

HOW TO RUN YOUR OWN COURT CASE

A practical guide
to representing yourself in
Australian courts and tribunals

{NON-CRIMINAL CASES}

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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.

3 Should you get a lawyer?

To determine whether you need a lawyer, consider the following factors:

How complex is your case?

At the outset any legal dispute can seem complex, especially to the parties involved. That it has even reached the litigation stage shows that the problem's been difficult to solve. But this doesn't mean necessarily that the case is legally complex.

Although the legal system has no shortage of complicated cases, the vast majority of cases are treated by the system as fairly simple, routine matters. This is because, to the trained eye, most cases can be reduced to one or two key issues.

The key issue might be: did you do what the law required? Or it might be: did the other party do what the law required? Or, does a certain law apply? Or has it been applied properly? Or do the facts justify a particular remedy?

For example, in a tenancy case the issue might be: is the landlord's notice to vacate valid? That is, did the landlord fulfil all the legal requirements in issuing the notice to vacate? In a family law matter, it might be whether the proposed arrangements for the children are in their best interests? In a debt matter, the issue might be about the exact amount of money owed, whether it is owed at all, or who actually owes it. For an appeal of a government decision about eligibility for a disability pension, the issue might be the degree of incapacity or whether the incapacity is permanent.

Begin assessing the complexity of your case by breaking it down in this way into its key element or elements. If your case involves more than one or two key elements, or if it involves a particularly slippery one, the case may not be a routine matter and it might be difficult to manage on your own.

Next, to help you judge its complexity, determine whether the key issues are issues of fact or issues of law. Don't assume that because it's a legal dispute it must involve a legal issue. Most cases are actually disputes about the facts, not about the law.

Issues of fact are things like: did you stop at the stop sign? Is the dog theirs? Did you agree to deliver the goods on Thursday? Did you deliver them on Thursday? Is your incapacity likely to last more than two years? Did the other party comply with the Family Court orders?

Issues of law, on the other hand, are about the mechanics of the actual law involved. Things like whether law X or law Y applies to your case, how it applies or what the particular wording in a law means, are all issues of law.

Disputes about the facts are often dealt with quite simply by the legal system. The decision-maker will decide the facts by weighing up the evidence that's presented. If the facts can be firmly established with good evidence, a smooth application of the law very often follows (but not always). These types of cases can be well suited to self-representation.

Disputes about the law, however, can become quite technical. Some legal issues can be treated in a straightforward manner using well-established case law. But if your case involves a particularly tricky interpretation or application of law, it may need the services of a well-trained and experienced legal mind. Consider getting a lawyer.

If your case involves several issues of fact or a combination of both issues of fact and law, it could need specialised help. The disputed events might stretch over long periods of time requiring substantial evidence or might attract several laws or changes to

the law over time that call for technical interpretation, weighty argument or complex decision-making.

Some of these cases can break new ground and permanently change the legal landscape, but they can also be painstaking and slow, taking years to work their way through the court system as a series of appeals. For these types of cases you need a lawyer, a good one.

In assessing your case, do not confuse its legal complexity with its emotional complexity. A case that seems insurmountable emotionally might be quite straightforward legally.

Also, don't be tempted to judge its complexity by the number or sophistication of the lawyers your opponent uses. Having an impressive legal team might show how much money your oppo-

CASE STUDY **McLIBEL CASE**

The world-famous McLibel case defied all the rules. When the fast food chain McDonald's sued two environmental activists in Britain for libel over a pamphlet they were distributing that was critical of McDonald's, the activists had two choices: either apologise to McDonald's for the pamphlet or defend themselves in court. Without a university or legal education of any kind and without legal aid (legal aid was not available in Britain for a libel case), the two chose to defend the libel action and to represent themselves.

The case involved extensive scientific and other evidence about the food value of McDonald's meals, their labour practices and misleading claims about recycling as well as complex legal argument. Beginning with few resources, the pair obtained free legal advice and did much of their own legal research. In total they called 180 witnesses to prove

ment is willing to risk on the case or spend to intimidate you, but it gives no indication of the quality of that team, the quality of their case or the quality of the justice that will be delivered.

Which legal body will be hearing the case?

Often the particular court or tribunal hearing your case can be an indicator of whether you will need a lawyer.

The legal system has a hierarchy of legal bodies, with the lower or **inferior courts** generally hearing the minor matters. Courts like the Magistrates Court, Local Court and Small Claims Court are all inferior courts. These are accustomed to people representing themselves.

Many but not all tribunals are actually designed for people

their assertions. The case, lasting seven years, became the longest running case in British history and, although McDonald's technically won, the result was anything but a success for them.

Internationally and publicly embarrassed by the court action and by much of the information that was proved true, McDonald's declared that it would not try to collect the \$40 000 that the court awarded. At any rate, the corporation's own legal costs for running the case were much greater, estimated at \$10 000 000.

This case is one example of what can be achieved by non-lawyers. However, the pair did not achieve it on their own. As the case grew, it captured public attention internationally and so its resources grew and it was sustained by the support of many volunteers, donations and a huge global campaign. It is unlikely the pair could have defended the case on such a scale without this support.

to represent themselves. If your case is being heard by a tribunal, check whether it is one of this type. These tribunals prefer to deal directly with the parties without escalating the formality, complexity, cost and delay that are often associated with the use of lawyers. Some tribunals even prohibit lawyers.

Also, some of the lower courts and tribunals are **no-costs jurisdictions**. This means that you can't recover your legal costs from your opponent if you win. This discourages the use of lawyers and reduces the likelihood that your opponent will use one. Check whether the court or tribunal you are using is a no-costs jurisdiction.

If your case is to be heard by a court in the upper levels of the hierarchy like the Supreme Court or High Court, seriously consider getting a lawyer. These **superior courts** are designed for lawyers, and specialised ones at that. Although it's not essential, be warned that extensive research as well as considerable time and effort can be required. These courts have elaborate procedures and strict formalities and their rules and paperwork can be gruelling.

Other legal bodies that are in-between in the court hierarchy – like the Family Court, Planning and Environment Court, Review or Appeals Tribunals – deal with both simple and complex matters. They are not, in themselves, an indicator of whether your case might be too difficult to run on your own.

How much money is involved?

The money factor affects your decision about a lawyer in a number of ways. Ask yourself:

- how much money is at stake in this case?
- can I afford a lawyer?
- will the lawyer cost more than the case is worth?

Although size is always relative, if your case involves a very large sum of money to you, give the decision about getting a lawyer

some careful thought. You may wish to investigate a no-win-no-fee lawyer.

If the case is not worth too much financially, you may find it more satisfying to run the case yourself. Of course, if you use a lawyer and you win, you may be able to recover your legal costs from your opponent. But if you can't recover these costs, your sense of victory can quickly vanish once you get your lawyer's bill and do the sums and realise who's really winning from your case.

The amount of money at stake in the case may affect which court will hear the case, as some courts have limited powers. For example, Small Claims Courts and some tribunals can only hear disputes worth up to a certain amount. The next courts up in the hierarchy, for instance the Magistrates Court, may hear disputes for larger amounts, but they may also be limited.

Generally, the larger the amount involved the higher the court that hears the case. And the higher the court, the more complex are its procedures and so the more complex your case can become. The more complex the case, the greater the need for a lawyer.

What else is at stake?

It might not be just money that's at stake. Think carefully whether anything else is at risk. Perhaps it's quality of life, your home or family stability, better business opportunities or your future rights and entitlements. Weigh up these factors when deciding whether to get a lawyer. If you then decide to run the case yourself, you will do a better job being fully aware of the case's consequences.

If your case is one that's best described as 'it's not the money, it's the principle involved', unfortunately the 'principle' and the 'law' don't always mean the same thing. The principle may be important but the law is not always there to support it, so the chance of success in these cases is not necessarily high. Sheer perseverance and the eloquence of the affected party, though, can sometimes make the difference. Provided the case is a valid one, it can be well suited to self-representation.

Knowing your needs

At all stages of your case, be prepared to reassess whether you should get a lawyer or some type of extra legal help. If any of the following are happening, you may be getting out of your depth:

- if you can't deal with the paperwork involved;
- if you are not managing the deadlines for lodging documents;
- if, despite using every means you are capable of (including court remedies), you still find yourself powerless against the other party's delays;
- if, when you seek free legal advice, the legal questions involved leave the lawyer scratching their head;
- if, after you have lodged your claim, the other party makes a **strike-out application** or **motion** to the court concerning the claim, on the grounds that it has no reasonable basis or it is frivolous or vexatious. This may indicate you have real problems with the merits of your case.

Sometimes, though rarely, someone other than a lawyer may be able to represent you. Some tribunals, for example, allow other types of advocates like your social worker, disability advocate or aged or veterans' advocate to help you at the hearing. Check with the court or tribunal involved.