

## Hartley, Sebastian

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### Improving Access to Civil Justice

#### Inquisitorial Process

As an advocate for my wife, an unrepresented litigant, an inquisitorial process is imperative in all cases coming before the Courts.

I have particularly noted paragraph 138 of report number 37 of the NZ Law Commission - Crown Liability and Judicial Immunity which states inter alia: -

*"The reasons for the protection accorded by judicial immunity include:*

*Promoting the fearless pursuit of the truth;...."*

In my submission the Law Commission's statement is a solid basis and reasons why an inquisitorial process should always be applied. However, in our experience, that has not happened.

Furthermore, Article 14 of the International Covenant on Civil and Political Rights (ICCPR) – affirmed in the Long Title of the NZ Bill of Rights Act 1990 – prescribes a fair and public hearing which again, in our experience, has not happened.

The UN Human Rights Committee has jurisdiction by way of an individual communication to consider whether or not a State Party (New Zealand) has ensured that Article 14 is given meaning and effect.

It is also well established that the function of the Courts is to give effect to the will of Parliament as expressed in legislation. Again, that has not happened.

Instead, unrepresented litigants such as my wife face very experienced and well resourced legal counsel in an adversarial situation who will always be able to persuade and veracity accepted by a judge on the day far better than an unrepresented litigant, particularly when Judges have not been promoting the fearless pursuit of the truth, do not ensure a fair hearing and are not giving effect to the will of Parliament as expressed in plain language legislation when raised.

With reference to unrepresented litigants and the adversarial approach, the 2014 address given by Hon Justice Winkelmann – as she was then – in her Ethel Benjamin address are noted.

As are the 10 August 2018 published remarks of Hon Justice Kos regarding the tide of unrepresented litigants clogging the courts with their rag-tag, rag-bag claims. Those remarks are disrespectful.

**Recommendation** – That Court Rules to include an Inquisitorial Process is adopted and applied in all cases coming before the Courts.

John Howard