 of the practice note, entitled **Procedure at Appeal Hearings.** Note that there are cross-references into other parts of the Practice Notes, dealing with such things as the operation of different case tracks for case management purposes, and the work of expert witnesses.

[38] I will set out some of the paragraphs from section 4 of the Practice Note, and offer commentary.

[39] Paragraph 4.1 deals with the order of presentation by parties in a hearing. It reads as follows:

> 4.1.1 The Court usually conducts an appeal against a decision on an application for a consent, or permit as a complete rehearing. When hearing such an appeal managed on the standard track, the Court will normally hear first the person who applied for the consent or permit - followed by the parties who support the grant. Then the Court will hear the parties who oppose the grant of the consent, approval, or permit.
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> The order of parties in complex case track matters (such as plan appeals) is a matter for the hearing Judge. Wherever possible, the order of parties should be discussed at a pre-hearing conference, or made the subject of prior directions. If in respect of a particular appeal or group of appeals it appears that it will be helpful for the Court to first hear the Council before the applicants or other parties who would ordinarily commence, the Court may so direct, either of its own motion or on the motion or on the motion of any party.
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> 4.1.2 Where there is a burden of proof upon a particular party, the Court will usually hear that party first.

[40] The above is reasonably self-explanatory. If any of the parties in a case perceive any unusual quality or issues in the case that might need particular directions about the order of presentation, it is helpful that such matters be raised at a pre-hearing conference (either in Court or by telephone) – such as are often held during the course of preparation of a case, or one specifically for the purpose. This will save time in a hearing, as well as allowing of other consequential procedural directions to be made, for instance about the manner of presentation, or the relevance of issues to the jurisdiction of the case or otherwise.

[41] Paragraph 4.2 of the Practice Note deals with the presentation of cases. Subparagraph 4.2.1 contains an indication that when parties open their cases they will outline the circumstances and the nature of the evidence to be called, state the resource

management factors relevant to their case, and state the legal principles on which they rely. This is called "giving submissions". It is an opportunity for parties to identify weaknesses or particular features of the cases of parties that have already been listened to, as well as a general statement of introduction to their own case. If evidence is being called as well (to follow these submissions) we do not wish to hear a detailed recitation of the evidence that is to follow. Opening submissions should usually be quite succinct and focused.

[42] Subparagraph 4.2.2 indicates that the parties who in the course of a hearing have heard all of the evidence from opposing parties prior to opening their own case, have the one opportunity to present their submissions critical of features of those earlier parts of their case, and not have a further right of reply at a later part of the hearing. The logic of that should be clear, and is based on avoidance of sheer repetition, which is something that bedevils us enough in any event !

[43] Clause 4.3 of the Practice Note concerns the presentation of evidence. It provides as follows:

> 4.3.1.Section 276(lA)(b) empowers the Court, whether or not the parties consent, to direct how evidence is to be given to the Court. The Court may direct that evidence be given by –
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> (a) the witness reading the pre-exchanged statement of evidence to the Court; or
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> (b) the Court pre-reading the statement of evidence; or
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> (c) a combination of (a) and (b), or another method.
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> Where matters of primary fact are in issue, the Court may require evidence in chief to be given viva voce, by question and answer. This issue should be clarified at a pre-hearing conference or in prior directions. Where the Court has directed that the evidence of any witness is to be pre-read, the witness, when called at the hearing, will confirm the statement of evidence as correct, and cross-examination will immediately follow.
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> 4.3.2 The preceding paragraphs outline the Court's general practice. However, the Court has power to regulate its procedure in such manner as it sees fit. It may therefore modify its procedure in particular cases if the interests of justice, and the orderly and logical presentation of evidence, so require.

[44] It is becoming increasingly common for the Court to favour some form of "pre-reading" of evidence, but pressures on the work of the Court are such that this does not always occur in days leading up to the hearing. In such instances the case commences

with the opening submissions for the first party to present, followed by an adjournment of some hours (or more if the case is an extensive one) for members of the Court to read evidence behind the scenes. Another reason for adopting this practice is that it has not been unknown for cases to settle over the weekend before the hearing (although such lateness is not encouraged!), whereupon many hours or even days of pre-reading by members of the Court might have been completely wasted.

[45] In a complex case the Court may, in addition to hearing the opening submissions of the first party, receive brief statements about the issues perceived as being relevant and important by the other parties.

[46] Before adjourning to read the evidence, the Court will often also discuss, in conference with the parties in open Court, the details for inspection of sites and localities, particularly in cases where the Court will undertake those inspections without being accompanied by the parties (the majority of cases).

[47] What this all means, is that by the time the hearing resumes, we will be ready to hear the evidence called on behalf of the first party presenting, after which we will receive the opening submissions and evidence of the other parties, and ultimately the reply submissions by the first party (or several replies if it is one of those longer more complex cases that call for them).

[48] What this means for witnesses, is that they will not have to read out their prepared statements of evidence in Court. They will be sworn in, asked to confirm their statements, make any corrections that are needed at that juncture, and then proceed to be questioned by the other parties and by the Court. In some instances it will be helpful for a witness to take us briefly through his or her graphic exhibits and the like if there is a high degree of complexity. But this is rarely necessary, because we will by that time have had the ability not only to look at that witness's evidence and materials but also to compare them with comparable relevant materials from other witnesses, in a way that we would not have been able to, under the former system of hearing one witness after another and with no pre-reading.

[49] Questioning of witnesses is one of the areas of quite some complexity and difficulty not only for parties who are not represented by a professional, but even for professionals themselves at times!

[50] Some particular wrinkles are these. First, there is a need to understand the difference between leading questions and non-leading questions. Leading questions are those which are capable of a "yes" and "no" answer. Another way of looking at leading questions, is that they are ones in which the manner of putting the questions suggests the answer. Many of this country's general rules of Court procedure are applied (although not as rigorously as in some of the Civil Courts, as I have indicated). Hence, a party supporting another party's witness is not permitted to ask leading questions of that witness. Equally, when you exercise the right of re-examination after the witness has been cross-examined by the other parties, and perhaps questioned by the Court, you are not permitted to ask leading questions. This can, and often does, cause real problems in practice, and is one of the reasons that careful thought, and indeed often considerable preparation, is necessary before the questioning process.

[51] Another issue is that the time for questioning witnesses is not the time for making statements. Parties not familiar with Court processes, often struggle with this. True questions are what we are looking for at this point.

[52] Next, there is another trap even some lawyers fall into, and which can certainly present difficulty for people not familiar with Court processes. Big open questions have the danger that the witness is simply not being tested but instead is offered an opportunity to restate, perhaps even underline, some aspects of his or her prepared evidence. Closed questions in cross-examination will generally be far more effective, to say nothing of safer.

[53] Also, try to avoid asking questions to which you do not know the answer. Again, preparation beforehand can be extremely important.

[54] During questioning, try to keep as succinct as possible, and certainly stick to the point…indeed, stick to the important points.

[55] Many books have been written on cross-examination, and I have not got time today to dwell extensively on it. Cross-examination can be useful, even sometimes important, but only if done in an extremely focused and careful way. I should add that it is the minority of cases that can be said to have been won on answers obtained in cross-examination, but on occasion it has occurred quite spectacularly. (But usually only as a result of quite a skilled approach).

[56] Paragraph 4.4 of the Practice Note deals with the viewing of a site or area at issue, and provides as follows:

> 4.4.1. In many cases, it is desirable that the site or area at issue in the proceedings be viewed by the Court. In general, the taking of a view assists the Court in better understanding the evidence presented in Court. The Court's normal practice is to confer with the parties about the taking of a view, its timing, a suggested itinerary, and any other relevant details that the parties or the Court may raise
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> 4.4.2. If the taking of a view presents the Court with additional or different information to that provided in Court, or information that no witness has correctly or accurately addressed in evidence, and the Court considers that the information might influence it in determining the proceedings, the parties will be consulted by way of a Minute or orally at a reconvened hearing, or via a judicial conference. The purpose of such consultation will be to ensure that the parties have an opportunity to explain or comment upon the information concerned before the case is determined.

[57] It is important to understand that a view is part of the evidence, and not merely an aid to better understanding of evidence already given. Where a view is to obtain evidence, or to contradict or reject evidence given in Court, care must be taken to ensure that the process is fair, and this may require reporting to the parties on information gathered. It is one of the reasons that inspections will often be undertaken earlier in a case rather than later, but that is not the invariable practice.

[58] It has not been unknown for the Court to arrive on the site or in a locality, and be completely surprised about features that actually appear quite different from evidence that was given in Court, even in photographs and other visual presentations. This brings me to the issue of exhibits.

[59] Paragraph 2.16 of the Practice Note deals with the issue of exhibits, and provides as follows:

> All exhibits, including photographs and other visual presentations, are to be presented in a practical and manageable form, and should be of a scale sufficient to be clearly legible. Individual documents or photographs should be separately identified. A bundle of documents, or a series of photographs, should be presented in a paginated and indexed folder or binder with protruding tabs. Aerial photographs with, where relevant, contour lines endorsed are a useful exhibit. If a photograph or other visual presentation is of a size or kind that is impractical to provide to other parties, it will suffice for the party intending to produce it at the hearing to notify the other parties not less than 5 working days prior to the hearing where it may conveniently be inspected. Parties should confer and, wherever possible, produce one agreed set of documents, photographs or other similar exhibits.

[60] Any difficulties over size or other aspects of an exhibit are best sorted out in a judicial telephone conference if they cannot be readily agreed amongst the parties and be likely to produce a procedural solution that the Court will be happy with.

[61] A fairly significant issue has developed in recent years over the quality and manner of presentation of exhibits. For instance, as regards photographs, the Court for many years tended to regard as appropriate the presentation of photographs of landscapes using a 50mm camera lens. The value and accuracy of such an approach has been doubted more recently, particularly in relation to distant views. The NewZealand Institute of Landscape Architects has recently conducted a series of technical workshops, and is preparing guidelines. It has involved members of the Court in this process in a careful way.

[62] The point is that exhibits should not only be of good clarity, colour, etc, but should not in any way be misleading. Techniques must be employed to deal with these many issues of quality, such as ensuring that exhibits are presented at a decent scale (eg A3, or greater size), and with advice to the viewer as to the distance from the eye that the page must be placed in order to gain a realistic impression of what can be seen in the field with the naked eye.

[63] Viewpoints must always be mapped in a clear and accurate way, and often it will be necessary for notes to be placed on the exhibits and in the prepared evidence, as to distances from photographic viewpoints to certain objects in landscapes, and the like.

[64] Once again, it would be possible to write in considerable detail on this topic, but it is my hope that the notes above will alert parties to the importance of care and professionalism in presentation.

What the Court considers in reaching a decision

[65] Without putting too fine a point on it, half a textbook could be written on this subject, but you will mercifully be spared that on this occasion.

[66] The guiding principles on this are to be found in the many sections of the Resource Management Act that provide matters to be considered in relation to the preparation of Policy Statements and Plans, and consideration of resource consent applications. Overarching is the ultimate touchstone of Part 2 of the Act, the purpose and

principles of the legislation. A great deal more detail about these matters can usefully be found in various publications, including the EDS publication ***The New Zealanders' Guide to the Resource Management Act 1991 (3rd edition)*** by Raewyn Peart.

[67] For today's purposes, let me summarise and say that beyond the legal technical parameters just outlined, the Court will confine its inquiry to the evidence presented to it, the submissions, and exhibits lodged, to the extent that they are relevant to the jurisdiction of the case. The jurisdiction of any case is set largely by the primary documentation which again, leaving technicalities aside, include matters in the appeal document, relevant submissions and further submissions filed previously with a Council, the Reply document filed by the Council, the notices by other parties under s274 RMA (again to the extent that the matters covered in those notices are relevant to the case at hand), and relevant provisions of Policy Statements, Plans, and other statutory instruments.

[68] I stress again that the Court will be considering only matters of relevance that are offered to it through evidence and submissions that can be tested in Court. We take no account of things that we read in the media, answers in "Question Time" in Parliament, and the opinions of Great-Aunt Flo. Members of the Court are entitled to bring their own worldly experience to a case, but in doing so must run the issues past the parties and relevant witnesses in open Court, and must of course assiduously avoid conflicts of interest. The Court is, and must be trusted to be, a truly independent body.

The Court's cost regime and security for costs

[69] By section 285 RMA, the Court may order any party to pay costs to another party, or to the Crown, to help offset expenses incurred in the hearing. Any party can make an application for costs, and any party involved in an Environment Court appeal can be liable for costs. Unlike in other Courts, there is no rule or general practice that says that an unsuccessful party to an appeal must pay the other party's costs. However, in the case of matters that are directly referred to the Court, there is a presumption that costs will be ordered against be applicant.

[70] In determining an application for costs, the Court has a discretion to decide whether it is reasonable to award costs, and to determine the appropriate amount. Costs awards are based on the costs actually incurred, and a party applying for costs will usually be asked to provide the Court with the relevant invoices setting out the costs and

expenses incurred. Costs can be indemnity costs (full costs) or a lesser amount of costs awarded at the Court's discretion. Fairly common awards (where it is necessary to award costs at all) amount to approximately 25% of proved and relevant costs incurred by another party or parties.

[71] The purpose of awarding costs is to compensate a party for costs incurred where it is just to do so. Costs are not intended to penalise an unsuccessful party or to discourage people from participating in appeals. The Court will only award costs if it decides that is justified in the circumstances of the case, and will determine each costs application based on its merits.

[72] Occasionally the Court may be asked to make an order for security of costs. Security for costs may be requested if it is suspected that the person bringing the appeal may not have sufficient financial resources to pay costs should their appeal be unsuccessful. The Court does not have to grant any request for security for costs and will consider the interests of all sides before doing so. Even if an order for security of costs is granted and the appeal is lost, this does not automatically mean that costs will be awarded.

Focus, relevance and avoidance of repetition

[73] Cases in all Courts have a tendency these days to involve excessive quantities of evidence and submissions. Cases in the Environment Court are unfortunately no exception. A real effort is necessary on the part of parties, witnesses and lawyers to avoid this. The starting point is the need for sound **preparation**. Good preparation will assist in attaining focus, relevance, and avoidance of repetition.

[74] It is well known that prolixity, lack of focus, lack of relevance, and excessive repetition can result in a good message being lost. Be aware that they may also signal to the Court the *absence* of a good message !

[75] I am not going to suggest that every counsel and every witness is possessed of the skills of founder of the RMLA, Hon. Justice Peter Salmon, who I remember in practice had an uncanny ability to reduce dozens or hundreds of pages of information invariably to about nine pages of crisp submissions. Nevertheless, these matters I am preaching about should, if practiced, result in a better quality of hearings, mediations, settlement conferences, and expert caucusing.

[76] A corollary is that hearings, mediations, judicial settlement conferences, and conferencing can proceed much more expeditiously.

[77] A significant downside of not practicing these things, is a huge unnecessary cost to the parties, and a slowing of the system. The Government, and many people and corporate entities associated with resource management litigation, and not just before the Environment Court, are right to be concerned about these things.

[78] It is worth remembering that there are references in the Practice Note of the Environment Court to these issues. For instance paragraph 2.1 reads:

> The objectives of case management by the Court are to –
>
> Ensure the just treatment of all parties;
>
> Promote the prompt and efficient disposal of cases;
>
> Improve the quality of the litigation process;
>
> Maintain public confidence in the court; and
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> Efficiently use available judicial, legal and administrative resources, and achieve the purpose of the RMA (where that is the relevant controlling legislation).

[79] It is relevant also to refer to paragraph 2.18 of the Practice Note, and again it is worth setting it out in full:

> **2.18 Co-operation in the preparation of evidence**
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> In preparing for the hearing, parties are expected to co-operate in ensuring that the proceedings are dealt with in a focussed way. With that in mind, parties are encouraged to, and may be directed to, provide a statement of agreed facts and issues, and an agreed dossier or folder containing copies of relevant provisions of statutory planning instruments, and any other documents common to the parties, at or shortly before the hearing. Succinctness and the *avoidance of needless repetition, aided by efficient cross-referencing*, tabulation and indexing, are sought by the Court. [Emphasis added]

Cost effectiveness

[80] What I have just been saying above can, itself, produce an outcome that can be succinctly summarised in one phrase – **Cost-effectiveness**. By that I mean cost-effectiveness for the parties, other participants in the case, and the Court.

Issues

[81] In preparation not only for hearings, but also for mediations, caucusing, and judicial settlement conferences, early identification of issues that are agreed and can temporarily be put to one side, but more importantly issues requiring resolution in the case, will be the first major step to gaining focus, relevance and resolution.

[82] It is necessary to give particular thought to the difference between issues and topics. To confuse them, and fill the list up with both, is to erode the pursuit of focus and relevance.

Conclusion

[83] It is worth concluding with a paragraph from one of the sources of information in this complex field, ***Brookers Resource Management***, a compendium published in 2 volumes. Paragraph A121.05 from that work reads as follows:

> A121.05 Litigants in person
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> The resource management regime must accommodate litigants in person as they often have an important part to play in the appeal process representing parts of the wider public interest. Accordingly, some latitude should be shown to the litigant in person, and the Tribunal should not insist on the rigorous observance of procedural formalities. On the other hand, litigants have a duty to pursue their appeal rights in a timely and conscientious manner: *Taylor v Auckland CC* Decision No. W092/1995 (Planning Tribunal).