

Submission On Accessibility Of Deaf And Disabled People In Aotearoa New Zealand's Courts

Tēnā koutou,

- A. Thank you for the opportunity to provide a submission to the crossbench diversity committees of the judiciary on accessibility in New Zealand's legal system.
- B. Accessibility in the courts is a significant challenge, and we are greatly encouraged to see the judiciary engaging on this issue. As the only community law centre in New Zealand which solely provides legal services and activities to Deaf and disabled people on disability-related legal issues, Auckland Disability Law ("**ADL**") is uniquely placed to comment. Our work includes client casework, legal education, and law reform work. We have extensive experience in advising and assisting Deaf and disabled people, for whom the current accessibility system often fails to protect and provide access to justice.

1. INTRODUCTION

- 1.1 This submission addresses the issues of accessibility in the New Zealand court system. It highlights some of the barriers faced by Deaf and disabled people engaging in the court system, including as defendants, witnesses, jurors or as members of the legal profession.
- 1.2 In Aotearoa New Zealand, 1.1 million people identify as being Deaf or disabled. They are more likely to be the victims of crime, and certain disabilities are over represented in offenders who appear before the courts. Legislation such as the Protection of Personal and Property Rights Act (1988), and the Mental Health (Compulsory Assessment and Treatment) Act (1992) also bring the courts and justice system into the lives of Deaf and disabled

people in a degree not usually experienced by other New Zealanders.

- 1.3 Implementation of this recommended system for supports would provide evidence to the UNCRPD Committee that Aotearoa New Zealand is making efforts to comply with its obligations, particularly with Deaf and disabled people's rights to access to justice.
- 1.4 In this submission we:
 - (a) firstly, identify some of the barriers encountered by Deaf and disabled people accessing the courts; and
 - (b) secondly, provide recommendations for resolving these issues.
- 1.5 The term "**Supports**" as used in this document should be read as having the meaning described in Appendix One.

2. CURRENT BARRIERS

I: Lack of Clear Guidance to Deaf and Disabled Persons for Accessing Supports in Court

- 2.1 The information provided to people seeking Supports when attending court is located on the Ministry of Justice ("MoJ") website: <https://www.justice.govt.nz/courts/going-to-court/pre/interpreters-language-and-disability-access/>
- 2.2 The website advises NZSL users "*You'll need to tell the court at least 10 working days before you need to be there... To arrange an interpreter, contact the court in person, by phone or by email*", and includes the following information under the heading of Disability Access & help:

"If you're deaf, hearing impaired, blind and/or speech impaired you can call us through NZ Relay.

If you're visiting a court and you have a disability, some ways the court may be able to help you include:

 - *provide documents in other formats (such as Braille or bigger type) if you have a vision problem*

- *use an accessible court room if you have a mobility problem*
- *give you a seat near the witness or judge or get sound reinforcement if you have a hearing problem*
- *serve you in a quiet place if you have a hearing problem or if you want to bring a person to sign for you*
- *go through the information more fully and in plain language if you have an intellectual disability or a problem with attention, memory or decision-making.*

You'll need to tell the court at least 5 working days before you need to be there. This will give them time to get the help you need."

2.3 No other information is provided on how to ask for these supports, or who to contact at any given court to request such supports.

2.4 The website also provides information on communication assistance. This is a support that is often required for those with intellectual or learning disorders, autism spectrum disorder or other neurodiversity, brain injury, as well as those under mental distress, and for children. The website states:

"Communication assistance may be available if:

- *you or someone you know has been charged with an offence, or will be giving evidence as a witness, and*
- *may need help to understand what is happening in court, respond to questions or give evidence.*

The judge can direct communication assistance to help defendants understand court proceedings, and defendants and witnesses give evidence to the best of their ability."

The webpage goes on to indicate the process for requesting communication assistance must be initiated by a lawyer, the police or a judge. The way this information is presented implies that communication assistance is only available for those involved in a criminal court matter. However, the information provided on the application form for communication assistance states that counsel for a participant in the family/civil jurisdiction can also complete the form for a communication assistance assessment.

The lack of clear information on the availability of communication assistance for civil/family proceedings conceals an important support for many court participants. If, on the other hand, the information on the form is incorrect, then that is a source of misinformation and confusion for those seeking supports. Either case presents a barrier to the Deaf and disabled community.

- 2.5 An ADL staff member recently tried to access the supports following the process on the website. As can be seen by his experiences, the process as it stands is difficult to use and often ineffective:
- (a) The staff member first went to a court in person. They approached the front desk and enquired 'how do I go about asking about accommodations of a disability if I had to come to court?'. The customer service representative was unable to give an answer and took the question to senior staff member. The ADL staff member was then provided with an email address to contact the court's Service Manager.
 - (b) The staff member then called the High Court using the number listed on the MoJ website to ask the same question. The call went straight to an automated hold queue without any other option provided. The staff member waited several minutes on hold, but had to terminate the call before they were able to speak to court staff.

II: Lack of Guidance to Legal Professionals on Accessing Supports for Deaf and Disabled Clients Attending Court

- 2.6 Legal professionals are the main point of interaction with the legal system for Deaf and disabled people and, accordingly, should be well versed in how to access supports. However, many of the legal professionals ADL spoke to had little or no understanding of how to access supports for their clients.
- 2.7 For example:
- (a) An adviser at a community law centre spoke about their experience obtaining communication assistance for one of their clients, as ordered by the Judge. They said that when it came to dealing with the court in question, the legal team found the process was opaque, and they experienced

frustration and delays due to untimely responses from the court.

- (b) A solicitor at a large law firm who undertakes court work said:

None of the litigators spoken to in the firm had any experience of requesting accommodations in court, and it was unclear from the resources investigated in their review who receives and deals with such requests.

III: Relevant Information is Not Available in One Accessible Location

- 2.8 Much of the crucial information on accessibility is dispersed across multiple web pages and individual documents instead of in one accessible location. Some of it is not even available online.
- 2.9 ADL recently undertook a case study to investigate the barriers encountered in accessing supports by going through the process of advising the court that a Maori person who uses a wheelchair wished to address the court in Te Reo for a civil matter in the District Court. This would likely require the provision of an interpreter.
- 2.10 This task alone took an hour of time and required 13 steps (set out below). Ultimately the researcher was still not successful in being able to access all relevant information and forms online.

The researcher undertook the following steps:

1. Visit the MoJ website and search for interpreters. There were 5241 item hits and the relevant page was item eight in listed results.
2. Search for Te Reo interpreters. There were 309 hits and the relevant page was item number three in listed results.
3. Open appropriate webpage to view relevant information.
4. Open the request for interpreter form – see note on form that you use different form if you wish to speak Māori in court.
5. Open the “Notice of intention to speak Māori” form – see note on form which says that a different form is required if you wish to speak Māori in a civil proceeding in the District Court (Form 4).

6. Search for the District Court webpage on the MoJ website. There is no clearly identified District Court link on the left sidebar or on top menus. Discover you need to click on the “Civil” link on the left sidebar in order to access the correct page.
7. The logical place to look here is the ‘Forms and fees’ link – however there is no link to the required form on that page.
8. Tried a number of ways to find the information on the ‘Forms and fees’ page using the ‘Find a form’ search.
 - (a) Searched ‘Notice to speak Māori’ in the keywords box. There are two forms under this heading. One is out of date. Neither are the appropriate form.
 - (b) Filtered Topic: ‘Court’; Category: ‘District Court – Civil’; keywords: ‘form 4’ – no relevant result out of six hits.
 - (c) Use same filters but with keyword “Maori” – no hits.

At this point, researcher gave up using the MoJ website and went to Google.
9. Searched for ‘District Court’ on Google and went to ‘The District Court of New Zealand: Home’ webpage.
10. Discovered there were no forms available on this webpage.
11. Tried Google search using search term ‘District Court NZ notice to speak Maori’.
12. Google search produces link to the relevant Form 4 subpage of Schedule 2 of District Court Rules 2014 hosted on the New Zealand Legislation webpage.
13. No link found to any other version of the Form 4 document available online. Researcher concludes they will need to contact the court directly to obtain the relevant Form 4. For our wheelchair using client, this is an additional barrier to accessing the required information.

IV: Different Pathways for Achieving Identical Outcomes

- 2.11 A big part of simplicity is having a streamlined process which is repeatable and consistent. However, as the below example shows, many of the current systems are unclear or require fundamental changes for minor differences.

- 2.12 For example, there are three different pathways for achieving the identical outcome of having an interpreter present to assist the function of the court. Based on the information given on the MoJ website, and documentation, the correct process for requesting an interpreter is:
- (a) For general interpretation - fill out the “request for an interpreter” form on the Ministry of Justice website and send it to the relevant court.
 - (b) For Te Reo interpretation - use the “Notice of intention to speak Maori” form and send it to the relevant court, unless it is a civil proceeding in the District or High Court, in which case fill out the appropriate Court Rules form and send it to the relevant court.
 - (c) For NZSL interpretation - don’t fill out any forms at all. Instead you contact the relevant court directly, in person, by phone, or by email.
- 2.13 Having 3 different processes to achieve the same outcome is both inefficient and creates an environment ripe for confusion, and disorganisation. Why not have one form and process that encompasses all of these requests in a seamless and cohesive manner?

3. RECOMMENDATIONS FOR IMPROVEMENT

3.1 Adopting the Ontario approach

Background:

- 3.2 In 2005, the Ontario Court’s Disabilities Committee was established to investigate how accessible the Ontario court system is to persons with disabilities.¹ The outcome was their 2006 report: “Making Ontario’s Courts Fully Accessible to Persons with Disabilities” (the “**Weiler Report**”). The Weiler Report recognised that in addition to barriers such as those created by the physical courthouse environment, the lack of clear processes and court staff designated to support disabled people to access supports was also a significant barrier to effective participation in

¹ Ontario Courts Disabilities Committee (2006). *Making Ontario Courts Fully Accessible to Persons with Disabilities*.

the courts.² The Committee made a number of recommendations aimed at removing all barriers that prevent full and equitable participation in the courts.

3.3 As part of adopting the Weiler Report recommendations, Ontario introduced a system of 'Accessibility Coordinators' (court staff with extra training) to serve as a "one-stop shop" for disability accommodation requests for court proceedings. Anyone who participates in services in the courthouse (witnesses, family members, judicial officials, those under enforcement orders, jurors, members of the public or counsel) can make requests for accommodations through the Accessibility Coordinator system.

3.4 Key elements of the Accessibility Coordinator system are:

- (a) The contact details for the Accessibility Coordinators are available both at the courthouse and online at the individual court's website for ease of access by the public.
- (b) The Accessibility Coordinator can work "one on one" with applicants to identify accommodation needs and requirements and investigate possible solutions.
- (c) The Accessibility Coordinator has the ability to implement certain accessibility requests without need for further consultation.
- (d) The Accessibility Coordinator will liaise with judicial officials around accommodation requests, as in some cases, it will be the judicial official who will need to make the decision on, or give approval to, the provision of the requested disability accommodation.
- (e) The Accessibility Coordinator can contact the Ministry Accessibility Unit for advice on accommodation options and resources.
- (f) The Accessibility Coordinator is involved in the process of upgrading court facilities and resources to increase accessibility.

3.5 In 2012, Laurie McEvoy, Senior Accessibility Policy Analyst at the Ministry of the Attorney General (Ontario, Canada), described the Court Accessibility Coordinator system as being the "most

² Ibid. p.4, p.16-17

significant accessibility initiative of the Ministry" to come out of the Weiler Report.³

- 3.6 As shown above, many of the issues facing Deaf and disabled people in the New Zealand court system are similar to those identified in the Weiler Report. ADL see no reason why the recommendations from that report could not be implemented in the New Zealand courts to address the same issues.
- 3.7 The benefit of introducing a system such as the Ontario Accessibility Coordinators is that it creates a clearly defined pathway for accessing supports – not only for the public, but for the legal profession and court system as a whole. Having a clearly identified position, with the specific tasks of facilitating the process means that:
- (a) the general public know where and who to go to for advice and assistance with Support requests, instead of having to randomly contact court staff who may not have the knowledge or ability to assist in a timely manner;
 - (b) legal professionals have a clearly identified path that they can use to make requests to have accessibility supports considered for their clients, or even themselves if required, before a case is heard;
 - (c) court staff no longer have to deal with random requests of varying quality around requesting supports. Instead, there is a clearly explained, standardised process for handling support requests leading to more efficient management of such requests; and
 - (d) judges have an identified court staff member who is able to handle the details of such requests on their behalf, ideally well before the start of a proceeding. Should accessibility issues arise during the hearing, this person is in a position to implement any judge's directions to resolve the issue in a timely manner.
- 3.8 Introducing this system would remove one of the greatest barriers to accessibility: the lack of a clearly signposted, consistent process for requesting assistance when attending court.

³ Law Society of Ontario (2012). *LSO CPD - Enhancing Access to the Courts for People with Disabilities 2012 (webinar)*. Available at <https://www.youtube.com/watch?v=PzpmMfl-ha0>

4. PROPOSALS TO INCREASE THE ACCESSIBILITY OF NEW ZEALAND'S COURTS

- 4.1 ADL propose a 3 stage process to enhance the accessibility of New Zealand's court system for Deaf and disabled people. Each stage is based on the resources required for implementation.

Stage One – Preliminary Steps – Minimal Resource Investment Required

- 4.2 ADL recommends a clear process for requesting supports be developed and standardised for all applications across all courts. Specifically, this process should be:
- (a) clear, in plain language, and accessible;
 - (b) as much as is practicable, use a single form for functionally identical requests (i.e. all requests for interpretation will use the same form and process); and
 - (c) able to be initiated by the affected person, or by their whanau, support people, or their lawyer on their behalf.
- 4.3 **Accessibility Link on Ministry of Justice Homepage:** Creation of an easily identified and accessible link on the homepage and any linked menus to a single 'Accessibility Webpage'. This page will contain all relevant information (in accessible formats) required to:
- (a) Understand what supports are available for a person attending court for any reason (including requests for interpretation, requests for communication assistance and/or requests for accommodation of disability related access needs).
 - (b) Understand and have clear guidance around the process for applying for a support. This includes what forms need completing; supporting documentation which may be required; timeframes for submitting, processing and response; who makes the decision; and avenues for appeal.
 - (c) Access any and all necessary forms, factsheets, and any other information required for completing an application for a support.

- (d) Identify options and avenues for obtaining assistance in completing the application process. For example, a Supports Liaison, or Accessibility Coordinator, both discussed below.

4.4 **Creation of Supports Liaison Role**

- (a) The establishment of a Supports Liaison role at every courthouse to be the 'one stop shop' for handling support requests, as per the role description set out in Appendix Two. In most courts, the Support Liaison role could be filled by existing administrative staff, whose roles are modified to accommodate the tasks outlined in the role description. In larger courts, or courts with high demand, there may be the need for this to be a full-time position.
- (b) The contact information for every court should also contain contact details and the identity of the Supports Liaison staff for that court. This information is provided in accessible formats.

Stage 2 – Intermediate Steps – Require Additional Resource Investment

- 4.5 **Accessibility Coordinator role created:** This role is based at the courthouse of each of the High Courts and at larger District Courts, as with the responsibilities as per the role description in Appendix Two. The Accessibility Coordinator has responsibility for liaising with judges around requests for supports, monitoring and increasing accessibility for their courthouse, and oversight and support of the Support Liaison staff, both within their courthouse, and those employed in other courthouses who do not have an Accessibility Coordinator on site. The courthouses suggested for hosting an Accessibility Coordinator are listed in Appendix Three.

Stage 3 – Long Term Steps – Likely Requires Significant Allocation of Resources

- 4.6 Creation of an Accessibility Support Unit within the MoJ. The role of this unit would include, but not be limited to:
 - (a) Responsibility and oversight of the Accessibility Coordinator/Support Liaison network nationwide, including recruitment, professional development and training.

- (b) Providing support to the Accessibility Coordinator/Support Liaison network for support requests that are:
 - (i) beyond the capability of the local Accessibility Coordinator/Support Liaison network to provide/manage; or
 - (ii) that requires the coordination of multiple Accessibility Coordinators to implement.
- (c) Review and development of MoJ resources, policies and procedures to ensure that they are fit for purpose and increase accessibility.
- (d) Ensuring capital expenditure on construction of new courts, or refurbishment of existing facilities remedies current identified barriers to access and/or incorporates universal design principles to increase future accessibility.
- (e) Being a point of contact within the MoJ for disability related issues, and MoJ liaison with other government departments and relevant organisations on disability matters e.g., Office of Disability Issues, Human Rights Commission, the Ombudsman's Office, the Health and Disability Commissioner; and Auckland Disability Law.

5. CONCLUSION

- 5.1 Our courts remain an intimidating place for Deaf and disabled people, for whom the current accessibility system often fails to protect and provide access to justice.
- 5.2 In particular:
 - (a) Information available to the public for requesting supports in the courts is vague, incomplete, and dispersed across multiple locations. This creates barriers to accessing those supports; and
 - (b) Conversations with Deaf and disabled people, lawyers and other staff indicate that there is no clear process for asking for supports in court, and no clear process for how requests are handled.

- 5.3 Ontario, Canada has successfully introduced a number of measures aimed at increasing the accessibility of the courts to the Deaf and disabled community.
- 5.4 ADL reiterates that implementation of this recommended system for supports would provide evidence to the UNCRPD Committee that Aotearoa New Zealand is making efforts to comply with its obligations, particularly with Deaf and disabled people's rights to access to justice.
- 5.5 These measures would remove many of the identified barriers that currently exist in the New Zealand courts and we strongly encourage the judiciary to consider how they could be implemented.
- 5.6 Thank you for reading this submission. We are more than happy to answer any questions from the crossbench diversity committees at any point.

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APPENDIX ONE

What are "Supports"?

- A. **Support(s)** – refers to the provision of any service or technology, or environmental or procedural alteration, that is required to remove an identified barrier to full participation in court proceedings.
- B. This includes, but is not limited to:
 - (a) access to interpreters of any kind;
 - (b) communication assistance;
 - (c) providing information and documents in accessible formats;
 - (d) reasonable accommodations for disability, such as:
 - (i) adaptive technology for communication or participation;
 - (ii) changes to courtroom protocol, duration of sessions, or other behavioural or procedural changes to accommodate the effects of a disability;
 - (iii) assessing and accommodating for environmental sensitivities and triggers
 - (iv) consideration in scheduling and location of hearing to allow for mobility impairment;
 - (v) allowing the presence of support people to enable the disabled person to participate effectively;
 - (vi) allowing the presence of disability support animals;
 - (vii) opportunity for the dignified administration of medication, or management of personal cares; and
 - (viii) use of AVL technology to enable participation.

APPENDIX TWO

Suggested Role Descriptions

SUPPORT LIAISON

1. The Supports Liaison role is to serve as the interface between those members of the public who require additional Supports to be able to effectively participate in the court system, and the court staff who have the authority to approve and implement accommodations.
2. The Supports Liaison does this by:
 - (a) being the publicly identified and designated contact for members of the public or legal professionals seeking Supports in the court. These supports include but are not limited to:
 - (i) requests for interpreters (NZSL, Te Reo, and ESOL);
 - (ii) requests for Communications Assistance; and
 - (iii) requests for Disability Accommodations – process requires further development to standardise;
 - (b) providing information and advice on how to complete the Supports application;
 - (c) reviewing any submitted Supports applications for completeness and communicating the need for any additional information/corrections in a timely manner to the applicant;
 - (d) forwarding reviewed Supports applications in a timely manner to the appropriate staff member (likely the registrar or Courts Accessibility Coordinator) for consideration;
 - (e) communicating the decision on the Supports application to the applicant in a timely manner; and
 - (f) actioning all approved Support applications – e.g., booking interpreters or arranging for assistive technology to be provided and set up.
3. Additional duties of the Supports Liaison would include:

- (a) providing information to court users on accessibility matters related to the court environment – e.g., be able to answer questions around locations of disabled parking, which entrances are wheelchair accessible, the location of lifts or accessible bathroom facilities, etc;
 - (b) receiving complaints and feedback around accessibility issues in the court and report these to the appropriate authority for action; and
 - (c) receiving complaints regarding the providers of support services and reporting these to the appropriate authority for action.
- 4. The Support Liaison role is not expected to have decision making power over whether or not a Support is provided. The role is to facilitate the application process and the provision of approved Supports.
- 5. It is likely that the Support Liaison role will require some professional development and ongoing training around the role and in effectively supporting disabled people, but this is not expected to be significant, as the role is primarily administrative and the focus is on increasing the accessibility of the courts by handling accessibility queries and streamlining the process of enabling Supports in the court environment.

COURTS ACCESSIBILITY COORDINATOR

- 6. The Accessibility Coordinator is the person empowered to action requests for Support in the courts. This is achieved by:
 - (a) Where the requested support does not require approval of the relevant Judge:
 - (i) actioning Support requests where the resources available permit the provision of the requested support; and
 - (ii) where the Support request is not feasible, to explore other options for meeting the identified need with the resources available.
 - (b) Where a requested Support will require the approval of the relevant judge:

- (i) by providing all available information about the Support request to the judge;
 - (ii) by providing an evaluation of the feasibility of providing the requested Support; and
 - (iii) where a requested Support may not be feasible, by considering and presenting alternative options for Support that will meet the applicants identified needs.
 - (c) By communicating, where required, details of Support requests to relevant parties – e.g., counsel.
 - (d) Being responsible for actioning any directive issued by a judge that involves the provision of any disability related accommodation or Support, or assessment of need for Supports in a timely manner.
7. Other duties of the Accessibility Coordinator could include:
- (a) Oversight and responsibility for Support provision within the court.
 - (b) Responsibility for identifying needs and opportunities for ways to increase accessibility within the court, and reporting these to the relevant authorities for action.
 - (c) Responsibility for the acquisition, maintenance and repair/replacement of assistive technology for use in the court.
 - (d) Oversight and supervision of Support Liaison staff.
8. Due to the nature of this role, it is expected that the Accessibility Coordinator will likely be a registrar or deputy registrar of the court.

APPENDIX THREE

Suggested Courts to host Court Accessibility Coordinators

COURTHOUSE	ALSO RESPONSIBLE FOR SUPPORTING
Auckland High Court	Court of Appeal
Wellington High Court	Court of Appeal, Supreme Court
Christchurch High Court	Court of Appeal
District Courts	
Auckland District Court	North Shore, Waitakere
Manukau District Court	Pukekohe, Papakura
Whangarei District Court	Dargaville, Kaitaia, Kaikohe
Hamilton District Court	Huntly, Morrinsville, Te Awamutu, Te Kuiti
Tauranga District Court	Whakatane, Opotiki, Thames, Waihi
Rotorua District Court	Tokoroa, Taupo
Gisborne District Court	Wairoa, Ruatoria
New Plymouth District Court	Hawera, Taumaranui
Napier District Court	Hastings, Waipukurau,
Whanganui District Court	Taihape, Ohakune, Marton
Palmerston North District Court	Dannevirke, Levin,
Wellington District Court	Hutt Valley, Chatham Islands, Masterton, Porirua
Nelson District Court	No supported courts
Blenheim District Court	Kaikoura
Greymouth District Court	Westport
Christchurch District Court	Ashburton
Timaru District Court	Oamaru
Dunedin District Court	Queenstown, Alexandra
Invercargill District Court	Gore

APPENDIX FOUR

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