Barriers to Participation in the Employment Institutions Symposium

Wellington, 22 May 2019

Introductory Remarks of
Chief Judge Christina Inglis

Nau mai haere mai
e hui mai nei
Tēnā koutou, tēnā koutou, tēnā koutou katoa

Welcome everyone – those from various community organisations, unions and business groups who have in-depth knowledge of the people who the employment institutions are designed to assist, a perspective of where the shortcomings are, and how the ability to constructively participate might be improved.

Welcome, too, to the researchers and academics who have been mulling over these complex issues, to those who act in a representative capacity, to those who work within government and who contribute to institutional design, policy settings and the legislative framework, to the Mediators, Members of the Employment Relations Authority and Judges.

This symposium came about because the Employment Relations Authority and the Employment Court wanted to reflect on whether what we are doing and how we are doing it is fit for purpose – if not, what might be done about it. We have been supported in our efforts by Professor Erling Rasmussen, who leads the Employment Relations Research Group with the New Zealand Work Research Institute, AUT. Erling's robust approach at committee meetings – Where is the empirical research? Why do we want to know this but not that? Why is the problem here and not there? – has kept Jim Crichton, Robin Arthur (Chief and Member of the Authority) and me in line and on our toes.

The first symposium reinforced what we already suspected – that there are significant barriers to participation. We also learned that there are multiple reasons for that, many of which are complex. We now need to focus attention on what we can do about it. I say "we" because this is something that will take a combined effort, an ongoing commitment, a degree of bravery and a need to think outside the square.

Helping us to think outside the square is a stellar line-up of presenters who will each offer a unique perspective on "Where to from here?".

Before we get to the first session of the day, I have been assigned two particularly important tasks.

The first is to tell you where the toilets are – north-east off the lobby. In the event of an earthquake, drop, cover and hold. For other emergencies, wardens will help us evacuate, meeting outside the building's main entrance.

The second task is one I am particularly happy to undertake – that is to introduce our first speaker, Justice Miller, a Judge of the Court of Appeal of New Zealand. Justice Miller has been around for a long time. Not only has he extensive experience working in the justice system, but he has spent a lot of time thinking about what works and what doesn't, identifying possible solutions and putting them into action. He is the guru of case management practices and shared the Australian Institute of Judicial Administration Award for Excellence in 2013.

The food for thought contained within Justice Miller's presentation sits quite nicely with an observation I would like to start the day on. It is from the third reading of the Employment Relations Bill all those years ago in 2000.

The architect of the Employment Relations Act, the Honourable Margaret Wilson, said this:[1]

> Finally, I wish to ensure that this House clearly understands … how the institutional arrangements generally are designed to focus on the problem between the parties.
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> The mediation services being established are about flexible and innovative problem solving. They are not confined to the limited, formal mediation construct used by our employment lawyers at present. …
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> …
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> If the problem goes beyond mediation to the authority and the court, those institutions are charged with focusing on that problem and resolving it. They will not waste their own time and that of the parties by looking at how their fellow institutions have previously dealt with the same problem.

So, a clear invitation, one might think, to look outside the square; for intelligent flexibility of approach focused on the particular case, rather than a one-size-fits-all traditional dispute

[1] (15 August 2000) 586 NZPD 940.

resolution default setting; and a plea to place the employee and employer's relationship and resolution of their particular problem – front and centre.

I now invite Justice Miller to take centre stage.