

14 June 2021

Clerk to the Rules Committee
c/- Auckland High Court
AUCKLAND

BY EMAIL:

Re: Submission in response to the:
Rules Committee's Consultation Paper 'Improving Access to Civil Justice'

We have been invited to make a submission on improving access to civil justice, as an ordinary family under sustained threat of litigation and opposition by two top New Zealand litigation firms, where we do not have the means for legal representation to be able to defend ourselves. Our crime: Vendors (ourselves) were made to carry the blame by a top Real Estate company for their negligence/acts/omissions.

We therefore support the Law Society's position regarding justice is a right and that cost of civil litigation has become prohibitive... depriving societies ability to enforce legal rights. The justice system should not be faced with the issues of disparity and inequity that it is for the rich only. We have found the accessibility of justice has become a luxury determined by socio-economic and financial status, which precluded our ability to afford legal representation to defend ourselves, where our neighbours (Purchasers) were able to afford 'top' litigators to work for them, and the Realty company, with some \$6 billion in yearly transactions, were able to engage their insurance negligence litigators, where both with wealth, aim their actions against ourselves who have no funds (though above the legal aid threshold), and at retirement age, being made to carry the realtors.

Lawyers should be known for transparency in the pursuit of justice, but that was not our experience with the litigators outside of court – it should not be win-at-all-costs for wealthy citizens only. Therefore, our submission is two-fold: one supporting improving access to civil justice, and in that pursuit it is essential lawyers uphold transparency (truth) so that the need to untangle (false/misrepresented) legal material pre-court does not become, in itself, another inequitable barrier to those without available wealth. In our experience there is impunity being practised by some professionals, and as such, constitutes another denial of a right to justice and redress if it is known we cannot afford to untangle false claims, via lawyers, from the truth - if it is being done to us then it is reasonable to surmise it is being done to others.

The fear created by the threat of litigation against ordinary people, with no funds available, was grossly disproportionate, as the premise of the legal proceedings against us, was the negligence of the Realty company, 'evidenced between Purchasers/Vendors combined documents in May 2021'. The Realty company, with some \$6 billion in yearly transactions, allows the Vendor to carry the blame for the realtors negligence/acts/omissions with the Purchaser (emails)– the realtor, March 2021, engage their insurance negligence litigators, whom exponentially complicate matters by claiming there are alleged agreements which they claim absolve their liability, which the Purchasers/Vendors know nothing about, and requires REINZ involvement to request release of copies to us. This experience, to us, shows the transparency of our legal system is being compromised when it is known there is no funds available to hold to account, though the alleged agreements were easily discounted by available documentation – it is an attempt, relayed by lawyers, to pervert the pursuit of justice.

The concept of justice as a fundamental right must embody that everyone in society be able to affordably access and present civil justice concerns, and/or breaches of those rights compensated, in a fair and transparent manner in accordance with law by neutral judges. We are accused (in legal letters and emails) of a crime of changing and altering legal documents (against our character and demonstrably wrong) and has cascaded from the realtors 'but-for' acts leading to our harm. ICCPR, *'A person accused of a crime should have their guilt or innocence determined by a fair and effective legal process. It also makes societies safer and stronger. Without fair trials, victims can have no confidence that justice will be done. Without fair trials, trust in government and the rule of law collapses.* Dr Bridgette Toy-Cronin of the Otago Legal Issues Centre noted that, while the median weekly income rose by only 3.4 per cent between 2015 and 2016, the average charge-out rate for employed lawyers rose by 8.4 per cent in that period. To her, this suggested that the cost of legal services is outstripping the average person's means of meeting that cost. Though lawyers are entitled to fair payment, they are also key players in societies checks and balances to uphold the law, and by excluding the rights of those whom cannot afford to pay them, creates an imbalance resulting in a monopoly where the rich are no longer held accountable for their actions. The premise is lawyers hold themselves to high ethical standards required of them, not complicating non-likely court action by fabricating agreements with impunity— requiring further legal fees to untangle the truth from fabrication. In our experience, there are those employing potentially effective but improper 'unsurmountable' risky barriers (perversion of justice can attract jail sentences) to the pursuit of justice, against the average person who does not have the means to go before a Judge.

It is the deterrence of legal action that acts to to dissuade people and companies from engaging in wrongful conduct – and when this right is limited by the ability to fund legal action, then wrongful conduct is not held accountable, circumventing the need for professionals to act in reasonable duty of care to those they serve. When people/firms engaged for significant fees don't 'own' their wrongful acts, or negligence, or lack of care of duty, they should be able to be held accountable, even by an ordinary person, so that others will be deterred from taking the same actions.

New Zealand enjoys an excellent reputation for transparency, though as a University of Auckland Law School speaker notes, *'we can do better, and we should not be complacent'*. The pursuit of justice should not be hindered, or attempted to be quenched, by legal misrepresentation outside of court, exacerbated by the ordinary persons inaccessibility to funds for recourse. Lawyers as professionals hold to the principles of law, and for those few lawyers who don't there is a need to hold them accountable when they have not acted in reasonable due diligence before repeating 'false' claims against others – otherwise the system becomes corrupt. The integrity of lawyers in the justice system are an integral and key part of societies checks and balances for law and order.

This is our first experience in our uneventful lives with the legal system and we could not afford to pursue it to receive justice, or even to regain our reputations (which we hold of value). Our experience is those in power and wealth roles, with their insurance negligence lawyers and litigators, avoid legal responsibility/ culpability, rather than 'own' errors they make – quickly - so but-for torts do not evolve to cascade and fester for over four years causing harm. If we cannot defend ourselves against actions of lawyers, or realtors, then justice is not being done in New Zealand, and the rule of law is not being upheld. If the court action is only relevant to the rich, like Agents on commissions selling over \$760million annually, then the court for ordinary people is not relevant, accessible, or effective to uphold the protection of the law for them. There is no other option for them to be treated fairly and impartially to resolve issues involving litigation and is well beyond the reach of most New Zealanders.

We managed after some 7½ months of lay and semi-professional involvement to collate and untangle legal lawyer claims, to gain a meeting with the 'upset' Purchasers (rather than litigation),

where it was able to be realised, with shared documentation, the realtors culpability – shall we say acts and omissions, negligence, and was the source of much mistrust between neighbours. The realty firm acknowledge they made the errors, but to this day will not disclose how they managed the correcting of the wrong information/plans, choosing instead to engage their Insurance Negligence Litigator against us, whom advise alleged fabricated agreements apparently absolve their liability, advising they will strongly resist us.

We agree it may be time to regulate lawyers and court fees as both are in service to the community, and important to be able to uphold societies standards by representing all of society, not only those whom are in power positions, have wealth, and protected by well versed insurance lawyers. Though lawyers are entitled to fair payment it appears, from our experience, some are making a whole lot more by tangling and misrepresentation prior to any action, requiring thousands to untangle - initially it appeared cheaper, and better for serious health issues as advised it would be stressful to oppose, to comply with a boundary adjustment (for no consideration) that we are made to cover for the realtors errors and inappropriate management of the corrections with the Purchasers (eagerly pursued by realtors), rather than defend our reputations and right to justice. In our experience, we were not able to obtain entitled-to documents from the realtors, originally making it hard to be in a position of discovery/culpability, and in our case required corroborating documents between previously 'upset' Purchasers/Vendors as the realtors would/will not provide requested documents.

Disputes Tribunal

We support a move to a more equitable legal system by expanding the role of the Disputes Tribunal because it is inexpensive and accessible compared to other options. We agree there needs to be a name change to reflect a more (positive) community-based resolution court. To free up the District Court we support increasing the jurisdiction to \$100,000, reflecting the current market better, and will attract more resolutions to be sought at this level. We support a new structure involving a series of tribunals as well as the court and could include a simpler system to be put in place for those served with smaller or lower under \$30,000 claims. Simplifying court documents and reducing court filing fees for these claims would also help. However, it is understood, and we may be wrong, the Tribunal is not able to enforce rulings, so enforcement still needs to go to the District Court, which would counter the reason for the proposals if this 'loop hole' remains.

We support more efforts towards mediation, or meetings with representation, as a first step. In our experience there was real merit and benefit in these meetings, since after some five months under threat of litigation had not been able to move forward at significant fees. Whereas at the meetings parties could 'hear' each other in free and open discussion - to advert litigation and discover who was culpable, to untangle misrepresentation from lawyers, view actual documents readily shared by both parties, uncover the truth and brought peace to former upset neighbours. This would have taken lawyers, and the courts, valuable time, and considerable funds to untangle. After some four years of mistrust between neighbours they shook our hands after the meeting.

Not all situations will be able to be resolved by Mediation, or by the current Disputes Tribunal, so we support the proposal, if it is adopted, that there may be need to increase the procedural and empowering of the envisioned new Tribunal, and to make it more user friendly with options. The idea being that 'civil justice' be accessible to all in New Zealand.

It is of concern to read that high users of the Tribunal, e.g. Insurance companies, creating inequity as their opponents will most likely be inexperienced one-off court respondents. Those self-representing will be disadvantaged if they do not have a lawyer – so disparity will need to be looked at from many angles.

Justice involves establishing relevant facts, determining if the applicable law to those facts warrants a legal remedy. In our case, the value of 'discovery', changed the whole scene and removed the litigation threat. Without discovery orders parties can hide relevant facts that are averse to their case until it is too late. Discovery of facts, in our experience, was hindered by the realtors not providing requested entitled to documentation, and information on how they manage the Sale & Purchase Agreement with wrong property details and obsolete, 2012 Lot 3 plan, that we email them they need to correct these errors to the Lot 1 details/LT as there is no Lot 3 (twice needing to advise them of their wrong information) - so establishing relevant facts relied upon the Purchaser/Vendors mediation/meetings, taking some five months to gain some trust/vulnerability between the parties to be able to share documents to be in a position to establish relevant facts.

District Court

We support moves to encourage accessible, timely information and more flexible judicial resources. From our very limited knowledge of the changes to the United Kingdom legal system it appears any moves to follow their more equitable approach would be a good thing, as mentioned in submissions regarding the Community Law Centres e.g. pre-action protocols.

There is a need for access to pro bono work, and an accessible register of suitably qualified lawyers willing to provide this, not just inexperienced junior lawyers which could create an inequality of service to those who need access to civil justice - usually because they do not have the funds. We would eagerly engage a lawyer, or a junior lawyer for that matter, on pro bono terms, but in our experience, they are hard to find.

From our experience, to discourage untenable allegations, it would be beneficial and appropriate to require a party, or their lawyer, to provide a statement of truth verifying their belief in the accuracy of matters in pleadings. This would have avoided the huge mess we are in, holding accountability towards our 'accusers', who will then need to be more careful before making wrongful claims – so adversely affecting another's life. In our situation, a 'statement of truth' would not have progressed the threat of litigation as obtaining the hard to gain by ordinary people Real Estate Agencies documentation, would reveal where the culpability lay. The information to make a 'statement of truth' would require the litigator, in due diligence, to put pressure on the Real Estate Agency to provide requested information. We suggest the requirement to provide a statement of truth be made/provided at the onset of any threat of legal action, and made before any mediation to ensure tenable allegations that parties and their lawyers are accountable to, and will save time and funds untangling misinformation – and is another check to hold 'everyone' accountable. The throwing of threats of legal action, estoppel, etc, from lawyers needs to be held accountable from the very onset. The threat of legal action/litigation is severe, and we have not come across anything near the level of stress it creates and any steps to discourage these should be encouraged.

To self-litigate still incurs costs: expert advice sought, photocopying, typing, research, travel, etc, so we would support reforming the rules concerning cost awards for self-represented litigants. In most cases, we imagine it is not something anyone who is not a lawyer would desire to undertake if they had the funds – clearly there is expertise and professionalism lawyers offer, and as lay people we have found it very hard to move forward as we have no means to enforce it. If the legal system wants to discourage self-representation, which self-representation in itself creates a disparity, then there is a need to make access to legal representation far more accessible. When our lawyer receives the letter of legal proceedings, they advise they will no longer represent us as they do conveyancing not litigation, leaving us high and dry – though our lawyer as a parting act, advises litigators to address accusations to the realtors. We ring many lawyers, who once they hear who is taking legal action, one of the top litigation firms, they decline to investigate our case – except top litigation firms were eager, but we cannot afford them. So, self-representing may not always be a choice, but may result when

no lawyer can be found willing to represent their case. However, we agree with the Law Society submission, in respect of the decision of some litigants not to instruct lawyers, and to self-represent is not a genuine exercise of free will but a choice forced by cost constraints.

There is a concern that the legal profession is so closely linked, due to New Zealand's relatively close pool of lawyers being linked to professional insurers, which may be one and the same. Our Land Agents are now in the hands of their Insurers negligence litigators. How can conflict of interest protection against this be ensured? We gain quick results via meetings between Purchaser/Vendor by sharing documentation– but now we have the realtors' insurance litigators involved and they make no amends to clear our name from their wrong acts/omissions. We recognize the need to consult and instruct a lawyer is fundamental in proceedings, and with potential distressing life consequences at stake, access to legal representation is really important in all court proceedings – thus any means to improve accessibility is to be encouraged, and must be balanced by lawyers holding to principled standards and their own due diligence – in and outside of court. It appears the Purchasers litigators have relied on the realtors actions, and have exposed themselves to repeating false defamatory claims against us of altering legal documents (which is unfounded), creating their own liability– this should not be happening to the ordinary law abiding, retirement age, citizens, who paid good money for 'expert' Real Estate service.

CONCLUDING REMARKS

Within days of receiving the notice of litigation (28 October 2020), one of us becomes so unwell it's life threatening, for this we are given an extension for legal action of two weeks, after months of fear and stress, hospitalisation, etc, it is agreed (our son asks for mediation over the fence!) to reduce the threat to more appropriate mediation/meetings where the realtors culpability is revealed, which our everyday, honest, conveyancing lawyer saw from the onset. The real estate realty firm that was unwilling to provide documentation requested, after some five months, escalate the matter by engaging their insurance negligence litigators advising they will strongly oppose us and provide anything but the requested documents. We advise their Board and Agents their fabricated agreements are perverting the course of justice, and would be perjury if taken to court which is responded to by their insurance negligence lawyers, who furthers the false agreements, and now adds alleged verbal addendums? Who can defend 'falsehoods' from experienced, well versed, litigating lawyers? We couldn't sleep for months in night-sweats from the fear of where this was going. The extent of the need for ongoing life-saving medical intervention cascaded directly from the 'but-for' torts of the realtors' acts/omissions. Our experience with the mega Real Estate company and legal system of New Zealand has defamed us and nearly took our life– the written law protects us but we can't afford to get those words into action, and those 'wealthy' creating the trouble move on in impunity.

We thank the Rules Committee for the opportunity for us to make a submission on the Consultation Paper. We would be pleased to answer any questions arising or provide any further information that might be useful for the Committee's work.

Yours sincerely
Mr & Ms Falconer