

Good afternoon,

Thank you for your 14 May 2021 letter concerning further consultation on improving access to civil justice. I understand that the current consultation process is principally concerned with the District and High Courts. Your letter has also mentioned the Disputes Tribunal, and consultation on proposals extending beyond rules making so as to touch on matters that would require legislative response. This is with the overall aim of improving access to civil justice in what has been described as a “once in a generation review”.

My earlier response to the initial consultation process made suggestions in respect of the High Court, District Court and Disputes Tribunal. Greater jurisdictional flexibility between those forums was suggested, as well as increased judicial activism, flexibility of procedure and a unification of procedural rules.

Please consider the response I am now making here with the following in mind:

1. that the overall aim of this further consultation is access to civil justice;
2. it is characterised as a more expansive ‘once in a generation review’ that may prompt legislative change; and
3. “civil justice” forums in New Zealand involve much more than the High Court, District Court and Disputes Tribunal.

There are a wide variety of other forums, tribunals, and disciplinary boards that operate in New Zealand. Examples include the Immigration and Protection Tribunal, the Social Workers Complaints and Disciplinary Tribunal, the Motor Vehicle Disputes Tribunal, and the Human Rights Review Tribunal. There are other processes to determine what may be regarded as matters of ‘civil justice’ as well. These include reviews of decisions by the Accident Compensation Corporation, and investigations by Commissioners such as the Health and Disability Commissioner and the Privacy Commissioner.

As I understand it, in many cases these organisations operate separately from one another, with separate premises and staff. More relevantly, they tend to have their own separate rules of procedure.

With that in mind, I ask that if my earlier suggestion of unified procedural rules receives further consideration, then other “civil justice” forums are considered as well. This may seem somewhat unpalatable at first blush, but I suggest it for these reasons:

A. Specialist forums do not seem to need an entire set of their own special procedural rules. Broadly, all rules of procedure operate to achieve the same end, which is to see that natural justice is done. As currently shown by the various forums in New Zealand at the moment, this can be achieved in many different ways, with different timeframes and template forms. But natural justice in these forums could be achieved in the same way, under a single set of (carefully considered) rules and forms.

There may well need to be some specific exceptions to general rules for some aspects of some specialist forums, but that only goes as far as those exceptions. It is not cause for an entire separate set of rules.

B. The premise of this further consultation is that changes to rules could improve access to justice. Procedural rules can impede access to justice in at least two ways. One is that they can be difficult

for a layperson to understand and apply. The second is that they can cause scarcity of lawyers in unfamiliar or less common forums that have their own bespoke rules.

Lawyers can be reluctant to take on cases in unfamiliar forums for several reasons. One is the professional risk associated with unfamiliarity. Another reason is that they might not feel they can justify charging clients for time spent studying bespoke rules for procedural quirks and pitfalls. Words, by way of example, do not always carry the same meaning from one forum to the next. That can be a professional hazard. Diligence is the remedy, but that has a time cost associated with it. The value of that cost may not be fair to the client, if it is passed on to the client in full. Alternatively, if absorbed by the lawyer, such absorption is not worthwhile if the lawyer is unlikely to return to the forum in the foreseeable future.

For these reasons I suspect that, if there were a uniform set of rules of procedure for various “civil justice” forums, then the public would be able to find lawyers to act in those forums more readily, and at less cost.

C. Finally, if a uniform set of rules applied across several forums, then there may be (greater) opportunities for those forums to pool and redistribute their collective resources to better effect. That may yield certain efficiencies, including cost efficiencies.

Thank you for the opportunity to participate in this further consultation. As before, I would be happy to discuss further if called upon.

Kind regards,

Martin Dillon
Barrister