

The Rules

Sophisticated investors know that the rules applying to an asset are reflected in the value of the asset. Change the rules and you change the value, for better or worse. Tax, banks loan-to-value ratios, stock exchange listing rules all impact on value. The same applies to the rules governing Court proceedings. However, the value that changes is something difficult to put a dollar figure on, but is perhaps our most valuable cultural resource – access to justice, which underpins the rule of law itself.

This rather philosophical introduction is to a topic dear to the heart of litigation lawyers, and largely unknown and ignored by most members of the public – namely, changes to the District Court Rules and its jurisdiction. It is difficult to work up any passion over something seemingly prosaic. But consider this. In 1992, the rules were changed to increase the jurisdiction of the District Court to the then heady sum of \$200,000.00. If your claim was for a greater sum, you had to go to the High Court.

In 1992, the median house price in New Zealand was about \$120,000.00, so a dispute over the average house could be heard in the District Court. In 2014 the median house price in New Zealand is \$415,000.00, and in Auckland it was \$637,000.00 in March this year. There is a proposal to increase the jurisdiction of the District Court to \$350,000.00, but in fact, to keep pace with house price inflation, the figure should be about double that (\$700,000.00)

Why is this important? Because the cost of a defended hearing in the District Court is less than the same dispute heard in the High Court. Which means that more people can afford to have their claim determined, which means they are less likely to seek alternative forms of dispute resolution – and by alternatives I do not mean mediation, I mean baseball bats (and the end of the rule of law). There are enough countries suffering just such a breakdown in their civil society to show this is no fanciful concern. If the District Court is meant to be the peoples court, where the bulk of civil claims can be resolved, it is important to ensure that the jurisdiction provided to the Court is sufficient for that task.

While the jurisdiction limits have not yet been changed (and we currently are stuck with the 1992 limit of \$200,000.00), the Rules themselves have. I am indebted to Matthew King of the Auckland District Law Society Civil Litigation Committee for recently publishing a summary of the changes, which I adopt in full, for your consideration, and which can be viewed at:

<http://www.adls.org.nz/for-the-profession/news-and-opinion/2014/7/4/district-court-rules-2014-%E2%80%93-quick-guide-to-key-changes-of-procedure/>

The essential elements of a proceeding are –

- (a) to commence the claim by filing and serving a statement of claim, together with “initial discovery” of the documents that are important to the case,
- (b) for the defendant to then file and serve a statement of defence and the documents important to the defence,
- (c) to have a conference with the Court and determine any further steps in the proceeding, which will involve
- (d) “further discovery” of all other relevant documents and can cover a vast array of other steps, if required, and then usually
- (e) a further conference dealing with how the trial itself is to be conducted and any necessary directions about that process. Finally comes
- (f) the hearing itself, when the evidence is presented to the Court by the witnesses, with submissions by the lawyers as to the appropriate legal issues and how the case should be determined.

We are often asked how long a case will take, and what it will cost. It is important to bear in mind that each party to a case has a range of steps that it can take, but does not have to take all of them. Thus, it is not possible to estimate either time or cost, as a quick read of the changes alone will show. As an example of the challenges, there are now well embedded in the District Court process three alternative types of trial, going from a relatively cheap short trial designed to take less than a day, to a full trial which, even in the District Court, can take weeks. It is ultimately for the Court to determine which of these 3 options will apply to any particular case. An estimate of cost based on one alternative will be woefully incorrect if another type of trial is required.

It was once true to say that there were 134 separate steps available to the parties to a civil claim, but with the changes to the rules, that is no longer the correct figure. No one should embark on litigation lightly. It can be a long, difficult and costly process. However, some of the costs incurred in bringing or defending a claim can be recovered in civil proceedings, if you are successful, albeit usually only to about two thirds of the actual cost of the process.

Because we are lawyers, we take an active and detailed interest in the rules of Court. Should you have any questions about bringing or defending any civil claim please contact us for professional and practical advice.

Disclaimer: This publication is necessarily brief and general in nature. You should seek professional advice before taking any further action in relation to matters dealt with in this publication.

About the author

- Ross has been a partner and litigator in a leading mid-sized Auckland firm for almost a quarter century. He has specialised in dispute resolution.
- Ross has a Bachelor of Law (Honours) (1980) and Master of Commercial Law (First class Honours) (2000) Auckland
- Email: ross@queencitylaw.co.nz / DDI: 09 970 8813

