

## **Hartley, Sebastian**

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**From:**  
**Sent:** Thursday, 10 September 2020 9:45 PM  
**To:** Hartley, Sebastian  
**Subject:** FW: Submission to the Rules Committee on Improving Access to Civil Justice

To: The Rules Committee Te Komiti mo nga Tikanga Kooti

Tena koutou katoa

SUBMISSIONS ON IMPROVING ACCESS TO CIVIL JUSTICE

### **Introduction**

I have hesitated to make submissions, not because the issues are not important, but because I have not been involved in regular court appearances over the last eight years. However I thought it might be useful if I did make submissions on a couple of the issues where my past experience might be of some relevance.

### **A change to the Inquisitorial System**

1. I came to work at the office of William Jordan in January 1968. At that time claims for damaged international shipping cargo were heard overseas and our office had a network of agents, not only in the U.K., but also in France, Germany, Sweden, Denmark, Italy and the Netherlands. Consequently I was able to follow the progress of the litigation in Civil Law jurisdictions as well as in the Common Law jurisdiction. In 1968 the Sea Carriage of Goods Act was passed allowing us to sue the shipping agents of the various shipping lines in New Zealand for goods delivered damaged after 1 January 1969.

In the three or four years after 1969 I was able to come to the conclusion that the U.K. Common Law was usually quicker and no more expensive than the more efficient of the Civil Law countries (Germany, The Netherlands and Scandinavia ) and much faster than France; the Italian system was so slow you settled for however little you could get.

One of the reasons that the Civil Law jurisdictions are slow is they tend to divide up a case into smaller parts, each of which has a separate hearing, for example in a cargo damage claim, the first hearing would be to hear evidence over the packing of the goods before shipping and maybe about the loading of the goods on the vessel, the second would be about the voyage, and the third would be about the discharge of the goods from the vessel and their condition and maybe about the condition of the goods on delivery to the consignee if there was a separate road or rail component.

Although the period when I was dealing with most of these claims ran from 1968 to about 1974/75, I continued to have the occasional case involving Civil Jurisdictions in later years. The issues I refer to above did not change. In the early 2000s a ship encountered very heavy weather in the Tasman Sea and a number of containers were lost overboard. Proceedings were issued in New Zealand, Australia and France by separate claimants within the one year time limit. The issue in the New Zealand and Australian courts was which was the correct jurisdiction. Once that was resolved by a preliminary hearing the cases in both jurisdictions were quickly resolved. The case in France continued for a further four or five years. When I queried our legal representative in France about the delay his reply was an email with a true Gallic shrug - it is the system.

2. The training of judges. The judicial system in Germany has a different system of selecting judges. The brightest and best academic students on qualifying elect to join the judiciary and are trained as judges. They do not go into private practice. They start as judges in the most junior tribunals and work their way up. So if New Zealand really wanted to abandon the Common Law it would have to train a whole new generation of judges while it phased out the existing judges. Likewise the existing counsel trained in the adversarial system would have to learn new techniques and unlearn their existing techniques or be phased out.
3. It would be disruptive to run an inquisitorial system in only certain types of civil litigation.
4. It would cause confusion and be disruptive to introduce some aspects of the inquisitorial system and not others. This would run the risk of getting the worst aspects of both systems.
5. I believe that the Disputes Tribunal jurisdiction should be increased from \$ 30,000 to \$ 50,000 or even \$100,000 as claims for sums of that magnitude are uneconomic to pursue through the District Court for the average citizen. However thought and further research is needed over whether there should be specialist Tribunals for certain matters, e.g. building disputes and whether the rights of appeal should be expanded.
6. I believe that many of the problems that cause the failure of Access to Justice in civil proceedings arise from the following issues:
  - a) The failure to have adequate legal aid payments. The current rates of legal aid are unrealistic and expect counsel to subsidise their clients to a major degree.
  - b) The stifling bureaucratic procedures and slowness in getting paid.

As a result I understand that only 35 or 36 counsel regularly accept civil cases on legal aid.

7. I believe that the energy should be exerted in the areas outlined in sections 6 and 7 above to achieve Access to Justice in civil proceedings rather than venturing into the Inquisitorial system.

I make these submissions in my personal capacity.

10<sup>th</sup> September 2020

Piers Davies

## Appendix

My legal experience:

1959 - 1965	Law Clerk Russell Mc Veagh
1964/5	LLB Auckland University and qualified
1965/6	Pupilage Lord Ilfords Chambers, Inner Temple, London
1966	Studied a course in German Law run by the British Institute of International and Comparative Law
1967	Diploma in English and Comparative Law, City of London College
1968 - 1970	Solicitor William Jordan
1970 - 2001	Partner Jordan Smith & Davies, specialising in Maritime Law
2001	to present Consultant Wackrow Williams & Davies Limited
1970	helped establish the first CAB at Ponsonby and its free legal advice service
1977	helped Robert Ludbrook set up the Grey Lynn Neighbourhood Law Office under the control of NZLS/ADLS.
1977	to 1980 on the Board of management of the Grey Lynn NLO
1980	Chairman of Grey Lynn NLO
1985 - 1986	convenor of the Ministerial Committee on Legal Services which produced Te Whaingā I Te Tika report

1986	set up the free legal advice service at Auckland Prisons, Pareremoremo
1986 - 2003	administered the free legal advice scheme at Paremoremo
1987	helped Robert Ludbrook establish YouthLaw Community Law Centre
1987 –	to present on the governance board of YouthLaw
2010 - 2018	on NZLS Courthouse Committee
2008 -	to present on ADLS Courthouse Liaison Committee