



The Rules Committee

Te Komiti mō ngā Tikanga Kooti

Improving Access to Civil Justice

Initial Consultation with the New Zealand Community

Due Date for Submissions:	11 September 2020
Address for Postal Submissions:	Sebastian Hartley Auckland High Court PO Box 60 Auckland 1010
Address for Digital Submissions:	Sebastian.Hartley@justice.govt.nz
Telephone Queries:	09 916 9782 (8:30–5:30 Monday–Friday)

What's the problem?

1. New Zealand's courts are meant to provide justice to all of our citizens, residents, visitors, charities, companies, community groups and other entities. Many different courts and tribunals hear non-criminal disputes. Two of these are the District Court and High Court. Generally, the District Court deals with disputes valued at \$350,000 or less, and the High Court other cases.
2. There is concern that fewer New Zealanders can access civil justice in the courts than previously. Increasingly, people coming to the courts cannot afford legal representation. Research suggests many people who might otherwise come to court to defend their rights are put off by the high costs of seeing a case all the way through.¹ News reports say lawyers tell potential clients who want to sue for less than \$60,000-\$80,000 that coming to court is more trouble than it's worth.²

Why are we consulting?

3. The Rules Committee is a group of judges, public servants, and members of the legal profession that are responsible for the rules that govern how the High Court and District

¹ Bridgette Toy-Cronin, Bridget Irvine, Kayla Stewart, and Mark Henaghan *The Wheels of Justice: Understanding the Pace of Civil High Court Cases* (University of Otago Legal Issues Centre, Dunedin, 2017) at 111.

² Rob Stock "Justice delayed, deferred, denied" *Sunday Star Times* (New Zealand, 2 February 2020) at 48.

Courts run. These rules are meant to ensure cases are decided quickly and fairly. The Committee believes that, because of the high costs of bringing or defending claims, it may well be that the rules are not doing this as well as they should. The Committee has started a wide-reaching review of these rules to reduce how much it costs to get to court.

What are the options the Committee is exploring?

4. The basic idea is that every civil case should be heard in the way that keeps the cost of coming to court in line with the value and complexity of the dispute.
5. This may involve a very large change being made in how judges and lawyers work. It may be that a much simpler procedure is to be used in most cases or in some types of case.
6. The Committee has not yet decided its preferred options. Some general ideas that the Committee thinks may help make civil justice more accessible, while ensuring justice is still done, are:
 - a. giving judges more control over how trials are run, with the aim of making trials more efficient while ensuring the truth can come out and both sides can be heard.
 - b. reducing the amount of written material parties have to produce by making it easier to use only the most relevant documents and witnesses to find the facts.
 - c. changing the rules on how parties obtain evidence from other parties to ensure parties only ask for the evidence they need to run their case.
 - d. introducing procedures to ensure plaintiffs and defendants are putting together their cases in the most effective way possible at an early stage by having Judges review the initial documents filed earlier than they do now.
 - e. allowing judges, at least at earlier stages of the case, to help parties reach an agreement to resolve their dispute, rather than strictly deciding between competing arguments; somewhat like is already the case in the Disputes Tribunal.
7. We have already published a more technical document setting out the detail of these ideas. This is available at www.courtsofnz.govt.nz/about-the-judiciary/rules-committee.
8. Please note that issues such as access to civil legal aid and court filing fees are outside the control of the Rules Committee.

Who do we want to hear from?

9. We want to hear from businesspeople, the leaders of non-government organisations and charitable entities, and any interested members of the New Zealand community.
10. The Committee wants to know what New Zealanders think it means to 'have justice done' when they go to court to resolve civil disputes. Our current system of justice is based

around plaintiffs and defendants having a lot of control over how they prepare and present their cases in front of a judge who remains largely uninvolved in hearing their evidence and legal arguments before deciding the case. This contest plays out largely in the courtroom during the trial.

11. The general ideas mentioned above involve moving away from this idea of justice in some ways. One particularly big potential change is reducing the importance of oral witnesses. That involves potentially changing ideas that have been fundamental in how civil justice has been done in New Zealand courts since the 1840s.
12. For this reason, the Committee wants to get a better sense of whether New Zealanders would feel justice will still have been done if they have less control over presenting their case because judges are more involved. We want to know what is most important to people in feeling that 'justice has been done' when they come to court. What makes people feel respected and listened to, or disrespected and not heard?
13. We would like to hear whether people would be interested in judges being encouraged to take a more active role in offering mediation and helping settle disputes.
14. We would also particularly like to hear from leaders of community groups, like city missions and budgeting services, who likely work with those who need to access civil justice but cannot afford to go to court or face other barriers. What deters people from going to court to resolve their disputes? In particular, is lack of money/perceived cost the main obstacle, or are other factors equally or more important?
15. We would also like to hear from organisations like the Community Law Centres and Citizens Advice Bureaux who assist self-represented litigants in navigating the court process about the barriers and frustrations their clients face in going to court.
16. From these groups, we would like to hear about these barriers and the type of disputes these clients need help in addressing. We would be interested in receiving any data you have and can share about the types of clients you are seeing who have civil legal issues but would also like to hear the stories of your clients and those involved for your organisations in dealing with them, and about any common themes you identify in the cases that you see.

How can you submit?

17. Direct your submissions to Sebastian Hartley, Clerk to the Committee, by 5 pm on 11 September 2020, using the details on the first page. Please include your name, any affiliations relevant to your submission, and your contact details.