

## Group Briefing

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# High Court takes firm stance on lay litigants bringing vexatious claims

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The High Court has made it clear that it will not tolerate vexatious claims brought by lay litigants which are intended to frustrate or prolong litigation to their advantage. The Court's limited resources must be fostered for the benefit of litigants who have meritorious claims. This is clear from a recent case, McMahon v Bank of Scotland plc, in which we acted for Bank of Scotland. Separately, the Court has issued guidance on the role of McKenzie Friends, lay people who provide assistance and support to lay litigants in court.

#### PROPER USE OF COURT RESOURCES

The lay litigant plaintiffs in McMahon issued proceedings against Bank of Scotland challenging the appointment of a receiver over their properties. The bank sought to have the proceedings dismissed on the grounds that it said they were frivolous, vexatious and were ultimately bound to fail.

The Court agreed that the claims were nonsensical and a waste of its valuable time and resources, and a waste of public money. It described the plaintiffs as "*professional lay litigants*" who were "*exceptionally intelligent, skilled and combative advocates*." As such, it doubted that they had put forward their claims unintentionally or through ignorance of the law.

The Court also noted that as lay litigants the plaintiffs did not have to pay any lawyers' fees and therefore may not have had the usual incentive to conduct the

litigation in an efficient manner.

The Court made an order prohibiting the plaintiffs bringing new proceedings concerning the properties in question without first seeking the Court's permission. This type of order is called an Isaac Wunder order. In making this order, the Court had considerable regard to the duration of the hearing (6 days, though it had originally been scheduled for 3 days) and to the consequent drain on public expenditure and court resources. It stated that the purpose of the order was to ensure that court resources are fostered for the benefit of other litigants, both represented and lay litigants, who have a right to have their meritorious claims heard as soon as possible.

#### THE ROLE OF A MCKENZIE FRIEND

Lay litigants in many cases have valid and meritorious claims. Recognising that they are unfamiliar with court

This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

procedure, the courts often afford them considerable latitude and will assist them, where possible. One way they do this is by allowing lay litigants to seek the assistance of a McKenzie Friend.

A McKenzie Friend is a person who is permitted to support a party to litigation but who does not have a general right of audience before the courts.

Recently, however, there have been concerns that lay litigants are being provided with incorrect advice from people who in many cases have no legal qualifications or knowledge of court procedure but who purport to act as professional McKenzie Friends or 'litigation consultants'. The High Court has issued [guidance on the role of a McKenzie Friend](#) as a result.

The Court has clarified that a McKenzie Friend can:

- » provide moral support;
- » take notes;
- » assist with case papers, provided they do not draft or prepare legal documents relating to any legal proceeding, either directly or indirectly, for a gain;
- » quietly provide advice regarding aspects of the case.

A McKenzie Friend cannot:

- » address the court, examine witnesses or make oral submissions;
- » receive any payment for their help;
- » act as the litigant's agent during proceedings;

- » manage the case outside court, for example, by signing documents.

If a lay litigant seeks assistance from a McKenzie Friend, he/she should first get permission from the court. The Court can refuse permission if it does not believe that the assistance of a McKenzie Friend is necessary. If it grants permission, it can regulate the manner in which assistance is provided. If it later becomes clear that the McKenzie Friend is in fact impeding the administration of justice, it can withdraw permission.

The McKenzie Friend can also be requested to provide his/her name, address and contact details to the court.