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Redistributing Justice

Consumers and the Jurisdiction of Disputes Tribunals

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Contents

Note

- Any use of the word 'tribunal' is actually an abbreviated reference to either the Disputes Tribunals or the Small Claims Tribunals. No other tribunal of the New Zealand justice system is referred to.
- Because of the programme used, the references have been left at the end of the text rather than appearing at the foot of each page.

I THE OPERATION OF DISPUTES TRIBUNALS

"The dominant classes do not object to litigation - they want the courts to themselves."[1] In a society where justice is expensive and dependent on legal expertise, this perceived aim of intentional segregation is achieved by a process of monetary and intellectual intimidation. The court system is dominated by those who have the wealth, the time and the experience to resolve disputes in the courts. Thus 'Joe Corp' has access to an authoritative mechanism for resolving disputes, but 'Joe Average' is excluded from the process.

This is especially true where 'Joe Average' is a consumer. Most consumer disputes are comparatively 'small claims', yet the court system marginalises these claims by creating an artificial threshold below which it is simply not realistic to seek a remedy through the courts. It is not practically viable to go to court to recover $ 2000,[2] and for some people it is not even an option. Few consumers are aware of their legal rights and fewer still have the knowledge, experience or finance to pursue an action against a trader in the District Court. Nonetheless, "...it is estimated that one in six consumer transactions results in some justifiable complaint against a trader."[3]

This raises some serious issues concerning the nature of 'justice' in our justice system. Should everyone have access to justice, or should it be reserved for those who can afford it? Are 'justice' and 'the law' different expressions of the same value? Is there one right way for reaching a just resolution or does it depend on the circumstances of the case? Where should the line be drawn between due process and flexibility in administering justice and on what factors does this depend?

The advent of Small Claims Tribunals in 1976 aimed to address these issues. The Small Claims Tribunals were an experiment in the administration of justice.[4] They were established on a necessarily informal model with a focus on mediation and a 'substantial merits and justice' approach to dispute resolution.[5] This was so as to be

responsive to individual circumstances and to place the responsibility for dispute resolution in the hands of the parties, and thereby the community. Initially the Tribunals' jurisdiction was limited to claims not exceeding $ 500, though this was expanded to $ 1000 in 1985. The cost of bringing a claim to the Tribunal was only $ 2, and later only $ 5. Thus a deserving applicant was not prevented from bringing a 'small claim' by prohibitive legal costs.

The Small Claims Tribunals were an "experiment that worked"[6], and in recognition of their success Parliament introduced the Disputes Tribunals Act in 1988. This extended the jurisdiction of the Tribunals and increased the monetary limit to $ 3000. It appears that the experiment is still working, the tribunals currently being used to capacity.[7] There are now 56 Disputes Tribunals across New Zealand, attatched to all District Courts and the cost to the applicant is just $10 for claims not exceeding $ 1000, and $ 20 for anything in excess of that.

However, it is not only in cost that Tribunals aim to make themselves more accessible to the general public. Referees are nominated by the community and are selected against a list of very broad criteria.[8] Legal qualifications are not necessary, and only about a quarter of referees are currently legally qualified, the emphasis still being a 'substantial merits and justice' approach to dispute resolution, rather than strict legalism.[9] In addition, sixty eight percent of referees are female and there are currently four Maori and three Pacific Island referees. Thus Disputes Tribunals are more representative of the community than the courts currently are.[10] This is in an effort to make tribunals more accessible to the whole community, not just white, middle class business men with experience in the law and in the legal process.

These factors clearly represent the philosophy behind Disputes Tribunals, perhaps best stated by the Honourable Phillip Woolaston, the Associate Minister of Justice at the

time the Disputes Tribunals Bill was introduced:

> They [Disputes Tribunals] provide remedies where before there were none - or none in any realistic or sensible sense - and in providing low cost remedies for modest claims, they give ordinary individuals some scope for asserting their rights.[11]

It is little wonder that the Ministry of Consumer Affairs "...views Disputes Tribunals as the most important forum for hearing and resolving consumer diisputes."[12] They provide consumers access to a fair system for dispute resolution where before there was none. Access to justice is more than a theoretical precept. There are a number of practical determinants also, which the Tribunals, unlike the courts, seek to implement.

The issues associated with access to justice are inherently linked to the question of jurisdiction. This paper is concerned with the nature and scope of the Disputes Tribunals' contractual jurisdiction, especially in relation to consumer legislation and the disputes between traders and consumers based on that legislation. As such it is largely an exercise in statutory interpretation which draws on the function and purpose behind the Disputes Tribunals Act in combination with such Acts as the Credit Contracts Act 1981, the Hire Purchase Act 1971 and the Door to Door Sales Act 1967.

It has been necessary to limit the discussion in this way so as to enable a more detailed analysis of the juridictional issues involved. This does not limit the importance of the discussion. With the advent of the Consumer Guarantees Act 1993 and the enforcement of consumer legislation in general, there is greater exposure being given to illegal trade practices and the concurrent neglect of consumer rights. It is necessary therefore to review the exact scope for enforcing those rights. Furthermore, while the focus is quite specific, the general principles of access to justice, the viability of informal justice and the effectiveness of state regulation on the market-place impact on every element of the justice system and society in general.

These issues are current, the Ministry of Consumer Affairs having recently prepared a report on the operation of Disputes Tribunals for the Justice Department,[13] with a view to reform. This includes a review of the Tribunals' present jurisdiction in the light of present and future day requirements. With the proposed abandonment of appeals to the Privy Council the organisation of the justice system is a priority concern. It is likely that Disputes Tribunals will assume an even greater role in New Zealand's justice system and therefore limits on jurisdiction and the rights to appeal are critical issues to be resolved.

This is the initial focus of inquiry. Part II outlines the special jurisdiction given to Tribunals and the limited appeal provisions contained in the Disputes Tribunals Act, and critically evaluates the relevant provisions against the nature and purpose of the Act. Part III discusses the jurisdiction of the Tribunals with specific reference to the Credit Contracts, Hire Purchase and Door to Door Sales Acts. Part IV argues for the extension of the current jurisdiction with respect to these Acts. Part V completes the analysis by suggesting some measures for reform and discussing their relative merits.

II A QUASI-LEGAL JURISDICTION

A The Right to Appeal

In accordance with section 23 of the Disputes Tribunals Act, Disputes Tribunals are a court of final jurisdiction. There are three exceptions to this:

(a) Rehearings

A party to the proceedings can apply for a rehearing under section 49 of the Disputes Tribunals Act. These are granted at the sole discretion of the referee and some substantive reason is required. A rehearing will not be granted merely because a party does not like the decision.[14]

(b) Judicial Review

The normal rules apply. The parties are entitled to natural justice[15] and any party can apply to the High Court for review under the Judicature Act 1908.

(c) Appeals to the District Court

Rights to appeal are creatures of statute.[16] Thus the only grounds on which an appeal can be made from the decision of a Disputes Tribunal are those specified in the Disputes Tribunals Act. Section 50 provides for an appeal only if:

> (1)(a) The proceedings were conducted by the Referee; or
>
> (b) An inquiry was carried out by an investigator-
>
> in a manner that was unfair to the appellant and prejudicially affected the result of the proceedings.
>
> (2) Without limiting the generality of subsection (1) of this section, a Referee shall be deemed to have conducted the proceedings in a manner that was unfair to the appellant and prejudicially affected the result if-
>
> (a) The Referee fails to have regard to any provision of any enactment that is brought to the attention of the Referee at the hearing; and
>
> (b) As a result of that failure, the result of the proceedings is unfair to the appellant.

This section is quite straightforward. The apellant must show that the process by which the Tribunal reached its decision was unfair and that this prejudicially affected the outcome. The right to an appeal is not determined solely by reference to the substantive outcome, but primarily by reference to any procedural unfairness. Section 50(2) is expressed as one instance of procedural unfairness. It does not create new grounds for an appeal based on the merits of a decision.[17] Thus the grounds for appeal are quite limited.

Judicial concern over the extent of this limitation has led some District Court Judges to 'creative interpretation', expanding the meaning of section 50 to allow appeals on questions of law and on the the substantial merits and justice of the case.[18] This has superimposed the jurisdiction of the District Court over that of the Disputes Tribunals and has thereby served to restrict the operation and effectiveness of Tribunals as an efficient and widely accessible tribunal for resolving comparatively small disputes. These interpretations have turned largely on the meanings of section 50(2) and section 18(6) of the Disputes Tribunals Act.

B The Scope of Section 18(6) - Having Regard to the Law

Section 18(6) of the Disputes Tribunals Act is central to the operation of Disputes Tribunals. It empowers Referees to disregard the law and thereby enables the efficient dispensation of justice on an individualised basis, without the prohibitive cost of lawyers or the barriers thrown up by legal rhetoric. Section 18(6) provides:

> The Tribunal shall determine the dispute according to the substantial merits and justice of the case, and in doing so shall have regard to the law but shall not be bound to give effect to strict legal rights or obligations or to legal forms or technicalities.

The basic issue which arises from section 18(6) is, to what extent is a Tribunal required to follow and apply the relevant law in a particular case? The answer impacts directly on the right to appeal under section 50, the operational efficacy of the Tribunals and the individual's right to a just resolution. As such it is a difficult issue with important ramifications and there is some variance of opinion on it.

1 Justice is the law

One argument is to say that the substantial merits and justice of the case cannot be met unless the relevant law is applied. Two cases are particularly instructive on this point. *State Insurance v Watkins*[19] and *State Insurance v Armstrong*[20] were decided differently by different judges, despite having exactly analogous fact situations. The cases involved contested insurance claims for damage arising from traffic accidents. Both claimants had falsely stated on their respective claims that they had not consumed alcohol six hours prior to their accident. This gave the insurance company a legal right to decline liability. In the Disputes Tribunal the referee in each case awarded in favour of the claimant because alcohol had not been a causative factor in either accident. State Insurance appealed to the District Court. In *Watkins*[21] Cullinane J reasoned:

> ...in so far as the Tribunal in the present case did not have regard to the law in the sense that legal principles concerning the rights and liabilities of parties under insurance contracts were disregarded, the "substantial merits and justice of the case" were not objectives achieved by reason of that failure.[22]

The argument is that disregarding the law defeats the merits. Because the case was not decided on its substantial merits and justice, the proceedings were conducted unfairly and therefore the grounds for appeal under section 50 were established. The appeal was allowed.

In *Armstrong*[23] Paterson J dismissed the appeal for lack of jurisdiction. With respect, this is the better view. The legislature has clearly awarded Tribunals the discretion to choose not to follow the law where it conflicts with the substantial merits and justice of the case. This is apparent for two reasons.

Firstly, in the initial consideration given to jurisdiction in the drafting of the Small Claims Tribunals Bill, there was a provision which would have required Referees to follow all applicable enactments. This was subsequently deleted before the Bill became law.[24] Also at the drafting stage there was some debate about the content of section 15(4) - the equivalent to section 18(6) of the Disputes Tribunals Act. The Parliamentary Counsel preferred a decision based on the law unless the merits pointed elsewhere. The Department of Justice opted instead for a clean break from the law. The latter view prevailed after it was referred to the Government Caucus Committee.[25] The same section, and therefore the same legislative intention, was carried across into the Disputes Tribunals Act.

Secondly, the ordinary construction of the Act supports a merits based approach as distinct from a strictly legal one. A merits based approach looks not only to the law but to all the circumstances of the case in order to reach a just resolution. The law is a relevant consideration. In a legal approach it is the only consideration, and in a court of law a judge is bound to apply the law. Section 18(6) expressly states that a Tribunal shall not be bound to apply the law. The two approaches are different.

There is good reason for this. If strict adherence to the law is a requirement then legal expertise is also a requirement. This imports the need for legally trained referees and legal representation at the Tribunal. An adversarial, legal approach discourages laypeople from bringing claims against better financed, more informed respondents such as businesses, who are repeat users of the system. This is especially true if the claimant knows that the respondent can and will appeal. Moreso, the additional delay

and expense involved will be prohibitive given the comparatively small amounts involved. Furthermore, a Tribunal bound by precedent would not have the flexibility to dispense justice according to the vast array of everyday situations which come before it. The Disputes Tribunals Act expressly legislates against these factors. For instance:

* Section 18(1) - the Tribunal must decide whether mediation is appropriate. The focus is on the parties reaching their own resolution if possible. This will not depend on the law, but on the circumstances of the case.

* Sections 38(7)(c) and 43 - lawyers cannot be present and the Tribunal has only a very limited power to grant costs. The bias is against lawyers and in favour of parties representing themselves. Many claimants, and indeed many respondents, will either not be aware of the law or simply unable to apply it.

* Section 7 - legal training is not specified as a qualification for becoming a referee. This can be contrasted with section 7 of the Small Claims Tribunals Act 1976 which it replaced. The 1976 Act specified three years practice as either a barrister or a solicitor as one of the possible criteria for becoming a referee.

* Section 40 - the Tribunal can take into account any evidence that it considers appropriate, even though that evidence may not be admissable in a court of law.

Clearly the focus of Disputes Tribunals is not the law. Of course this is not a licence to completely disregard any relevant law and it is not used as such. If a referee is aware that there is an important legal issue involved, or relevant legal principles are brought to their attention, then section 18(6) requires that they have regard to that law. The Disputes Tribunals Act probably imposes an obligation on referees to:

> ...consider any legal principles of which he or she is made aware in a fair and unbiased manner, and to apply the law except when strict adherence would go against the substantial merits and justice of the case.[26]

A groundless refusal to consider the law, or an arbitrary decision not to apply it, will probably amount to procedural unfairness as anticipated by section 50. However, if a referee has regard to the law and decides on the substantial merits and justice of the case not to apply it, that decision cannot be appealed. In any case most referees have commented that:

> ...the 'law' and 'merits and justice' seldom conflict in the areas within the Tribunals' jurisdiction... the law acts to guard against arbitrariness, and substantial merits and justice 'humanise' the law, prevent the inequitable use of the law, are particularly useful in a laypersons' tribunal, and are useful reference points in explaining the decisions reached.[27]

The two values; the 'law' and 'merits and justice' are distinct and each makes an important contribution to the decision making process of the Disputes Tribunals. Therefore in a case such as *Watkins*[28], where a referee decides not to follow the law because the substantial merits and justice of the case do not warrant it, that decision is not open to appeal under section 50 of the Disputes Tribunals Act. Such an appeal would be an appeal on the merits of the case, not against the manner in which the proceedings were conducted.

2 *Common law interpretations of statute*

Section 50(2) grants a right of appeal if the Referee fails to have regard to any enactment brought to their attention and this unfairly affects the result. G P Rossiter reasons that "the logical corollary of that is that judicial interpretations of a statute must also be borne in mind".[29] Unless a Tribunal has regard to the relevant interpretations of higher courts when addressing a statute, the requirements of section 50(2) have not been met, and an appeal should be granted.

While persuasive, this argument imports too much into section 50(2). As argued in the previous section Parliament did not intend for Tribunals to become over-legalised. The rationale behind section 50(2) is best summed up in *NZI Insurance NZ Ltd v Auckland District Court*:

> ...whereas it might be thought unrealistic to require referees to have regard to common law principles, it would not be unreasonable or beyond the competence of a person qualified for appointment as a referee to expect him or her to have regard to relevant statutory provisions if they were brought to the referees attention at the hearing.[30]

Requiring referees to research, interpret and apply the relevant statutory interpretations in every case is practically inexpedient and detrimental to the operation and accessibility of Tribunals for administering justice at this level. What this also illustrates is that the jurisdictional boundaries are unclear and therefore these types of cases are not easily resolved by looking at the jurisdictional provisions of the Disputes Tribunals Act. The focus is the substantial merits and justice of the case.

3 Getting the law right

A party cannot appeal on the grounds that a referee based their decision on a mistake of law.[31] This entails that there is no control on the section 18(6) requirement that a referee have regard to the law insofar as this means getting the law right. This can be problematic. In *Saban v Crone*[32] the appellant agreed to allow his neighbour, the respondent, to prune a tree on the appellant's property. The respondent went about the task with some dedication and 'pruned' the tree to a stump, leaving the branches on the appellant's property. The appellant applied to the Small Claims Tribunal for compensation, alleging that he had specified a minimum height. The referee, unable to prefer the evidence of either party, dismissed the claim. The appellant then appealed to the District Court on the grounds that the Tribunal had no jurisdiction to hear the claim.

The Court accepted that as there was no contract - only a gratuitous licence - the Tribunal had made its determination outside the bounds of its jurisdiction. However the appeal was also dismissed. The question of jurisdiction was a question of law and as such was not a proper subject for appeal.

Is this a matter for concern? There is some protection in the Act against mistakes of law. Firstly, in situations where jurisdiction is mistakenly asserted by the Tribunal, the decision of the Tribunal is a nullity and can be struck out in an application for review in the High Court. Nevertheless, the costs of review are likely to be prohibitive given the sums involved. Secondly, the decision must be based on the substantial merits and justice of the case. There may be some situations, albeit a limited number, where an appellant can show that by misconstruing the law, this object was not acheived by the Tribunal and therefore the proceedings were conducted unfairly. For example a referee may decide in a particular case that the substantial merits and justice favour one party simply because the law is in their favour. If that 'law' is wrong then the case would no longer be decided on its merits. In practice, however, this will be difficult to show as a referee is unlikely to make a decision solely on the basis that it is the law. It is more likely that the law will be used to support other substantive considerations which go towards the merits of the particular case and therefore an appellant would be unable to challenge the decision.

Therefore the protection afforded by the Act is limited and it may be that some measure of reform is necessary to address this.[33]

4 The Tribunal is not bound to give effect to strict legal rights...

Peter Watts argues that:

> ...the use of the words "strict legal rights" is consistent only with the Tribunals not being required to make an order in favour of someone who has a common law right, not also with their conferring on someone a right which they would not have at common law.[34]

This interpretation is problematic for two reasons. Firstly, by refusing to enforce one party's common law rights, a Tribunal is in effect conferring a right, or an immunity, on another party which they would not ordinarily have at common law. Secondly, it fails to accord section 18(6) its full and natural meaning. This is especially true since Watts believes that a Tribunal can only ignore obstructive technicalities.This is not the case. Section 18(6) refers to rights and obligations and contrasts them with mere forms and technicalities.

To illustrate his point, Watts uses the example of a promise given without consideration. According to Watts, the promisee could not enforce the promise in a Disputes Tribunal. This is true, but not because of any limits on section 18(6). Rather it is because there is no contract and therefore no jurisdiction under section 10(1) of the Disputes Tribunals Act.

A better example might be where the parties dispute the existence of an implied term. The Tribunal, by its jurisdiction under section 18(6) could disregard the legal requirement that the term be necessary for business efficacy and imply a term if the substantial merits and justice of the case warranted such an implication. In doing so the Tribunal would be conferring a right which would not ordinarily exist at common law. Thus the interpretation suggested by Watts is to restrictive and fails to recognise the full extent of the quasi-legal jurisdiction open to Disputes Tribunals.

5 Summary

An appeal can only be made from the decision of Disputes Tribunal on the grounds specified in section 50 of the Disputes Tribunals Act. This means that an appeal cannot be based on the grounds that the referee chose not to apply the law or applied the law incorrectly, unless he or she did so in a manner which was procedurally unfair to the appellant. This entails the following:

* The referee must base their decision on the substantial merits and justice of the case, in accordance with section 18(6). A referee is not bound to apply the law.

* The referee must consider any relevant legislation brought to their attention, otherwise there is granted a right to appeal under section 50(2).

* There is also an obligation on the referee to consider any other legal principles of which he or she is aware in an unbiased manner, and to apply those principles except insofar as they conflict with the substantial merits and justice of the case. Otherwise an appeal will lie under section 50(1). This does not impose a duty to know the law in every situation.

* A party cannot appeal on a question of law. Therefore, where a Tribunal acts outside its statutory jurisdiction, that action will be reviewable in the High Court only.

* There can be no appeal on the merits of a Tribunal's decision. The discretion awarded to referees is final.

C A Quasi-legal Jurisdiction - a Necessary Feature

The limited grounds for appeal mean that in effect there is little or no control over the section 18(6) requirement that a Tribunal shall have regard to the law. Errors can and will occur for which there will be no remedy.

However, the loss of a right to complain about errors of law perpetuated by a lay-referee is a small price to pay for speed, simplicity and finality.[35] Strict legality is merely a factor in a political calculus where other values take precedence. If the focus is on strict adherence to the law, inevitably there will be an increase in lawyer involvement. This will increase the cost and the time it takes to resolve a dispute in the Disputes Tribunal. Advocacy and litigation will erode the ability of Disputes Tribunals to mediate disputes and the doctrine of precedent will prevent resolutions from being 'tailor-made' to suit particular grievances between particular disputants.

There is a more fundamental concern. Disputes Tribunals do not just provide faster, cheaper justice for those who would have obtained justice anyway. They also provide access to justice where previously there was none. To resolve a dispute in the courts takes a considerable amount of effort and expense. These factors alone are enough to deter would be claimants from filing a claim, especially where the cost of the claim exceeds the sum in dispute. This is plainly not satisfactory. If the law, and therefore lawyers, are to be a necessary part of the process, then the Disputes Tribunals are no different from the Courts: time consuming and expensive.

1 Informal justice

Disputes Tribunals should not be available to only a privileged few. That is why the emphasis is on appointing referees from the community; from both sexes and from different cultural backgrounds. Not everyone is able to cast their grievance within a legal framework and many people feel intimidated by the law and all its trappings. These people should not be prevented from expressing their legitimate grievances because the law is not accessible to them. This is not to say the law is irrelevant. It is not. The law is an important part of the dispute resolution process, and individuals should be encouraged to know their legal rights and obligations, especially as responsible consumers. Disputes Tribunals can aid in this process. They allow individuals to present their own case and are responsive to both the law and the

'substantial merits and justice of the case'. Thus Tribunals enable access to justice, but it is a different *kind* of justice and this raises issues of its own.

Tribunals are not perfect. Not everyone will be able to present their own case and often there will be an imbalance of power between the two parties so that a mediated settlement is likely be biased in favour of the stronger party. This is common in consumer disputes. Most consumers are likely to bring isolated claims against traders who have used the system many times.

The Disputes Tribunals Act aims to minimise the effects of this. Section 38(2) permits a Tribunal to approve a representative if it is appropriate in the circumstances. Section 38(3) specifies certain instances where it will be appropriate, such as where one party is a minor or is unable to present his or her case adequately. Under section 38(5) support persons are permitted to be present, though they may not speak. The Justice Department also provides interpreters where necessary, although half of the Tribunals providing this service currently charge for it.[36] Perhaps most importantly, by virtue of section 18(3) there is no obligation on referees to approve an agreed settlement. This can serve to protect one party from being 'rail-roaded' into an agreement which they do not support.

Under section 18(1) the Tribunal must first assess whether mediation is appropriate. This provision differs from section 15(1) of the Small Claims Tribunals Act which placed the primary focus on agreed settlements. Nonetheless, both tribunals acted as a mediation/arbitration hybrid. This type of informal jurisdiction has been criticised on the grounds that it is overly intrusive and coerces the parties into agreeing to an unsatisfactory settlement:

> ...an arbitrator's impartiality is impaired if she participates in confidential caucuses with the disputants under the auspices of a mediator. Instead of retaining the formal distinction between mediation and arbitration, which emphasizes differences between the authority of an arbitrator to make a binding decision and the tools of persuasion available to the mediator who merely recommends a solution, together they function to transform the mediation process into a more proactive type of intervention than pure mediation implies.[37]

The parties may reveal confidential information to the referee acting as a mediator which they would not have revealed to a referee acting as an arbitrator. This compromises the referee's objectivity as an arbitrator and undermines the effectiveness of mediation. The parties know that if they do not reach an agreed settlement the referee will 'reach an agreement for them'. This forces the parties to reach their own 'agreement' as they have already divulged any information which would have been kept confidential in an adjudicatory setting. Furthermore, there is a danger that mediation will dissolve into mere compromise.

A recent report by the Ministry of Consumer Affairs found that one half of consumers who had settled their dispute by agreement were dissatisfied with the settlement; "[s]ome felt pressured to settle, others just 'gave up'."[38] This is not encouraging and suggests that the Disputes Tribunals may actually be undermining the rights of consumers and therefore any 'justice' gained through increased access.

However, overall most consumers were satisfied with their experience in Disputes Tribunals[39] and it is likely that the satisfaction rates for consumers in the District Court (those of them who got there) will be lower still. Disputes Tribunals, because of their special jurisdiction have the benefit of flexibility; they are faster and more responsive to particular fact situations than the courts. The mediation/adjudication hybrid enables the referee to dispense with stalemates and he or she can also assign different processes to different elements of a dispute. For example the referee might

make a ruling on the quantam of a debt, but let the parties negotiate an appropriate repayment schedule to suit themselves. The referee can also decide what process will best suit the parties in the circumstances. This decision is critical as it will be determinative of the parties' satisfaction with the outcome. Ultimately, therefore, the success of mediation will depend on the quality of the referee. This is recognised by the Justice Department and is a factor in employing and training Referees.[40]

The informality of Disputes Tribunals not only makes Tribunals more accessible, it also allows them to operate a broad spectrum of services which were not previously available. They are an avenue for the lay person to obtain justice or even just to "...'have their say', be listened to and have things clarified in their minds."[41] A singular, exclusively legal approach cannot and should not be applied to this type of claim. Often hearings are used to explain why a debt has not been paid and to arrange for payment by instalments. It is reasonable to assume that people are more likely to meet their obligations where they have negotiated a realistic repayment schedule themselves, than where one has been imposed by the Courts.[42] The law is of no use in this situation because ultimately it is practical considerations, such as the parties' means, which will determine the outcome.

Thus the more informal a small claims resolution system is, the more effective it is at targeting the the sorts of claims and parties the system is designed to reach. Experience in both New Zealand and in other jurisdictions has consistently shown this to be the case.

In New Zealand the Courts of Request, established in 1844, fulfilled the same function as the modern-day Disputes Tribunals, at least insofar as they addressed small claims. There was one important difference: their directive was to "proceed according to the laws in force."[43] Given this, it is not surprising that they were short-lived. They parallelled the ordinary courts in their operation, fulfilled no distinctive function and were accordingly disestablished.[44]

The London Small Claims Courts suffered a similar fate because again they remained overly legalistic. Claimants were advised to obtain legal advice, and even though the adjudicators played an investigatory role, the hearings were conducted adversarily with almost exclusive reference to the law. This resulted in the 'capture' of the Small Claims Courts by businesses and repeat users. Individuals seldom appeared, except as defendants and even then they were unlikely to file a defence. The system lasted only six years.[45] In Northern Ireland, in 1989, the set-up was essentially the same. Business claimants out-numbered individuals by twelve to one, and individuals seldom filed a defence to a claim.[46]

In Canada, Small Claims Courts were widely criticised in the 1970's for being dominated by businesses who used them largely as debt collection agencies. In response to this criticism the Courts were informalised to a greater degree, and the public perception of them is now generally more favourable.[47]

What can be gleaned from these examples is that not only is an informal approach to dispute resolution appropriate for Disputes Tribunals, it is probably also a necessary feature of their continued existence. It is a straightforward equation: unless Tribunals are accessible, consumers will not use them. Disputes Tribunals will not be accessible if they are perceived and operated as a strictly legal forum because the legal process involved in bringing a claim to the Tribunal:

- costs too much;
- takes too long;
- is too inflexible to respond to individual circumstances;
- is too alien and complex for the ordinary person to comprehend; and
- is too intimidating for the ordinary person to even want to invoke.

Therefore it is best that the quasi-legal jurisdiction of Disputes Tribunals be retained so that they remain as efficient and as non-terrifying as possible, while still providing a widely acceptable and authoritative mechanism for resolving disputes.

2 Grounds for appeal

Once the viability of the Tribunals' quasi-legal jurisdiction is accepted, then necessarily the grounds for appeal must be limited. Regarding this, Phillip Woolaston, the Associate Minister of Justice at the time the Disputes Tribunals Bill was introduced, stated:

> Appeals on the merits are totally inconsistent with the legislation, for the simple reason that the way by which a solution is arrived at in a Tribunal is quite different from the rules and procedures that apply in ordinary Courts.[48]

Thus it is Parliament's clear intention that Tribunals should operate differently from the ordinary courts. Because of this, appeals on the merits and on questions of law are not permitted by the Disputes Tribunals Act. It is only when the hearing is marred by procedural unfairness that an appeal can be heard by the District Court. This is entirely appropriate.

III THE SCOPE OF THE TRIBUNALS' JURISDICTION

A The Primary Jurisdiction of Disputes Tribunals

A discussion of jurisdiction involves two different types of question:

(i) Whether a particular kind of claim can be heard by a Disputes Tribunal (claim jurisdiction) ; and

(ii) Whether a Disputes Tribunal has the power to make a particular type of order (power jurisdiction).

The claim jurisdiction of Disputes Tribunals is established primarily by section10(1) of the Disputes Tribunals Act. It provides that a Tribunal shall have jurisdiction in respect of:

(a) a claim founded on contract or quasi-contract; and

(b) a claim for a declaration that a person is not liable to another person in respect of a claim or demand, founded on contract or quasi-contract, made against that person by that other person...

An action is 'founded on contract' if it "...is one for the successful maintenance of which it is necessary to rely on, or prove, a contract."[49] It is not necessary that an actual term of the contract be in dispute.

Section 10(2) of the Disputes Tribunals Act supplements section 10(1). It states that a Tribunal shall have *such other jurisdiction* as is conferred on it by any other enactment, specified in the first schedule. Thus subsequent legislation confirms the specific jurisdiction of Disputes Tribunals in respect of that legislation, but cannot derogate from any pre-existing jurisdiction established under section 10(1) of the Disputes Tribunals Act. This is important because the Justice Department has interpreted two enactments specified in the first schedule - the Credit Contracts Act 1981 and the Hire Purchase Act 1971 - in such a way that they do just that.[50] These two Acts supposedly limit the ambit of the Tribunals' jurisdiction under section 10(1) of the Disputes Tribunals Act, rather than merely adding to it.

It should be noted that section 10(1) is subject to the rest of section 10 - and therefore to section 10(2). However the wording of section 10(2) is explicit; Parliament clearly intended for it to expand on the primary jurisdiction created by section 10(1). That is the ordinary meaning of the words 'shall have such other jurisdiction'. The main reason that section 10(1) is subject to the rest of section 10 is so that the Tribunal can only exercise its jurisdiction when the total amount claimed does not exceed $ 3000. The fact that section 10(1) is subject to section 10(2) merely denotes that section 10(1) is not exclusive of any subsequent jurisdiction.

B The Credit Contracts Act 1981

The principle of uniform disclosure is fundamental to the Credit Contracts Act.[51] This is enforced under the disclosure provisions contained in Part II of the Act. These provisions set down the disclosure requirements and enable a court to declare a contract unenforceable and impose stringent penalties for non-disclosure, as well as being able to grant relief from these. Nonetheless, for credit agreements involving a relatively low principal, the disclosure provisions of the Credit Contracts Act are frequently corrupted. There are two reasons for this:

(i) Consumers are not aware of their rights under the Credit Contracts Act; and

(ii) at present, enforcement is only possible throught the courts. Therefore, where relatively small sums of money are involved, the Credit Contracts Act is practically unenforceable because it is simply not worth the expense, time and effort to bring a claim to court.

The blame for this lies partly with Parliament for drafting unclear consumer legislation, but primarily with the Justice Department for taking an unnecesarily restrictive approach to that legislation.

1 The restrictive approach

Section 45A(1) of the Credit Contracts Act provides that a Tribunal shall have jurisdiction to exercise any power conferred on a court by Part I of this Act. The Act is silent with respect to Part II. The implication is that a Tribunal has no jurisdiction with respect to the disclosure provisions contained in Part II, by the maxim *expressio unius est exclusio alterius.*[52] The sections in the various enactments which confer jurisdiction on Disputes Tribunals are very specific. The argument is that such particularity denotes Parliament's intention to limit the jurisdiction of Disputes Tribunals to those sections expressly mentioned.

It is submitted that this argument is by no means conclusive and furthermore, that there is scope within the existing legislation for Disputes Tribunals to have jurisdiction with respect to Part II of the Credit Contracts Act. Moreso, jurisdiction is not only possible, it is necessary to achieve the objectives of both the Credit Contracts and Disputes Tribunals Acts.

2 Alternative interpretations

'Expressio unius' is only a maxim. "Allowance must always be made for the fact that the *'exclusio'* may have been accidental, still more for the fact that there may have been good reason for it."[53] Prior to the enactment of section 45A(1) of the Credit Contracts Act, a Disputes Tribunal had no power to re-open an oppressive credit contract within the meaning of Part I of that Act.[54] By virtue of sections 18 and 19 of the Disputes Tribunals Act however, a Disputes Tribunal already had the jurisdictional power to enforce the statutory rights and obligations arising under Part II of the Credit Contracts Act. Therefore, an express reference to Part II would have been superfluous or, at the very least, conceivably overlooked.

This can be contrasted with the jurisdiction of District Courts conferred by section 45 of the Credit Contracts Act. District Courts are given express jurisdiction over the entire Act. However, unlike the Disputes Tribunals Act, the District Courts Act 1947 did not contain provision for the exercise of the kinds of powers anticipated by Part II of the Credit Contracts Act. For example, section 33 of the Credit Contracts Act provides for the alteration of the penalties for non-disclosure by agreement between the parties. Prior to the enactment of section 45 of the Credit Contracts Act, a District Court would not have had the power jurisdiction to enforce such an agreement. A Disputes Tribunal, by comparison, could enforce such an agreement by virtue of section 18(3) of the Disputes Tribunals Act.

Remember the primary claim jurisdiction of Disputes Tribunals is created by section 10(1) of the Disputes Tribunals Act. The powers a Tribunal can legitimately exercise are those specified in Sections 18 and 19 of the same act. Section 45A(1) of the Credit Contracts Act is part of the supplementary jurisdiction introduced by section 10(2) of the Disputes Tribunals Act. As such it should be *additional* to the primary jurisdiction established by the Disputes Tribunals Act. The Disputes Tribunals Act is the empowering Act of the Tribunals; it created the Tribunals and defines their nature and scope. A tacit implication from section 45A(1) of the Credit Contracts Act should in no way limit this. To do so is to limit the very nature and purpose of Disputes Tribunals.

3 Tuulua v Jackson Investments Ltd[55]

This was a claim brought before a Disputes Tribunal. It can serve as a useful example as to how a Tribunal might exercise its jurisdiction over the dislosure provisions contained in Part II of the Credit Contracts Act.

The applicants (T) purchased purchased a car from the respondent (J), subject to a controlled credit contract. Over an eight month period, T made a number of payments to J, until they were informed by J that they were in arrears pursuant to the agreement. However, due to an error on J's part, T had never received a copy of the agreement. On being informed of this, J immediately posted a copy of the agreement to T. The sale price shown on the agreement was disputed by T. They claimed that the agreed price was $ 8700, whereas the credit agreement showed the total price to be $ 9 000. T lodged a claim with the Disputes Tribunal to have the sale price reduced to the lower figure of $ 8 700.

At an interim hearing the parties agreed that the sale price should be $ 8 700. The Referee also decided that initial disclosure had not been made in accordance with section 16 of the Credit Contracts Act and that therefore J might be liable for penalties under section 25 of that Act. This would entitle T to receive a maximum of $ 5 672.40 from J. The referee invited the parties to prepare submissions on the claim and adjourned the hearing *sine die*. At the subsequent hearing the referee struck out the claim on the grounds that the Tribunal had no jurisdiction with respect to Part II of the Credit Contracts Act.

With respect, it is submitted that this determination was mistaken and that the Tribunal had the necessary jurisdiction under the Disputes Tribunals Act. In order to invoke the disclosure provisions under Part II, a party must first prove a 'controlled credit contract' as defined by the Credit Contracts Act, section 15. Therefore, any action under Part II will either be 'founded on contract' or for a declaration of non-liability for a claim founded on contract, and comes under the claim jurisdiction established by section 10(1) of the Disputes Tribunals Act.

It is useful to chart the jurisdiction of Disputes Tribunals with respect to the Credit Contracts Act, in the following way. In the chart 'Disputes Tribunals Act' has been abbreviated to DTA and 'Credit Contracts Act' to CCA.

Does the dispute fall within Part I or Part II of the CCA?

Part II

Primary jurisdiction - section 10(1) of the DTA

For a Tribunal to have jurisdiction the dispute must be either 'founded on contract' or for a declaration of non-liability in respect of a claim founded on contract'

To maintain an action under Part II of the CCA it is first necessary to prove a controlled credit contract. Therefore Part II of the CCA falls within the primary jurisdiction of Disputes Tribunals under section 10(1) of the DTA.

Power Jurisdiction - sections 18 and 19 of the DTA

Section 19(1) of the DTA- A Tribunal may, as regards any claim within its jurisdiction, make one or more of the following orders...

The Disputes Tribunal can therefore exercise its powers under the DTA in accordance with the provisions contained in Part II of the CCA. Because it is operating under the DTA it can exercise only those powers specified in the DTA and subject to such limits as the DTA imposes.

Part I

Secondary jurisdiction - section 10(2) of the DTA

A Tribunal shall have such other jurisdiction as is conferred on it by any other enactment.

Section 45A(1) of the CCA specifically confers jurisdiction on a Disputes Tribunal to exercise the powers contained in Part I of the CCA. These add to the powers a Tribunal already has in respect of the CCA under its primary jurisdiction.

4 *The power jurisdiction of Disputes Tribunals*

As well as the general claim jurisdiction established by section 10(1), the Tribunal also has its own power jurisdiction, conferred by sections 18 and 19 of the Disputes Tribunals Act,[56] which it can exercise so as to enforce the Credit Contracts Act. Therefore the Tribunal in *Tuulua v Jackson*[57] could have:

(i) enforced the parties' agreement on the lower sale price, under section 18(3) of the Disputes Tribunals Act.

(ii) decided whether the disclosure provisions of the Credit Contracts Act had been breached, by virtue of its section 10(1) claim jurisdiction.

(iii) enforced the statutory penalties for non-disclosure. Whether a penalty applies is not a matter of discretion. It is a statutory entitlement which applies automatically, subject to an application by the credit provider under sections 31 to 33 of the Credit Contracts Act. The Tribunal is empowered by section 19(1)(a) to order one party to pay money to another. That is exactly the effect of a monetary penalty under the Credit Contracts Act. The Tribunal would not have been exercising a power under the Credit Contracts Act. It would have exercised a power under its own jurisdiction, conferred by the Disputes Tribunals Act, in accordance with the statutory rights and entitlements contained in Part II of the Credit Contracts Act.

(iv) declared the agreement unenforceable in accordance with section 24 of the Credit Contracts Act, under section 19(1)(b) of the Disputes Tribunals Act.

(v) granted relief for inadvertent non-disclosure as provided in section 31 of the Credit Contracts Act. The same powers contemplated in section 31 are contained in section 19(1)(b) of the Disputes Tribunals Act. Again, the statutory rights and entitlements contained in the Credit Contracts Act would not be enforced by a Disputes Tribunal under that Act, but under its primary jurisdiction conferred by the Disputes Tribunals Act.

(vi) enforced an agreement between the parties for the reduction of the statutory penalties in accordance with section 33 of the Credit Contracts Act. Section 18(3) of the Disputes Tribunals Act enables a Tribunal to do this.

(vi) granted relief from the statutory penalties in accordance with section 32 of the Credit Contracts Act. Section 32 is different from the other sections contained in Part II. It does not merely define a statutory entitlement but rather confers a power on a court to grant relief. A Disputes Tribunal is not a court for the purposes of section 32. Section 32(1) provides that the Court may, on the application of the creditor, order:

> (a) that any of the sections 24 to 28 [the penalty provisions] shall not apply; or
>
> (b) that an amount for which liability has been extinguished pursuant to any of those sections be reduced to an amount specified by the Court.

A Tribunal has the jurisdiction to exercise these types of powers also, again under its general jurisdiction as provided in sections 18 and 19 of the Disputes Tribunals Act. Section 18(6) of the Disputes Tribunals Act states that a Tribunal shall not be bound to apply the law. Thus a Tribunal already has the jurisdiction to order that 'any of the sections 24 to 28 shall not apply'. Furthermore, the Tribunal can reduce the statutory penalties, as contemplated by section 32(1)(b) of the Credit Contracts Act, by virtue of its power to reduce liability under section 19(1)(b) of the Disputes Tribunals Act. However, as the Tribunal's jurisdiction derives from the Disputes Tribunals Act, it must act within that jurisdiction and is therefore bound to determine the dispute on the

substantial merits and justice of the case. It cannot refer to the broader grounds specified in section 32(2) of the Credit Contracts Act. The Tribunal is limited to the jurisdiction that is conferred by the Disputes Tribunals Act and cannot claim any additional powers unless they are specified in another enactment. The Credit Contracts Act does not confer any additional powers with respect to Part II, but only to Part I.

This expansive interpretation of the Disputes Tribunals Act in relation to section 32 of the Credit Contracts Act goes against even that of the Ministry of Consumer Affairs.[58] In the Ministry's opinion, a Tribunal cannot exercise the kind of power anticipated by section 32. It is important to note that even if this is the case, this does not entail that an application by a credit provider under section 32 will oust a Tribunal's jurisdiction altogether.

Section 36(1) of the Disputes Tribunals Act only requires a Tribunal to strike or transfer proceedings if it has no jurisdiction to hear and determine those proceedings. Jurisdiction is only limited as to the powers a Tribunal can lawfully exercise; a Tribunal could still hear and determine the dispute under its section 10(1) claim jurisdiction. Therefore the Tribunal could still order that the statutory penalties for non-disclosure be imposed, but this order would be subject to the credit providers right to apply to the District Court for relief under section 32 of the Credit Contracts Act. This is perfectly in keeping with the self enforcing nature of the Credit Contracts Act, the importance assigned to disclosure in the Act[59]and the requirement that the penalty provisions be 'subject to' section 32. Furthermore, section 19(2) of the Disputes Tribunals Act specifically authorises a Tribunal to impose such conditions as it sees fit. Thus the Tribunal is authorised to make an order 'subject to' an application for relief.

However, it is submitted that this unduly burdens both parties and unnecessarily complicates the process. The forseeable consequence of accepting the Ministry's interpretation is that credit providers will always apply for relief under section 32 and therefore, the whole purpose of admitting access to the Disputes Tribunals - avoiding the difficulties associated with access to the Courts - is defeated. The objectives of the legislation are only really achieved if Tribunals have jurisdiction over the whole of Part II.

C The Hire Purchase Act 1971

Section 47A of the Hire Purchase Act provides that a Tribunal shall have jurisdiction to exercise the powers conferred by sections 10(1) and 26(2) of this Act. Again, the implication, by the maxim *expressio unius,* is that a Tribunal does not have jurisdiction to exercise the powers contained in the rest of the Act. However, it is submitted that this implication does not limit any pre-existing jurisdiction conferred by the Disputes Tribunals Act. A Disputes Tribunal is authorised to hear certain claims and exercise certain powers by the Disputes Tribunals Act. It is also authorised to exercise such other jurisdiction as is conferred on it by any other enactment. This supplementary jurisdiction should not detract from the Tribunals' former type of jurisdiction. To do so creates arbitrary distinctions in the law and unduly limits the effectiveness and accessibility of Disputes Tribunals to both consumers and traders.

The Hire Purchase Act expressly increases the jurisdiction of Disputes Tribunals with respect to two provisions.

Section 10(1) of the Hire Purchase Act empowers a court to impose conditions on the variation of a hire purchase agreement. It also states that the variation will not be enforceable without the leave of the court. Prior to the enactment of section 47A of the Hire Purchase Act, a Disputes Tribunal was not specifically authorised to exercise such a power. The Tribunal was not 'the Court' for the purposes of the Hire Purchase Act and sections 18 and 19 of the Disputes Tribunals Act do not contain provision for this type of power. Therefore, it was necessary to expressly confer jurisdiction on Tribunals with respect to this section.

Section 26(2) is the same. It provides for a very wide range of discretional powers to grant relief to the purchaser, including the power to vary the agreement, where a vendor has either served a notice of repossession or repossessed the goods. Prior to the enactment of section 47A of the Hire Purchase Act, a Tribunal did not have the jurisdiction to exercise these powers.

However, like the Credit Contracts Act, there are a number of provisions in the Hire Purchase Act over which a Tribunal could exercise its jurisdiction under the Disputes Tribunals Act, even though these are not specifically mentioned in section 47A of the Hire Purchase Act. These include disputes relating to the lack of disclosure, the statutory penalties for non-compliance and the consequences of a failure to meet the statutory notice requirements.

Until the enactment of the Consumer Guarantees Act 1993, these also included disputes as to the statutory requirements of quality and fitness contained in sections 11 to 14 of the Hire Purchase Act. It is especially odd that a Tribunal should not be said to have jurisdiction with respect to these, as they were deemed to be implied terms in every hire purchase agreement. Yet this is precisely what the Justice Department maintained.[60] This severely undermined the contractual jurisdiction of Disputes Tribunals and created an arbitrary distinction in the law, between ordinary contracts of

sale with implied terms of quality and fitness and hire purchase agreements with similar implied terms.

This is not to argue that Tribunals have jurisdiction over the Hire Purchase Act in its entirety, only that they have the full extent of the jurisdiction that is conferred by the Disputes Tribunals Act. For example, section 35 permits the court to vary the judgments of other courts in relation to the hire purchase agreement. It is not appropriate that Disputes Tribunals should be able to exercise this power, and under the Disputes Tribunals Act they cannot. There are some additional sections over which a Tribunal cannot exercise its jurisdiction, such as sections 20, 31 and 45.[61] These may be a proper subject for reform, but at present a Tribunal cannot act in accordance with them because it does not have the power jurisdiction to do so. However, this should not prevent Disputes Tribunals from acting in accordance with the Hire Purchase Act, where that action is within the scope of the Tribunals' primary jurisdiction, as defined by the Disputes Tribunals Act.

D The Door to Door Sales Act 1967

Any credit contract not made at appropriate trade premises is covered by the Door to Door Sales Act. Under section 5 of that Act, a credit agreement not made at appropriate trade premises is deemed unenforceable if the diclosure requirements of section 6 are not met. Section 6(ba) requires the finance rate and the total cost of credit to be disclosed in accordance with Part II of the Credit Contracts Act.

Disputes Tribunals are not expressly mentioned under the Door to Door Sales Act. Therefore, any jurisdiction a Tribunal has over credit agreements not made at appropriate trade premises originates from the Dispute Tribunals Act. A Disputes Tribunal can hear a claim alleging non-disclosure in breach of the Door to Door Sales Act by its primary jurisdiction under section 10(1) of the Disputes Tribunals Act. From here a Tribunal faces two possible alternatives:

(i) It could determine the claim but would be unable to declare the contract unenforceable. This possibility arises because of the *expressio unius* maxim. The argument is that because the Door to Door Sales Act imports the Credit Contracts Act provisions on non-disclosure and the Tribunal does not have jurisdiction with respect to those it also does not have jurisdiction with respect to the Door to Door Sales Act. This is a long-winded argument and goes against the natural construction of the Disputes Tribunals Act. The Door to Door Sales Act does not confer an express jurisdiction on Disputes Tribunals, nor is it mentioned in the first schedule to the Act. However an express jurisdiction is established by section 10(1) of the Disputes Tribunals Act. Therefore the Credit Contracts Act and section 10(2) of the Disputes Tribunals Act are irrelevant. There is no basis for the claim that the supplementary jurisdiction established by section 10(2), or implications based on the Credit Contracts Act, limit the operation of Disputes Tribunals with respect to the Door to Door Sales Act.

(ii) The Tribunal can declare the contract unenforceable under section 19(1)(b) of the Dispute Tribunals Act in accordance with section 5 of the Door to Door Sales Act. This creates an interesting dichotomy. According to the restrictive interpretation of the Credit Contracts Act, a Disputes Tribunal does not have the requisite jurisdiction to declare a contract unenforceable for non-disclosure under the Credit Contracts Act. The disclosure provisions of the Credit Contracts Act and the Door to Door Sales Act are identical. Therefore, if the restrictive interpretation is correct, the power to declare a contract unenforceable depends solely on where the contract was executed! The alternative is to accept that Tribunals currently have the jurisdiction to enforce the disclosure provisions of the Credit Contracts Act, as well as those of the Door to Door Sales Act. This alternative is preferable. The question of jurisdiction should be based on more substantive considerations than the premises on which the contract was executed.

Therefore a Tribunal has jurisdiction over the Door to Door Sales Act by virtue of its general jurisdiction under section 10(1) of the Disputes Tribunals Act, even though specific jurisdiction is not conferred by the Door to Door Sales Act.

This same conclusion applies to all three Acts. Parliament has decided the scope of the Tribunals' jurisdiction in the Disputes Tribunals Act. Where necessary Parliament has increased that jurisdiction through other Acts. This specific jurisdiction supplements, but does not detract from, the primary jurisdiction conferred by the Disputes Tribunals Act. Given that the object behind the Disputes Tribunals Act is providing access to justice, and that the Hire Purchase, Credit Contracts and Door to Door Sales Acts aim to protect consumers, it is also the meaning which gives each Act such 'fair, large, and literal construction as will best assure the attainment of the object of [each] Act' in accordance with section 5(j) of the Acts Interpretation Act 1924. There is scope in the legislation for jurisdiction; it only remains to be shown that jurisdiction is actually necessary.

IV SHOULD TRIBUNALS HAVE JURISDICTION?

A Caveat Creditor and the Need for Realistic Enforcement

All three Acts: the Credit Contracts Act; the Hire Purchase Act; and the Door to Door Sales Act are aimed at consumer protection. Concepts such as uniform disclosure are fundamental to their operational philosophy. This is evidenced by the preamble to the Credit Contracts Act - the aims of disclosure being to:

> (b) Ensure that all the terms of contracts are disclosed to debtors before they become irrevocably committed to them; and
>
> (c) Ensure that the cost of credit is disclosed on a uniform basis in order to prevent deception and encourage competition.

It is clear from the automatic imposition of treble damages that these aims are to be taken seriously.[62] On its introduction into Parliament, former Prime Minister and Minister of Justice, Geoffrey Palmer stated:

> The old principle of common law was caveat emptor - let the buyer beware - but the new principle of common law in the Bill is caveat creditor - let the creditor beware. The Bill aims to improve the protection of the consumer.[63]

The current situation makes a mockery of this principle. In a letter to the Justice and Law Reform Committee, dated 3 February 1994, the Ministry of Consumer Affairs stated:

> We receive a large number of enquiries and complaints about credit agreements and certainly these tend to be among the most serious. Frequently the disclosure provisions of the Credit Contracts Act have not been met. This may be a failure to disclose the finance rates,[64]or incorrectly staing the amount financed... it is also common for the initial disclosure provisions to be flouted totally by failure to provide a copy of the credit agreement.

This situation has occurred because few consumers are aware of their rights under the Credit Contracts Act and even fewer have the knowledge, experience or finance to pursue an action against a credit provider in the District Court. The Credit Contracts, Door to Door Sales and Hire Purchase Acts were designed to provide self-help remedies to the consumer.[65] This is apparent from the structure of the Acts; it is the creditor who must apply for relief from the 'automatic' penalties. However, under the present structure, where the only available enforcement agency is the District Court, this is not the case. In practice it is the debtor who must bring an action to court because credit providers are not likely to self-impose the penalties for non-disclosure.

In some situations, where the disclosure provisions of the Credit Contracts Act have been breached, a consumer will stop making payments in accordance with the penalties. However this poses the risk of repossession when the amount owing under the contract minus the penalty - the 'specified amount' - is repaid. This is exacerbated for chattel mortgages where no notice is required before repossession.[66] While in theory a consumer could negotiate with the credit provider to accept the reduction as a self-imposed penalty, this is extremely unlikely in practice, especially if the credit provider knows that the consumer will be forced to go to Court to enforce his or her rights under the Hire Purchase and Credit Contracts Acts.

Furthermore, a Credit provider who knows that there is very little risk of enforcement is less likely to meet the various requirements, such as disclosure and proper notice, in the first place. There is in effect nothing to 'beware'. This is especially true where credit agreements are of a relatively low value because it is simply not worth the time and expense necessary to bring a claim to Court. Yet this is precisely where Disputes Tribunals would be most beneficial. This has been the evidence in Australia:

> The mere existence of the Tribunals is said to have induced businesses to be less recalcitrant because now there is greater possibility of an action being taken against them.[67]

Thus the presence of Tribunals can have a preventative effect also. If there is access to justice, there is less of a demand for it in the first place. The difference between New Zealand and Australia is that in Australia the legislation put in place to protect consumers is practically enforceable.

It is naive to think that the threat of sanctions such as treble damages will change illegal trade practices unless there is access to an inexpensive, fast and authoritative mechanism for enforcing consumer rights. Viewed against the importance and the intended self-enforcing nature of the rights protected by the Hire Purchase and Credit Contracts Acts, it is insupportable that consumers should be denied access to Disputes Tribunals.

B Access To Justice - an End in Itself

The previous section looked at access to justice as a means to an end - namely the realistic enforcement of consumer legislation and thereby achievement of its objectives. However, there is a more fundamental issue at stake. Consumer legislation aims to protect the rights of consumers; not just some consumers, but all consumers. This aim cannot be achieved if the only means of enforcing those rights is through the courts, because those consumers who cannot afford to enter the court system receive no protection. Therefore most consumers with small claims do not have equal access to justice because in practical terms they cannot afford to go to court.

However, expense is not the only factor in assessing the effectiveness of Tribunals as an accessible mechanism for resolving disputes and administering justice. Tribunals are also faster and are more responsive to particular fact situations. They are more representative of the community and do not reqire legal expertise. To deny consumers access to Disputes Tribunals when their rights have been clearly infringed is to seriously undermine the principles of equal access to justice. It places the consumer in a Catch 22 situation. He or she can either go to court or write off their loss; either way the consumer loses. At least by writing off the loss they lose less in terms of the time and effort it takes to get to court.

C Enforcing Consumer Legislation - an Appropriate Function?

The imposition of penalties requires the exercise of a punitive function. It has been suggested that this is not therefore an appropriate function for Disputes Tribunals to assume. This objection is misplaced. The penalties are an automatic sanction imposed by Parliament and as such can and should be enforced by Tribunals. The alternative is that the penalties will not be imposed at all because the courts are not a viable option for enforcing small claims. Most cases will involve a genuine dispute as the credit provider is likely to apply for relief under the legislation. It might be argued that the exercise of a punitive function is not consistent with the goals of settlement espoused by the Disputes Tribunals Act. Against this, section 33 of the Credit Contracts Act provides for the reduction of the statutory penalties by agreement between the parties. The consumer legislation actually incorporates the type of approach used by the Tribunals. Furthermore, settlement is not the only option open to the Tribunals. Section 18(1) of the Disputes Tribunals Act recognises that adjudication may be more appropriate in certain circumstances. Hearing claims founded on contract such as, whether a contract is enforceable, whether the total cost of credit has been disclosed, or whether relief should be granted from the penalties for non-disclosure, is a function to be properly assumed by Disputes Tribunals.

It has also been argued that the complexity of credit disputes makes it more appropriate that jurisdiction be restricted to the courts. This is also misplaced. Referees have indicated that they do not consider credit disputes to be particularly complex compared with the variety of contractual disputes which come before the Tribunals.[68] Nor are credit agreements so complex that a Tribunal cannot re-open a contract that it decides to be oppressive within the meaning of Part I of the Credit Contracts Act, or vary an agreement in accordance with section 26(2) of the Hire Purchase Act. Most of the issues arising under these Acts are purely factual and therefore a referee is no less qualified than a judge to resolve them.

The objection is stronger when the Tribunals' approach to legal issues is called into question. Complex legal issues can arise under the Credit Contracts, Hire Purchase and Door to Door Sales Acts. The agreements they cover are binding, legal agreements, entered into on the understanding that the law would govern their operation. Yet under section 18(6) of the Disputes Tribunals Act a Tribunal is not bound to apply the law. Referees are not required to be legally trained, and only about a quarter currently are.[69] Lawyers are not permitted to be present at the hearing, and the prohibition on costs discourages even legal advice.[70] Taking these factors into account, are Disputes Tribunals the appropriate forum for resolving consumer disputes?

The answer is still yes. The initial response to these objections is that Tribunals are enabled to resolve the legal issues which arise under Part I of the Credit Contracts Act, and are therefore equipped to answer the issues arising under Part II also. However, even this limited jurisdiction might raise some objections, so this is no answer.

V SUGGESTIONS FOR REFORM

A Raising the Monetary Limit

Section 10(3) of the Disputes Tribunals Act provides that:

> ...a claim is within the jurisdiction of a Tribunal only if the total amount in respect of which an order of the Tribunal is sought does not exceed $ 3 000...

Under section 13, this can be extended to $ 5 000 by an agreement between the parties.

The wording of section 10(3) enables a Tribunal to have some flexibility. In *Tuulua v Jackson*[72] T was entitled to a maximum of $ 5672.40. They reduced their claim to a total of $ 3000 in order to bring it within the Tribunal's jurisdiction. However, J had applied for a reduction of penalties under the Credit Contracts Act. This reduction should not be subtracted from the figure of $ 3000, but instead it should be subtracted from the initial figure of $ 5672.40. In this way, even if a reduction was granted, T still may have been able to recover $ 3000. Applicants should word their claims so that the sum of the total amount to which they are entitled, less any reductions, does not exceed $ 3000. This is some compensation for having to reduce the amount of the claim in the first place.

The reduction of claims in order to satisfy the $ 3000 monetary limit are a common-place occurrence; testimony to the fact that "...there is a signifcant gap between the current monetary limit in the Disputes Tribunals and what is financially viable to take to the District Court."[73] In accordance with this the Ministry of Consumer Affairs has recommended that the monetary limit be raised to $ 5000, with an additional limit of $ 10 000 by agreement between the parties.[74] There is some merit in these recommendations. The monetary limit has not been reviewed in seven years and it is probably in keeping with inflation and the increasing competence of Disputes Tribunals.

In general terms the viability of the Tribunals' quasi-legal jurisdiction has already been discussed.[71]However, in relation to the three 'consumer Acts', as far as the parties' expectations go, if they expect the law to govern their relationship then it is likely that this will significantly affect the approach adopted by the Tribunal. In fact the merits are unlikely to deviate much from the law as the Hire Purchase, Credit Contracts and Door to Door Sales Act seem tailor-made for the Tribunals' special jurisdiction. For instance, section 32 of the Credit Contracts Act which provides for relief from the statutory penalties for non-disclosure is highly permissive. In deciding to make such an order the court can take into account 'such other matters as it sees fit'. This clearly allows for a 'substantial merits and justice' approach to dispute resolution. Furthermore, disputes will often arise between parties who have an ongoing credit relationship and therefore it may be more appropriate that they decide for themselves the future operation of that relationship (with the help of a referee), rather than have a decision imposed by the court which may be practically unworkable or unsatisfactory for future dealings. A practical resolution will often be more desirable than a singularly legal one - moreso when the cost of a legal resolution far exceeds the benefits to be had from it. The consumer claims which come before the Tribunal are everday disputes, brought by ordinary people without legal expertise or huge budgets marked 'justice'. Instances of non-disclosure or insufficient notice are everyday occurrences suffered by consumers all too often. Some remedy, even a non-legal one, is better than none.

Therefore, the Disputes Tribunals jurisdiction is both necessary and appropriate for the enforcement of consumer rights under the Hire Purchase, Credit Contracts and Door to Door Sales Act. There is a social need for jurisdiction and there is scope for jurisdiction within the existing provisions of the Disputes Tribunals Act, in combination with these three consumer Acts. It only remains for this to be recognised.

However, caution should be exercised. If the monetary limit is raised too high, the informal method of dispute resolution may no longer be acceptable to the parties. Thus the additional limit of $ 10 000 is tempered by the parties' agreement.

There is a more far reaching concern. It is because of the comparatively small amounts in contention that Tribunals operate in the way that they do. Some commentators have rejected this approach as arbitrary, arguing that it should be the type of case and the type of relationship which determine the process, not the amount in issue.[75]

This argument, though sound in theory, is misplaced in practice. For one thing, the amount disputed does actually provide some 'rough and ready' boundaries for the types of disputes that are heard. For another, small claims courts are established to meet a practical necessity - dispute resolution without the prohibitive cost of the legal process:

> The truth of course, is that elaborate procedural rules and complex formalities are incompatible with claims for small sums not because these claims are inherently simpler or because fairness does not matter in the redress of 'small' legal grievances, but because elaborate and complex rules demand that lawyers interpret them and lawyers are too expensive.[76]

If the monetary limit is raised too high, too quickly, lawyers will inevitably become involved. There will simply be too much at stake. Again this will shift the focus of the Tribunals away from a merits based, individualised approach to a legalised, adversarial one. This may result in the 'capture' of Tribunals by businesses.[77] This is not what Tribunals were established to do.

Even though they are no longer called 'Small Claims Tribunals', Disputes Tribunals are essentially a court for small claims. This is an important and defining feature of their operation and success, and should not be compromised. Therefore, while the monetary limit should keep pace with inflation, it should not be significantly increased beyond that. Money, after all, is the root of all evil.

B Appeals on Questions of Law

Saban v Crone[78] illustrated that even where a Tribunal mistakenly asserts jurisdiction and makes a determination accordingly, a party cannot appeal to the District Court to have that determination reversed. This is a matter of some concern, especially given that, in practice, jurisdictional limits are instructions to court staff who are not legally trained and who have the initial responsibility for accepting and rejecting claims. The general impression to be had from Referees is that acceptance of a claim settles the question of jurisdiction.[79]

It is interesting to note that Parliament chose not to remedy this when the Disputes Tribunals Act was introduced. Obviously an applicant could bring an action for judicial review in the High Court, but the costs are likely to be prohibitive given the sums involved. Some reform of the process is necessary to prevent Tribunals from making determinations outside the ambit of their jurisdiction. Rossiter[80] suggests an amendment to section 50 to include the right to appeal on questions of law, or at the very least, where jurisdiction is in issue.

This solution is not practical. Firstly, allowing appeals on questions of law would again over-legalise Tribunals. Tribunals operate a quasi-legal jurisdiction and as such it is not appropriate that the ordinary courts, functioning on a different level of inquiry, have the jurisdiction to hear appeals from the Tribunals.[81] Secondly, an appeal to the District Court can be just as prohibitive in terms of cost as an application

for review in the High Court, especially where there is the very real possibility of costs being awarded.

A more practical solution is to reform the process before the problem occurs, by training court staff and referees to review juridiction carefully. Borderline cases can be referred to the court's legal advisers for more detailed investigation prior to the hearing.[82] In this way excessive costs and delay are avoided and the Tribunal can focus on the more substantive issues raised in the dispute.

C Reforming Consumer Legislation

Even though it has been shown that there is scope in the current legislation, amendments to the Credit Contracts, Hire Purchase and Door to Door Sales Acts would be useful in order to clarify the jurisdiction of Disputes Tribunals with respect to these consumer Acts. Specifically, jurisdiction should be extended to enable a Tribunal to enforce the disclosure provisions of all three Acts. This would simply confirm the jurisdiction established under the Disputes Tribunals Act.

It may be that an amendment to section 10 of the Disputes Tribunals Act would have the same effect. For instance, section 10(2) could be redrafted to read:

> (2*) *Without limiting the jurisdiction of Tribunals conferred by section 10(1) of this Act* a Tribunal shall have such other jurisdiction as is conferred on it by any of the enactments specified in the First Schedule to this Act.

This is a more simple amendment, but it has a much wider impact. However, there is no risk involved as the Tribunal would still be restricted to exercising only those powers set down by Parliament in the Disputes Tribunals Act. This would limit any confusion created by the *expressio unius* maxim, as well as allowing the Tribunals jurisdiction where, because of an oversight in the drafting stage, the Tribunals' jurisdiction might have been excluded.

There are also a number of provisions in the Hire Purchase Act over which Dispute Tribunals do not have jurisdiction, but should have. Section 20 allows the court to assign title absolutely to the purchaser if the vendor unreasonably witholds consent to do so. Section 31 enables a court to direct the sale of goods in a manner, and subject to such terms and conditions as the court sees fit to impose. Section 45 empowers a court to extend the statutory time limits on notice. These are important provisions in the Hire Purchase Act and there does not seem to be any reason why a Disputes Tribunal should not have the jurisdiction to enforce them. Hire purchase agreements frequently cover goods worth less than $ 5000. Therefore disputes are often likely to be 'small disputes'. Unless Tribunals have jurisdiction, the provisions of the Hire Purchase Act are not likely to be enforced at this level. This undermines the rights of consumers to protection and to a remedy if that protection fails. Therefore an amendment is necessary to increase the Tribunals jurisdiction.

D A Separate Credit Tribunal

The Ministry of Consumer Affairs has recommended that consideration be given to setting up a specialist credit division of the Disputes Tribunals.[83] This has obvious advantages. Specialisation will increase the expertise of the Tribunals in relation to credit disputes. It will probably also increase the availability and effectiveness of class actions.[84]

There is however a danger of the 'slippery slope'. Too much specialisation may result in confusion as to jurisdiction and may also decrease the effectiveness of Tribunals to deal with the wide range of grievances which come before them in 'ordinary' disputes.

VI CONCLUSION

Disputes Tribunals provide access to a fast, inexpensive, informal and fair mechanism for the resolution of disputes. As such they are a valuable mechanism for consumers. For comparatively small claims they are the only mechanism available to consumers - the expense and effort involved in bringing a claim to court is prohibitive given the size of the claim. Most consumer disputes centre around small claims and therefore a resolution in the District Court is simply not available to most consumers.

However, even the availability of Disputes Tribunals has been limited. The District Court has in some instances imposed restrictions on the informal, quasi-legal method of dispute resolution. This is central to the operation of Disputes Tribunals and their ability to deal with consumer disputes fairly and on an individualised basis. The Justice Department has interpreted consumer legislation narrowly so that the Tribunals have no jurisdiction with respect to a number of provisions which extend valuable protection to consumers. Accordingly, these provisions are not being enforced at the small claims level and the purpose of the legislation is defeated.

This is insupportable. Parliament has defined the full nature and extent of the Tribunals' Jurisdiction in the Disputes Tribunals Act and has thereby empowered Tribunals to administer a special kind of justice, over a special kind of dispute in order to achieve a special kind of objective. Disputes Tribunals and the courts "...are not simply institutions for settling disputes; they are a political resource designed to achieve broad redistributive goals."[85] The justice system cannot, and should not, limit what is ultimately a political decision.

In fact separate Credit Tribunals are probably unnecessary, the Ministry only urging 'consideration'. The present system is equipped to deal with a whole range of consumer disputes, including credit disputes. However, if established the proposed Credit Tribunals should remain a division of the Disputes Tribunals and as such should retain the quasi-legal jurisdiction and monetary limit provided by the Disputes Tribunals Act. The increased expertise gained from specialisation should not be used to justify separate Credit Tribunals to hear both small claims and large claims. This would again marginalise the small claimant without access to legal expertise.

Annex 1: Relevant provisions of sections 18 and 19 of the Disputes Tribunals Act.

18. Functions of Tribunal -

(1) The Tribunal shall, as regards every claim within its jurisdiction, assess whether, in all the circumstances, it is appropriate for the Tribunal to assist the parties to reach an agreed settlement in relation to the claim.

(3) Where the parties reach an agreed settlement, the Tribunal may approve the settlement, and the settlement shall then take effect as if it were an order of the Tribunal made under subsection (8) of this section, and shall be enforceable in accordance with section 47 of this Act.

(6) The Tribunal shall determine the dispute according to the substantial merits and justice of the case, and in doing so shall have regard to the law but shall not be bound to give effect to strict legal rights or obligations or to legal forms or technicalities.

19. Orders of Tribunal -(1) A Tribunal may, as regards any claim within its jurisdiction, make one or more of the following orders:

(a) The Tribunal may order a party to the proceedings to pay money to any other party:

(b) The Tribunal may make an order declaring that a person is not liable in respect of a claim or demand described in section 10(1)(b) of this Act:

(c) The Tribunal may order a party to deliver specific property to another party to the proceedings:

(d) The Tribunal may make a work order against any party to the proceedings:

(e) Where it appears to the Tribunal that an agreement between the parties, or any term of any such agreement, is harsh or unconscionable, or that any power conferred by an agreement between them has been exercised in a harsh or unconscionable manner, the Tribunal may make an order varying or setting aside, the agreement, or setting it aside (either wholly or in part):

(f) Where it appears to the Tribunal that an agreement between the parties has been induced by fraud, misrepresentation , or mistake, or any writing purporting to express the agreement between the parties does not accord with their true agreement, the Tribunal may make an order varying, or setting aside, the agreement or the writing (either wholly or in part):

(g) The Tribunal may make an order dismissing the claim.

(2) Any order made by a Tribunal may be unconditional, or subject to such conditions (whether as to the time for, or mode of, compliance, or otherwise) as the Tribunal thinks fit to impose.

References

1 R Abel *The Politics of Informal Justice Volume 1* (Academic Press, New York, 1982) 8.

2 The average cost of bringing a claim to the District Court, based on enquiries to the Legal Services Commission and ten Wellington law firms, ranges between $ 1600 to $ 15 000, with a common figure of $ 6000 being quoted.

3 The Ministry of Consumer Affairs *A Review of the Operation of Disputes Tribunals From a Consumer Perspective* (Ministry of Consumer Affairs, Wellington, 1994) 4.

4 NZPD vol 489, 4354, 14 June 1988.

5 Small Claims Tribunals Act 1976, ss 15(1) and 15(4).

6 Above n 4.

7 Above n 3, 7.

8 Disputes Tribunals Act 1988, s 7; NZPD vol 489, 3997, 5 May 1988.

9 Disputes Tribunals Act 1988, s 18(6); Above n 3, 28.

10 For instance, less than 12 % of all District Court Judges are women.

11 Above n 4, 4356.

12 Above n 3, 9.

13 Above n 3. The Strategy Committee is preparing a report on Disputes Tribunals, in conjunction with the Ministry of Consumer Affairs, for submission to Cabinet on 1 December 1994.

14 Above n 3, 106.

15 New Zealand Bill of Rights Act 1990, s 27(1).

16 *Shotover Gorge Jets Ltd v Jamieson* [1987] 1 NZLR 437.

17 Above n 4, 4356.

18 See *Richardson Drilling Co Ltd v New Zealand Railways Corporation* [1989] DCR 497; *Underhill v Brodka* [1987] 3 DCR 557.

19 [1991] DCR 433.

20 Unreported, 27 June 1991, District Court, Blenheim.

21 Above n 19.

22 Above n 19, 441.

23 Above n 20.

24 Above n 4, 4356.

25 A Frame "Fundamental Elements of the Small Claims Tribunals System in New Zealand" in C J Whelan (ed) *Small Claims Courts - a Comparative Study* (Clarendon Press, Oxford, 1990) ,76.

26 *NZI Insurance NZ Ltd v Auckland District Court* [1993] 3 NZLR 453, per Thorp J, 464.

27 P Spiller "A Review of the Disputes Tribunals of New Zealand" (March 1990) NZLJ 109, 111-112.

28 Above n 19.

29 G P Rossiter "Disputes Tribunals: Appeals to District Courts" (August 1991) NZLJ 266, 269.

30 Above n 26, 461.

31 Above n 26.

32 [1987] 3 DCR 541.

33 See Part V, SUGGESTIONS FOR REFORM, section B, *Appeals on Questions of Law.*

34 P Watts "The Quasi-Contractual Jurisdiction of the Disputes Tribunals" (August 1993) NZLJ 283.

35 Above n 26, 456; *Poutu v Simm Insurance and Another* [1990] DCR 215, 221-222.

36 Above n , 89. The Ministry of Consumer Affairs recommends that this service should be free. This recommendation should be implemented as disputants are not entitled to recover costs and deserve an equal right to be heard.

37 C B Harrington *Shadow Justice - The Ideology and Institutionalization of Alternatives to Courts* (Green Wood Press, Conneticut, 1985), 127.

38 Above n 3, 91.

39 Above n 3, 2.

40 Above n 8.

41 P Spiller "Reflections of a Disputes Tribunal Referee" (November 1992) NZLJ 397, 399.

42 Empirical Evidence supports this assumption. Above n3, 90.

43 An Ordinance to Establish the Courts of Request 1844, Session 11, no 8.

44 Above n 25, 73.

45 C J Whelan "Small Claims Courts in England and Wales" in C J Whelan (ed) *Small Claims Courts - a Comparative Study* (Clarendon Press, Oxford, 1990),121-125.

46 D Greer "Small Claims in Northern Ireland" in C J Whelan (ed) *Small Claims Courts - a Comparative Study* (Clarendon Press, Oxford, 1990), 143.

47 I Ramsay "Small Claims Courts in Canada: A Socio-Legal Appraisal" in C J Whelan (ed) *Small Claims Courts - a Comparative Study* (Clarendon Press, Oxford, 1990), 25.

48 Above n 4, 4356.

49 *Turner v Stallinbras* [1898] 1 QB 56, 58.

50 Opinioned in a Justice Department letter, written on behalf of the Secretary of Justice, to the Ministry of Consumer Affairs, 14 March 1994.

51 See Part IV, SHOULD TRIBUNALS HAVE JURISDICTION?, Section A, *Caveat Creditor and the Need for Realistic Enforcement.*

52 The mention of one thing is the exclusion of another.

53 J Bell and G Engle *Cross on Statutory Interpretation* (2 ed, Butterworths, London, 1987), 139.

54 Although it did have the power to set aside or vary a contract that was harsh or unconscionable - Disputes Tribunals Act, s 19(1)(f). The Credit Contracts Act extends this.

55 Unreported, 3 October and 1 November 1991, Disputes Tribunal, Christchurch, DT 1281/91.

56 Annex 1.

57 Above n 55.

58 The Ministry, in a letter to the Justice and Law Reform Committee, dated 3 February 1994 stated: "it is clear however that the power contained in section 32...is limited to the District Court."

59 Above n 51.

60 Above n 50.

61 See Part V, SUGGESTIONS FOR REFORM, Section C, *Reforming Consumer Legislation.*

62 The Bill initially contemplated provisions for criminal sanctions.

63 NZPD vol 438, 1491, 10 July 1981.

64 In one instance from South Auckland the finance rate was disclosed as_%. The true rate was 755 % - Ministry of Consumer Affairs.

65 Above n 3, 65.

66 Chattels Transfer Act 1924.

67 C N Yin and R Cranston "Small Claims Tribunals in Australia" in C J Whelan (ed) *Small Claims Courts - a Comparative Study* (Clarendon Press, Oxford, 1990), 64.

68 Above n 3, 65.

69 Above n 9.

70 Disputes Tribunals Act, s 43.

71 See Part II, A QUASI-LEGAL JURISDICTION.

72 Above n 55.

73 Above n 3, 59.

74 Above n 3, 61.

75 Above n 47, 31-32.

76 Above n 45, 126.

77 Above n 47, 25; above n 46, 143; above n 45, 121.

78 Above n 32.

79 Above n 25, 95.

80 Above n 29, 269.

81 Above n 4, 4356.

82 As was the case in *Tuulua v Jackson,* above n 55.

83 Above n 3, 67.

84 Above n 3, 66.

85 Above n 47, 41.