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Sent: Monday, 30 March 2020 4:58 p.m.
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Subject: the lockdown and 'essential services' issue - COVID-19 - valuation evidence matters

This email is addressed to the:

President of the New Zealand Institute of Valuers ('NZIV');
Auckland District Law Society ('ADLS') Courthouse Liaison and the Property Law Committee Convenor; and
New Zealand Law Society Courthouse Committee Convenor

Good afternoon

I was appointed as a liaison to various government departments, ASLD and NZLS on various law report matters by previous NZIV Presidents. Without such mandate, I now write as a registered valuer and 'admitted' barrister and solicitor.

I have been considering the lockdown and 'essential services' issue. Intuitively, as with new house construction and conveyancing, I don't see valuation for mortgage purposes as an essential service. Nor do I see most valuation purposes as essential within the context of this epidemic. I also see the reference to the decision as final in correspondence sent through NZIV channels to members.

What might have been missed is that *the proper functioning of the Courts is essential service* in that the courts will continue to operate for specified matters. This would vary for different 'Levels' (I suggest that we might be a different levels in the weeks / months to come).

It appears to me that the Chief Justice, at one 'Level', says that the Courts will prioritise certain matters. For direct reference I provide a **link:** <http://www.bates.net.nz/news.html> to follow to the letters from the Chief Justice (I'm an ADLS member so I receive these as a former lawyer).

There might be circumstances where valuation evidence might be an integral part of resolving the matter, such as:

Level 4:

- Liberty of the individual;
- Personal safety and wellbeing; and
- Matters in which resolution is time critical.

Level 3:

- Criminal matters (warrants to arrest, bail, case review hearings, defended hearings, sentencings, various appeals);
- Mental Health Act orders; and
- Orders under the Health Act.

For example an ex-partner seeking spousal maintenance from relationship property in a care and protection context. Possibly a 'proceeds of crime' case too, might require consideration of land value in the financial aspects in a liberty of the individual context. Perhaps reasonable to anticipate (if we consider Europe and the UK), even an estate matter with a seriously unwell beneficiary (from COVID-19 or other illness).

These might be few and far between, but yet might be *the case*. So, I'm not suggesting this is urgent (now), but that it should be considered now in the event the lockdown is extended.

Perhaps at a lower level the ADLS lease cl 29.2(d)(1) is specifically for circumstances of an "epidemic". It is clear from my own files that this will be a rapidly intensifying issue for landlord and tenants requiring relief. The Arbitration Act

evidence circumstances ought also be considered given the breadth and economic impact of closing premises has on closing businesses (which appear to have been overlooked with a focus on the *labour* market).

I prepare valuation evidence for cases for various jurisdictions for around the world. If I cannot attend in person, they typically defer my witness examination. But that is where 'the point in question' or 'the whole matter' can be deferred. Several times I have been set up to give evidence remotely, only to have the judge decide he/she wanted to hear the evidence directly. For eg: that happened for the NZ High Court at Auckland in Feb this year – I had been in the USA for Massachusetts Court evidence work so had an accepted reason not to be available that day. The whole point in these considerations is that there might be some exceptions needing to be heard.

So, I believe that there might be cases where a valuer's evidence might be essential.

My suggestion is that our profession might wisely identify:

Valuation evidence might be essential in a small number of evidence hearings. Therefore, it is proposed that remote witness examination and desktop valuation could be provided where suitable. Access to valuation office resources might be needed where those processes apply. It is suggested that any attendance at a subject property, sighting comparisons and attendance in Court would be non-essential work unless the Court finds it necessary to the justice of the case for the functioning, care, support or liberty of a party, in the epidemic context.

The professional bodies (NZIV, NZLS and ADLS) could liaise with each other and perhaps provide some guidance to members and act as a conduit with the MOJ and other relevant Ministries, to save them clutter at this hectic time.

I am very busy with pre-existing cases and new lease ADLS cl 27 & 29 cases and can work from home so am not much effected. But others might be locked out of offices and hold relevant evidence.

I wish you health and prosperity during these tough times.

Kind regards

Peter Bates

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