

Designing Online Court Forms

Recommendations for Courts and Tribunals in Aotearoa



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Executive Summary

Online courts are a new frontier of justice delivery. They hold the promise of a modern, cost effective, accessible, and efficient court system. An important aspect of the promise of online courts is that litigants can access them without the help of a lawyer. This is very attractive to governments as it responds to a number of pressing issues: saving money (by reducing the need for state sponsored subsidies to lawyers), increasing access to justice (by reducing barriers to court including cost, inconvenience, and fear), and protecting public health (by enabling remote filing and processing of court files). For the public, the promise lies in cost reduction (avoiding legal fees), reduced time to resolution, increased engagement, and fewer barriers to access.

If online courts are to be accessible without the help of a lawyer, then the design of the online forms for starting a proceeding is an essential component. Without well designed forms, the public will not be effectively engaged or be able to coherently tell their story to the court and the promises of online courts will be lost. The purpose of this report is to condense key lessons drawn from existing research and our own research findings, to improve the design of online filing for dispute resolution systems in Aotearoa.

The report canvasses two important cautions in designing online court forms. First, a caution against “digital by default”, emphasising that even the best designed online forms need to have a genuine off-line alternative. Second, a caution about who needs to be involved in the development of court forms. This relates to the reality that all court forms will contain forms of nudging—built in incentives and disincentives that alter user behaviour—and this has important implications for the design process.

The next part of the report discusses specific lessons in designing court forms for use by lay people. The final design needs to be achieved via testing and iteration but some important lessons can also be drawn about essential components of a good design.

The final part of the report suggests ways in which form designers can think beyond the traditional court process and use the move online to gather further useful information and feedback. Rather than only replicating the paper-based project, it suggests ways we might be able to use digitisation to increase our knowledge about our civil justice system.

Introduction

Online courts are a new frontier of justice delivery. They hold the promise of a modern, cost effective, accessible, efficient court system and some jurisdictions have already made bold moves towards implementation.¹ An important aspect of the promise of online courts is that litigants can access them without the help of a lawyer. This is very attractive to governments as it responds to a number of pressing issues: saving money (by reducing the need for state sponsored subsidies to lawyers), increasing access to justice (by reducing barriers to court including cost, inconvenience, and fear), and protecting public health (by enabling remote filing and processing of court files). For the public, the promise lies in cost reduction (avoiding legal fees), reduced time to resolution, increased engagement, and fewer barriers to access (Sela 2016; Byrom 2019).

When people discuss online courts, the first thing that normally springs to mind is a hearing conducted via video-conferencing. Use of this technology has boomed during the Covid-19 pandemic as courts around the world have been forced to shift online to protect public health. This move has created some headline grabbing moments—such as the lawyer in Texas who accidentally activated a cat filter and assured the judge “I am not a cat” as he struggled to deactivate it.² Also the subject of discussion has been the development of systems (called “Tier 1” in England’s online court programme) to enable potential court users to identify the nature of their legal problem and navigate their way through self-help solutions (Susskind, 2019, chapter 10).

A third aspect of online court design that tends to receive less attention but is very important is the development of court forms. Rebecca Sandefur has noted: “As unglamorous as court forms may be, they are a valuable tool in promoting access to justice by codifying legal expertise in a way that nonlawyers can use” (Sandefur, 2020). If online courts are to be accessible without the help of a lawyer, then the design of the forms is an essential component. Even if a full online courts programme (with video conferencing) is not implemented, filing legal claims online offers the potential for considerable increases in efficiency and accuracy of court records, costs savings for both the government and disputants, and greater accessibility. Tribunals in Aotearoa have made some forays into online forms³ and it is expected that the trend will continue. The need to

¹ See for example the projects in England and Wales (<https://www.gov.uk/guidance/the-hmcts-reform-programme>) and in British Columbia (<https://civilresolutionbc.ca/>). For a review of nine online court systems from around the world, see Joint Technology Committee (2017). Case Studies in ODR for Courts: A View from the Frontlines. Williamsburg, VA: National Centre for State Courts (<https://www.ncsc.org/>) (https://www.ncsc.org/_data/assets/pdf_file/0023/18707/2017-12-18-odr-case-studies-revised.pdf). For a list of courts operating online dispute resolution currently, see <http://odr.info/courts-using-odr/>.

² “I’m not a cat’: lawyer gets stuck on Zoom kitten filter during court case”

<https://www.youtube.com/watch?v=IGOofzZOyl8>

³ See for example the Disputes Tribunal <https://disputestribunal.govt.nz/how-to-make-a-claim/>, and Tenancy

modernise our court filing system has long been recognised (Adams, 2018) and the case has only been strengthened by the Covid-19 pandemic. The ability to file and access case files remotely creates much greater flexibility for disputants, administrators, and decision makers and creates much greater efficiency than our current paper-based system. The design of an online court form sounds like a simple technocratic exercise but in fact raises difficult and important issues about access to justice and the role of the courts.

The purpose of this report is to condense key lessons drawn from existing research and our own research findings, to improve the design of online filing for dispute resolution systems in Aotearoa. Those engaged with developing and administering court and tribunal systems are the key audience for the report, although those developing online legal information or working with litigants in person may also find the material of interest.

The report begins by canvassing two important cautions in the development of court forms. First, a caution against “digital by default”, emphasising that even the best designed online forms need to have a genuine off-line alternative. Second, a caution about who needs to be involved in the development of court forms. This relates to the reality that all court forms will contain forms of nudging—built in incentives and disincentives that alter user behaviour—and this has important implications for the design process.

The next part of the report discusses specific lessons in designing court forms for use by lay people. The final design needs to be achieved via testing and iteration but some important lessons can also be drawn about essential components of a good design. This draws on lessons from our research conducted in 2018 and 2019 on online court form design. While the lessons in this section are directed towards online forms, they are equally applicable to paper-based forms.

The final part of the report suggests ways in which form designers can think beyond the traditional court process and use the move online to gather further useful information and feedback. Rather than only replicating the paper-based project, it suggests ways we might be able to use digitisation to increase our knowledge about our civil justice system.

Two cautions

Before proceeding to the main findings, we set out two important cautions. The first is the need for genuine paper-based alternatives and the second is the care that needs to be taken in setting

Tribunal <https://www.tenancy.govt.nz/disputes/tribunal/making-an-application/>.

and monitoring the goals for the online filing system.

Providing a genuine paper-based alternative

Directing people towards using online systems has significant financial benefits for governments. While there are costs in developing and maintaining such systems, there is a reduced need for staff and physical infrastructure. This can lead to a desire to pursue policies of “digital by default”, strongly encouraging people to use online options and making paper-based options less accessible. Pursuing digital by default for courts and tribunals is likely, however, to leave a significant part of the community behind. This is due to a suite of skills and resources needed for a disputant to engage with an online court form.

Proponents of online systems sometimes underplay the number of people who will be unable to access these systems. Richard Susskind, a key proponent of online courts, suggested the number of people in England and Wales likely to be digitally excluded was under five per cent. This has been refuted as “other evidence suggested that statistics such as these did not present a sufficiently detailed picture of how individual users may fare in using new digital court and tribunal systems” (Justice Committee, 2019, p. 13). There are a number of skills and resources needed to access an online court form. Most obvious is connectivity to the internet. The 2018 census recorded 211,000 households (13%) as having no internet access at home. Vulnerable and marginalised groups are over-represented in this group, including Māori and Pasifika who have been identified as being more likely to lack an internet connection than the general population (Digital Inclusion Research Group, 2017). In addition to an internet connection, people need a device to use. Digital inclusion is defined as “having convenient access to, and the ability to confidently use, the internet through devices such as computers, smartphones and tablets” (Department of Internal Affairs, 2019, p. 7). Smartphones are the most commonly possessed device with 80% of people in Aotearoa of all ages owning at least one smart phone in 2019, and there were more active mobile subscriptions than people in Aotearoa (Hughes, 2019). While most systems are created using cross-browser testing and evaluation on mobile platforms, it should be noted that smartphone access is likely to be insufficient for effective access of an online court form. The small form factor of mobiles, together with the on-screen touch keyboard, discourages the entry of large amounts of text and makes it difficult for the user to deal with complex choices. Access to an online court form, therefore, likely needs access to a computer or tablet.

People also need computer literacy to navigate and fill out a form. A survey of adult skills conducted in 2014 and 2015 reported that over 45 per cent of adults in Aotearoa:

“... score at or below Level 1 in problem solving in technology-rich environments. ... At Level 1, adults can only use widely available and familiar technology applications, such as e-mail software or a web browser, to solve problems involving few steps, simple reasoning and little or no navigation across applications” (Organisation for Economic Co-operation and Development, 2016, p.2).

In addition to sufficient computer literacy and digital inclusion, access to an online court also requires “legal capability”:

That users undertake a range of activities online is not to say that they have the capability to undertake legal processes online. Digital capability is not the same as legal capability and both forms of capability are likely to be required to successfully navigate an online court (Denvir, 2018, p. 7).

Legal capability captures the idea that people may not recognise their problems have a legal aspect and therefore only seek help from non-legal advisers. Furthermore they “...may lack knowledge about legal rights, legal services and pathways for legal resolution...” (Pleasance et al., 2014, p. 31). They may also lack the necessary literacy and communication skills necessary to achieve a legal resolution (Pleasance et al., 2014). In Aotearoa, 11.8% of adults attain only Level 1 or below in literacy proficiency: “At Level 1 in literacy, adults can read brief texts on familiar topics and locate a single piece of specific information identical in form to information in the question or directive” (OECD, 2016, p. 2). We do not have a measure of legal capability in Aotearoa, but we know from a significant base of international research that many people, even if they possess digital capability, will not necessarily have the legal capability to engage with an online court (note there are efforts to develop a measure, see Pleasance and Balmer, 2018).

The multiple layers of capability and access to technology that are required to access an online court form, mean that digitisation will have an effect on who initiates claims:

Digitisation may make it easier for certain types of claimant to initiate claims, whilst deterring others. Reducing barriers to accessing legal processes may alter the types of cases that individuals pursue through the justice system (Byrom, 2019, p.19).

The design of forms cannot alter this fact but we note this issue to sound a note of caution. While online court forms offer benefits, these will not be benefits realised by everyone. Well supported alternative (paper-based) pathways must continue to be offered.

Ethical design of online court forms

It is tempting to think about the development of a court form as a technical and neutral exercise,

where a series of user-friendly questions can be developed to elicit information. The design of a system, however, can never be neutral as it will always build in ‘nudges’—whether these are intentional or not—that affect how people interact with the system.

Any system that involves user interaction creates an interface: the place where the user’s actions occur. The technology of any interface is created through a combination of physical, digital, and human elements. Inherent in this interface are various features that allow, encourage, and constrain user actions to various degrees. For example, a computer system can allow a date to be entered as a piece of plain text (‘free text’) in a text input box; alternatively, a ‘date picker’ can constrain the input to be one of a pre-determined set of valid dates. Typically, within an interface, some actions are allowed, some are prevented, and some are made possible but require time and effort (e.g., filling out a free text box rather than clicking on a pre-populated option). Any system interface inherently provides these constraints and costs whether it is expressly stated or designed for. The totality of the costs, incentives, and constraints produce a “choice architecture” (Thaler, Sunstein, & Balz, 2012). As with a physical building, some actions (leaving through doors) are made easier over other options (leaving through windows). Just as in the physical world, the designers of an interface are “choice architects”, steering people to a particular option by shaping the environment in which they are making a decision.

Steering users can be achieved not only through including cost-based incentives (doors vs. windows) but also through exploiting predictable patterns of human behaviour, referred to as a “nudge”. A nudge is “any aspect of the choice architecture that alters people’s behavior in a predictable way without forbidding any options or significantly changing their economic incentives” (Thaler & Sunstein, 2008, p. 6). For example, we know that people will more frequently select entries that are at the start of a list rather than those later on, so the option placed at the top of the list nudges users to select this option (e.g., Grant 2017). Similarly, if all other things are equal, users will prefer the default selection so pre-selecting an option nudges users towards that option (Johnson, Bellman, & Lohse, 2002).

Nudges can be deliberately included or might be unintentional; interface designers who are unaware of the principles of nudging may inadvertently include interaction elements that discourage one behaviour and encourage another (Schneider, Weinmann, & vom Brocke, 2018). Table 1 lists the six main ‘nudge’ principles in the original choice architecture theoretical framework in the first column (Thaler, Sunstein, & Balz, 2012), supplemented with descriptions from Weinmann, Schneider, and vom Brocke (2016). The third column provides examples of these nudges in the context of online courts and dispute resolution.

Table 1 - General Nudge Principles with example applications to online court forms

Nudge Principle	Description (from Weimann et al., 2016)	Application to online courts
Creating incentives	Making incentives more salient to increase their effectiveness	The online dispute process itself contains incentives relative to a conventional process i.e., the ease of access may incentivise use. Usage and costs can be explicitly related to the probably more costly traditional process, to remind users of the benefits.
Understand mappings	Mapping information that is difficult to evaluate to familiar evaluation schemes	A court form is an unfamiliar situation so provide users with information about the process. This should include clear presentation and the use of visual elements, ensuring the design is user-centred (Rossi and Lenzini, 2020). While the claim is being processed the system may appear as a black box. Providing operational transparency (Buell, Kim & Tsay, 2017) allows users to see inside of the black box. One familiar model is that of courier delivery firms who now allow detailed package tracking by end-users. In a dispute resolution context this transparency would keep parties up to date with the detail of the progress of their claim and provides updates on the expected resolution timeframe.
Defaults	Preselecting options by setting default options	In a screen that asks the claimant to input the resolution they are seeking, if a monetary resolution option is pre-selected this will tend to increase users requesting monetary compensation rather than non-monetary alternatives.
Giving feedback	Providing users with feedback when they are doing well or making mistakes	Spelling, grammar, length and content-based feedback on textual input as part of a claim.
Expecting error	Expecting users to make errors and being as forgiving as possible	Allow free navigation; automatically save; support undo; allow users to back out of the process without upfront commitment to avoid a sunken cost perception.
Structuring complex choices	Listing all the attributes of all the alternatives and letting people make trade-offs when necessary	Inform users about the possible consequences of their choices before they commit to a particular option. For example, provide information about the likely costs (monetary, time, and cognitive), timeframe and resolution possibilities before they file the claim.

The ability to include nudging gives rise to important questions about the extent to which an online court form could influence a litigant’s behaviour. As Table 1 shows, this could be positive: “online courts hold the promise of leveraging their design to improve the quality of litigant engagement

and support deliberation and informed decision-making” (Sela, 2019, p. 137). However, it is very important to be aware of the nudges, costs, and incentives that are contained in the design, as even “small changes in the design architecture of systems (e.g. altering the position of different boxes or questions) could radically impact on the behaviour of individuals in unintended ways” (Byrom, 2019, p.20). Sela (2019, p. 138) provides a detailed analysis of the risks of nudging in online courts and cautions that:

Since no choice environment is neutral, the goal should be to design online courts that adhere to the core values and functions of courts, and encourage litigants to engage in informed and deliberate decision-making, introducing as little bias as possible while enhancing (or at least preserving) litigants’ self-determination.

To understand this caution, it is helpful to look at some specific examples of how the choice architecture in an online court portal could influence litigant behaviour and undermine the core values of the court system.

Figure 1 shows the resolution phase of a prototype we built when conducting this research. A traditional court form or pleading would have no options at all, expecting the litigant (or their advisor) to generate the resolution desired. This is obviously problematic if the litigant does not have the knowledge to generate the options themselves. The prototype therefore tries to support the litigant to make an informed choice. It places monetary resolution as the first option. This list does not have a default option selected, and given it is only a short list, the order in which the options appear are unlikely to influence to the user.

Requested Resolution

What do you want to resolve the dispute?

Select all that apply

- I want the respondent to pay me money**
- I want the respondent to do or stop doing something**

For example, you want John Smith to stop using your parking spot, or you want Mary to allow you access to a right of way.

Figure 1 - The initial resolution screen of the prototype

However, the question does have considerable asymmetric specificity: the second option is vague relative to the first. The options make it clear that monetary resolution is possible, and then presents the possibility of having the other person do or not do *something*. Many users are “one-shot players” (those engaging with a dispute resolution system for the first and only time) and are unlikely to have a clear sense of the possibilities.⁴ A short text description (as in the John Smith

⁴ Other users will be “repeat players”, for example Government bodies, larger corporations (see Galanter, 1974).

example in Figure 1) may be insufficient to fully inform one-shot users of the costs and benefits of different options. Choice asymmetry in interface designs is a potential source of a deceptive user experience that would fail to meet general goals of litigant self-determination.

So how else could the second option be posed to make all the choices equally specific? As with most interface design questions, there is a balance to be found between overloading the interface with options and presenting only a limited range of options. Design options here include:

- Allowing users to opt to see more details of possible resolutions e.g., through a pop-up window or expandable content, which is an example of the long-established principle of ‘details on demand’ (Shneiderman, 1996);
- Providing access to a longer list of resolution options without requiring users to make a selection to see further details;
- Providing a frequency-ordered list of prior resolutions i.e. the resolutions that previous claimants have most frequently requested appear first;
- Providing a satisfaction-ordered list of prior resolutions i.e. the resolutions that previous claimants have most frequently graded as satisfactory appear first (assuming the portal collects this data from users at the completion of the process);
- Providing a list derived from the history of claims in physical courts;
- Providing a list derived by those with expertise in the range of possible resolutions.

It is apparent from this list of choices that each could nudge users in slightly different directions. This opens the possibility for the designer to build in policy goals that may be at odds with the core values and principles of a court. A nudge can be subtle and unintentional, or could amount to a “deceptive design pattern”, which has been described as:

... user interface design choices that benefit an online service by coercing, steering, or deceiving users into making decisions that, if fully informed and capable of selecting alternatives, they might not make (Mathur et al., 2019, p.1).

There are many variants of deceptive design patterns and some will be familiar to readers from interacting with commercial websites: sneaking an additional product into an online shopping cart, using confusing language to steer users into making particular choices, or attention grabbing messages such as saying how many people have recently booked a hotel room. While it is unlikely an online court designer would engage in this type of nudging, the important point is that no design (regardless of intention) is neutral. Given the importance of courts to our structure of government, particular caution needs to be taken in designing online court forms.

Software developers are unlikely to have experience in conceptualising their work in terms of the core principles of the court and those who are well versed in these matters (the judiciary), will be unlikely to have experience in choice architecture decisions. Policy officials could play an important role in bridging this divide but are representatives of the executive rather than the judiciary. A design project therefore needs careful management. The field of dispute system design, which began from examining dispute resolution systems within organisations (Costantino and Sickles, 1996), encourages as a starting point, very careful articulation of the goals of the system being developed (Amsler et al, 2020).

This would be a complex exercise and would need to be undertaken at the outset of the project when the prototype is developed. Prototypes enable feedback and evaluation to occur before significant resources are committed to develop a full system. “Prototyping is externalizing and making concrete a design idea for the purpose of evaluation” (Bill Verplank quoted in Muñoz & Miller-Jacobs (1992)).

Prototypes address the general problem that is encountered in building software for users: it is difficult to fully specify the exact nature of the system to be developed. There are many reasons for this problem, but they include:

- Changing requirements: as a system is developed, users (or those paying for the system) reconceptualise the problem and change their initial thoughts (or demands) as to the functionality that should be included;
- Ecological differences between development and deployment: software developed in a laboratory environment is a poor fit for real-world usage (Thomas & Kellogg, 1986);
- Lack of diversity in the field: software development is disproportionately populated by young men who often find it difficult to consider the needs of other types of users.

Whole sub-disciplines of computing are devoted to trying to address these problems including requirements engineering (e.g., Laplante, 2017), human-computer interaction, and usability engineering (Nielsen, 1994). Core design problems (such as changing requirements from the customer) are unlikely to be resolved with a single prototype, and therefore multiple iterations of prototypes are critical (Nielsen, 1994). The popularity of agile software development in the past decade is partially based on the idea of multiple iterations, utilising rapid feedback from “customers” (people who are intended to be representative of the end-user population).⁵ Agile

⁵ While “customers” is suitable terminology for many instances where an agile process is applied, it is not suitable for the justice context. See Toy-Cronin (2020) for discussion.

development is characterised by:

Small, colocated teams, with an onsite or easily available customer, an emphasis on programming and early testing, and frequent feedback on iterative delivery of working software... (Hoda, Salleh, & Grundy, 2018, p.61)

The frequent feedback from customers inherent in agile methods is now an established method for addressing issues such as changing requirements.

While the agile process involves customers—reflecting the general goal of user-centred design—development should also include close involvement of those who are monitoring the system to ensure it achieves its policy goals. This is required not only in the prototyping phase but throughout implementation. Chivukula et al. (2018, 2019), through laboratory studies, suggest that intentions can be subtly modified during design activities to produce potentially manipulative designs. It is, therefore, important to embed a legal monitor (a representative of the judiciary or lawyer) into the software engineering team to ensure that these goals are not altered during implementation.⁶

To ensure that the system is in fact meeting its goals, it is also important to undertake a rigorous programme of testing, before and after the release of the interface. This programme of testing needs to go beyond user-satisfaction testing to empirically testing the effect of the choice architecture on the users. Three forms of testing are suggested by Sela (2019): Randomised Controlled Trials, experimental testing, and observational data gathered once the system is operating. The system design should also be based on the existing empirical evidence we have about how to develop a system that meets lay people's needs. To make a contribution towards this empirical evidence, we undertook two forms of research on lay people making legal claims and we draw on the results of that research in the next section of this report.

Designing court forms for lay people

A primary audience for online court forms is lay people. While people may still have legal representation or have assistance from a lawyer in completing an online court form, online court reform is targeted towards developing systems that lay people can access without the assistance of a lawyer. There are powerful incentives to ensure online court forms meet lay peoples' needs.

⁶ The General Services Administration of the US Government (as part of their digital government programme) has proposed specific practical guidelines for software development teams to avoid deceptive design patterns: <https://digital.gov/resources/deceptive-design-how-to-identify-and-combat-consequence-design>. There is currently no equivalent in Aotearoa but such guidelines could nevertheless be referred to by design teams here.

From the perspective of the state, these are in the form of saving costs by reducing the need for state sponsored subsidies to lawyers. From a litigant perspective, these are increasing access to justice by reducing barriers to court, including inconvenience, fear, and cost, particularly in the form of lawyers' fees. It is therefore imperative that an online court form is designed with the needs of lay people in mind.

To provide evidence for what those needs are, we conducted empirical research using two data sets. First, a sample of Court forms completed by lay people and lawyers filed under the District Court Rules 2009. These were a paper-based form but one that was intended to be user-friendly for unrepresented litigants. We analysed a set of almost 100 forms to identify issues with the form design and the differences between lay and legal explanations of disputes.⁷ We refer to these as the "2009 DC Forms". Second, the claims filed by lay people and lawyers in an experiment that involved participants pleading a claim in a mock version of the British Columbia Civil Resolution Tribunal portal. The experiment generated 77 claims which we analysed.⁸ These are referred to as the "Experiment Forms" in this report. Before turning to the lessons from that research, we make a general comment about the nature of legal reasoning and how it differs from lay reasoning.

Legally trained people—judges, lawyers, law graduates (many of whom become policy officials)—often fall into the trap of believing that legal reasoning is a "a sharpening of thought (...) implying that it involves a honing of general analytic ability" (Mertz, 2007, p. 98). If only lay people could be "better" in their reasoning, then they would be able to explain their claims just as well as lawyers. Advice, therefore, urges people to "be precise and clear about what you are asking the judge to order", "stick to the facts", and "use plain language and write simply" (see for example Ministry of Justice, Care of Children Act 2004 form notes, page 1).

Legal reasoning is not, however, just a sharp form of general reasoning. Instead it is a very particular, culturally laden way of thinking, that focuses on some information and omits other information (Mertz, 2007). Thinking like a lawyer is often in direct conflict with how in lay society, we engage in telling stories about being wronged. Let us take for example a hypothetical story of

⁷ The results of this part of the study will be published separately in an academic journal. Check the lead author's website for publication details.

⁸ Detail of the method used in this study was published in Toy-Cronin, B., Irvine, B., Nichols, D.M., Cunningham, S. J., & Tkacukova, T. (2018). Testing the Promise of Access to Justice through Online Courts. *International Journal of Online Dispute Resolution*, 5(1-2), 39–48. The results of this part of the study are being published separately in an academic journal. Check the lead author's website for publication details.

an incident in a carpark told to friends in conversation. It might go something like this:

People are so inconsiderate. A couple of weeks ago I was at Pak'n'Save and just as I was pulling into a park some [expletive] guy came roaring out of a park—without even looking—and cut me off. There was a woman standing waiting with her trolley and she was really angry too cos he could have hit her kid.

This story uses various mechanisms to convince the listener that the storyteller has been wronged. It uses a general scene setting statement about “people” being “inconsiderate” and it uses colourful adjectives (an expletive and “roared”) for emphasis. It also adopts multiple perspectives—the storyteller’s and the bystander’s—to increase credibility. None of these devices are, however, part of legal storytelling. Converted to a legal narrative, the story would be told from only one perspective (that of the wronged person), and include only details that would support laying blame on another person such as precise details about time, location, and vehicle appearance. The persuasive language of everyday English would be converted to the legal style: “roaring out” would “reversed suddenly”, for example.

A conflict narrative told for a court, therefore, is not simply a precise version of one told out of court; it is a story told with entirely different cultural norms. A disputant cannot simply acquire these new norms by “being precise”. Engaging in competent legal storytelling requires mastery of an entirely different register and an awareness of the need to include certain facts and leave others out. The design of court forms can recognise these challenges and support people in converting their lay conflict story into one that can be actioned in a legal forum. The suggestions made here are based on our analysis of lay narratives—contrasted to legal narratives—and suggest design solutions to support lay people towards providing the detail of a legal narrative.

Repetition

Repetition is problematic because it makes a claim or defence unnecessarily long, frustrating to write, and perhaps even more frustrating to read. Form design should therefore seek to minimise repetition. Lessons can be drawn from the DC 2009 Forms which our review showed created a great deal of repetition. One cause of this was the structure of the questions in the claim. These followed the pattern of the legal elements of a dispute: (1) the connection between parties, (2) the details of the duty the defendant owes the plaintiff (the legal duty), (3) what happened that led to this claim (the legally relevant facts), (4) facts showing why the defendant should pay or give what is being claimed (connection between facts and duty), (5) the consequent loss. On the face of it, this seems like a simple way to structure a claim, ensuring that the opposing party and fact finder will have all the necessary elements. However, depending on the claim, it can simply invite

statement of the same material over and over again. Take for example a claim arising under a contract to supply goods in return for payment. Element (1), the connection between the parties, is created by the contract, so the existence of that contract and its terms are the connection between the parties. Element (2), the legal duty, is that goods were supplied under the contract and the defendant did not pay. Element (3), the facts, repeat the same material—there was a contract, goods were supplied, the defendant did not pay the specified amount. Element (4), the connection between the facts and duty, are the same again—there was a contract, goods were delivered, the defendant did not pay the specified amount. Element (5), the loss suffered, is the specified amount, already stated in answer to (3) and (4). The overall effect of reading the pleading is one of frustration at being told the same information over and over again. In contrast, the Experiment Forms that we used in the second part of our study asked only two questions to elicit details about the nature of the dispute. This format greatly reduced repetition. Repetition still occurred—the desire of disputants to emphasise points that are important to them through repetition is unavoidable—but the more open-ended questions minimised repetition.

People will generally be too brief

Lay people have a reputation for being long winded in their explanation of their disputes, what lawyers refer to as “prolix”. As McKeever et al. (2018, p.105) identified in their Northern Ireland study, litigants in person were unsure about how to prepare documents and what to include:

A recurring comment was the ‘belt and braces’ approach to statements and affidavits where LiPs [litigants in person] were unsure or were unfocussed about what to include, so included everything for completeness, and so produced over-long written submissions.

They are, however, also noted to be overly brief and leave out important detail. This was noted in a study by Trinder et al. (2014, p.24), who found litigants in person “often filed papers ... with too little ... information in them”. Our research found that while a small minority of lay people filed very long claims, a larger group filed overly brief claims that did not provide the decision maker or the opposing party with sufficient information. Questions designed to elicit information about the nature of the dispute therefore need nudging built in to prompt people to write more information. The research found however that past a tipping point, more words did not elicit more detail. Lay people did not include detail because they did not realise it was relevant or necessary, not because there was limited space. Text boxes should therefore have a character limit but there should be nudging to suggest to people they write a minimum number of words, for example a statement saying “most applicants write between 200 and 1,000 words in this space”. This is a

nudge in the form of a “social norm”, a strong form of nudging that tells the user how other people have behaved in a certain situation (Sunstein, 2014, p.586; Goldstein, Cialdini, & Griskevicius, 2008).

Naming parties

Lay people need support in consistently naming the protagonists in a conflict story. Lawyers usually define the parties using terms such as “first plaintiff” or “the plaintiff” and then use these terms consistently throughout the claim. Each action is then attributed to the defined party. The reason for this precision is that in legal claims the purpose is to blame, so identifying the party who has carried out each action is very important. This is foreign to a narrative in everyday language, where defining and repeating names of various actors would be very odd.

In our research, as might be expected, lay claims exhibited mixing of terms and inconsistent references when talking about the people involved in a claim. Some would appear to use defined terms in the way that lawyers do, but then switch inconsistently, creating confusion. In this example from a 2009 DC Form, the defendant is the tenant but the claim uses both “defendant” and “tenant”, creating the impression they are different parties:

The Defendant has an obligation pursuant to the Lease to (amongst other things) pay rental ... to the Plaintiff as landlord from [date] until the release of the tenant’s obligations by virtue of expiry of the term of the Lease, or assignments of the Defendant’s obligation.

This creates confusion for the reader about precisely who is involved in a dispute and to whom responsibility is being attributed. A more effective interface will prompt users to always use defined terms (first respondent, the applicant), by highlighting pronouns or personal names and listing defined terms that might apply.

Naming companies, trusts, and other non-natural parties

Precision in naming the party is particularly difficult for lay people when parties are not natural people. For example, the director and the company might be two separate parties as defined in this claim. These two examples taken from the 2009 DC Forms (written by lawyers) illustrate some of the complexity that might be involved:

“The second defendant is the director and shareholder of the first defendant”

“The defendant was at all material times the sole director and shareholder of [Company Name] Limited (Debtor). The defendant gave the plaintiff (a bank)

a guarantee to secure (or help secure) all debts, liabilities and obligations of the Debtor to the plaintiff (Guarantee)”

Identifying that a non-natural person might be responsible for a claim, for example a company, is more difficult than understanding the liability of natural persons. This is an issue which is more difficult to remedy through form design as it requires legal knowledge. However, precisely naming a company can at least assist. As Pablo Cortes observed in his submission to the Select Committee on Access to Justice and Courts and Tribunal Reform in England and Wales:

[T]he research on Small Claims Procedure in Ireland (and the limited experience of the OC pilot) have found that allowing for the online submission of claims can reduce their admissibility when an unrepresented claimant did not identify the correct legal name of a business defendant; this also creates problems in the enforcement stage (Cortes, 2019).

Building in the capacity to search the companies register might increase accuracy in the identification of the parties, even if more complex questions of corporate liability remain the domain of legal advice.

Applicant Type* [?](#)

- Individual
- Organisation/Company
- Trust

Note: Please ensure you supply the correct legal name

[Click here for information on entering organisation names](#)

Organisation/Company Name:*

Organisation/Company Contact Name:*

Figure 2 - Disputes Tribunal Application Form

The Disputes Tribunal Application form (Figure 2) allows Organisations/Company and Trusts to apply—but provides no automated assistance for completing accurate details for these types of applicants (or, in general, for specifying entities who are targets of claims). Automated completion/identification of companies is however provided at the Companies Register.

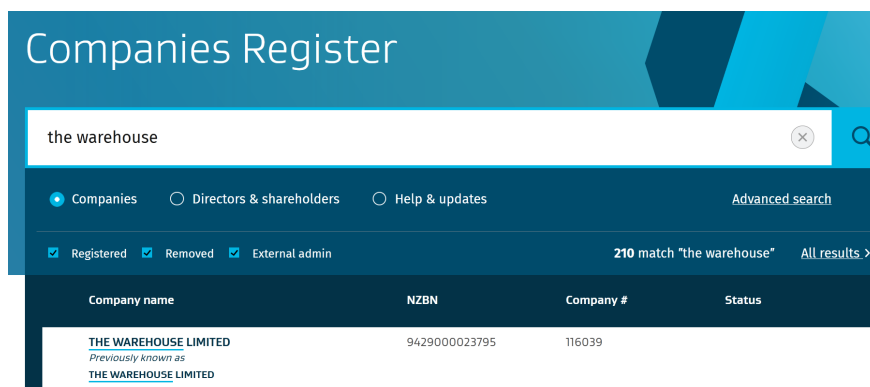


Figure 3 - Auto-completion of company names at the Companies Office

There is scope to include the register of companies (and other registers maintained at Companies Office) as an automated assistance tool in an online court portal. However, Aotearoa does not maintain a register of trusts that could be used in the same way. In discussing the costs and benefits of a register of trusts, the provision of automated assistance to users of online services was not mentioned (Law Commission, 2011). However the issue of accurate identity (in a similar pattern to what we found in our research) was raised: “Third parties, including potential creditors, may be unaware that they are contracting with trustees as opposed to the legal and beneficial owner or a company” (Law Commission, 2011, p. 122).

Use of timelines or date prompts

Lay people need to be nudged to use timelines, as many will not organise narratives in this way. The presence of time markers in legal reasoning is important. Chronological ordering puts particular facts in the context of the surrounding circumstances. Organised by time, events can be seen in causal relationship to one another. For example, an argument that Person A only did a specific action because she received an email from Person B, can be undermined if it is shown that Person B did not send the email before Person A did the specified action. For this reason, chronologies are a common requirement in civil court procedure.⁹

Lay conflict narratives will not naturally include this type of detail; if you are telling a conflict story in a social setting, weighing it down with specific dates and times will bore your audience. In keeping with this observation, our study showed that lay people are less likely than lawyers to use

⁹ For example District Court Rules 2014, r 9.9. The plaintiff must serve a chronology of facts cross-referenced to documents or briefs of evidence. The responding parties must then identify any facts in dispute, add other facts, and cross reference them to documents and witness statements.

chronological markers and when they do use them, are less likely to use them in a clear way (for example using a general time period rather than a specific date or time). Given the importance of detail about time in legal narratives, it is therefore useful to incorporate this into the design of an online court form. This could take the form of a prompt to specify a date if a general time period is indicated or providing tools to assist the disputant to organise their narrative chronologically.

Grammar, spelling, and formatting

One of the forms of nudging discussed above is the ability of a form to give feedback. This can be relatively simple feedback, as occurs in applications such as Microsoft Word, that highlights spelling or grammatical errors for the user. The presence of these errors in claims can be prejudicial to the claim, as they are distracting to the opposing party or decision maker and can signify (rightly or wrongly) that the disputant is relatively uneducated. This can undermine the authoritativeness of their claim and therefore providing feedback to allow correction of these errors can be helpful.

The authoring of text can be assisted with various spelling, grammatical, and layout support features. Document authoring applications such as Microsoft Word contain many Autoformat options to identify, fix, and suggest textual improvements (see Figure 4). These features can also be deployed for text entry on web systems.

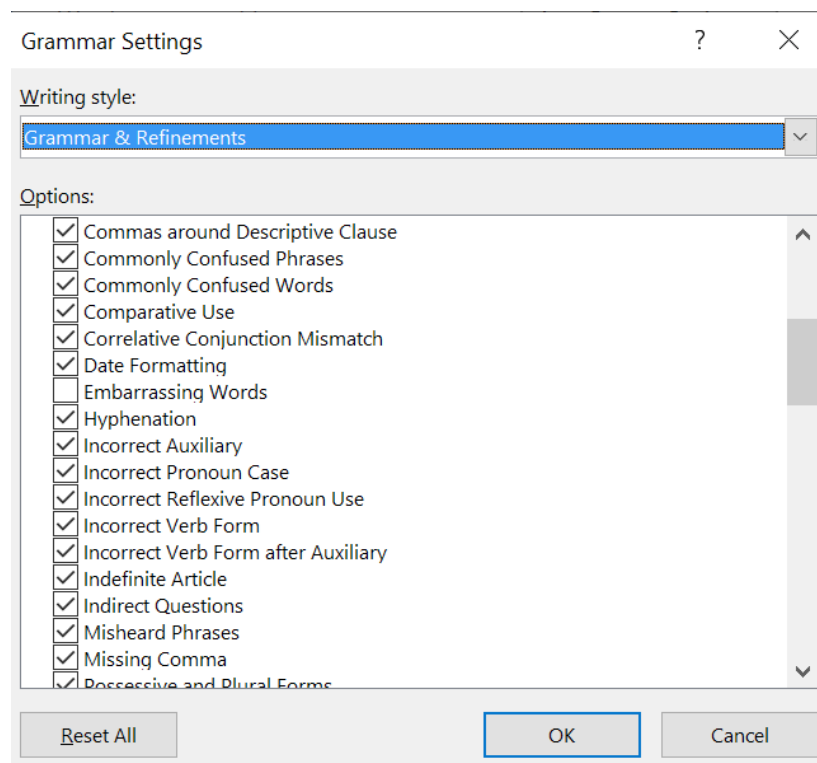


Figure 4 - Some of the Grammatical AutoFormat options in Microsoft Word 2016

Providing a means to consistently format claims through the portal is also helpful. In the Experiment Forms for our research, lay people tended to enter chunks of text with few paragraph breaks and little or no use of headings or numbering (colloquially, a ‘wall of text’). Lawyers, in contrast, attempted to use numbering but the text box provided did not easily support this and it resulted in blank space or uneven tabulation. Part of the research involved retired judges giving feedback on completed Experiment Forms and one commented: “a good layout makes it so much easier for the adjudicator to follow. Faults in layout can be irritating”. Building this into the portal is therefore important.

General purpose word/text processors shy away from providing feedback on text structure, since ‘correct’ structure is often application- or domain-specific. We can, however, look towards a few computationally feasible editing supports for online court forms. A prime example is suggesting textual lists of items that might be better presented as bullet points or numbered lists. Tidying the presentation of bulleted lists using common writing style principles for lists (e.g., <https://www.nngroup.com/articles/presenting-bulleted-lists/>) is also possible by detecting when stylistic conventions are breached (e.g., “Write list items to have approximately similar line lengths”, “Avoid repeating the same word(s) at the beginning of each list item”). Note that this type of intervention is intended to provide feedback to the user with suggestions for improvement. Similarly, it is also straightforward to identify long paragraphs that would benefit from being split into smaller ones. As evidence that this level of application-specific support is possible, the Grammarly commercial service (<https://www.grammarly.com/>) offers many of these features. Additionally, in 2019 Grammarly introduced a *Tone Detector*—a subsystem that can identify a range of 40 ‘tones’ in text, such as ‘informal’, ‘confident’, ‘formal’, and ‘angry’. This service might be particularly appropriate for citizens interacting with a judicial process, where this feedback could prompt users to reflect on their writing before submission.

Alerts for incomplete forms

The ability for an online form to prevent filing if all fields are not completed is advantageous to the courts and the parties as it ensures cases are not rejected for being incomplete. However, this needs to be balanced with the fact that in some cases the form cannot be completed because of circumstances outside the disputant’s control. A case in point is the Tenancy Tribunal portal, which at the time of the research, required the party to enter their email address to proceed. Not everyone has an email address so requiring this field to be filled in is an unreasonable limit on entry

to the system. Consideration therefore needs to be given to using alerts that a form is incomplete but not forcing completion.

There are lessons drawn from our research that might help lay people complete court forms more accurately and completely. The online process, however, offers opportunities to collect information that goes beyond the communication of the dispute itself and it is this issue we turn to next.

Thinking outside the claim

When designing software to largely replace a manual or physical process, a common mistake is to simply copy the task steps from paper to digital. In the field of Health Informatics, another sector that is addressing increasing computerisation, Braunstein (2015, p.93) notes:

A commonly made mistake is to keep essentially the same workflows and processes rather than to carefully re-engineer them to take maximal advantage of the capabilities of the new information system...Systems may be selected, as they are far too often, based on a lists [sic] of features, each of which represent the desires of a specific person or functional area, but with no real thought as to how the entire system will function to improve the workflow and processes of the practice. I cannot overemphasize how often this...deeply flawed scenario plays out...

Simply adding technology to an existing process is termed 'paving the cow path': "the usual meaning of this phrase is computerizing a process in a way that does not change or improve the process itself" (Bannister and Connolly 2012). The introduction of a new digital system often involves opportunities for additional, or alternative, functionality that would not be considered in a basic paper to digital migration.

In the context of online courts and dispute resolution it is, therefore, important to think outside the bounds of the immediate issue (claimants interacting with an online dispute portal) to consider how this technological change will impact the relationships between the general public, the legal system, and the regulatory process that sets the parameters for all these interactions.

Gathering feedback and iterating

An online court form offers the opportunity to gather feedback for the benefit of system designers and managers, regulators, and the general public. It also offers opportunities for users to reflect on their own actions. We discuss these possibilities in turn.

Feedback to the system designers/managers

Alongside typical channels of feedback for public services (for example emails and online chat), any computerised system generates large amounts of usage data. This will include details on sequences of usage and time spent on different task steps. It is important that this data is captured and reflected to the system designers and managers. This feedback enables initial assumptions to be tested against real-world behaviour. For example, designers can test an assumption that most users complete a particular section of the form in under 10 minutes.

Feedback about procedure

Court procedures, including procedure for filing and defending claims, have underlying goals. The 2009 DC Forms for example, were intended to increase accessibility, particularly for litigants in person. The Rules Committee who developed those forms, however, had a great deal of difficulty assessing whether they achieved that aim and even how many litigants in person were filing claims (Courts of New Zealand Rules Committee, 2012). This is unsurprising. There is often considerable distance between high-level actions and their effects on ordinary citizens. Whilst there are other channels for general feedback, the best place to capture accurate reactions to a procedural change is on those interacting with the system. An online court is precisely one of these times and should be designed with the ability for users to simply communicate their responses. The Civil Resolution Tribunal administers a participant satisfaction survey, which provides useful information about whether the design is achieving its aims. Providing similar tools for decision makers to assess the system is also important.

Opportunities for disputants to reflect on causes of conflict

Most people would prefer not to be involved in the civil justice system so when it does occur, it can be an opportunity to reflect on the sequence of events that led to their involvement. Many users might undertake this reflection on their own, but an online court could be an opportunity to encourage such reflective thought. Prompts such as ‘what could have happened to prevent this claim being needed’ could be valuable in two main ways.

First, as a learning experience for the user: for example, could a contract or agreement have been more specific? A phrasing derived from any educational activity might be suitable, such as “what would you say to an earlier version of yourself?” or “if you had a time machine to back to last year what advice would you give yourself?” (e.g., Ehlers, 2013, p.176). Second, as an additional source of information for regulators or government departments: should there be an awareness campaign or other publicity to clarify some issue for the public? Better information or advice on particular

issues? Feedback of this nature could inform where resources should be directed to prevent disputes or intervene earlier in disputes.

Care would, however, need to be taken to ensure users are aware of how their comments may be used. It needs to be clear that such reflections are not part of the claim itself. Additionally, appropriate privacy reviews of the content should occur before use: users are much more likely to contribute valuable feedback with clarity around privacy and identification.

Using the feedback—iterating

These different forms of feedback provide valuable information to feed into improving the design of the system. It is very important to build in the capability and budget to change the form design in response to feedback. It is only through having this capability that the benefits of the online system can be harnessed. A good example of iterating is the Civil Resolution Tribunal in British Columbia, which has significantly changed the design of its portal in response to user and stakeholder feedback.

We do, however, repeat the caution that we stated at the beginning of this report: the design of online courts requires particular caution and processes to monitor and test design. As Sela says:

Given the public function that online courts are entrusted with, their designers should be held to heightened standards of professionalism, accountability and ethicality. The underlying premise is that choice architecture interventions that are mindfully designed and empirically tested are more effective at reaching their designers' goals and more normatively appropriate compared to choice environments that are designed through trial-and-error. To meet these standards, online court designers should commit to evidence-based planning and evaluation of any digital choice architecture they produce. (Sela 2019, p. 31-32).

When iterating the design, the same attention needs to be paid to the core goals and principles of the online court system. Iterations in the design need to be carefully tested to ensure that they support the goals and do not undermine user self-determination.

Consistency across systems

Another aspect of thinking outside the claim is thinking across the system. Although the content of the claim is a natural focus, it is important to realise that a user interacts with any one system as a part of a much larger ecosystem of online systems and services. This is true even when restricted to governmental services. A standard principle of user experience is that of consistency (Nielsen, 1993): that unwarranted variation produces inferior, and more error-prone, interaction.

Consequently, the design of any new system needs to take account of this larger landscape of both existing online systems and current paper-based forms as these will be the experience of potential users.

Online systems provide an opportunity for automated assistance to both simplify user interaction and create consistent data that is more interoperable with other systems. For individual users, name and address information can be entered more quickly and accurately via use of systems such as RealMe, Driving Licence, or Passport Numbers as a unique key or to autocomplete address fields. For example, using the online Tenancy Tribunal Application¹⁰ requires a user to have a RealMe¹¹ account. This enables pre-filling of many fields saving the user time and reducing errors but also introduces a potential barrier to participation. On the other hand, the Disputes Tribunal Application¹² has no requirement for a RealMe ID, but neither does it allow RealMe to be used to simplify entry. The issue of consistency extends down to the formatting, sizing, and spacing of data entry fields. Figure 5 shows how an individual can identify themselves at the Disputes Tribunal Application and Figure 6 shows the PDF Weathertight Homes Tribunal Application Form. When systems are developed or refreshed in isolation, they can easily become inconsistent and produce an inferior user experience.

Applicant Type* [?](#)

Individual
 Organisation/Company
 Trust

What is your name?

First Name(s)	Last Name(s)*
<input type="text"/>	<input type="text"/>

Figure 5 - Applicant Identification at the online Disputes Tribunal Application¹³

1. Claimants name and details (Note 1)

Please provide full and exact legal names of all claimants. The claimant/s in the Tribunal must be the owner of the property.

Owners (Claimant) (full and exact legal name):

¹⁰ Tenancy Services. (2020). Making a Tenancy Tribunal Application online. <https://dispute.tenancy.govt.nz/app/Extra/TenancyTribunal/Default.aspx>

¹¹ New Zealand Government. (2020). RealMe. <https://www.realme.govt.nz/>

¹² Ministry of Justice. (2020). Disputes Tribunal Application Form.

<https://forms.justice.govt.nz/forms/uicomponents/34006758>.

¹³ Extracted from Disputes Tribunal at <https://disputestribunal.govt.nz/how-to-make-a-claim/apply-online/>.

Figure 6 - Claimant Identification at the Weathertight Homes Tribunal Application Form¹⁴

Achieving consistency between any new portal and existing systems (paper or digital) is likely to improve the user experience. When evaluating the costs and benefits of these tools, the user experience perspective is that reducing the time/effort spent on administrative information allows users more time to focus on providing the best evidence for their claim. Where external systems are integrated into the user experience, the data that is entered may be more re-usable in other systems. However, we note there are likely to be privacy issues in integrating data from disparate systems in the public sector and this is also an important consideration (Scassa et al., 2019).

Providing legal guidance

Online courts also provide the opportunity to integrate legal assistance. This is one of the key aspects of the original proposal in England and Wales for online courts and has been implemented in the form of the “Solutions Explorer” in the British Columbia Civil Resolution Tribunal. In addition, some authors have suggested that online courts should include material to guide disputants through the process, including “help buttons with procedural and substantive legal aid materials customised for each specific item” (Sela, 2016, p. 354; see also Justice Committee, 2019). This is the sort of material that a lawyer would ordinarily provide. In the United States context, inclusion of this material has raised questions about whether such assistance would constitute the unauthorised practice of law (Cooper, 2014) but there is more room within the Aotearoa regulatory environment for this type of assistance. Consideration should be given to building in this type of assistance to Aotearoa systems.

Conclusion

Online filing for dispute resolution systems in both the court and tribunal settings offers significant benefits for all stakeholders. For these benefits to be realised, the systems need to be designed with a deep understanding of the users. This includes acknowledging and designing off-line systems for the users who are digitally excluded or who lack legal capability to engage with an online court form. For those who do have access and capability, the design needs to prompt them to provide the detail that a legal narrative requires, rather than just exhorting them to “be precise” or “be succinct”. These forms also need to be designed with full awareness of the potential for nudging users—intentionally or unintentionally. This requires both government and judiciary to understand the issues and actively engage in the planning and design of online court

¹⁴ Extracted from Weathertight Homes Tribunal Application Form for Single Dwelling House Claims at <https://www.justice.govt.nz>.

forms. With the safeguards of a strong user-focus and judicial engagement, online court forms could provide greater physical and financial access for many disputants, and better data about our justice system to support ongoing design improvements and cost savings for government. Most importantly, such safeguards will help ensure that courts deliver consistent and equal justice to all disputants, whether they seek it online or offline.

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