Community Law Waikato
TE TARI TURE-Ā-HAPORI O WAIKATO
Part of the National Community Law Movement

7 September 2020

Sebastian Hartley
Clerk to the Rules Committee
By email: Sebastian.Hartley@justice.govt.nz

RE: Improving Access to Civil Justice

1. Thank you for the opportunity to provide comment on Improving Access to Civil Justice.

2. This comment is a group response from the Solicitors at Community Law Waikato comprising Sarah Fraser, Dee Holmes, Justin Young, Harriet Youn, Sonali Perera, Ellen Hockey and myself.

What does it mean to 'have justice done'?

3. The paper asks the question "what do New Zealanders think it means to 'have justice done' when they go to court to resolve civil disputes?"

4. Our clients at Community Law are generally marginalised, vulnerable, low income, often have high debt, are limited in their education and face various barriers to justice. We have answered this question from their perspective.

5. **We believe that to have justice done our clients will need to understand the process, understand why and how the Judge made their decision and have the opportunity to be heard.**

6. Often our clients will not act when they receive a notice of claim. They are completely overwhelmed with the complexity of the situation. Disability, mental health issues or a lack of education can exacerbate this dilemma. Some do not understand what the claim is about. Other clients do not understand the severity of the situation.

7. Frustratingly, some clients do have a defence. But they do not come to us until after the Court makes a decision. Sometimes years later.

8. We have a few clients who do engage in the process. Many of these clients still come out the other side confused as to what happened.

Understanding the process

9. Our clients do not see justice done when they do not understand the process they need to go through, or have just been through.

10. Clients often come to our office seeking help for a matter that is at civil enforcement stage. They tend not to engage in the process when the other party serves them notice. As a result, the matter proceeds to summary judgment.

11. Even though the matter is at civil enforcement stage, clients come to us now wanting to defend the matter. They do not realise they were supposed to do that much earlier.

12. The majority of our clients have no idea how to respond to a notice of claim, or even that they need to respond. As mentioned earlier, some do not even know what the debt is for. The paperwork is confusing to them.

13. To resolve this, and seek more engagement, our clients need to understand the process. This starts with clear, succinct information in plain English. This information would explain what a claim is and how to respond to it. It would include clear timeframes (usually a date or an explanation of what 20 working days is). It needs to tell them where to go for help and to do it quickly (how to find a lawyer or community law centre – bearing in mind free legal services such as ours with high demand often cannot see clients on the same day. They may need to wait for an appointment).

14. Many of our clients who want to make a claim would have difficulty drafting it. Even if they are able to find the current template on the Ministry of Justice website, it is unlikely to help them. The template references High Court rules and legal terms such as "cause of action" that are difficult for clients to understand.

15. What would help our clients is a much simpler template with explanatory notes. The rules should require the other party to give this template when serving a claim. This would give our clients a head start if they want to defend a matter. It would likely encourage them to seek help to fill out the form.

Opportunity to be heard

16. Our clients want the opportunity to be heard.

17. For our clients who engage with the process, the complaints we hear include feeling like a lawyer on the other side trampled them or the judge interrupted or did not listen to them. Both of these situations leave them feeling unheard and disenfranchised with the process.

18. The opportunity to be heard is difficult to balance with the need for efficiency in legal processes. Without legal training, many people include a raft of irrelevant information.

19. This inquisitorial process suggested by the Hon Justice Kos in Proposal Two could address this issue.

20. Likewise, the process adopted by the Hon Sir Graham Panckhurst QC is much less complex and allows clients to take part and be heard.

Understanding why a decision is made

21. Many of our clients do not understand why the judge made their decision. This is generally because they do not understand the law or the process. It can also be that the decision lacks an explanation. They also need decisions in a timely manner. Client expectations are generally weeks rather than months. We would suggest this time-frame should apply for simple cases, with the ability to extend that if the matter is complex.

22. There will be a portion of clients who will not accept justice as being done unless they are the successful party. This cannot be fixed. A definition of what justice is, and what it is not, could be included in the paperwork. This may assist but is unlikely to achieve a blanket solution. However, the feeling of justice being done could increase for the unsuccessful party if the process were more understandable to them and the understanding of what justice means in New Zealand was made clear.

Undisputed Debts / Debts under $30,000

23. Our clients often owe or are owed debts that may seem like small amounts; generally under $5000. For beneficiaries and minimum wage earners, these are large sums of money. Unless the debt is in dispute, the Disputes Tribunal is not an option.

24. The Disputes Tribunal process is an effective resolution for many of our clients because:

    a. To make a claim, there is a simple form to complete. There are examples of completed forms on the website for guidance.
    b. The cost of making a claim is low and therefore, not out of proportion to the sum claimed.
    c. The risk of costs being awarded against the client is not an issue and therefore the client is more willing to engage.
    d. The timeframes are clear.
        i. The client fills in the application, receives a date for the hearing, and shows up on the day .
        ii. For claims against a client, they receive a date for the hearing and they show up on the day to defend it (no paperwork required beforehand).
    e. No written submissions are required aside from the initial form.
    f. The referee can adjourn the hearing if the client needs to gather more information.

25. If the Disputes Tribunal became the default position for all debts under $30,000 (including undisputed debts), there would be an increased level of engagement. Another option is for the District Court to check all claims under $30,000 on whether they are more suitable for the Disputes Tribunal.

26. We note the committee is considering a process similar to that in the Disputes Tribunal. Clients will be much more engaged if the District Court sets up a similar system for debts under a certain amount.

27. In many tribunals/authorities, there are simple forms for clients to start a claim or respond to it. For example, the Employment Relations Authority, the Tenancy Tribunal, the Immigration and Protection Tribunal and the Social Security Appeal Authority. Often the members do get involved in the process much earlier with teleconferences and ascertaining issues. Though these systems can still be difficult to navigate, they are more user-friendly for our clients.

Information

28. The initial claim should include much more information. Many of our clients do not understand what the claim is for. When a debt collector is involved, it leads to more confusion. On the odd occasion we see a client when they are initially served, we often have to spend time chasing down paperwork to find out what the original debt is for and whether there is any defence.

What deters people from going to Court to resolve their disputes?

29. We agree that money is one of the main factors. The debts our clients want to take or defend are uneconomic to litigate in Court.

30. The second primary factor is that the process is too complex for our clients to navigate. We accept that for high-level complex claims, more rigid rules need to be in place. For the straight forward, or low value monetary claims (maybe under $30,000) that are outside the jurisdiction of the Disputes Tribunal, a much simpler system could be in place.

What types of matters are we seeing?

31. The types of issues our clients present with (that could have been litigated) include:
    a. Irresponsible lending by finance companies (often vehicle finance)
    b. Door to Door sellers seeking payment of high value goods many years later that clients may not have received
    c. On-sold debts to debt collectors
    d. Misuse of identify – debts created in clients names
    e. Consumer Guarantees matters – goods that were not fit for purpose

f. Client sold vehicle/lent money but never received payment.

32. This is a brief submission, but we can elaborate on the above or answer any questions.

33. Thank you for the opportunity to provide feedback.

Yours faithfully
Community Law Waikato

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