

HOW TO RUN YOUR OWN COURT CASE

A practical guide
to representing yourself in
Australian courts and tribunals

{NON-CRIMINAL CASES}

Nadine Behan



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Note for the reader

While every effort has been made to make the information contained in this book as up to date and accurate as possible to reflect the laws and the legal system of Australia as at August 2008, its contents are not intended as legal advice. Use it as a guide only and be sure to obtain legal advice for your specific legal problem.

14 The result

The verdict can come in various forms. It can be delivered verbally by the decision-maker at the end of the hearing. It can be reserved, that is, handed down by the decision-maker at a later date. Or you may just receive a copy of the written decision in the mail.

If the decision is delivered verbally, it can happen quite quickly. After giving a brief overview of the facts and then reasons for the decision, the decision-maker may just state the result and the specific orders made.

Decision-makers regularly begin their delivery with positive comments about the losing argument. So what may start out favourably may not end as a favourable result. Wait for the conclusion and don't interrupt the decision-maker during their delivery of the result.

Make sure you understand the orders clearly, especially in terms of what you have to do and what the other party has to do. If you don't understand any part of them, ask the decision-maker at an appropriate moment to explain. If you have any queries, such as about dates of payment or required actions, now is your chance to clear up any potential problems.

Often you can also pick up a copy of the orders at the counter of the registry on your way out. Read these carefully before you leave. Make sure the information in them, especially the names, addresses, any dates of payment and amounts of money, are correct and correspond to what the decision-maker actually said. If there are errors or you have any queries, ask at the registry *before you leave*. It can be quite difficult to have orders changed later.

If the decision is reserved, it may take weeks or even months to find out the result. You will be notified in due course when the decision is to be announced. You might be required to attend court to hear the decision delivered verbally by the decision-maker. Or else a copy of the written decision may be available on the day to be picked up at the counter of the registry.

Often with reserved decisions, the judgment contains the specific orders along with lengthy written reasons for the decision. Read these carefully and seek legal advice if you have any queries. If the query is a practical one, the registry may be able to answer it.

If you receive the written decision in the mail, it may or may not contain the reasons for the result. If it doesn't contain reasons, you may be able to apply for a written statement of reasons. In any event read the decision carefully, get legal advice about any queries and contact the registry if there are any errors.

Winning and losing

In an adversarial system like ours, the result usually produces a winner and a loser. For the winner, it's easy to believe that the result is a good one, that the legal system is a good one, and that justice has prevailed. But for the loser, it can be hard to reconcile a bad result with any notions of fairness and justice.

A better approach to the decision, whether you're the winner or the loser, is to concentrate just on the following:

- what does the result actually mean?
- what are its consequences?
- what are your options?

The result may be either more or less clear-cut than it appears. Wordy, difficult to read decisions can still result in a very clear and practical outcome. Likewise, brief and easy to read orders may have complex ramifications for other aspects of your life. So if you have any trouble understanding the decision or its consequences, get legal advice.

Now investigate your options for compliance with the orders. If you are the unsuccessful party and you're unable to carry out the orders, you may be able to apply to the court or tribunal to have the orders varied or set aside, or to have further orders made regarding payment or other arrangements. There may be provision for financial hardship.

Similarly, if you are the winning party do not assume that compliance with the orders will happen automatically. The other party might be unwilling or unable to comply and you may have to resort to enforcement measures.

For most parties, receiving the result puts an end to the dispute. For better or worse, they accept the verdict, carry out the orders and get on with their lives. For a small proportion though, the matter doesn't end here and the decision is appealed to a higher authority.

If you are the unsuccessful party one of your options may be to appeal the matter. There are time limits for appealing and it is vitally important to appeal within time. Otherwise, you may lose your right to appeal. See the section on 'Appeals'.

If you are the successful party and you suspect your opponent may either not comply or may take the matter further, it is best not to celebrate your victory until either the orders have been carried out, for example, the money is in your hand, or the time limit to appeal has expired.

Enforcement

If you are the successful party and you aren't completely confident that the orders will be carried out, contact the registry and investigate your enforcement options.

If you're the unsuccessful party and you aren't able to comply with the orders, find out the consequences and any alternative courses of action. Look up the legislation, ask at the registry or find out from the website exactly what the court's powers are to change the arrangements and what sanctions you will face for

contravening the orders.

If the judgment requires certain action, for instance in some of the family law orders, the possible sanctions for non-compliance may include contempt of court proceedings, a fine or bond or sentence of imprisonment.

If the judgment involves a sum of money and it's not paid by the due date, you may face seizure of your property or a **garnishee order** may be placed on your wages plus extra associated administrative fees. Or you may be required to attend court and be examined regarding your financial situation. Such actions may be avoidable, for instance by an application to pay by instalments.

At this stage of the dispute, it is still crucial for both parties to continue keeping accurate records. A party complying with the orders can quickly correct any errors or misunderstandings by producing the appropriate paperwork that proves the compliance. A party unable to comply can increase their chances if they can show specific evidence of their attempts to comply and why their attempts didn't work. A party seeking enforcement or redress when orders are breached will need specific details of the breaches: the 'what, when, where and how'.

{ ***Golden Rule of Litigation:*** KEEP ACCURATE RECORDS }

The use of enforcement measures can be distressing for all concerned. Although these measures can mark the true end of the dispute they can often trigger, one last time, the full emotion of the dispute for both parties. If you need to institute them, or they are instituted against you, try to deal with the situation calmly and professionally.

Appeals

If you believe the result is wrong, you may be able to appeal it. The right to appeal, however, is not automatic and various restrictions apply. If you are serious about an appeal, there are several

factors you must consider. They are:

- whether appeal is available;
- what restrictions apply to the appeal;
- whether there are valid grounds for appeal;
- the time limit for lodging the appeal application;
- the risks of appeal;
- its prospects of success;
- the likely costs of the appeal;
- whether you will need a lawyer.

Most but not all decisions can be appealed. The rules for appeals are found in the laws that relate to the particular decision, for example the *Family Law Act 1975*; or the laws governing the original court or tribunal; or laws governing the appeal court or tribunal, for example the *Administrative Appeals Act 1975*. If appeal is available, you will have little or no choice about which court or tribunal will hear the appeal.

There may be other restrictions on the appeal. In some cases you must first apply for permission, or **leave to appeal**, from the appeal court or tribunal. Or, appeal might only be available for an error of law in the original decision, not for an error of fact. Also, for some appeals new evidence is not allowed.

Activating an appeal doesn't necessarily put the current verdict on hold. You may need to apply to the original or the appeal court or tribunal for a **stay of proceedings**, which stops the decision being carried out until the outcome of the appeal.

Some kinds of appeal look at the case afresh. Other kinds look at the original decision and see if it was wrong. The original decision might be confirmed or set aside and, in some instances, sent back to the original court or tribunal to be reheard.

To find out your appeal rights begin with the website or registry of the court or tribunal that heard your case. If you have a written decision, this may also contain information about your appeal rights. Find out the specific legislation governing your possible

appeal, then try <www.austlii.edu.au> for its exact wording.

It's no use appealing a decision because you think it's unfair or wrong or just plain bad. You must have legally valid grounds for an appeal. You must be able to clearly identify how and where the decision went wrong. For example, was the wrong law applied? How? Was the law applied wrongly to the facts? How? Was the law misinterpreted? How? Although you may have every reason to be disgruntled with the quality of the decision, you will not succeed on appeal unless you have a legally winnable argument.

Strict time limits apply to appeals, so you must think and act quickly. You may have as little as 14 or 28 days to lodge the **notice of appeal** or **application for leave to appeal**. Get legal advice immediately.

Find out as much as you can about a possible appeal. Ask a lot of questions. Is appeal available? What kind of appeal? What are the restrictions? What's the time limit for lodging the appeal? And especially get advice on possible grounds for your appeal and your prospects of success.

Find out what you stand to gain – and what you stand to lose – by appealing. There may be a real risk that the appeal decision might leave you worse off than now.

Assess the likely costs of an appeal. The filing fees of appeal courts can be substantial and might not stop at a one-off filing fee for filing the notice of appeal. Check if any waiver of fees is available. There will also be the hidden costs, things like time, energy, frayed nerves, paperwork, telephone calls, photocopying, witness and other expenses.

The other costs you must factor in are the legal costs of your opponent. Appeals can be serious affairs and your opponent may enlist expensive lawyers to fight this appeal. Should the appeal fail, you risk being held liable for these costs. Get legal advice about this risk.

An appeal will also escalate the complexity and formality of your case. The procedures will be more elaborate, the require-

ments more demanding, there'll be more jargon and your opponent's lawyers may be more exacting and aggressive. The legal arguments may be difficult to understand, let alone to argue.

Consider seriously whether you need a specialist lawyer. Investigate your options for the right lawyer at the right price. Shop around. If your case concerns an issue of significant public interest, you may be eligible for a grant of legal aid or be able to enlist the services of a **pro bono**, or free, lawyer through one of the Public Interest Advocacy Centres or Clearing Houses.

On a final note, the appeal process can take considerable time to come to hearing. Preparations can take months, even years depending on the type of appeal. Ask yourself if you have the energy to invest in such a significant period of uncertainty. Are you ready to start the litigation wheel turning again?

With all its variables, the appeal process is still probably the most important element in our legal system. An appeal will take your case to a higher authority. The higher the authority, the more powerful and binding are its decisions and the more far-reaching its effects. It is mostly through appeals that vital changes take place as to how our laws are interpreted and applied. For all the effort, appeals can and do produce real change. A win for you at the appeal stage may mean a win for many others like you. Best of luck.