

Public Perceptions of the New Zealand Court System: An Empirical Approach to Law Reform

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Users of the civil courts have witnessed rising costs and delays over the last decade.¹ As such, there have been several changes in New Zealand (eg, introduction of case management,² changes in discovery rules³), aimed at reducing costs and delay. We are not the only jurisdiction grappling with these issues in the civil court system; major reform efforts have also taken place in other countries such as England⁴ and Australia.⁵ There is also increasing debate about the merits of incorporating more alternative dispute resolution (ADR) methods into the current civil court structure.⁶

While users of New Zealand civil courts face major barriers to access justice, the extent of these problems and the subsequent solutions are less clear. Law reform efforts, unlike projects in other disciplines such as the sciences, often do not get subjected to rigorous evaluation. For example, it is only now that the effect of changes implemented as a consequence of the Woolf Reforms in England nearly a decade ago is beginning to be questioned.⁷

In New Zealand no empirical evaluation of recent law reforms has been undertaken. The District Court discovery rules were changed in 2009 with the intention of reducing delay and, therefore, costs. This change was implemented without any empirical data supporting the notion the changes would in fact reduce delay and cost.

Users of the court system have little voice in the reform process. However, soliciting and understanding the public's views on law reform

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¹ John Hansen "Courts, Administration, the Judiciary and the Efficient Delivery of Justice: A Personal View" (2006) 11 Otago LR 351.

² Ministry of Justice *Civil case management in the District Court* retrieved from <www.justice.govt.nz/services/information-for-legal-professionals/practice-notes-and-guides/civil-case-management-district-court>; Andrew Barker "The Economics of Litigation" [2009] NZLJ 328. District Court Rules 2009.

⁴ For example see, The Right Honourable Lord Woolfe *Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales* (HMSO, July 1996); Michael Zander "The Woolf Report: Forwards of Backwards for the New Lord Chancellor" (1997) 16 CJQ 208.

⁵ Victorian Law Reform Commission *Civil Justice Review* (2008).

⁶ For example see The Honourable Geoff Davies paper "Can Dispute Resolution be Made Generally Available", in this journal edition.

⁷ For example see, Hazel Genn *Judging Civil Justice: The Hamblin Lectures 2008* (Cambridge University Press, Cambridge, 2010).

is essential for two fundamental reasons. First, in democratic countries such as New Zealand, public opinion is important in the development of government policy,⁸ as the court system should meet the public's expectations of it. Second, at the practical level, given that civil law resolves disputes between people we need to understand what people expect and want from their court system in dealing with these disputes. We need to have an understanding of the nature and extent of problems facing civil litigants in order to develop effective solutions.

One example of the incorporation of public views in law reform efforts was a review of the New Zealand court system conducted by the New Zealand Law Commission in 2004.⁹ Public opinion was canvassed on a wide range of issues, including the structure of our court system and how the courts can operate more efficiently to meet the needs of users. Over 300 people lodged formal submissions, leading the Law Commission to make several key recommendations for change (eg, reform of the civil procedure system, more support for court users, compulsory mediation).

Soliciting opinions through the process of formal submissions is a valuable way of capturing public opinion on a matter. This method, however, does not result in representative views on the particular issue being heard. Only the views of those who hear about the discussion paper (eg, through newspaper, internet, or radio), make the effort to obtain a copy of the paper, write and then send their submission are heard.

Compared to other jurisdictions such as the United States¹⁰ and the United Kingdom,¹¹ relatively little empirical work that incorporates public opinion of court processes has been conducted in New Zealand. Only three studies of this nature have been carried out in New Zealand, all commissioned by government.

In 1999, 5,431 adult New Zealanders were asked about their experience of civil legal problems in the past three years.¹² The researchers enquired about the type of problem, whether they sought advice and the barriers they encountered in resolving the problem. They found that New Zealanders experienced a wide range of legal problems, with consumer problems the most prevalent. Further, many barriers to successful resolution were reported, including lack of access to legal information

⁸ F John Mehrstens III "Three worlds of public opinion? Values, variation, and the effect on social policy" (2004) 16 *Int Journal of Public Opinion Research* 115 at 115.

⁹ Law Commission *Delivering Justice for All: A Vision for New Zealand Courts and Tribunals* (NZLC R85, 2004).

¹⁰ For example see, M/A/R/C Research (Report Commissioned by the American Bar Association) *Perceptions of the US Justice System* (1999).

¹¹ For example see, Hazel Genn *Paths to Justice: What People do and Think About Going to Law* (Hart Publishing, Oxford, 1999).

¹² Gabrielle Maxwell, Catherine Smith, Paula Shepherd, and Allison Morris (Report commissioned by the New Zealand Legal Services Board) *Meeting Legal Service Needs* (1999).

and the cost of legal services.

In a similar study conducted by the Legal Services Agency in 2006, researchers interviewed 7,200 New Zealanders about their experience of civil legal problems (eg, consumer, debt, welfare, employment, family, immigration).¹³ The respondents were asked if they had experienced any of these types of legal problems over the past year, with 29 per cent of respondents reporting that they had experienced one or more of these problems over that time. Of those who reported a “non-trivial” problem, consumer related problems were again the most prevalent (10.4 per cent). The authors reported that a large percentage of those with legal problems wanted better access to legal information to help them deal with the problem, and approximately half of them wanted some support while working through their problem.

The final empirical study of public perceptions conducted in New Zealand examined public perceptions about the court system and court processes.¹⁴ The Ministry of Justice have questioned 1000 people every year since 1999 about their views on the court system. These individuals were asked whether or not they agreed or disagreed with 12 statements about the court system (eg, “courts provide services for all New Zealanders”, “courts are an important part of the democratic process”, “New Zealand has modern court systems and processes”, “most people who get a fine can get away with not paying it”). The authors found that the respondents expressed some negative attitudes about the court system, particularly in regard to court delays, lack of information provided about the courts, and the cost of legal proceedings (eg, of those surveyed in 2009, just under three quarters agreed or strongly agreed with the statement that “most people cannot afford to take cases to court”).

While the above studies are important in that issues about court processes and access to legal services are raised, several critical issues remain to be addressed in New Zealand. First, while individuals reported dissatisfaction with some aspects of the court system (eg, cost, lack of information) the reasons behind their answers are, as yet, unknown. That is, what aspects of the court process are costly and what changes need to be made to address this?

No study to date in New Zealand has surveyed public opinion about the professionalism of lawyers and judges. Gathering information about the public attitude towards these individuals is important given the central role they play in our court system. Other jurisdictions (eg, the United States) have conducted such research with interesting findings. For example, the American Bar Association found that while those

¹³ Ignite Research (Report commissioned by the Legal Services Agency) *Report on the 2006 national survey of unmet legal needs and access to services* (2006).

¹⁴ AC Neilsen (Report commissioned by the Ministry of Justice) *Public Perceptions of the New Zealand Court System and Processes* (1999-2009).

Americans surveyed thought that lawyers were knowledgeable about their profession, they thought lawyers were also poor communicators with complex billing practices.¹⁵

In contrast, very little is known about the public perception of lawyers in New Zealand. Users of the court system rely heavily on lawyers' knowledge and skill when they are faced with a problem that needs to be resolved in a legal forum. Anecdotal evidence suggests that the public perception of lawyers may not be that favourable.¹⁶ For example, the media are frequently reporting cases of lawyer misconduct that may tarnish the image of lawyers. In a recent Readers Digest opinion poll of most "trusted" professions, lawyers rated poorly coming in behind locksmiths, bartenders, farmers and plumbers.¹⁷

The final issue yet to be addressed in New Zealand is whether the results observed in prior research can be replicated by a non-governmental agency. Public perceptions research to date has been conducted or commissioned by Government agencies that tailor their research to answer specific issues that their agency was established to address. No independent survey has been conducted in New Zealand that measures public opinion on a broad range of legal issues.

The Present Study

We conducted an independent nationwide study of public perceptions of the New Zealand court system to help inform the law reform debate. The aim of the study was to gather further and more comprehensive empirical data on the public's opinion of their court system.

Method

Participants. The participants were 1875 adult registered voters from New Zealand, of whom 55 per cent were female, and 45 per cent male. The participants ranged in age from 18 to 93 years, with the bulk of the participants aged between 35 and 74 years (74 per cent). Overall, the ethnic background of the participants was largely pakeha (white New Zealander) with this group comprising 85 per cent of the participants. Ethnic minorities comprised the remainder of the sample (eg, Chinese, Tongan, Samoan, Indian) with Māori (indigenous New Zealanders) participants comprising 4 per cent of the total sample.

Materials. Electoral Roll. We obtained an electronic copy of the New Zealand electoral roll to enable us to generate a random list of

¹⁵ American Bar Association *Public perceptions of Lawyers: Consumer Research findings* (2002).

¹⁶ Margaret Bazley (Report Commissioned by the Ministry of Justice) *Transforming the Legal Aid System – Final Report and Recommendations* (2009).

¹⁷ Readers Digest *New Zealand's Most Trusted Professions 2009*, retrieved from <www.readersdigest.co.nz/content/new-zealands-most-trusted-professions-2009>.

participants. Voting is not compulsory in New Zealand, but 94 per cent (2,988,208) of adult New Zealanders aged 18 years and over who are eligible to vote are listed in this roll. The roll contains basic data about each voter, including their name, occupation, address, age (summarised into 5 year sections), and whether they identify as being a native New Zealander (Maori) or not.

Questionnaire. We devised a three-page questionnaire that asked participants for their opinions on various aspects of the court system. The questionnaire comprised of three sections. In the first section, participants were asked to respond to nine questions about four different aspects of the court system (lawyers, judges, affordability and court system/efficiency) using a 5-point likert rating scale, with 1 being strongly agree, and 5 being strongly disagree. These questions are listed below.

1. I believe I would get a fair hearing in the New Zealand court system.
2. I believe my case would be completed within a reasonable amount of time if I went to court.
3. If I had a legal question I would know where to go for help.
4. I think I could afford to hire a lawyer if I needed help with a legal issue.
5. If I hired a lawyer, I would trust him or her to act in my best interests.
6. I believe the average New Zealander can afford to bring a case to court.
7. In general, I think that New Zealand lawyers are competent to do their jobs.
8. In general, I think New Zealand lawyers behave honestly.
9. In general, I think New Zealand judges treat people with respect.

In the second section we asked participants to state whether or not they had any previous involvement in the court system, by ticking all the boxes beside the legal forums they had been involved in from a list of 14 commonly used courts/tribunals in New Zealand (District Court, High Court, Court of Appeal, Supreme Court, Youth Court, Family Court, Employment Court, Māori Land Court, Environment Court, Tenancy Tribunal, Disputes Tribunal, Mediation, Arbitration). We included a space for respondents to write if they had been involved in any other legal forum not listed above. We then next asked the participants if they believe any changes need to be made to the system (yes or no option) and asked them to explain why or why not. In the final section we asked participants to provide their demographic data (age, gender and ethnicity).¹⁸

Procedure. We first ran two focus groups to gather feedback on our questionnaire wording and design. The first focus group consisted of 17 students from the University of Otago who were given a \$40 book

¹⁸ Even though our questions could be interpreted from a criminal law perspective, for the purpose of this paper we have focussed on the civil law system.

voucher each to attend the two hour long session. The second group consisted of 23 staff members from the University of Otago, ranging from technicians to academic members of staff (including staff from the Marketing, Statistics, and Psychology Departments). Staff members were not financially compensated for their attendance. During these sessions we asked participants for their feedback on their interpretation of each question and how the question wording influenced their answers. As a result of the feedback we made a few minor changes to the questions, primarily simplifying the language we used.

Next, we randomly generated a list of 10,000 names from the New Zealand Electoral Roll. Of this sample, 50.04 per cent were female, and 49.96 per cent were male, with 6.7 per cent of the sample identifying as being of Māori descent. The individuals in this list came from throughout New Zealand, with the bulk being from the greater Auckland area and other metropolitan areas in the North Island (eg, Wellington), consistent with the population distribution in New Zealand.

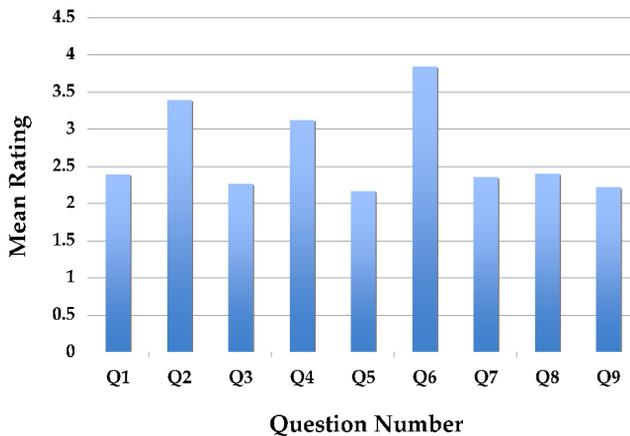
In mid March of 2009, we sent these 10,000 individuals the survey to complete. We included a cover letter detailing the purpose of the survey and included a free-post envelope for the survey to be returned in. We provided instructions for the option to complete the survey via the internet.

Results

The primary measured variables in this study were the participants' ratings for the nine rating scale questions. We observed some significant, albeit very small differences according to whether our respondents had prior legal experience (902 respondents) or not (973 respondents) for six of the nine rating scale questions (exceptions were Questions 2, 4 and 6). When differences were observed, those with prior legal experience tended to have slightly more negative views than those without prior legal experience. However, given that none of the observed differences exceeded .2 out of a possible 5 points, the observed differences are too small to draw any meaningful conclusions on the differences in opinions of these two groups. As such, we have combined the data from these two groups. The preliminary data are presented in turn below.

Responses to the Rating Scale Questions

Figure 1. Mean responses for the nine rating scale questions



A 1 represents a “strongly agree” (a positive response to each question), a 5 represents a “strongly disagree” (a negative response to each question), and a 3 is a neutral response (neither agree or disagree). Figure 1 shows that overall participants gave fairly positive ratings, generally indicating an overall “satisfaction” in regard to the specific aspects of the legal system addressed by our questions. The exceptions were Question 2, 4 and 6, which our participants rated on the neutral to negative side of the scale. These three questions addressed the affordability and efficiency of the court system. Specific data for each of the topics covered in these questions is presented in turn below.

Affordability

We asked two questions about affordability. The first question was whether the respondent believed they could afford a lawyer, and the second question was whether the respondent believed the average person can afford to take a case to court. The percentage of respondents that answered in each of the available categories (strongly agree to strongly disagree) is shown below for these questions.

Figure 2. Percentage of responses for each option for the question: "I think I could afford to hire a lawyer if I needed help with a legal issue."

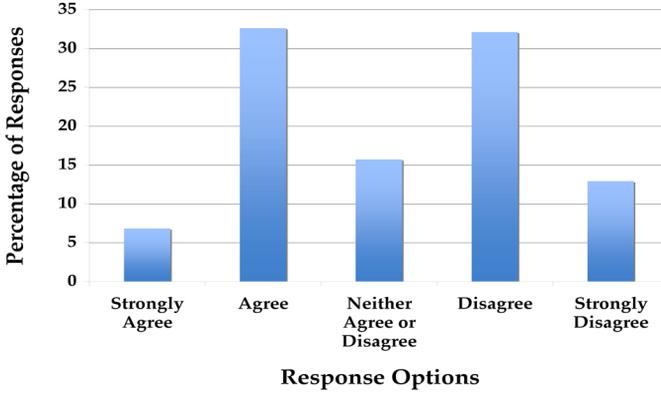
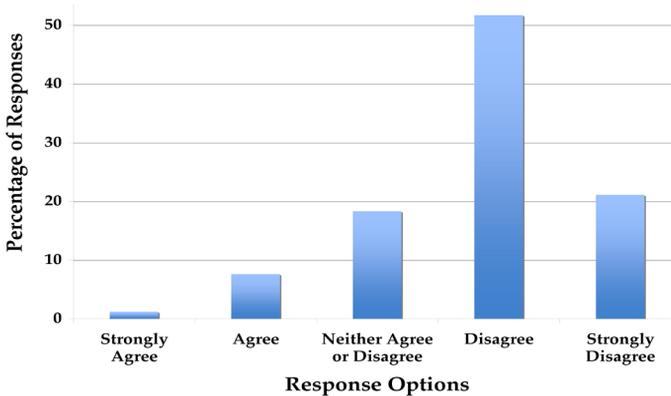


Figure 3. Percentage of responses for each option for the question: "I believe the average New Zealander can afford to bring a case to court."



These figures show that our respondents' opinions on the affordability of legal services were on the negative side of the scale, with the question about whether the average New Zealander can afford to go to court rated the most negatively of all the questions we asked.

Court System/Efficiency

We asked three questions about the court system in general and the efficiency of the court system. The first question was whether the respondent believed they would get a fair hearing in the court system. The second question was whether the respondent believes if they had a court case it would be completed within a reasonable time. The final question was whether the respondent knows where to go to get legal

assistance.

Figure 4. Percentage of responses for each option for the question: "I believe I would get a fair hearing in the New Zealand Court System."

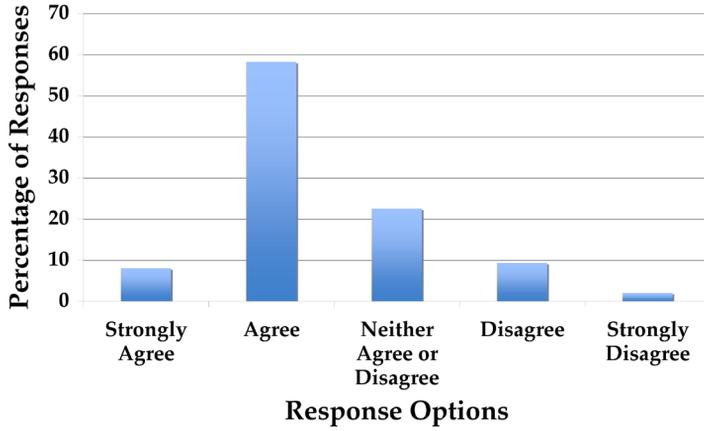


Figure 5. Percentage of responses for each option for the question: "I believe my case would be completed in a reasonable time if I went to court."

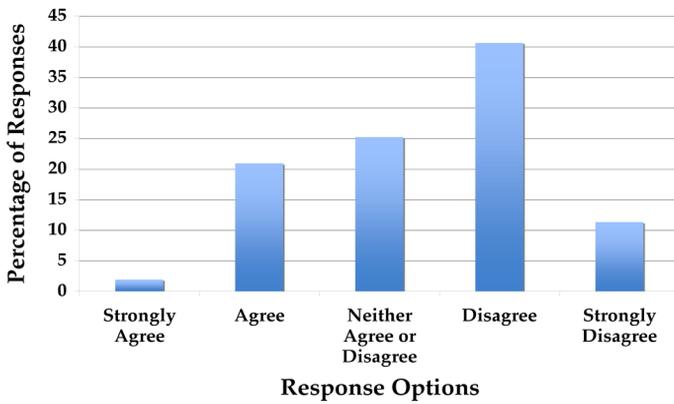
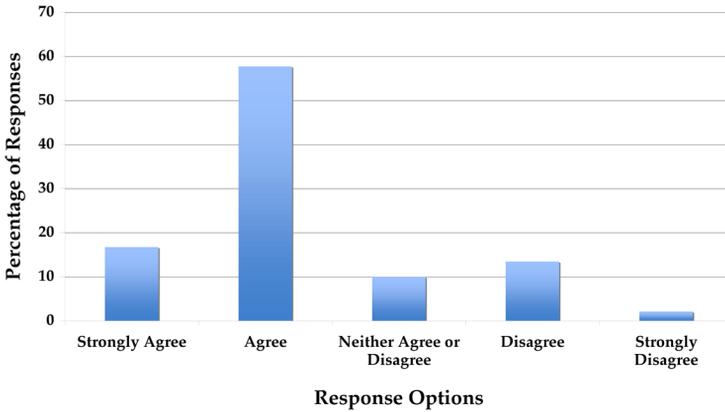


Figure 6. Percentage of responses for each option for the question: "If I had a legal question, I would know where to go for help."



These figures above reveal the respondents tended to disagree that court hearings are held in a timely manner, but tended to agree that they would know where to access legal help and that they would get a fair hearing in the courts.

Lawyers

We asked the respondents three questions relating to lawyer conduct. First, we asked the respondents whether they trust lawyers. Second, we asked whether they think that New Zealand lawyers are competent. Finally, we asked whether they think lawyers are honest.

Figure 7. Percentage of responses for each option for the question: "If I hired a lawyer, I would trust him or her to act in my best interests."

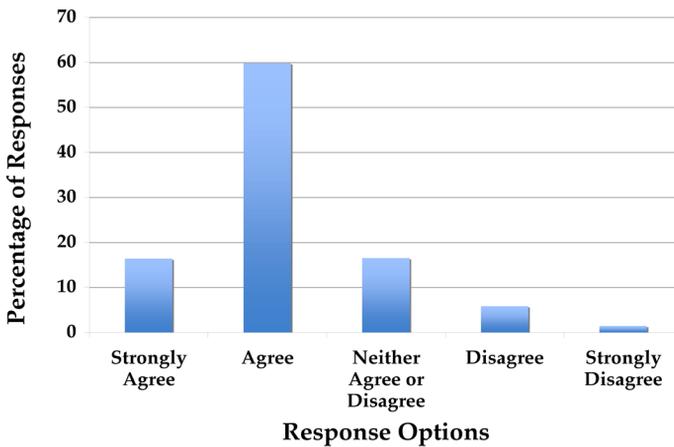


Figure 8. Percentage of responses for each option for the question: "In general, I think New Zealand lawyers are competent to do their jobs."

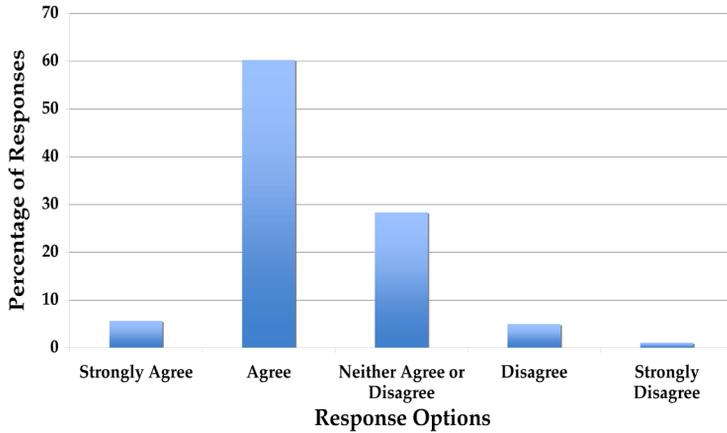
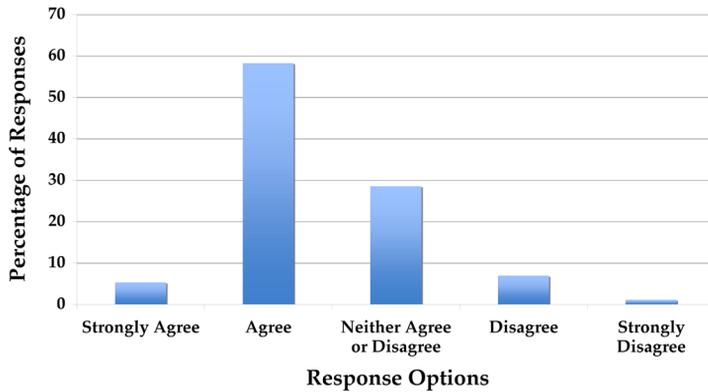


Figure 9. Percentage of responses for each option for the question: "In general, I think New Zealand lawyers behave honestly."



In summary, the data in this section show that the participants' opinions of lawyers tended to be quite positive, with the majority agreeing that lawyers behave honestly, are competent to do their jobs, and will act in their client's best interests.

Judges

The final topic we included in our survey was on judges. We asked our participants one question about whether New Zealand judges treat people respectfully.

Figure 10. *Percentage of responses for each option for the question: "In general, I think New Zealand judges treat people with respect."*

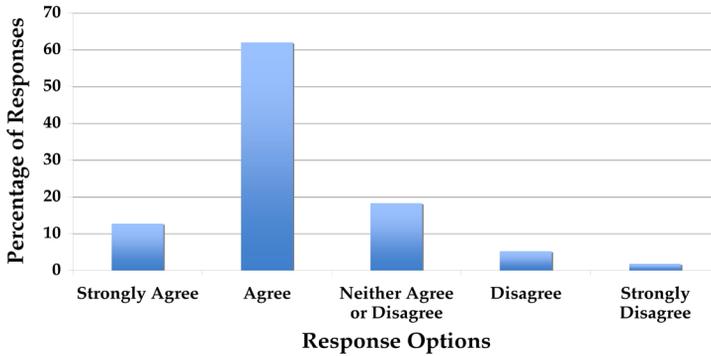


Figure 10 shows that the majority of our participants agreed that New Zealand judges treat people with respect.

Respondents' Views on Changes Required to the Court System

In total, 87 per cent of respondents reported that they believe changes need to be made to our court system. We entered all our respondents' comments verbatim into a database to enable a thematic analysis to be conducted.¹⁹ Our respondents' comments were varied, and covered the spectrum of legal issues (eg, legal aid, fairness, cost, judges' performance). The predominant issues raised, however, were related to lawyers, cost and delay. These are discussed briefly below.

Lawyers

Many of our respondents reported that a change to the way in which lawyers conduct themselves is required, particularly in relation to how much they charge for their services. In fact, some of the harshest comments were directed towards lawyers. For example:

"Lawyers should be economically [sic] efficient and not just there to fill their own pockets."

"Lawyers charges are unrealistic for average NZers."

"Lawyers that I have had dealings with are generally only after how much money they can bleed out of the system."

"Sometimes it seems lawyers use various tactics eg calling for extraneous reports to delay an inevitable outcome."

¹⁹ We are still in the process of analysing the data for this question. As such, only brief overviews of results from this question are included in this paper.

“Basically I think the solicitors and the lawyers should act in the best interests of the individual and not of their own.”

“Lawyers string out the cases.”

“I personally like to keep out of lawyers ways as much as possible and courts as I think lawyers are really doing it for money 95 per cent of the time not really justice. I’ve heard lawyers boasting ‘I could win the case either way’.”²⁰

In fact, our respondents made very few positive comments about lawyers. We have listed two such comments below.

“I was impressed with the competence of lawyers and the judge in my recent jury service.”

“Lawyers shouldn’t cost so much, but lawyers I have known have been very good lawyers.”

Cost

Another predominant theme amongst our respondents was that the cost of legal services is too high. Again, no respondent reported that the New Zealand justice system delivers services in a cost-effective manner. We have listed a few selected comments below.

“The costs to pay lawyers and court fees are prohibitive for most low income people and relying on legal aid reflects in the quality of representation.”

“My general impression is that it is very slow & extremely expensive and that the only people it works for are the lawyers who are all getting rich.”

“The costs of using the legal system to resolve any problem are so great that many people put up with things that they would rather address.”

“Cost of lawyers [sic] unaffordable - justice is not always won due to the expense involved in pursuing the case.”

Delay

Finally, one of the most recurrent comments was related to the speed at which justice is delivered. In particular, our respondents reported that court processes need to be made more efficient so that cases are settled in a timelier manner. In fact, no respondent reported they believe that court system operates efficiently.

²⁰ Many of these comments show that lawyers need to explain to their client what they are doing, how much it will cost and why it will cost that much. Under the Lawyers and Conveyances Act (Lawyers: Conduct and Client Care) Rules 2008 lawyers are now required to provide this information to their clients (see chapter 3, in particular rule 3.4).

"The time it takes to get a court hearing. The stress and anxiety it causes a person or family."

"Compared to some overseas jurisdictions it takes way too long for cases to be processed through the court system (both civil and criminal)."

"The processes need to be speeded up. This might mean night courts of similar."

"Large and unnecessary delays in court hearings."

"Courts should sit for longer hours."

"Cases take too long to be heard - waiting list times unacceptable."

In summary, while our respondents made a wide range of comments covering all facets of the legal system, the most common comments were about delays, costs, and lawyer behaviour (eg, lack of communication, purposeful delaying tactics). In particular, our respondents expressed the view that they want a more cost efficient and timely court system, and a higher standard of conduct from legal counsel.

Discussion

This study provides important data on what users think about their court system. Consistent with the small body of research conducted in New Zealand, our respondents rated the questions concerning affordability and delay the most negatively. The majority of our respondents disagreed that legal services are affordable and that cases are heard in a timely manner. Further, many of our respondents made comments reflecting the fact that they would like to see the court system run more efficiently and in a more cost effective manner. These views were consistent across our sample, and varied little on the basis of age, gender, ethnic background, and previous exposure to the court system.

While no empirical statistical data exists on the actual cost of litigation in New Zealand, what evidence we have available tells us intuitively that it is very costly. Lawyers' fees range from \$150 per hour to thousands of dollars per hour for senior barristers. Further, not only are legal services costly, court statistics tell us that delays are commonplace. For example, Hansen reported that over the past few decades there has been an increasing trend for cases to take longer to come to trial, both in the civil and criminal jurisdiction.²¹ Hansen also reported that it is now rare for civil cases to be heard within a year of filing.²²

Given that the public are dissatisfied with the cost of legal services and the timeliness in which they are delivered, and that this viewpoint is supported by the empirical evidence available, naturally the question arises what can be done to address these issues. To this end, we are

²¹ Hansen above n 1, at 358.

²² *Ibid* at 354.

presently in the process of conducting intensive interviews with users of the civil court system throughout New Zealand. We are asking our participants a range of questions concerning what their experience was like, what they believed works well, and what they would like to see changed and why. This research will enable richer data to be gathered on the problems court users face in New Zealand, and help target specific areas for research and reform.

The second main finding is that despite our participants rating of lawyers' honesty, trustworthiness and competency being fairly favourable, some of the harshest comments made by our respondents were directed towards legal counsel. In particular, many of our respondents' comments questioned the integrity of lawyers and the manner in which they justify their costs. On the surface it may appear paradoxical that despite favourable ratings the qualitative comments about legal counsel were largely negative. It may be that the small number of respondents who rated lawyers negatively accounted for the majority of these negative comments. We asked the participants in very broad terms what changes they would like to see to our court system. Our respondents were, therefore, free to talk about any aspect(s) of the court system they wished. As a consequence, due to the limited space provided on the survey form, respondents may have only made comments about aspects of the court system they had particularly strong feelings about. This may be the reason why our findings paint a slightly more negative picture of lawyers compared to other qualitative work done in this area.²³

This research highlights important issues facing users and potential users of the court system. This study is an important first step in developing a research programme aimed to gain a better understanding of the nature and extent of problems civil litigants face. Understanding how the public interacts with the legal system, the barriers they face accessing the courts, and the issues that arise as they work their way through the legal process will enable more informed civil reform decisions to be made in the years to come.

²³ American Bar Association (2002) above n 15.

