

Call for review of civil justice system

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A University of Otago PhD candidate is calling for a review of New Zealand's civil justice system after completing research into those who represent themselves in civil court.

Bridgette Toy-Cronin's now completed doctoral research involved civil litigants who have represented themselves, plus court staff, lawyers and judges, and asked why [people](#) would choose to forgo a lawyer, what their experiences are like, and how other participants in the court system perceive and respond to them.

She found that people had varied reasons for litigating cases in person, ranging from not being able to afford a lawyer, to having had bad experiences with previous lawyers, or believing their case was strong enough that the "truth" would come out regardless.

Many of the reasons overlapped, she says. "Financial reasons are important and formed part of the reasons for litigating in person expressed by every litigant who participated in this research."

But, she noted, they "expressed a number of other motivations for proceeding in person, in addition to financial reasons".

As to their experience, Ms Toy-Cronin says the reality is that navigating the court process is "too difficult in many—even most—cases for litigants to navigate in person".

She found that a complex set of information and skills was needed,

much of which was inaccessible to the lay person – such as information found only in law libraries which offered limited access, or the detailed understanding needed of court procedure, with its legal styles of speech and etiquette.

The perception of court staff, lawyers and judges was also a potential barrier.

"Judges and court staff are committed to maintaining the appearance that the courts are accessible to [ordinary people](#). This is because the court's legitimacy rests partly on this proposition."

However, "the government does not provide enough funding for most people to obtain free legal advice, and few people can afford to pay for a lawyer, but the courts must still be somehow seen as accessible to ordinary people or they will be seen as only available to the rich".

Court staff are also balancing the need to protect the courts from becoming overloaded with work, with the additional time needed to help self-litigants to fairly access the system.

"In many cases, these countervailing pressures encourage judges, lawyers and court staff to steer self-litigants away from accessing the courts in person," she says.

Ms Toy-Cronin therefore concludes that a review of the civil justice system is needed, "to produce a system in which more principled choices can be made about which cases come before the courts and about how much time and procedure they should be allocated once they come there".

- A full copy of the executive summary of Bridgette Toy-Cronin's PhD is also attached to the email that distributed this release.

- Bridgette is a court lawyer who has practised in New Zealand and Australia. She has a Master's in Law from Harvard University and will graduate with her PhD from Otago next month.
- Her research was funded by the New Zealand Law Foundation and the University of Otago.

Provided by University of Otago

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