

28 June 2021

The Clerk  
The Rules Committee  
Ministry of Justice  
Auckland

Re: Improving access to civil justice

I wish to submit on the further consultation sought on the proposed potential reforms aimed at addressing barriers to accessing civil justice.

I have been practicing since late-1984. My practice is principally civil litigation as a barrister sole in Dunedin and other parts of the lower South Island.

Other than an occasional appearance in a regulatory tribunal, my practice is almost entirely in the District Court and in the High Court

### Disputes Tribunal

I am generally supportive of all of the recommendations made for the Disputes Tribunal.

I am generally supportive of increasing the jurisdiction of the Disputes Tribunal.

However, with that increase must come an increase in the level of skill of the adjudicators. In my view, anyone acting as an adjudicator ought to have legal qualifications and experience in practice.

I would further submit that it is imperative that the Disputes Tribunal not just have regard to the law but try to apply it to the cases before it.

It also seems to me that it is imperative that there is a general right of appeal from the Disputes Tribunal to the District Court.

The reason I make this submission is because, while I acknowledge the force of the argument about access to justice, there is the corollary that people who have been before either the Tribunal or the Courts must feel that justice has been done.

I know from personal experience talking to clients that there are a number who bitterly feel the sting of injustice on the basis that they feel that they were not heard in the Disputes Tribunal or that the decisions were incomprehensible.

I also make the point that \$50,000 (or even \$20,000) is a fortune to most New Zealanders. If they are to have a ruling against them for a figure like that, which could result in loss of a home, a business, relationship, then they must have the right to an appeal.

I also support the concept of renaming the Disputes Tribunal as the Small Claims Court.

From personal experience, many people still refer to it as the Small Claims Court notwithstanding the long past change of name.

### **District Court**

I am less convinced that there needs to be changes in the District Court.

The District Court Rules contain provisions for a short trial and/or a simplified trial.

I have found the simplified trial process to be a significant advantage on cost.

My comment would be that not enough Judges take the opportunity at the initial or any subsequent case management conferences to direct the parties to either a short trial or a simplified trial.

So, in my submission, it seems to me that the tools are already available to reduce cost in the District Court. The difficulty is that too few practitioners and Judges (with respect) take advantage of the options currently available.

Were Judges to require parties to explain why, say, a simplified trial is not appropriate at a case management conference, then I think that simplified trials will become a far more common feature of civil litigation in the District Court.

It would be far more effective to introduce the presumption that all matters are to proceed as a simplified trial than to otherwise alter the District Court Rules.

### **High Court**

I would be reluctant to see any changes to the current High Court Rules.

In my view, they are unnecessary and the current rules serve the interests of justice well.

Yours faithfully



Dean Tobin