

Barriers to Participation in the Employment Institutions – recent symposium provides food for thought, and much scope for further work

Community groups, academics, policy makers, senior legal practitioners, representatives from unions, Business New Zealand, the Canterbury Chamber of Commerce, Employment Mediation Services, the Employment Relations Authority and the Employment Court gathered in Wellington recently to discuss barriers to participation in the employment institutions and how those barriers might be better navigated.

It was the second in a series of symposia organised by the Auckland University of Technology's Work Research Institute, the Authority and the Court. The symposium provided a valuable opportunity to hear directly from the communities the employment institutions are designed to serve, including those in precarious employment.

Many contributors highlighted the perceived complexity of employment law and practice, and difficulties in understanding how to navigate the dispute resolution process. A number of cultural issues were also raised, ranging from a reluctance to challenge or question those in authority, to the way in which mediation services must be accessed and are now delivered.

There was much support for providing additional resources to community organisations where people might first discuss workplace problems, including church groups and doctors. Some information suggested many people turned to their doctor as the first source of how to deal with such problems, due to effects on their health, and medical practices might be well placed to act as a conduit for information and assistance. The Law Societies were identified as being well placed to undertake an important role in this regard. There was also much support for ensuring that a diverse range of tools were available, beyond those which are exclusively on-line. This point was reinforced by University of Otago Legal Issues Centre director Bridgette Toy-Cronin, who talked about the research she has done into what does and does not impede access to the justice system.

The cost (including financial) of pursuing and defending employment disputes continued to receive a great deal of focus, including for vulnerable workers and small to medium sized employers. Numerous participants identified this as a significant barrier to positive engagement with the employment institutions, and rather as an incentive to look at settlement as the only viable option. Possible solutions were canvassed, including that the Employment Relations Authority give further consideration to adopting a different (possibly no-costs) regime.

The reputational costs of pursuing employment disputes and the impact of the current general practice of naming parties in determinations and Court judgments were identified as a key concern. The Chief of the Employment Relations Authority spoke of his understanding (from feedback he had received over the years) that the prospect of name publication was sufficient to steer many people away from pursuit of a claim beyond the confidential mediation setting, and that it was not uncommon for those who had been named in a determination (as a party or a witness) to have considerable difficulty finding alternative work. In this regard reference was made to the practice of on-line searching by some recruitment agencies and employers. It was suggested that consideration be given to reversing the general presumption, and discussion as to whether legislative amendment might be required given the approach adopted by the Court of Appeal to non-publication, including in employment matters.

Many noted the demonstrable increase in the demand for support and assistance in employment matters over recent years (including the developing presence of lay advocates), which has occurred against a backdrop of diminishing union presence in workplaces. The implications of this for those who could not afford to engage professional assistance and support was discussed. Speakers from the Auckland Community Law Centre and Citizens Advice Bureaux national office outlined initiatives they are undertaking, including a pro bono scheme assisting self-represented litigants which has been piloted by the Centre in the Employment Court and has recently been expanded to the Authority in Auckland. Work is also underway, with the assistance of the Borrin Foundation, to develop a WorkBot chatbot providing access via a smart phone device to information about employment law and how to resolve disputes.

- Papers from the first and second symposia are available at <https://workresearch.aut.ac.nz/reports-and-projects/papers-and-presentations#barriers2>