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LAW REFORM COMMITTEE

Inquiry into vexatious litigants

Melbourne — 13 August 2008

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Mr J. Wilson, director, corporate services, Wellington Shire Council.

The CHAIR — The committee welcomes Jim Wilson, director of corporate services with Wellington Shire Council. Thank you very much for coming to give evidence to us today. We have received your submission; thank you very much for that. We have had a look at it and we will come to it in a moment. There are a couple of formalities that we need to go through. The hearing this morning is held under parliamentary privilege, which means anything you say that might be critical of somebody or might be subject to litigation will be protected, but if you say those same things outside this hearing, then obviously you will not be afforded that protection. We have about half an hour, so we will hand it over to you to set it up and speak to the submission and the terms of reference, and then we may have some questions to clarify some of the matters you have raised or that have come out of your submission.

Mr WILSON — To start off with we saw the issues paper come through, we were probably a little unsure as to whether it was something that was within our ambit to make comment on, but in the end we decided that we would. We wanted to put our view as a local council about the sorts of problems that we have, and I guess other councils would be having similar problems — in fact we know that they do. Whilst there is only one of us here — that is, me — I guess you could multiply it by 79 and you would get the scale of the issues that we are thinking about.

You have seen our submission. Thanks for having us today. I want the submission to be seen in the light that we are not wanting people to complain, because we think it is really important that we work with the community and individuals to address their issues, to hear their complaints and to sort out some of the disagreements, so we do not want it to be perceived in the sense that we are dealing with people who have issues with us. We think that that part of our work is very important in dealing with people and communities, and we think this is a bit different to that.

Vexatious litigants — and I use that term quite broadly — seem to be people who are outside the regular court or legal system and who become involved with us. They use free tribunals, which is good — things like VCAT, which is not totally free but relatively free compared to getting involved in the legal system, the Ombudsman and any other sorts of tribunals like that that are around.

What sorts of things do they do that make us feel that they are heading into the vexatious litigant box? They use those free tribunals. They cruise around outside the legal system. They seem to switch issues. When you think you have just about solved an issue for them, all of a sudden they will find another one that they need to become involved with. They write a lot of letters, and I think, as we have said in the submission, a lot of them are bush lawyers. I am not saying they make things up, but they put things in ways that individuals within organisations might perceive to be proper legal documents, and to that extent we need to get them checked out from time to time.

They bombard us with emails as well, and you know how easy it is to push out a lot of emails very quickly to a lot of people. That happens and it is very hard to deal with. At times we have blocked addresses coming into the organisation because we felt that was the right thing to do. They seek interviews with us, and that is fine. We always like talking to people. We probably talk too much sometimes. We like discussing these issues with people to see if we can resolve their problems. Again, we are not always successful, and there is this group of people that does seem to find itself in this vexatious litigant box from time to time. Despite all those things we try to do to help them, we sometimes just never seem to be able to resolve their issues.

One of the questions in your issues paper was the question of mental illness, and it was a good question. I think we probably have the view that some of these people might be suffering some illnesses. It is impossible for us to say, we are not doctors, but they do seem to have some problems from time to time. That is hard for them, but it is hard for us as well. There may be some issues there. I think you were talking about the merits of referring people and possibly if they want to go that might be a way around it.

They are very costly for us to deal with in terms of time. As you probably know, in an organisation where you do not get the right answer from one person you will probably go and talk to another person, another person and another person in an effort to get the answer that you want. There is a lot of staff time involved in some of those things. It costs a lot of money to do some of those things and particularly with legal advice.

We have had a few where they have prepared documents that seem, on the face of it, to be proper legal documents, and it would be remiss of us not to protect the ratepayers by getting those checked out. We have on occasions had to get legal advice. I cited an example in the submission where it really does start to add up, and ultimately it is for nought. That is an actual real documentable cost that we could talk about.

I have found, in terms of our staff, some of these people are very persistent. They are very threatening sometimes, and again that probably meshes a bit with illness. In fact some of our staff have even been served with, again, what appear to be proper legal documents that claim to have seized their house and all their assets and all those sorts of things. That has also happened to our councillors. People find it quite distressing when they get a document that seems to be a proper legal document claiming that they now own your house and all your assets, and you are just going along doing your job. I think people find that quite upsetting at times.

Councillors have received invoices or been given invoices for sums of \$1 million and things like that, as a claim against us with no real substance. There seems to be a bit of a tendency for litigants to claim that we have no authority. This happens to us quite a bit. Over the years it has been alleged that the Local Government Act has no foundation, the council is not properly constituted, the state is illegal and the federal government is illegal; ditto with the constitution, all the way back to the Magna Carta, and all this sort of stuff. That is not uncommon and we see it from time to time.

We seem to be increasingly receiving purported legal documents. Although I have not been able to track any of them down, some of them seem to be coming as form documents off the net where people have access to these sites and they are able to find documents, and all of a sudden you have got what seems to be a legal document that you can serve on people. We have had people do that to us.

It seems that the websites are actually encouraging people to — I have an example here that I might table for you and you might want to do a bit more research on it yourself — flout the laws of the land. This comes from a website called the Embassy of Heaven. I do not know whether you have heard of that one. You have probably worked out that what they essentially purport is that the laws of the land do not apply to these people, and maybe other laws do. You might wish to take that and do some research for yourself. It is an American site, not an Australian one, but people clearly access it and use the ideas and concepts from it.

The other thing I was thinking about this morning is that there also seems to be at times, and this is not true for all of the litigants, some networks out there, particularly in this challenging of the legal system and the constitution and those sorts of things, and again you have probably heard about those things from other people.

We understand that other agencies are also having issues with some of these people. They do not just focus on the council. I think if you spoke to other local agencies or authorities you would find that they probably have similar issues. Possibly the local magistrate would have some issues with some of these people and again probably they are looking for some outcomes out of this review as well.

What would we be looking for as a council? I guess we would be looking for something that is simple, something that is cheap, something that is effective. I was really surprised when I read your background paper to find that only 14 vexatious litigants have been declared in eighty years. Clearly that is a very high test and it may well be the right thing, but it would seem to me that in the society we live in today there are a lot more people involved in taking legal action at all sorts of levels within the system and people seem to be much more active, so that 14 in eighty years does not seem to be right to me. It may be that the tests are too high.

We would not want to take away the rights of the individual because that would not be the right thing to do, but we just think that there might be a need for a better balance between the individuals and the organisations that are charged with doing particular things. We are not sure that the balance is quite right.

We think it would be great to have some local process. I think we have suggested the local magistrate in that circumstance, rather than the Attorney-General. That seems to be, for us, quite remote and possibly expensive, and it is possibly quite time consuming to go through that process. In terms of the delay, it may well allow the litigant to continue their actions rather than them being able to be dealt with swiftly. I think there are some issues there.

The other thing I suppose we are saying is that part of that process would be a desire, if it is possible, to limit action. There is a bit of a suggestion in your paper that maybe you get three inquiries, or there is some limit to the number of complaints or inquiries someone can make. I do not know how you could exactly regulate that, but the concept is okay. It is like being able to rule a line under matters. After we had done our bit, we have responded three times, or had 10 meetings or whatever it is, we could say, 'Okay, we have done our bit, there is no requirement for us to do anything else in this particular matter'. Those are the sorts of thoughts we have had. We think it is a real problem for us. Some of it gets into the legal system through the Magistrates Court, other times it just cruises around more in the administrative zone which probably makes it harder for us to finalise.

The CHAIR — Thanks very much for that. Perhaps just as an opener, you say in your submission, and you also indicated in your presentation, that you have about three or four litigants at any one time. So when you compress it in the way that you have necessarily summarised it for us this morning, it looms as a very large issue. But stepping back into the arena where over a year or two years you have three or four going at any one time, does that mean they go on for a long time, or they accumulate? How does all that build up to create both a financial and related time cost of staff and stress? Could you just explain that?

Mr WILSON — It is a good question. I found it a bit hard to find a dimension for the numbers, and that is an estimate essentially, but I actually have some that I am personally aware of that have been running for decades. That gives you an indication of the amount of work that a whole range of people have done over many, many years. That starts to become a big cost for the organisation.

The CHAIR — Could I just interrupt you there — you are talking about people that are taking formal legal action against the Wellington shire; you are not talking now about people that are nuisance callers and writing in letters and things that you have control over, that you as a shire can say, ‘Right, our staff are not dealing with Mr Smith any more’, or whatever.

Mr WILSON — I think the trouble is that some of them are very diverse and mixed up. The ones I am thinking of that have gone on for this long involve a mixture of all those things: the council taking some legal action, so I suppose we are the initiator in that case, and there is all the argy-bargy that goes on around that; and a whole range of administrative things and so on, probably not so much in the formal zone, but there are elements of that.

The CHAIR — Just coming back to the quantification again and how that is worked out, it is interesting that, as you said at the beginning, local government is coming in to give us some evidence around this, so what is really useful for us is to get a bit of a grip on how your organisation deals with it on a day-to-day basis or over a period of a year. Really, all you have said in the submission, given that it is hard to quantify, is that you have three or four running at any one time and that it is a great drain on your resources and a stress to your staff. So how does that work out?

Mr WILSON — I suppose I was trying to think about it. I work in the corporate area, but these issues tend to be spread across the organisation. I am not fully aware of all of them, but they will occur, for example, in rates. We get people objecting to rates, saying, ‘You have no authority to charge rates’, and that sort of stuff. It will probably happen in our roads area; obviously roads are an important area of local government. Local laws is an area where people get involved. And there is also planning, naturally, although all the planning matters go through VCAT; they are usually well processed there, but there are others that linger. We make lots of decisions that affect people at a local level, and I think that is something that encourages people to talk to us.

Mr CLARK — Just following on from the Chair’s question about the distinction between litigation and in-house complaints, as it were, or complaints just to you as a council, what jurisdictions do you find people are issuing proceedings in? You mentioned that perhaps you would like a local magistrate to have power to block proceedings. Are people issuing in the Magistrates Court? Are they going to VCAT, the Supreme or County Court, or all over place?

Mr WILSON — The ones that come to our particular area are in the Magistrates Court. We deal with things like unpaid rates. I suppose that is a financial trigger for them, that they do not want to pay their rates, so they will fight that. Magistrates usually say, ‘You own property, the council has a right’, end of story, but nevertheless, you still have to go there and defend the case, appear, and all that sort of stuff, so there are costs there. That is probably one of the key ones that happens.

Mr CLARK — The example you gave was the \$6000 cost in response to an apparent court proceeding, which brought the total to \$15 000. That seems to be a large legal cost if the complaint on its face was bogus. Were they exactly the facts of the matter? What level of court was that case brought in?

Mr WILSON — That was a Magistrates Court matter. Again, the documentation that some of these people present is quite a lot. I think there was probably paperwork about an inch high, with quasi-legal stuff in it. I guess we have been a bit nervous about some of those sorts of cases, because they are not easy for us. I am not a lawyer, and it is hard for us to tell whether they are for real or not, and the lawyers have been through it a few times. Again, whilst I think we were talking about having been through that process two or three times with that

person, the documentation has changed; that one has been running for many years, so we have been keen to make sure we are right, and we have asked the lawyers to have a good look at it for us.

Mr O'DONOHUE — Thanks for being here with us. Do you have a sense that country councils perhaps face more of this because of a sense that government is too far away, in Melbourne or in Canberra, and that therefore the local council is a face, for want of a better word, of government regardless of what level or tier? Do you think that is a problem, particularly to country councils.

Mr WILSON — I do not know. Actually I am not sure that it is. I think it is more a function of the number of people you have in your municipality, so I would suspect that metropolitan councils with more people probably have proportionately more of those sorts of issues.

The CHAIR — What I want to ask you is: does the council have a protocol or process to guide its staff, people such as yourself and others who work to you in the other areas? You said it is quite dispersed across the shire. Do you have protocols and processes to support your staff in working through some of these issues?

Mr WILSON — Yes, we do. It is hard to actually establish a point, but there is a point in every complaint where it seems to be getting out of hand, where we will not write back to that individual any more. I mean, after about a hundred letters on the same thing, and they have been threatening, you actually just have to say, 'Sorry, I am not going to respond any more'. We probably do not have a written protocol, as such, but it is something we do consider.

The CHAIR — That is at the end when you have had enough.

Mr WILSON — Yes.

The CHAIR — But at the very beginning of the process — if you can remember the beginning given that you say some of them have lasted as long as they have — do you use processes like alternative dispute resolution methods, or ways on a preliminary basis of approaching a person to either dissipate what their concern is or to redirect it in some way?

Mr WILSON — We probably do not explore things like alternative disputes much. We do, I think, certainly in areas like planning. That is the sort of area where they will look at those and have some informal discussions. Normally, say it was a local laws matter, there are probably three or four layers of management that you would choose to talk to the persons for each of those layers of management to give them options in case their view was that the person at the lower level had not quite got it right. I think we have those sorts of things in place, but you still do not seem to be able to solve the problems.

The CHAIR — From our point of view, what we are hearing from people on the one hand is that anyone would be reluctant to limit people's legitimate rights to gain redress from an injustice that they feel they have had put upon them, but on the other hand we are also very sensitive to the things that you and others are saying. Part of our job is to try to strike the right balance. So we are looking to see how organisations such as yours might be working at the front end and through your organisation to see what has been successful. If there are things, if you would like to shoot them across to us when you go back to Wellington shire and see how you actually how you work those things out, that might be useful for us.

Mr WILSON — In terms of total number of customer contacts — I just looked at some the other day — I think we had something like 50 000 phone calls in a year. That is just phone calls through our customer centre. There would be other phone calls and lots of other contacts. If we are only talking about less than a handful of people a year, to me that is indicating that we are hopefully resolving most people's issues.

The CHAIR — Absolutely; that is right.

Mr WILSON — We are only talking about a very, very small percentage. I think that is good, and we would like to keep it very small. I think you are right; we do not want to limit people's chances to raise their issues and for us to resolve them. That is actually what we want to do. So yes, it is a difficult issue for us. I think it is very frustrating for people, because we are not quite sure what to do with some of these things. I suspect that is the problem that other people have as well.

The CHAIR — I have one more question. Your submission talks about giving the courts power to prevent further administrative as well as legal action, but based on your experience, what happens when a potential vexatious litigant is unsuccessful in the courts or tribunals? Do they come back to you? Do they continue to press the complaint in other ways, which is what you alluded to at the beginning?

Mr WILSON — Absolutely. That does not stop them. Again they will say, ‘Okay, I lost that one in court. I will take it to court again.’ They go that far. Even though they might appear in front of the same magistrate who ruled against them last time, they will bring it up again. I think they are very persistent. Maybe it gets back to this issue about how well they are. Maybe they are not understanding what the decision was the first time.

The CHAIR — All right then, we will leave it at that. Thank you very much, Jim. I think I forgot to mention at the beginning that Hansard staff are recording the discussion. You will be sent a copy of the transcript and you can make any minor adjustments to it just to clarify things. I hope you would be open to Kerryn or Susan getting in touch with you to get any further follow-up information or get your views on things.

Mr WILSON — Thank you.

Witness withdrew.