

**ADDRESS GIVEN AT THE
NEW ZEALAND BAR ASSOCIATION ANNUAL CONFERENCE**

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I am not sure how I came to be foolish enough to agree to address you on “the place of civil litigation in a just society”. It was particularly rash when a double-booking meant I could not be here in time for the morning’s session in which I imagine you have teased out much that can be sensibly be said on the topic. I am also conscious of the fact that the topic assigned to me seems to have the potential to overlap with that the Attorney-General is to address tomorrow, always a dangerous prospect.

My unease was not allayed when, in response to queries about what I am expected to do, I received a letter from Bruce Gray. I have to confess to some difficulty in understanding it all. Leaving aside the entirely helpful allusion to the Rhodian defence, the letter advised that this conference is intended to “begin a dialogue between Bench and Bar about the ways in which our work can be done more quickly and consuming fewer resources”. This was a little baffling. I am not sure why it is necessary to *initiate* a dialogue on this topic. Sometimes it seems to me that the bench and bar never talk about anything else.

I am very happy indeed to contribute if I can to such dialogue. But, on that, the Bruce Gray’s letter was hardly reassuring. He attributed to me the view that “parties should be free to bring to the court all facts which are relevant to a relationship which gives rise to a dispute”. Then he suggested that, *nevertheless*, despite the views attributed to me, it might be a good thing to “explore the extent to which parties may owe duties to the Court and other parties to prosecute their claims with reasonable efficiency.” In that, Mr Gray ventured to suggest, “as with all requirements of practice and procedure, to be effective any ‘encouragement’ must be capable of support by requirement and by sanction for failure”. So, it was clear that my contribution was meant to be a counter-revolutionary attack on what is reasonable.

Can I say immediately that I am wholly in favour of prosecution of claims with reasonable efficiency. How could I not be? Nor do I hold the opinion that the parties can “bring to the court all facts which are relevant to a relationship which gives rise to a dispute”. Whatever that means. (Relevance to the dispute itself is something else). I do not advocate doing away with all procedural “requirements” (whether through rules or by judicial direction) or even sanctions. So, if I am being set up to play an extreme part at this conference, to stimulate discussion and controversy, I would really rather leave that to others.

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What may be fair to attribute to me – and *perhaps* it is controversial among some - is some scepticism about the extent to which the rules of procedure which govern access to the courts may sensibly be expected to achieve faster and cheaper determinations which meet the expectations of a just society. Do not get me wrong. I think close attention to the procedures by which claims of substantive right may be vindicated through the courts can improve the speed and keep down the costs of litigation. I just have some doubts about the extent of improvement that can reasonably be expected from rules or case-management and some anxiety that compliance may come to be seen as sufficient end in itself. Perhaps I have a contrarian's instinctive resistance to current fashions in theory about what works in delivering procedural justice and what does not, particularly when unsubstantiated by sound empirical information. I worry that we seem to be losing the language of "justice" in discussing civil litigation. And I think we need to take seriously the view expressed by Ronald Dworkin that there is inherent worth in the procedures of litigation that is more than the value to the parties of the number of disputes resolved within a reasonable time frame.

Of course it is necessary that we should keep adapting our processes to meet the needs of the times in access to justice through the courts. We cannot hanker after a golden age in which litigation was affordable to all and prompt and efficient. There never has been such a time.

So I am in favour of experimentation with new methods, especially if we are prepared to discard the experiments promptly if they do not deliver or make matters worse. A Rolls Royce system is unacceptably expensive, so balance is necessary and limits are inevitable. What is important is to ensure that limits and processes do not compromise the essential principles which underlie a just legal system.

In an attempt to provide some spur to the continuing dialogue between bench, bar and wider society about procedural justice, I thought it might be helpful for me to concentrate on some of the underlying principles and how they are affected by current and possible changes. The Chief Judge is anxious in case my remarks seem to undermine the initiatives taken recently in the High Court to restructure case-management. In case I am misunderstood on this, too, I should like to say that I applaud the recent steps in relation in particular to simplification of discovery and case-management.

They are rightly to be regarded, however, as what Benjamin Cardozo called, in the context of common law method, a working hypothesis. That is true of all the rules that preceded them.

Back to the future?

The Supreme Court of New Zealand managed to get along without any rules of procedure until the first puisne judge, Henry Chapman, arrived to join the Chief Justice, William Martin. Some standardisation was then considered by the judges to be necessary to ensure consistency, and the rules settled by the judges were enacted by ordinance in September 1844.

The rules were tailored to the circumstances of the colony, in which there were only five people with some legal training, all in Wellington. The Court sat in Auckland and Wellington and on circuit in such other places and times as might be identified Proclamation. The rules provided that precedence would be given to non-local business “for the convenience of witnesses and other persons attending the Court”. Civil complaints were initiated by writ of summons and service of the writ together with particulars in writing of the plaintiff’s demand. Such particulars were to “set forth the demand in a simple and compendious manner, specifying items dates and amounts”. Defendants within 20 miles of town had to appear before the court on 14 days notice. Defendants further afield were allowed notice of not less than 28 days. Rule 28 is of some interest, particularly in connection with the issues identification now provided for by Rule 7.5 of the current High Court Rules:

All parties being present, either personally or by solicitor, at the time and place mentioned in the summons, the judge shall proceed to elicit the point in issue by examination of the parties or their solicitors, at which examination no other person than those above mentioned shall be present. He shall then reduce into writing the material statements of the respective parties, taking notice of any defence that would be available by the law of England as administered by Courts, of either law or equity, which writing shall be signed by the parties. A fair copy thereof shall be made in a book to be called the Record Book, and shall be signed by the Judge.

Any defence was required to be “set forth specially and distinctly and consistently with itself”. Although the defendant might have one adjournment in settling the case where sufficient cause was shown, there was no further adjournment unless the plaintiff consented. At the examination before the judge, each party could exhibit any documents on which he proposed to rely at trial and if the judge thought it reasonable to do so he could require the other party to admit the documents, failing which if later proved the cost of proof was on that party “whatever may be the result of the trial”. Any documents in the possession of either party not exhibited were proved at the expense of the party who put it in evidence at trial. The rules provided for tender of satisfaction, at any stage, after which the defendants costs were to be paid by the plaintiff who failed to recover as much as was tendered. There was provision for notice to produce and a power to apply for discovery by examination on oath.

As for trial, Rule 41 provided that “the plaintiff or his counsel “shall briefly state the facts which he means to prove, without comment thereon, and shall then proceed to the proof thereof”. Then the defendant was required to follow suit. Costs were to be paid by the losing party, provided that if the

plaintiff recovered “less damages than 40 shillings, such plaintiff shall not be entitled to any costs whatever” unless the Judge certified that the action was brought “to try a right other than the mere right to recover damages in the action” or the grievance was wilful and malicious. Where a statement or denial by either party was untrue and known to be untrue, twice the amount of taxed costs was allowed.

In all, there were 75 Rules only. Where a matter of practice was not especially provided for, the practice of the Courts at Westminster were to be followed “so far as the same shall be applicable to the constitution of the Court and consistent with the laws and circumstances of the Colony”. This was early modern case management indeed. It has been said of the 1844 Rules, which were principally the work of William Martin, that they were “the product of courage, commonsense and upwards of 2 years experience of the actual conditions obtaining in the Colony”. We have never been quite as light in rules ever since. But the cases were largely shaped and managed by the judges.

This “magnificent improvisation” did not meet the needs and expectations of the influx of settlers in the late 1840s. They wanted recognisably British law. Sir George Grey when Governor in 1849 thought the time had come to move closer to English procedure. He commissioned the judges to adapt English procedures to New Zealand conditions. The *Regulae Generales* comprising some 500 rules (again principally the work of William Martin) were enacted as a schedule to the Supreme Court Procedure Act in 1856. Pleadings were more complex and technical, and party control edged out judicial control, although the Court retained supervision of pleadings.

In *Busby v White* decided in 1859 (an account of which is published in the Victoria University of Wellington Law Review), some early judicial case management came horribly unstuck. The pleadings, which sought to challenge the validity of the Native Land Ordinance on grounds which included repugnancy to English Law and to the Treaty of Waitangi, had been approved by the Acting Chief Justice, Mr Justice Stephens. But when Stephens retired and Chief Justice Arney, newly arrived, heard the claim it was dismissed as “a collusive suit ... to confound the rights of property through the length and breadth of the colony”. The dismissal came after the Chief Justice had endured 3 days of argument from James Busby on 10 identified issues. On one point alone Busby’s written submissions covered “one hundred closely written folio pages”. Among the arguments it was claimed that the Treaty of Waitangi was to be construed in the same way as the Treaty of Union between England and Scotland and that it guaranteed the “well founded” and “indisputable” property of the “sovereign” Maori tribes. The Chief Justice’s summary dismissal of the suit was regretted by some of the newspapers of the colony, which took the view that it was undesirable that “one of the most important questions ever submitted to a legal tribunal” should remain undetermined and unable to be taken on appeal to the Privy Council. And since the questions stirred in that case remain to vex the New Zealand legal system, perhaps the Chief Justice might have served the interests of justice better by letting the case run.

The 1856 Rules continued until 1882 when a new Code of Civil Procedure replaced the complex system of pleading with more flexible processes which were “well in advance of other contemporary systems”. The Code had been produced by a Commission set up in 1880 which included the whole bench and some talented lawyer politicians. It is thought that the driving force on the Commission was Robert Stout, later Chief Justice. The 1882 Code was substantially re-enacted in 1908 as a schedule to the Judicature Act. It was subject to no major revision until the reforms of the 1980s brought to an end a sixteen year work of rewriting. That is a period of unparalleled stability in procedure, and a measure perhaps of the quality of the product.

By the 1960s however the system was said to be “creaking”. Dr George Barton writing in the New Zealand Law Journal expressed criticisms of the Code, and similar comments were expressed in an article by JH Wallace entitled “The Paper War”. The fixture lists had been growing longer due to an increase in work generally attributed to change in social circumstances and the introduction of legal aid. It is rumoured that Sir Richard Wild as incoming Chief Justice in 1966 had promised the Government that he would not seek an increase in the judicial complement for three years because he thought that improved administration and use of the judicial resource would be sufficient. By 1969 even he had come to the view that making judges work harder and purging the lists of cases prematurely set down (by requiring certification by all parties that a case was ready for hearing) was not enough. So in 1969 the Rules Committee set up a subcommittee to overhaul the Code.

The subcommittee, comprising Sir Thaddeus McCarthy, JT Eichelbaum, Stuart Ennor, and Mr Justice Wilson decided on a new Code, rather than a patch-up. It is recorded that Eichelbaum, Ennor and Wilson “studied the civil procedure of several European Courts as described in books lent by the Justice Department but derived no inspiration from them”. They considered that the adversary system was best suited for New Zealand conditions but thought there was “a place for the inquisitorial system at the interlocutory stage of the proceeding”. In this was the germ of case-management pre-Woolf. The Committee came up with the enduring formula that “this Code of Civil Procedure and every provision thereof shall be so construed as to secure the just, speedy and inexpensive determination of all questions arising in any proceeding”. Their approach was that rules of procedure “must lubricate, not clog, the wheels of justice” and that it was necessary to adopt a “proper conceptual basis” for the new Code.

After mighty labour and changes in personnel, the Committee under Mr Justice Barker thought the end was in sight. There followed a further delay of six years while the Justice Department took 3 months to think about the reform. (“Nothing of moment was received from the Justice Department”). There was a further five years delay while Parliamentary Counsel improved the drafting and it was resolved that the Rules would be enacted as a schedule to legislation instead of being in regulations. And there was further delay when the Auckland District Law Society dropped a “bombshell” by

deciding to make submissions to the Select Committee on the rules, thus getting around a deal apparently made by Mr Justice Barker and what was described as “the lawyer members of Parliament”. Apparently, lengthy submissions prepared by an Auckland committee chaired by Mr Dugdale, left the Select Committee unmoved. And first version of the present rules was adopted, after sixteen years gestation.

The current rules have been much amended, including by the significant changes to discovery in 2012. And the substantial restructuring undertaken in 2008 was a significant reform which has restored some order to the whole. Nor should the importance of the case management amendments – both the earlier reforms introduced in 1994 and the more recent 2013 reforms be minimised. But the point to be made from this history is that overhauling the Rules in a comprehensive way is a huge undertaking. Members of the Rules Committee work extremely hard to keep the rules current and we have been fortunate to have excellent resources available to us in recent years in the form of Donald Matheson and Parliamentary counsel. A root and branch review would however require much more resource. That is not to say that it should not be attempted, especially if, as seems to be the case, there is a widespread view that our procedures are clogging, rather than lubricating, the wheels of justice. I want to look briefly at the validity of that perception before considering the sort of “conceptual framework” that the Revision Committee thought indispensable to reform in this area and which requires consideration of the purpose served by procedural justice.

The problem

It is worth remembering what galvanised the review set up under Sir Richard Wild in 1969. It was said that cases were taking too long to be determined. The causes of the problem were put at “inept procedural rules and human frailty”. The solutions adopted in the 1986 Rules were to reduce the number of ways in which proceedings could be commenced – simplifying access - and to do away with unnecessary court determinations and hearings, for example by use of consent memoranda. The “human frailty” identified in particular at that time was concealment of the real case in the hope of “ambushing” the other side. It was identified that too much time was wasted at trial through failure of the parties to identify the real issues and come clean about them. This was addressed in the reforms by requiring sufficient particulars to inform the court and the other parties of the real nature of the case. Summary judgment was introduced. Wide ranging powers were given to the judge to give directions and to hold pre-trial conferences. The aim was to bring the “cuckoo clock” judge out into the open.

These embryonic powers have been developed in more recent rules to put the Judge in the centre of case management. The development was part of a common-law-wide phenomenon, which, starting first in the United States, gathered energy with the Woolf reforms in the United Kingdom. In the years since there has been much convergence in procedural rules in common law countries and much learning from each other.

The Woolf reports arose out of a sense of crisis in civil justice. It was largely driven by concerns about cost, which do not seem to have featured prominently in the problems identified by the Review Committee in New Zealand. It had been shaped by the problems identified in the 1970s, when it began its deliberations. Unlike the Revision Committee, the Woolf proposals directly questioned the adversary system and the culture of lawyers working within it. Its solution was judicial management of cases in which procedures were proportionate and rationed. It operated on the basis of strictly enforced timetables, requirements of co-operation and a push to obtain earlier settlements with strong pressure to mediate disputes. Judges were to be guided by principles of efficiency and expedition and enforced directions through costs sanctions against parties and counsel. The emphasis on mediation gained significant support from practitioners working in the field. And the shift of work to private dispute resolution was accompanied by “troubling anti-adjudication rhetoric”.

The rhetoric may have escalated when the reforms did not seem to be delivering their goals of speedier determinations at lower cost. That was perhaps inevitable given the over-optimistic notion behind the shift that once judges had assumed the responsibility to manage cases all would be well. It may have taken too long for the penny to drop that this may have been a single good idea pressed beyond its real use. In the meantime it may have set up a cycle of increasingly intense regulation backed up by increasingly punitive sanctions which puts me in mind of the old woman who swallowed the fly. Some of the more recent “transforming justice” initiatives in the UK and in the recent Civil Procedure (Amendment) Rules 2013 (which I think the Chief Judge mentioned this morning) seem to me to be getting up there towards straining at the horse. Similar escalating control and sanctions are to be seen in other jurisdictions.

What the disappointments should have done is cause us to reconsider some of the other drivers of delay and cost and how they may be better addressed. That is happening now as the pendulum swings back, as pendulums always do. We should be careful not to let this go to the other extreme and to throw the baby out with the bathwater. But in the meantime, the rhetoric and the language in which the discussion has been carried on has left a disabling legacy for the courts which needs I think to be squarely confronted. At times, it has driven a wedge between the profession and the judges.

Dame Hazel Genn has criticised the debate as having “trivialised civil disputes that involve legal rights and entitlements” and as having “redefined judicial determination as a failure of the justice system rather than its heart and essential purpose”. It is not necessary to go to the other extreme of developing an anti-ADR rhetoric to take the view that it is time to focus on what is obtained through litigation in the courts and to resist the idea that the function of the courts is simply to resolve disputes. The debate has not only affected civil justice. The notion that procedural fairness is concerned only with resolving cases quickly and cheaply has now taken hold in other areas, including public law and criminal law. It has also been influential in the

attitude which is behind the setting of court fees. It devalues the public good of court determination of right and emphasises the private benefits. The anti-judicial mindset is potentially undermining of judicial function more widely and may influence recent initiatives in the Ministry of Justice and Government which indicate diminishing appreciation of why the institutional independence of courts is essential to the rule of law.

It is time to do something to dispel the haze of public anxiety about procedural justice that has developed during the course of the past decade in particular. Much of it has been fuelled by theory and is woefully short on substantiation. As Lord Neuberger once said, while zeal for justice is fine, “zeal for a form of dispute resolution or any other idea, theory or practice is not so healthy. It smacks of fanaticism ...”

Follow-up studies to the Woolf Reforms in the United Kingdom indicate that the pace of resolving cases has improved, “but probably at a higher cost”.² In the United States, the triumphalism of individual docket management has not led to measurable benefits. In New Zealand, the lack of empirical information of the most basic kind is striking. It is concerning that the University of Otago’s “Preliminary Study on Civil case progression times in New Zealand of 15 April 2011 acknowledged “a dearth of robust New Zealand based research in this area”. It was driven to speculate about factors which might bear on delay, identifying a clutch of possible considerations which are entirely conjectural, and do nothing to dispel misinformed anxiety.

What are the ends of procedural justice?

The title given to me for my paper avoids the language of “justice” in respect of procedure but asks about civil litigation in a “just society”. I would like to think that a “just society” wants a system of law that delivers procedural and substantive justice. Resolution of disputes in an efficient and cost effective manner could be achieved by rolling a dice or flipping a coin. That arbitrariness is not what we expect from any system of justice.

Sir Jack Jacob, in his Hamlyn Lectures emphasised that procedure is “the practical way of securing the rule of law”. For, as he said, “the law is ultimately to be found and applied in the decisions of the courts in actual cases”. And the “actual cases” which come to courts for determination are the way in which legal rights are recognised and given effect. If procedure is essential to the rule of law, then we need to take it very seriously indeed, particularly in a jurisdiction like ours in which the rule of law is one of the twin principles of the constitution. The right to have access to a court is a free-standing right of constitutional significance, as is implicit in the New Zealand Bill of Rights Act and international human rights covenants.

² Department for Constitutional Affairs “The Management of Civil cases” DA Research Series 9/05 at iii.

If access to the courts is part of the rule of law, then the procedures by which it is obtained need to be an especial responsibility of the courts. To date in New Zealand rules of court have always been Judge-led, in recognition of the fact that they establish consistency on what would otherwise be inherent jurisdiction exercised by each Judge. I think there is room for some concern that the need for substantial judicial control over procedure as essential to maintaining access to the courts for vindication of law is being lost sight of. Seeing civil litigation as private dispute resolution which can be subcontracted out to private providers or which can be subject to cost recovery blunts the perception of the proper boundaries between courts and the executive in the administration of justice. I do not suggest that the executive does not have a proper role on the resources to be diverted into courts or a perspective that should be considered in developing rules of procedure. But I think some vigilance about proper boundaries is required and is not easily understood without a more developed sense of the centrality of procedural justice to the rule of law.

I have mentioned Ronald Dworkin's view that there is "inherent worth" in the procedure observed by a court. He based that worth on the right to consistent treatment and the need to give weight in what he acknowledged to be an appropriate balance to be struck between the costs of the administration of justice and accuracy in result. For Dworkin, since this balance was a human right, it limited the scope of democratic choice. Jeremy Bentham too considered that the "adjective branch of the law" had as its own defensible object "maximisation of the execution and effect given to the substantive branch of the law". A just system of civil procedure seeks to maximise accurate application of the substantive law while minimising expense, delay and complication. And while there is room for democratic choice in the resources to be applied to courts and some limitation and rationing is justifiable in a free and democratic society, there is an irreducible balance to be struck without which the rule of law is undermined.

In this balance, there is room both for rules to establish consistency of treatment and discretion to be exercised in the context of an individual case, as through tailored case management of what is the correct balance in context. The parties do not have a right to complete accuracy in judgment, achieved through exhaustive processes in which they are wholly unchecked. But they have a right to the maximum accuracy consistent with the resources reasonably available, a balance which is struck to establish a minimum level of protection against the risk of wrongful imposition of liability.

Although it may be more controversial, there may be good policy in a light hand in regulation and case-management. That is for a number of reasons.

The first reason is the lessons of natural justice. Apparently open and shut cases and obvious solutions are too often not, on second look. (And a second look is usually better.) There is nothing more warping than a conviction that you are doing the right thing. And judges are not immune. Although it is in a different context, the lesson of the *Taito* case should I think be constantly before those who are undertaking judicial case-management.

It is a reminder to us to stick as closely as possible to judicial function. Case management should I think be about ensuring minimum standards, not optimum ones. And leaving the parties to shape their cases through their pleadings provided minimum standards are observed may prove the sounder way in ensuring maximum substantive justice. Professor Zuckerman is I think right to caution that “it is only to be expected that once judges take on an active role, they will no longer be able to remain uninvolved in the dispute between the parties”. He thinks that cannot be avoided. I think it should be avoided as far as possible.

The second reason is that procedural choice is a feature of all systems, whether civil law or common law, as Professor Jolowicz has shown in his writing. And some level of party autonomy is efficient and appropriate. Carrots may be more effective to channel conduct thought to be appropriate than orders and sanctions.

Thirdly, I think it is right to be cautious about the attainability and desirability of tailoring requirements too closely to individual cases. One of the principal reasons for procedural rules is to ensure consistency across cases and litigants. Proportionality in such matters is a matter of perspective. Equality in treatment is generally accounted an important principle of any legal system and any system of discrimination is contestable. I do not suggest that some grouping of categories of case may not be appropriate in striking a balance between resources and accuracy. (Although I do not think we should be too eager to classify cases deserving of more accuracy in result.) But it is micro-management in the conditions of access to the courts for determination of disputes I think we need to be careful about because it can lead to inconsistency.

Fourthly, and most importantly, too much focus on individual cases and how best they are to be advanced emphasises resolution of private disputes to the loss of the sense of what is achieved through resolution by adjudication. Narrowing issues, promoting compromises, all the things case management tries to achieve, should not obscure the fact that civil proceedings provide the opportunity for application, clarification and development of law. As Jolowicz has pointed out in his work on “Civil Procedure”, it is “the messages” sent by the courts that are resources litigants need to determine disputes. He considers that it must be “one of the purposes of procedural law to maintain that balance”:³

That litigation should take place is essential to maintenance of the rule of law and to the achievement of justice for the mass of people who are never, themselves, involved in actual proceedings before the court. If civil procedural law is to achieve its purposes, a choice in favour of litigation or a choice in favour of an appeal, to say nothing of lesser matters on which litigants have a choice, should sometimes be encouraged, especially when a question of general importance is at issue. The process of civil litigation serves purposes other than that of doing justice to those who appear before

³ At p 73.

the courts, and the achievement of those purposes must be an objective of procedural law.

Fifthly, light-handed regulation in restricting or channelling access to the court for determination is consistent with our legal traditions and sticking to tradition as far as possible may be wiser and more easily tweaked than violent swings of the pendulum. The rules in place at any time are not sacrosanct. They should always be under review. As the German academic A Englemann points out:

The allocation of the power of choice between the parties, on the one hand, and the court, on the other comes from tradition and from prevailing views of principle and policy, not from the nature of things.

So tradition has its part to play as do the prevailing views held as to principle and policy. Big upheavals set up big reactions and are perhaps best avoided.

Sixthly, it is perhaps important to realise the limits of what can be obtained by procedural justice. I have doubts about more ambitious designs such as attempts to achieve equality of arms and redress inequality in financial resource, including by some of the proposals for class actions, which I think may easily develop into engines of oppression. At the end of the day, we have to be concerned to keep the doors open, even if, like the doors of the Ritz, those with fat wallets will find it easier to walk through them. Nor do I think we can afford to be seen to favour top-end litigation over other disputes. There are questions of wider legitimacy in the public mind which we should be cautious about forfeiting. For similar reasons, I have doubts about our approach to recovery of costs. Membership of society is not costless. Accessing the courts comes at a cost which is the price the citizen has to pay for the protection of the law. We may have gone too far in trying to ensure that litigation costs are recoverable to the extent presently permitted. The risk of party and party costs must now be a principal barrier to “maximising the execution and effect” of substantive law. Perhaps it is time to consider the American approach, now adopted in Quebec, to party and party costs. Similar considerations prompt caution about sanctions for arguments and cases found to be untenable. There may be particular need for caution in relation to litigation with a public flavour in which inhibiting the scheme of private enforcement through costs orders may shift more enforcement cost back on to the public.

The real costs of litigation lie I think beyond rules. And beyond the scope of this paper. It requires consideration of the structure and habits of the profession. Rules should keep open access, remove impediments. So I am a minimalist.
