

Hartley, Sebastian

From:
Sent: Monday, 4 May 2020 2:13 PM
To: emily.sutton@lawsociety.org.nz
Cc: RulesCommittee
Subject: proposed civil justice reform

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Rules Committee Followup

Dear Emily and rules committee,

Thank you for the opportunity to provide feedback on the proposed civil justice reform, and in particular point 3.

As a brief background, I am a barrister sole specialising in civil work with 20 years experience. I primarily act for everyday plaintiffs such as Mr & Mrs Jones living in suburbia or on a lifestyle farm or orchard.

1. I support the introduction of a short trial process as an option in the High Court. Based on my experience in the District Court, it is a good option to have available and improves access to justice for simple claims when a defendant has a weak/contrived defence but is stalling for time or trying to drag the case out and increase costs to the plaintiff in the hope that they give up.
2. I support point 2 as possibly being appropriate in some cases.
3. I do not support point 3. The goal of the review is to “improve access to justice in New Zealand by reducing how much it costs to bring a civil matter to court” and in my opinion the introduction of a *compulsory* summary judgment type process would reduce access to justice for everyday plaintiffs. It would certainly increase costs on plaintiffs seeking to file a claim and in my opinion it would not speed up the resolution of the large majority of claims. Rather it would increase both the cost and time taken to resolve a standard claim. As an example many everyday leaky home plaintiffs already struggle to fund a legal claim and a compulsory summary judgment type process would only make that worse. Given the complex building issues and expert evidence that is necessary to overcome the plaintiff’s burden of proof, properly completing summary judgment evidence would be a very time consuming and expensive task. Currently, 70% or more of those claims are resolved at a mediation at a relatively early stage with experts reports exchanged on a without prejudice basis beforehand. That is a cost effective process. Exchanging experts reports on a without prejudice basis significantly reduces the legal costs as compared to the cost of filing affidavit evidence. In my opinion a *compulsory* summary judgment type process would significantly increase the costs of filing a claim and reduce access to justice for everyday plaintiffs with little or no benefit to most of them.
4. I consider that the options in point 4, will say statements rather than formal statements of evidence and reducing presumptive discovery obligations, may improve access to justice in some cases if they were available as an option but that they should not be applied in a presumptive or across the board manner as to do so would reduce the access and quality of the justice delivered in many cases.

Kind regards

Nathan Smith

Nathan Smith

Barrister