

JOURNAL OF CIVIL LITIGATION AND PRACTICE

Volume 5, Number 3

September 2016

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Experts and Opinion Evidence 163

A Question of Malice: United Kingdom Supreme Court Justices Split 5–4 in *Willers v Joyce* (Executors of Albert Gubay Deceased) [2016] UKSC 43 165

ARTICLES

Three contemporary issues in civil litigation: Discovery, expert evidence, and alternative dispute resolution – *The Honourable Thomas Frederick Bathurst AC*

This article discusses, from a judicial perspective, some continuing issues which are of concern to judges in civil litigation. First, it discusses issues surrounding discovery, including the costs of discovery, and limitations that have been, and should be, placed on discovery. Second, in regard to expert evidence, it discusses issues regarding the minimum threshold for expertise, the impartiality required of experts, expert conclaves, and concurrent expert evidence. Finally, the article examines issues regarding court-ordered alternative dispute resolution, including a discussion of when such orders are fruitful. All of these three areas raise issues associated with the changing civil litigation landscape and the desire for justice to be achieved through efficient and cheap procedures. 168

Civil justice: Haves, have-nots and what to do about them – *Justice Stephen Kós*

This article considers problems faced by litigants in person in the effective delivery of civil justice in New Zealand. It reviews proposed reforms that might improve access to justice. The author identifies serious deficiencies in the present adversarial system, although noting that more intrusive case management has bridged the adversarial and inquisitorial systems to an extent. Drawing on aspects of Scandinavian civil procedure, the author argues that access to justice would be improved by adopting more features of the inquisitorial system in the District Court in cases where claims are below a monetary limit or a party is involuntarily self-represented. The “mixed model” proposed would include pleadings review by a court-appointed assessor and the examination of witnesses primarily by the judge. 178

Disaster & resilience: The Canterbury earthquakes and their legal aftermath
– *Justice Stephen Kós*

This article reviews the legal ramifications of the Canterbury earthquakes of 2010 and 2011, including the High Court’s response in creating the Canterbury Earthquake List. The author explains particular themes that have arisen in Earthquake List litigation, including the legitimacy of Executive action, the relationship between statutory insurance provided by the Earthquake Commission and private insurance, and difficulties in proving the scope and cause of damage. The author discusses legislative reforms that have been proposed, including simplification of the role of the Earthquake Commission. The author argues in

favour of this, noting that the bifurcation of insurance cover between the Earthquake Commission and private insurers causes needless delay and suggesting that the role of the Commission should be modified to focus on underwriting. 190