

BOOK REVIEW

Nadine Behan, *How to Run Your Own Court Case: A Practical Guide to Representing Yourself in Australian Courts and Tribunals* (Redfern Legal Centre Publishing, 2009)

Civil litigation can be a complex and tortuous process. It is not a game for naive players as there are many pitfalls that occur along the way to resolution or judicial determination. For the uninitiated, issues of discovery, time limits and legal costs can be a confusing mire of technicalities and jargon. Those who enter into litigation hastily, emotionally, or simply unwisely, often find themselves facing large legal costs and months or even years of paperwork and court appearances before a matter can be appropriately resolved by settlement or judicial intervention. Even experienced legal practitioners can find themselves in difficult straits at times in what may have begun as a simple litigious process.

It is unusual to find a book which deals in such detail with running a civil law case and it is obvious that the author has had a number of years of legal experience and knows the civil litigation legal landscape well. The book is written in simple English and is very easy to read. It defines most legal terms and provides a glossary of terms at the back. As the title suggests, this book is a guide for a non-lawyer to run a civil case in a court or tribunal in Australia. The blurb on the back cover of this book states that it 'applies Australia-wide and to all types of civil litigation'. This is a particularly ambitious goal and, like Caesar, this book attempts to be 'all things to all people' in the area of civil litigation and, as such, it does not succeed in its objective.

This book would have been much better if it had a much less ambitious objective. Its strengths lie in providing simple and lucid overviews of the civil litigation procedure. If it were a book assisting people with how to help their lawyer to run their civil law case, it would provide good insight to clients working with their lawyers on a litigious matter. In this regard it provides a good description of civil litigation and the steps required to bring a matter to a judicial resolution. In chapter 2, the author comments that '[a] successful lawyer-client relationship is about teamwork. Just as you need a good lawyer, the lawyer too needs a good client'.¹ To me, this is what this book should have been about. As a book assisting clients to work with their lawyers, it would provide clients with insights regarding the work their lawyer is doing to resolve the matter and assist those clients in providing their lawyer with the instructions, facts and evidence required to bring a matter to hearing. However, this book attempts to be a comprehensive guide for those running a civil law case from commencement to finalisation without the need for legal representation and, as such, it fails. In its attempt to cover courts and tribunals around Australia, it is much too wide and imprecise to be really

1 Nadine Behan, *How to Run Your Own Court Case: A Practical Guide to Representing Yourself in Australian Courts and Tribunals* (2009) 11.

helpful for a person who is attempting to deal with a specific litigious matter without the need for legal assistance.

The book does have its good points. It proceeds in a logical and chronological fashion. It describes the basics of the legal system, the litigation process and the steps required to bring a matter before a court. Chapters 1 to 8 are quite helpful in that they provide a simple, well-written and easy to understand explanation of the legal system and the litigation process. There is very little depth in the information provided, but it does provide an easy to read overview of the Australian legal system and the basic order of events in civil disputes. In this regard, this book would be helpful for legal studies at school and law students who are involved in clinical programs or in placement situations which have a strong civil law focus. It provides quite detailed and useful overviews of civil litigation which would enable a student or a new practitioner to grasp the basic requirements of running a civil case from commencement to resolution.

The book provides various case studies dotted amongst the text. Unfortunately, I found these to be superficial. Further, they were placed in the text in a way which completely interrupted the flow of the narrative. They were not particularly helpful and had the apparent objective of attempting to provide 'happy ending' or 'feel good' stories regarding various aspects of litigation. Unfortunately, they were just too simplistic in their approach to provide any real insights.

My other disappointment with this book was that there was not enough reference to non-litigious solutions. Granted that the book is meant to be about running a civil court case, however, the author could have spent more time describing how to avoid getting immersed in litigation in the first place or how to extricate oneself from the necessity of a court hearing by way of settlement. There is some treatment of avoiding court in chapter 5 but the author only devotes two and a half pages to this discussion. Considering that the vast majority of matters settle without the necessity for a judicial decision, it seems to me to be a glaring omission from the text. There was very little discussion of non-adversarial solutions to legal problems such as mediation, arbitration, conciliation, or, indeed, simple negotiation.

When the text gets down to the nitty-gritty of case preparation, many of the comments are so broad as to be completely unhelpful. For example, in describing the process of commencing a claim, the author advises the reader that the claim may be a simple form or it may be a specific format legal document and that there may be legal documents that are needed to be included with the claim. Behan provides no details as to what those documents may need to be and, of course, cannot possibly hope to provide such information, considering she is attempting to cover all civil courts and tribunals in Australia. Consequently, for a person who is actually contemplating initiating litigation on their own, this section does not provide any assistance at all. Unfortunately, the section abounds with unconstructive and nebulous comments such as 'know the law' but does not provide information as to how to do this.²

2 Ibid 85–8.

The section on evidence in ‘Preparing your case – Part 2’ is actually the best part of the book as it provides excellent detail as to what evidence is required to run a civil court case and is quite detailed and thorough. Again, it offers a first-rate overview and would be particularly useful for law students and new practitioners.

However, in chapter 14 the author deals with enforcement of orders in slightly less than one page of text. As all practitioners who have had any dealings with the civil litigation process know, enforcement of civil process is time-consuming and complicated and deserves a much more thorough treatment. It is also a necessity in the great majority of matters. The author advises the reader to ‘investigate your enforcement options’³ by contacting the registry of the court, without providing any further detail. Again, this is not helpful for a person with a specific order that they wish to enforce. Similarly, throughout the book the author advises the reader on numerous occasions to obtain legal advice, despite the fact that the whole objective of the book is for the person to run the matter without the necessity of recourse to lawyers.

In summary, this text is simply too ambitious in its attempt to enable a person to run their own civil litigation from go to whoa. It would be much better utilised as a resource for new practitioners, law students or for people who are embroiled in litigation and wish to better instruct their lawyer and understand the civil litigation process.

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3 Ibid 140.

