

DISPUTES TRIBUNALS

In 1976 the Small Claims Tribunals Act was passed. It provided that disputes over relatively minor claims could be decided by an adjudicator who was not necessarily a legally qualified lawyer. This was the forerunner of the Disputes Tribunals which replaced the Small Claims Tribunals in about 1988. The jurisdiction of the Disputes Tribunals was increased some time ago so that their current jurisdiction is for claims up to \$15,000.00 as of right and \$20,000.00 if both parties to the dispute agree. One of John Keys 2008 pre-election promises was that he intended to relieve the pressure on the District Courts by increasing the jurisdiction of the Disputes Tribunals to claims of up to \$50,000.00. So far the amount of any one claim has not increased to that amount. Running a defended civil trial in the District Court for claims of less than \$50,000.00 are uneconomic and a further increase in the Tribunal's jurisdiction is warranted.

It is essential that there is a genuine dispute before a claim will lie. It is not a cheap debt recovery process. Lawyers are not permitted to represent their clients who need to have a well prepared statement to assist the adjudicator to make a proper decision. Decisions are not always based on legal principle but endeavour to provide a fair outcome of the dispute.

A survey of the workings of a number of Tribunals revealed that in general the parties have been satisfied with the functioning of the Disputes Tribunal. Parties also expressed satisfaction with the way they were treated in the process and the time it took to resolve the dispute. In addition most of the adjudicators are now legally qualified which should give participants confidence that there is a proper legal basis for the decision.

Not every cloud has a silver lining. If a party to a dispute is successful in obtaining a ruling in their favour from the Disputes Tribunal, enforcement of the order has to be through the District Court which is not always satisfactory.

Each of the larger District Courts has a Collections Unit which collects fines and makes orders for payment in civil proceedings if the debtor has means to pay. This is where enforcement becomes difficult and many creditors have to accept payment by paltry weekly instalments or nothing at all if there are no means to pay. If the debtor has no

income no order will be made so the creditor is left with the unenviable task of pursuing the debtor for payment. In the worst case scenario the debtor can apply for bankruptcy or the “no assets procedure” so all recourse against the debtor is stopped.

A further increase in the Disputes Tribunals jurisdiction would provide quicker and easier access to the settlement of disputes than is now the case.

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