

JOURNAL OF JUDICIAL ADMINISTRATION

Volume 31, Number 3

2022

ARTICLES

Magistrates' Experiences of Judicial Supervision in Mainstream Courts – *Michael D Trood, Benjamin L Spivak, Diane Sivasubramaniam and Stephane Shepherd*

Judicial supervision is a form of judicial oversight available in some Australian jurisdictions. Little is known about how judicial officers target or practice judicial supervision on mainstream court lists. This study aimed to address these gaps by interviewing (n = 15) and surveying (n = 43) Victorian magistrates regarding their use and experience of judicial supervision. The findings demonstrated that magistrates adapt judicial supervision to the challenges of mainstream courts in a manner that is broadly consistent with the “best practice” literature underpinning positive outcomes, yet the resource and listing constraints in mainstream courts are likely to detract from the utility of judicial supervision relative to problem-solving courts. Further research is needed to identify the optimal schedule of review hearings and which individuals would experience the most benefits of judicial supervision in mainstream courts or would be better suited to more intensive judicial supervision in problem-solving court lists. 115

Lessons from a Failed Court Reform: The Cautionary Tale of the 2009 New Zealand District Courts Rules – Bridgette Toy-Cronin

In 2009 the New Zealand Rules Committee introduced a set of what were intended to be easy-to-use court forms to increase access for litigants in person and ensure proceedings could be commenced economically. After reports of “widespread dissatisfaction” with the forms they were withdrawn and pleadings were reinstated. This article traces the history of the reform development and withdrawal, arguing for the need to move to evidence-based civil justice reform. It identifies key issues that need to be addressed in any future reforms: having adequate information about court users; testing proposed innovations thoroughly; and planning evaluation. In addition, the article considers what might have been learned about form design, had testing and evaluation been carried out. It concludes that reform bodies need the resourcing to be able to carry out testing and evaluation, as well as access to data about court users, to enable progress towards improved access to justice. 138

The Use of Artificial Intelligence in the Judiciary and Its Compliance with the Right to a Fair Trial – Kalliopi Terzidou

European courts are increasingly investing in Artificial Intelligence (AI) applications for the automation of the administration of justice, to improve the efficiency and quality of the judiciary. However, AI can display considerable issues, such as opaqueness and unfair bias, resulting from the defective designing of their algorithms. This article explores the opportunities and risks of AI technology for court users – including judicial staff, legal representatives and litigants – by investigating proposed and developed applications by European judiciaries under the right to a fair trial. AI is found to pose certain risks to the independence and impartiality of the judiciary, as well as to the adversarial and public

character of court proceedings, notwithstanding the opportunities for the improvement of access to courts. The regulatory solutions for the safe use of AI adopted by European judiciaries can encourage similar practices in other judiciaries, including Australia and the United States. 154

The Relational Dimensions of Procedural Fairness in a Tribunal Setting –
Therese MacDermott, Denise Meyerson, Catriona Mackenzie and Danielle Moon

People’s understanding of fair treatment in their interactions with legal and other authorities has been the subject of influential cross jurisdictional research in social psychology. This research has shown that people’s procedural fairness judgements are influenced by the quality of their interactions with authorities. People feel fairly treated when authorities convey trustworthiness and neutrality, and listen to them and treat them with respect, because such treatment conveys a relational message about equal status in the community. This article discusses the findings of an empirical case study which involved interviews with a group of Tribunal Members. The aim was to investigate how they translate the legal rules of procedural fairness into practice. The findings show that the interviewed Members are attuned to both the relational concerns identified in the social psychology literature and the normative dimensions of procedural fairness when they implement the legal rules in their procedural practices. 169