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LAW REFORM COMMITTEE

Inquiry into alternative dispute resolution

Melbourne — 29 November 2007

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Mr P. Lauritsen, Deputy Chief Magistrate, and

Ms A. Goldsbrough, Supervising Magistrate, Family Violence & Family Law, Magistrates' Court of Victoria.

The CHAIR — I welcome Peter Lauritsen and Anne Goldsbrough. Thank you very much for coming to this hearing of the inquiry into alternative dispute resolution. There are just a few things before we begin. Thank you for sending the material on and for your interest in our inquiry. Hansard staff will be recording the details of what you say, and a transcript will be sent to you afterwards. One thing I need to say to you, which you probably know anyway, is that the conversation we are having here is protected under the Parliamentary Committees Act, so parliamentary privilege is extended to you. But if you say the same difficult things outside the confines of this hearing, you are not afforded that privilege. We run these sessions fairly informally. We will give you some time to talk about the court and your work in relation to the terms of reference, and then we will jump in with some questions.

Mr LAURITSEN — I will start. I am the Deputy Chief Magistrate with special responsibility for our civil jurisdiction, so when a copy of the discussion paper was sent to our Chief Magistrate he referred it to me. The submission made on behalf of the Court was a limited one from the Court, and annexed was a submission that the court had made together with the dispute settlement centre of Victoria to the Law Reform Commission's inquiry into civil justice chaired by Dr Peter Cashman. The Court had previously made a much larger submission to Dr Cashman's inquiry in relation to those matters but it did not touch upon alternative dispute resolution.

The document I sent to the Committee — or the two documents, but particularly the one titled 'Alternative dispute resolution' — really just sets out historically what has happened in the court in relation to alternative dispute resolution, what the current situation is, and also the pilot program that we have just stared at Broadmeadows Court from 1 October this year.

I had a discussion with your Executive Officer as recently, I think, as one or two days ago. It seemed to me that you may well have questions of me in relation to mediation and intervention order applications, and I thought it would be better if my colleague, who is the Supervising Magistrate in charge of that area, came along to provide information in that regard rather than me doing it more or less second hand.

All I want to say really, I suppose in addition to what I have written, is that every civil dispute — and I am excluding applications for intervention orders — in our court, except for a few, undergoes some form of alternative dispute resolution within the court or annexed to the court before being listed for a hearing before a magistrate or a judicial registrar. The primary form of alternative dispute resolution in civil disputes in our court is the prehearing conference which I referred to historically, and they date from the mid-80s. Almost invariably nowadays these are conducted — and have been so for many years — by our registrars and deputy registrars who are by and large trained in some form of alternative dispute resolution process.

From a Melbourne perspective, that is the court at Melbourne where a very large number of these civil disputes are lodged and dealt with, how successful our registrars are in resolving these disputes is indicated by the fact that just over 68 per cent of such disputes that are placed before them for the purposes of pre-hearing conferences are resolved at those pre-hearing conferences.

The CHAIR — Can I just interrupt you there, are you saying that every case that comes to the Magistrates' Court — —

Mr LAURITSEN — That is defended; every defended case.

Mr FOLEY — Civil cases.

The CHAIR — That is right; every civil case goes to an ADR process?

Mr LAURITSEN — Excluded are a number of claims relating to property damage arising out of motor vehicle accidents where the amount varies — for instance, in Melbourne we

do not do any of those cases by way of pre-hearing conference or any other method; we just list them straight for hearing. In other courts — at other suburban courts and country courts — they generally exclude them from ADR if the amount in dispute is less than $1000. But in Melbourne we do not do any of them mainly because historically they are difficult to resolve. The issues are often about who is to blame for the accident. In one sense they would be easy to resolve, because you take a risk assessment of it, but in another sense culturally they are difficult to resolve, so we do not spend the time on them and focus on other areas.

I might just add this. In our court, in civil proceedings, we have, for instance, about 75 000 civil cases issued each year. A large number of those are undefended and are disposed of administratively by way of making orders. Of the 75 000, between 8000 and 9000 are defended each year, and it is those 8000 or 9000, except for some of the property damage out of motor vehicle accidents, that are then referred to a form of ADR. The primary form that we use is the form conducted by our registrars and deputy registrars — these pre-hearing conferences. Their resolution rate — certainly at Melbourne, and it is replicated elsewhere in the state — is very high, at 68 per cent.

We have since 2002, at Melbourne and spreading throughout the rest of the state, deliberately used the mediation process. We started it in Melbourne in late 2002 as a pilot program, whereby our registrars and deputy registrars who had been trained as mediators would deal with a few mediations each month. They were dealing with about four per person per month. We did that because it was an anticipation of the substantial increase in our jurisdiction, which commenced on 1 January 2005. It was seen then that, as the cases became more complex because there was more money involved, we really had to have a lot of experience in relation to mediation. We consciously trialled this program at Melbourne using our own staff in mediation. Also, we consciously set down mediations very soon after the notice of defence was filed by a defendant. The traditional view was that you waited till all interlocutory steps had been cleared before you put a matter down for mediation. Our experiment was that we would put it down very quickly, before interlocutory steps had taken place or all of them had taken place, in an attempt to see if we could resolve at a reasonable rate and thus save the parties a lot of costs and a lot of time. In fact it proved to be very successful using our registrars and deputy registrars. That program is now expanded. It is no longer a pilot program, and mediation is a second limb, if you like, of ADR in our court in civil proceedings.

At the moment we use our registrars and deputy registrars, we use the legal profession — barristers and solicitors, and have distinct arrangements with each of those — and we also use the Institute of Arbitrators and Mediators as mediators in relation to those disputes.

The resolution rate on mediations of our matters is running at 64 per cent across the board, which is very high as well. We only refer to mediation those matters that we think deserve a mediation — that is, that there has to be at least $30 000 in dispute, and it has to have a degree of complexity, whether it be complexity in facts or complexity in law, that would, if the matter went to trial, involve the hearing by a magistrate of, say, three to five days. A three-to-five-day case before a magistrate is dreadfully expensive. In the last five-day case that I dealt with, which was quite recently, the cost of the successful party ran at $25 000, so the costs are really very large, even in our court which is the lowest court in the hierarchy. That sort of resolution rate is very gratifying.

The Broadmeadows pilot was a real attempt to devote a great deal of resource by way of mediation to smaller claims in an area that would benefit from such devotion of resources. Why Broadmeadows? It was a court that had a history of experimentation in various areas. The only court in Melbourne that does Koori Court matters is at Broadmeadows, and that is where it started. It had a very significant non-English-speaking population, and our co-partner in this program, the Dispute Settlement Centre, provides interpreters, so that could be accommodated. The area was economically deprived, by and large, and also the intervention order mediation program was

starting there in August this year, so it fitted in. That program started on 1 October. We have now referred some 18 matters to mediation. None of them have been mediated yet. I am told there are two for mediation today, so we will be very interested to see how they go.

One of the features of that pilot is the use of an intake officer provided by the Dispute Settlement Centre, and that person's job is to contact the parties beforehand to make sure that they know what the process is about, make sure that they are in a position to proceed on the day of the mediation and with a view to trying to resolve the dispute. On average, this person contacts the parties between 6 and 10 times per file in order to make sure those matters occur.

I am told that of the eight that have been set down that that has been done within the four weeks from the filing of notice of defence, which is what we aimed at with this pilot program — a very rapid turnaround for a mediation, devoting resources to it. The Dispute Settlement Centre uses a two-mediators model, which is an extremely successful model where you are dealing with a lot of emotion in matters, so it will be interesting to see how it goes in relation to civil disputes, where, I would imagine, there is not a great deal of emotion in most of them, although there probably could be, as opposed to, say, applications for intervention orders. The mediators will be largely legally trained. We took that step and made that requirement because we felt we had to sell this to the legal profession. The legal profession are reluctant to deal with people, even mediators, who are not legally trained. If this pilot succeeds, which I am confident it will, then that requirement will, I think, just fall into the background, when people see the skills of the mediator and the conciliation skills of the mediator.

The other aspect of the pilot that I really wanted to push, and I was really glad we could do it, was the question of pre-issue mediation. I made passing reference, I think, to it in what I sent you. We started pre-issue mediation in our court. What that is is mediation of disputes before proceedings are actually issued in our court. We as a court have no jurisdiction to do anything until a proceeding has actually commenced in our court, in civil matters by the issue of a complaint. What I have been trying to pursue over the years is to encourage the legal profession to mediate a dispute before anyone decides, 'I will issue it in a court', with the obvious saving of time and a huge amount of money. We set up that process in late 2004. I would have to say that there has only been a relatively slight response to it so an aspect of this particular pilot was pre-issue mediation, as I set out in the document.

The CHAIR — How does that work? Someone has a complaint, they go to their lawyer and then what happens next?

Mr LAURITSEN — If the lawyer knows that there is someone on the other side — a lawyer on the other side, for instance, or even an individual — and they agree that there should be a discussion beforehand, a mediation discussion, then they approach the court. They approach in this case the intake officer at Broadmeadows — the person provided by the DSCV — and they arrange a mediation. The beauty of it for those people is simply we provide a venue at no cost, we provide two mediators at no cost, we provide interpreters at no cost, and if it unfortunately does not resolve, then the costs incurred in the mediation by the parties become in effect costs in the cause. If someone does issue proceedings and it goes to an ultimate judgement by a magistrate, then the costs of that failed mediation are protected and someone will get costs. From my perspective there is every reason for people who have disputes to avail themselves of pre-issue mediation. I have certainly, in relation to this pilot, spoken to a large number of lawyers, even electorate officers I have spoken to, whom I felt ought to know about the program because they are a significant source of referral, financial counsellors and so on, that this is an available resource. It costs really the parties nothing or very little to avail themselves of it in an attempt to resolve a dispute before it comes to court because the moment you issue proceedings and the moment they are defended the costs then start to escalate, even on our modest scales.

I also mentioned judicial mediation. We do not do it in our court because we just do not have the resources to do it — in other words, we do not have magistrates who have time to do it; they are too busy hearing cases and determining them. From what I understand, judicial mediation is extremely successful where it has been tried. Certainly I understand it has been tried in some of the provinces of Canada, in some of their courts which are roughly equivalent to our court. In one instance, on the basis of the information provided to me, there was a 98 per cent resolution rate of disputes. It can be done, it can be very, very successful, but it is very resource intensive. The County Court is not dealing with judicial mediation, but what they are doing is they are putting judges in charge of particular lists. These judges are experts in the particular area — for instance, medical negligence. Those judges, as far as I understand, adopt a form of ADR in the way that they deal with the parties such that very few of the cases in some instances ever go to trial; most of them resolve before trial.

Our direct experience in our court of judicial mediation is, as I indicated, our judicial registrars, who have been dealing with what could be called industrial matters — matters in our industrial division. Their resolution rate is about 58 per cent, so it is good, but it is not dramatic. I do not know that there is really anything else I feel I need to say.

Ms GOLDSBROUGH — Questions first if you like?

Mr DONNELLAN — The pre-issue mediation, you have talked about that and you are saying it has not been taken up a lot. Is that cultural? With the solicitors, in a sense, is it a cultural issue that they are obviously used to an adversarial system and so forth and potentially that would minimise work in the long run? That is just a guess. I come from a family of lawyers so I am not having a go at lawyers per se; I am genuinely just asking if it is.

Mr LAURITSEN — I think the cultural aspect is the way the legal profession views ADR in any event. I think in our court, even though historically and presently it has had a very high success rate of resolution, it is still seen deep down as a step in a process towards a trial. It is not seen as an end in itself. Moving just slightly away from that, one of the aspects of this pilot is that the court has changed the cost structure in relation to these mediations so that there is a weighting of costs in relation to overall costs in relation to the mediation. We are putting costs, to a degree, at the front end. There is a real incentive, with the limited costs available in relation to those matters, to put your best foot forward at the mediation because if it does not succeed then the costs that a party can achieve going to a final hearing are not that much more. We have made a conscious attempt to weight it and bring home to the profession that this is really in their interests from an economic point of view — —

Mr FOLEY — Put some market signals in the process. Has it been successful? Too early?

Mr LAURITSEN — It is still early days in the pilot, but the intake officer tells me that whenever she rings parties who are represented by lawyers one of the first questions asked of her is about the question of costs. She is able then to refer to our rule of court which deals with this question of costs and that seems to satisfy them. I think the signal is getting through. Pre-issue mediation is novel, even though it has been around in our court for a while. It has not been taken up. It is taken up occasionally, but not taken up to the extent that I had hoped.

This pilot is an incentive for them to take it up because we are providing mediators, we are providing a venue, we are providing interpreters, we are providing everything at no cost to the parties so there is every reason in the world to take it up. That is where I will be watching very closely, whether that succeeds or not.

Mr FOLEY — Peter, other than the traffic and matters that you referred to, and the cost issues, are there any other matters that are suitable or not suitable for mediation processes, whether they are pre-mediation registrars or the judicial ones in the civil list that you have come across?

Mr LAURITSEN — No, except for the property damage matters for the reasons I have given, either the amount is too small or the cultural reasons, if you like; we seek to pre-hear or mediate everything else.

We are certainly not put off by one of the parties saying, 'There is no point to this exercise'. Certainly in relation to pre-hearing conferences, because we compel them to go, culturally everyone does go, and culturally they do try. There are very few instances I am aware of where a party will turn up and say, 'No, I am not going to say anything, or do anything'. That just does not happen in pre-hearing conferences, and it does not happen also in the mediations, as far as I am aware. It is very rare that there is not something that can be gained from an ADR process.

For instance, in this pilot, one of the things that I wanted to catch up in it is where you have a defendant who really does not have a defence. I get a proportion of cases that I hear and determine, that is if they come off a trial, where there really is no defence. The defence really is, 'I cannot afford to pay' or, 'I cannot afford to have a judgement against me' or something like that. It is just very sad because so much cost is involved in it.

One of the things I wanted to pick up in this pilot was — and I have been telling the lawyers and the community legal services and anyone else in the area that is relevant — even if you have got a client who does not have a defence to his claim, where the issue was one of payment, or the issue is one of whether they can afford, from a credit point of view, to have a judgement against them, why not send them off, why not go to this mediation, put in a notice of defence, go to the mediation? What is to be lost? And there is a lot to be gained. There might be a little bit lost in costs, but there is a lot to be gained, one would have thought, in working out some arrangement that they could live with.

Mr FOLEY — Those are issues; what about groups of people that might be better, or not, for pursuing through ADR-kind of arrangements in the civil cases?

Mr LAURITSEN — Not in our court. There is no evidence that we should distinguish one from the other.

Mr FOLEY — Is there any evidence as to different groups — youth, Koori, I don't know — any types of evidence to show whether it has been more successful or not successful?

Mr LAURITSEN — No, there is no evidence one way or the other.

Mr DONNELLAN — Just a clarification: before you said intervention orders and family violence, and things like that, do not get dealt with by the pre-issue mediation?

Ms GOLDSBROUGH — No.

Mr DONNELLAN — That is what I thought.

Ms GOLDSBROUGH — Only the unrelated matters — intervention orders do, and I will tell you a little bit about that. Where the parties are not related, there is no family violence; they are community disputes or business disputes.

Mr DONNELLAN — Yes, I see what you mean.

Ms GOLDSBROUGH — In fact I have set up a pilot that was with Peter back in 2002 as well and I can tell you a little bit about that.

Mr DONNELLAN — So it might be over-the-fence disputes?

Ms GOLDSBROUGH — Watering of the jasmine — just like the movies.

Mr DONNELLAN — Yes, I can see; lots of fun, lots of enjoyment! People cannot even be civil to each other next door.

The CHAIR — Peter, can I just take you back to when you talked about intake officers a bit earlier on and you told us about the role that they play, but just looking at the other side of it, the people themselves who are party to a dispute of some sort, what support do they need when they are referred for mediation?

Mr LAURITSEN — If they do not have a lawyer, then it is the job of the intake officer, case manager if you like, to speak to them, to make sure that they understand what is involved in mediation, what materials they might have to bring to the mediation in order to ensure that the mediation takes place when we have assigned a date for it, and also that some sensible discussion can take place.

The interpreters are important; that is a resource, given the area that we are dealing with, but apart from that, we also look at the issue, if the intake officer forms the view that the person needs legal advice then she — in this case, the pilot, it is a she — will refer them or suggest that they go and see perhaps a community legal service. There is a Broadmeadows Community Legal Service, or see Legal Aid, and Victoria Legal Aid have an office in Broadmeadows, or even, if necessary, a private solicitor in the area.

Part of the function of the intake officer is to look at an issue like that, of dealing with a self-represented litigant. The intake officer in this case is not a lawyer, but she is a legal executive, has had 15 years experience of a large legal firm, so she is very familiar with the issues that would arise in litigation of the type that would be the subject of this pilot program.

We, as a group, meet on a monthly basis to monitor the progress of this pilot — and we met yesterday, perhaps in anticipation of today — and she briefed me and the others about how it was going.

The CHAIR — Mindful of the time, probably it is time to move to you, Anne, if it is all right.

Ms GOLDSBROUGH — Sure. My name is Anne Goldsbrough, and I am the Supervising Magistrate for Family Violence and Family Law. Some of the comments that I will make to you are, I guess, against a background when I was a family lawyer and at the Family Court for a long time, I was the registrar and the list registrar there and, only for the record, designed pre-hearing conferences myself and conducted the first 550; so case management and ADR principles are very important, I think, in managing disputes that end up in the court. I am a trained mediator. I trained at the Family Court, and those skills, as I was saying, are very handy indeed, in relation to managing disputes.

I also sit in the list every day when I am not doing something like this. I have spent a lot of time dealing with family violence matters and stalking matters, we call them, because it is under section 21A of the Crimes Act, which is rather untidily, if I may say, super-copied into the Crimes (Family Violence) Act.

What that means is that where parties were unrelated — or not related to each other even in some de facto sense — the capacity to make an intervention order was limited, and when Parliament introduced that section in 1994, unrelated parties such as neighbours, people who were having a civil dispute, people living in housing commission flats, parents at the football et cetera — and on and on it goes — could make an application for an intervention order.

There is no doubt that much of the behaviour that goes on over the fence — whether it be the jasmine or the dog poo over the fence, which is another favourite — can involve a range of incredibly antisocial behaviours and the imposition of oneself on others, which I think is something we need to look at. One of the benefits of ADR, speaking as a committed mediator, is that engaging in a process to resolve a dispute is what we all need to learn — I guess it is the parent in me talking and my experience on all those committees — but unless we can resolve a dispute and have those skills, many of life's hurdles really do stop us.

In relation to community disputes, we set up a system back in 2002 — which I also piloted at Sunshine and again at the Melbourne Court when I moved into that and sat in the family violence list every day — where we had a very good success rate. We again had a member of the Dispute Settlement Centre who I asked to come to the court, and working with Peter we had some money for civil disputes, and really by, I guess, my persistent doggedness I managed to get some of the money to apply to these matters, and we had very good success rates. That was a funded project, and of course it collapsed. If you wanted to read about it, there is an evaluation in the *Journal of Judicial Administration*, and if you think it is useful, we can send an electronic copy to you.

This system that is set up now through the Dispute Settlement Centre is really a replication of that. One of the key things I came up with when I was designing the system with Cathryn Burton, who was a registrar, was to make sure somebody was at the court and speaking to people, because they all arrive and say, 'We couldn't resolve it ourselves. We're not going to go to mediation. It won't work'. The process was to make sure that we had somebody at the court who understood it and who could talk about the expectation of the magistrate, because I cannot refer them — I cannot make them go.

So I have set up with the staff that feed into my court at any location by speaking to the registrars, so that everyone is using the same terminology about, 'The magistrate will expect you to go. Have you considered it?', and so on. We schmooze them, if you like, into thinking that perhaps they do not know all the answers, because they come to court thinking they know all the answers, and they quite often have a rather indignant self-righteousness in relation to obtaining an order — 'Do I have to be dead before somebody will do something for me?'.

My background, for what it is worth, is also complex. I also bring with me teacher training and training to be a psychologist, so I have a range of different avenues I can draw on from moving from course to course as we could in those days when education was free — you can tell my age now — unlike the way it is for my children. I guess I have been able to use a range of those approaches in setting up a system.

I do not have access to our figures. I was actually only speaking to Peter yesterday — which is how I come to be here today — when we were talking about figures and talking about intervention orders. I am happy to respond in relation to anything else that I do not have with me today or to look at some section of your report and respond more formally, if you think it would be helpful.

I have also spent considerable time working on the family violence reference. I was part of Judith Pearce's advisory committee and I am on the statewide steering committee, so I feel very strongly, if I may say, that parties in family violence intervention order proceedings with an imbalance of power must not be made to mediate. There was some research from Canada at the time I was at the Family Court, which I can probably track down, but what it really does is suggest that once a person has managed to extract themself from that relationship, which is often extremely difficult in a cycle of violence, when you force the parties to mediate about a common goal such as children, it can in fact pull down the defences again, and there have been a number of murders and so on.

It is quite a significant area, and if you would like something on it, I would rather put it together and give it to you, but I think you will find that that is a pretty common view held by most of us in

this area. However, when we get to unrelated parties or related parties who have a greater power balance now and who go through an intake process, they might want to opt in rather than be forced in; that is what I would say.

The system that we have set up at the moment is that I tend to list stalking and neighbourhood disputes on certain days. I regularly have a member from the Dispute Settlement Centre there. Even though they are told the registrar is outside, they might say no, but by the time they get to me we usually get them to go and speak to that person. These documents which I have just left with you, as they may be helpful, set out the process for you to refer to if you would like.

We have drawn up some documents from the original pilot from 2002 which we still use. I adjourn the first return date to allow for mediation, we keep records on Courtlink and we encourage the parties to minimise the dispute. They can bring in other people. I sometimes arrange shuttle mediation, if there are some issues of violence that are brewing. Shuttle mediation I am sure you know about; I do not need to tell you.

The CHAIR — Can I just interrupt you: you said that often when people come in they say they want to go straight to the court because they have tried to talk to their neighbours or whoever and nothing has worked. Then you talked about the process that you go through. Could you give us some sense of the flavour of the conversation? What helps people? What turns them?

Ms GOLDSBROUGH — What have I found successful?

The CHAIR — Yes. What works in that conversation?

Ms GOLDSBROUGH — What I guess I have found successful is if I have got two people — for example, yesterday — standing up in a dispute about business and software that has been removed. They come and say, 'He's taken one against me' and, 'He's taken one against me. Why should I go to mediation? It's all done and dusted. We just have to litigate'. What I would say is, 'Well, you've spoken to the people outside, and they have talked to you about the alternative. In my experience there is always room to move, there is always room to manoeuvre, and there is always room to understand the other person's point of view'.

I would say to them 'Now, you can be listed for hearing in February or March, and you will presumably have a number of witnesses' — this is what is costly, which is Peter's point — 'and you can go and minimise the dispute'. They might say something like 'I am not going to be in the same room as him'. That is fine. What I am doing is meeting their objections by knowing the process. I would say, 'That is fine, we can have a co-mediation. If it is a co-mediation model you will have two people with you. There will be interpreters there for you. It might be that you can resolve some of your dispute and reduce the amount of time'.

So it is the expectation that they are met from moment they arrive with the registrars, the lawyers who are my duty lawyers who attend every list every day from Victoria Legal Aid and the Women's Legal Service Victoria and know the process. It is about communication and understanding that the court process is a backdrop. I am there as a last port of call.

I will decide something if nobody can decide it themselves. That is what I say to them, 'You will want to have a say in what type of order you have, you will want to have a say in how the resolution is made'. It is the sort of thing I used in conciliation at the Family Court as well, doing lots and lots of order 24/regulation 96 conferences. It is about making sure you are experienced to know the process, you can tell them that in your experience very often people are able to find a resolution, and also reminding them that if they have an intervention order they still have to report it to the police to have it enforced. If they can meet and have some understanding about how they are going to behave tomorrow, instead of yesterday, then it is going to make it better tomorrow and the next day. It is that sort of, I guess, teacherish mode in some ways. It is; I guess it is

communication and really making sure they understand what they are getting into. It probably makes it pretty hard to say no — that is my plan anyway!

There are a couple of things Peter mentioned that I would like to address, if I could just briefly, because I am sure time is running on, about judicial mediation. I have to say when I was at the Family Court we had a go at it and it was spectacularly unsuccessful because the judicial officers all decided to do it and had not had the training, and they worked that out later. But there is a model in the US where family law practitioners have taken on what is a pre-litigation process. They have joined a group who will agree 'If we get a client, I will speak to one of you and we will try this process and keep people away from courts'. A number of models are used overseas directly on that principle.

On Peter's point, over the years there have been pre-hearing conference. How I designed them was that before you go to litigation you really need to know what you are dealing with. So before I was going to set something down for hearing myself, as a practitioner with 250 files, I always looked at it three or four weeks out and worked out what I needed. If I was required by the court to do that then I would be in a better position; and at pre-hearing conferences we had about a 75 per cent resolution rate.

Setting ADR mediation up as soon as it arrives, which is what I do in my lists, then we have an interim order perhaps; it comes to the first stage, and there it is, before parties are polarised. In my observation once somebody has had to give evidence or write down what they think about somebody, that is then what they believe and they are going to stick to that. We have a lot of disenfranchised people who use the court for stalking measures. At the moment we have 26 500 applications every year for intervention orders; nearly a quarter of those are unrelated parties. I can get the figures for you, but I would guess that of that, about 10 per cent are what I call new boyfriend-girlfriend related, so still within the family violence context, but my guess would be that about 15–18 per cent would be business disputes, neighbours, flats, noise, which are often very violent, and that is the difficulty.

My final comment, if I may, is that our submission to the Victorian Law Reform Commission — which is of course a public document, and I was substantially responsible for it — really outlines what I think should work. It is something I have set up in Melbourne. That is, when a neighbour goes to the police and want some help the police should refer them to mediation. Some police sergeants should have access to understanding the skills required, like we have developed with our registrars; and councils, schools and others should have that access to referral to dispute resolution.

Mr FOLEY — Ministry of Housing officers?

Ms GOLDSBROUGH — I would have a list of Ministry cases. It would cut the numbers enormously. In fact, there was an article in the paper about just that: a group of them sat in the back of my court a while ago. What I have set up with the local police around my Melbourne court where I sit is a presentation from the Dispute Settlement Centre of Victoria, and I am educating them; I take that role in dealing with police officers on a range of matters, to know about the mediation so that they can use the expectation word, as I call it. So I am pushing it back outside the court to expand into the community that sort of expectation. If we could have something where parties had that referral at that point, the police will become more skilled, the parties will be become more skilled, and they may even be able to pass it on to the children, that would be an advantage, and I think that is quite a simple process.

The CHAIR — It is interesting you say it is a simple process. Just getting back to the point about the role of the police being in empowering communities, just moving further down the line, if you like, to the nub of where disputes start: what kinds of things you do you think we could

do as a society that would enable people to resolve or solve their disputes themselves without even needing systemic support and responses?

Ms GOLDSBROUGH — I would like to do a longer blue-sky version, because I do have some points of view, but I still think it is that understanding of resolving disputes and not that sense of self that we seem to all have at this point, that 'I am entitled' to various things. In my years of working with police and training them at their invitation about these matters, one of the things they constantly come up with is how to resolve something when they go to a house or a building dispute where people are doing things over the fence and pulling fences down and suddenly they turn into the arbiter.

Of course they are not, but they are pressed because they want to help, assist and resolve. So giving them the skills to help them work out the dispute and immediately resolve would be helpful. I would also empower them to understand they are the judge, and that maybe other skills need to be gained. Children in schools learning to resolve disputes and understanding that dispute resolution is part of the society's fabric, and that they are going to meet it before they perhaps go to a court.

They are going to meet it when they go school and they are going to meet it when they have a problem about a consumer issue. They are going to meet an expectation that you will take some responsibility, if it is appropriate, to identify what the issues are and try to resolve them and listen to somebody else's point of view. I think the more we allow people in authority, in positions of power or direction, in the community to have those skills and move them on down the line — —

As soon as I was a mediator I could do other things better because I could hear or listen better. I am still working on the children, but that is a different issue. That is one of the things, I think. As Peter said earlier, empowering the registrars has improved counter skills, understanding skills. People actually want the answer about family violence and mediation. They actually want to be able to resolve their dispute. They do not want a decision from me; they want it to be fixed. I think many of them, if they understand it is part of the process, would be happy to engage in it. I think we have to create that expectation. I speak to and do a lot of work with the Sudanese and Horn of African communities. Empowering them to understand what our rules are so that they can resolve things themselves, but not inappropriately, is something else I have also taken up through the department and do a lot of work on.

Mr BROOKS — I have a question about the 2002 intervention order project with the Dispute Settlement Centre. I have read through the material, but could you give us your personal view of the success of that program and how that sort of system might work better in the future?

Ms GOLDSBOROUGH — I have to say that I did not find my evaluation between 5 o'clock and today, but Peter did point out that there is an article in our material. It had great success. I was sitting at Sunshine at the time. I took the role in family violence there and we used it for neighbourhood disputes. I was able to actually engage with the parties because I knew what the process was. We had — I would be guessing — a very high success rate of people going in and agreeing to mediate, depending on the range of the dispute. There are some disputes that are just not appropriate, I think.

The CHAIR — Such as what?

Ms GOLDSBOROUGH — Where there is actual violence.

The CHAIR — What you referred to before.

Ms GOLDSBOROUGH — But also I have to say that the New South Wales legislation sets it out pretty well in their Crimes Act and their apprehended violence orders for related parties and unrelated parties. They have a very complicated name for it. There is a discretion to refuse to

issue process for it, which sets out what a registrar should follow and which I think is helpful. Section 562N, 'Referral of matters to mediation', talks about things such as where:

> … the defendant has engaged in conduct amounting to harassment relating to … religion, homosexuality, transgender …

There is a range of matters that are just not appropriate to mediate. Schoolchildren bullying is not appropriate for mediation. That is actually making the bullyee and the bullyer equally accountable for the event. It is that sort of stuff. I did not really finish, I am sorry. I went off.

Mr BROOKS — Overall, it is a very successful project, is it?

Ms GOLDSBOROUGH — I thought so, because it did a number of things: the local community got to hear about it, they started coming to the court asking about it, some of them would come and sit in the back of the court, and the registrars and the staff got to understand the process so that they could encourage those coming to the court to engage in it. It resolved most of the matters I sent in the beginning. I was a bit cautious about what I sent in the beginning. I was using my old hat, I guess. I have become more free range as I have gone on and left more to them. That is because I then had confidence in the dispute settlement centre to properly screen for matters. Because of my background I felt some responsibility to be cautious in what I sent. Where there was a real power imbalance, I had to be careful.

When I moved to Melbourne, in the beginning of 2003, there was a turnaround. So our lesson from this is that you needed a committed judicial officer, you needed a group of them who really understood the process to press it. I think we are in a new position now, since 2002. I think more of the staff have now done training, it is now more part of our culture and the court is bringing in a whole range of people from outside court — our applicant support workers, defendant support workers. So we are used to really embracing and I think making great the connection between the court and the community.

Mr FOLEY — Does the Judicial College have a role in this?

Ms GOLDSBOROUGH — I think it does.

Mr FOLEY — Does it now?

Ms GOLDSBOROUGH — Probably not enough, but I would be happy to take it on. At their request, I am actually doing some work with them on these matters, on family violence and some of the human rights matters. I think absolutely there is a role, because it is a skill that is very important.

Mr FOLEY — Does it see itself as having a role?

Ms GOLDSBOROUGH — I could not answer that, but that would be a good question to ask them.

Mr FOLEY — It would be.

Mr LAURITSEN — If I could intervene, I was a member until recently of what was called the syllabus advisory committee of the Judicial College. The decisions of the Judicial College are made by the board, which is composed of heads of jurisdiction, like my Chief Magistrate, the Chief Justice and so on. This was a committee set up by the board composed of members of the various courts and also the Victorian Civil and Administrative Tribunal, which would recommend programs to the board for adoption. The major focus, because it was cross-jurisdictional, was programs that were cross-jurisdictional. One of the inhibiting factors for family violence is that it is not really cross-jurisdictional; it is our court.

Ms GOLDSBOROUGH — I have to disagree.

Mr LAURITSEN — In a narrow sense.

Ms GOLDSBOROUGH — No, I think family violence is sadly everywhere, including in the murders, and that is the thing we need to deal with and that is the challenge. Peter is right; it was seen as just the applications.

Mr FOLEY — It is just how the cops deal with it sort of thing?

Ms GOLDSBOROUGH — Yes.

Mr LAURITSEN — That is the first piece of dissension.

Ms GOLDSBOROUGH — Both are valuable points of view, just slightly different.

The CHAIR — This has been a very fruitful coming together of the judiciary and the legislature. It has been very good. Thank you both very much for coming.

Ms GOLDSBOROUGH — If you think we can help in any other way, just let us know.

The CHAIR — As I said, I am sure that Kate and Kerryn will be in contact with you. You will get a copy of the Hansard transcript. Thank you both very much.

Witnesses withdrew.