

The Small Claims Tribunal: Perceptions and Effectiveness

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Abstract

In 2008, the Consumer Council of Fiji commissioned the author to carry out an effectiveness study of the Small Claims Tribunal (SCT). This paper provides some of the results of the study. It finds that those who are aware of the SCT have an overwhelmingly positive opinion of the institution. It further confirms that the SCT is an effective mechanism for resolution of small claims disputes. Concerns, however, were expressed at the perceived decline in the quality of referees, and delays in resolution of disputes. The utilisation of the Tribunal as a debt recovery mechanism by the commercial sector was also clearly established, calling for reforms in the system to make the institution more effective for consumer redress rather than as a commercial debt collection mechanism.

Introduction

The Small Claims Tribunal (SCT) is a body established by law to 'provide prompt and inexpensive relief to claimants' for monetary claims of upto \$5,000. Established in 1996 by the Small Claims Tribunal Decree 1991, the primary function of a SCT is 'to attempt to bring the parties to a [claims] dispute to an agreed settlement' (s15) in certain specified types of disputes involving monetary claims upto a specified maximum sum. The jurisdiction of a SCT is exercised by a Referee or by a Resident Magistrate (s4). Referees are

¹ A longer version of this paper appears as Chand (2009). This study could not have been completed without the cooperation of staff and referees of the SCT, including former referees. The most useful discussion that the author had with former referee Ikbal Jannif is gladly acknowledged.

appointed by the Chief Justice; persons so appointed need to be capable by reason of their special knowledge or experience of performing the functions of a Referee. The Tribunal commenced operations in Suva in 1996, followed by Lautoka (1998) and Labasa (2008).

The SCT is administered through the Judicial Department's Budget and Human Resource heads. Until 2005, the budgets and staffing were incorporated within the Magistrate's Court activity. From 2006, the SCT received a separate Activity recognition, with a clearly demarcated budgetary line, indicating budgetary independence. The SCT commenced with a budget of no more than \$50,000. It was expected that the only cost of operating the tribunal was the cost of referees and providing limited support services. Over the years, however, the budgetary allocation for the SCT has been increased. But the increase has been confined to, as Table 1 shows, a total expenditure of no more than \$0.5m.

	Budget	Actual
1996	Na	Na
1997	Na	39,700
1998	Na	83,800
1999	95,000	94,700
2000	100,000	44,800
2001	150,000	110,900
2002	150,000	143,000
2003	150,000	149,800
2004	150,000	150,000
2005	415,800	315,600
2006	427,100	442,700
2007	469,900	527,800
2008	366,100	Na
2009	367,200	-

With this level of expenditure, the average expenditure per case filed with the SCT is less than \$100. This is regarded as an expenditure that is far lower than the average expenditure in the Magistrates Court.

Staffing

The established staffing position in the SCT comprises administrative staff and referees. Administrative staff are responsible for the administration of the office and the claims. The referees form the engine box of the SCT. There is budgetary provision for 5 referees each in Suva and Lautoka and 1 in Labasa. However, over the past few years, there have been only 3 referees each in Suva and Lautoka, and one in Labasa.² In 1996, on the other hand, there were 7 referees appointed for Suva alone.³ Table 2 shows the staffing position in the SCT.

Table 2: Staffing Position in SCTs

	Administrative Staff			Referees				Total Staff
	Suva	Lautoka	Labasa	Suva	Lautoka	Labasa	Total	
1996	4	-	0	7	-	0	7	11
1997	4	-	0	7	-	0	7	11
1998	4	na	0	7	na	0	7	11
1999	4	na	0	7	na	0	7	11
2000	4	na	0	7	na	0	7	11
2001	4	na	0	7	na	0	7	11
2002-2005	na	na	0	na	na	0	na	Na
2006	11	7	0	4	3	0	7	25
2007	11	7	0	4	3	0	7	25
2008	11	7	5	3	3	1	7	25
2009	11	7	5	3	3	1	7	25

Referee Training and Remuneration

The SCT Decree provides for the appointment of referees. A referee ought to be 'capable by reason of his special knowledge or

² The single referee in Labasa handled 450 cases in 2008, and approximately 17 per week on average during the first 12 weeks of 2009.

³ The first lot of referees were: Ikkal Jannif, Temo Stuart, Fred Achari, Donald Santa Dass, Merewalesi Rokowawa, Ayesha Shameem and Susan Douglas. The referees at the date of the dissolution of the court system of 9 April 2009, were: John Tevita, Isaac Peter and Lote Buinimasi (Suva); Panapasa Matailevu, Sita Ram, and Josefa Rakaseta (Lautoka), and Keshwan Padayachi (Labasa). No name has been gazetted after the new legal order came into force in Fiji (May 2009).

experience for performing the function of a Referee'. A referee need not have legal qualifications (s6(2)).

While the SCT is a division of the Magistrate's Court (s3(3)), the objective of the SCT is to provide 'prompt and inexpensive relief to claimants' (long title, SCT Decree 1991).

The issue here is whether the referees are to interpret the case before them as a legal issue or as an issue that needs a fair, just and acceptable outcome. The prevailing interpretation is that the aim ought to be a just and acceptable outcome. As such, the skill of arriving at a just solution is more important than legal knowledge or the skills of a lawyer. Former referee, Ikbal Jannif stated that referees' decisions ought to be based on 'justice rather than the law' thereby requiring skilful referees. This view is on the basis of s15 of the SCT Decree. This section states that 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 actual forms or technicalities'.

Yet, the matters brought to the Tribunal are, essentially, matters of contract. Contracts are legal matters. Where referees appointed do not have legal qualifications, they need to be trained adequately to handle matters that essentially revolve around contracts. The referees appointed in Fiji to date have all been persons who are non-lawyers. Numerous persons appointed as referees have extensive experience in business, bureaucracy or social service. Those with experience in business would tend to have some understanding of contracts. However, those coming from a social service background, would generally tend to have a lower degree of understanding of contracts.

When the Tribunal was initially established, referees were trained by experts, sourced from the New Zealand Disputes Tribunal, which was the model on which the SCT was developed. A former referee from the first group of referees, Ikbal Jannif holds that the initial training of referees was rigorous and prepared the referees well for their responsibilities.

In 1996, under British Aid, a SCT Referee's Manual was developed that placed the responsibility of training SCT staff on the Chief Registrar (2006: 11). The manual listed the 'dos and donts' for referees. It also provides the job description for SCT Referees, and states that appointees 'who are not legally qualified will be re-

quired to complete training in relevant law', albeit in 'elementary' legal knowledge specific to the jurisdiction of the Tribunal (2006: 14, 18).

However, both the frequency and intensity of training over the years have declined. Today there is no established programme for people to go through before they are confirmed as referees. Nor is there, for appointment of referees, any rigorous screening process, which includes formal examination of processes and matters pertinent to the function of a referee. There is also no pre-scheduled continuing education programme for the referees.

In the absence of quality on-going training of referees, the risks to sub-optimal outcomes are significant. The tendency for some referees to delve in issues of law, and therefore, to behave like judges, is strong where there is a lack of continuing education and training of referees. This not only creates confusion and reduces efficiency, but it also reduces the confidence that people have of the SCT.

A major problem now also concerns the fairly low number of referees. While budgetary provision exists for 5 referees each in Suva and Lautoka, currently there are only 3 each in each of these locations. There are 2 hearing rooms each for the SCT. This means that each referee's cycle can be repeated more often than was possible during the early days of the SCT.

Each referee now is paid an allowance/honorarium of \$160 for a full day's hearing and \$80 for a half day hearing.⁴ Reducing the referee cycle has meant that referees are now required to spend more time with the SCT, leading to an effectual full-time work for referees.

The danger of being drawn towards a full-time employment is obvious. Where referees do not have any full-time engagement other than being a referee, the tendency to delay cases rises. Evidence from one tribunal shows that at least one referee hardly disposes a case in one hearing.⁵ This raises the number of days a referee has to sit. Such practices, which emerge on account of poor ad-

⁴ A full day's hearing contains 5 hearings; the recommended time for each hearing is 1½ hours (Referee's Manual, 2006: 13, 16).

⁵ Adjournment is allowed under the operating guidelines given to Referees in the Referees Manual. A case should not be adjourned for more than 2 occasions (2006: 13). This flexibility itself provides the leeway to referees to prolong the number of hearings to, as the outer limit, 3 times the number of cases filed.

ministration of the SCT system, tend to undermine the very essence of the SCT – to provide efficient and inexpensive relief to claimants.

A key aspect of the SCT process is recording of a case hearing. Referees make decisions on the basis of what they have heard and understood of a claimant's case and the respondent's response. Normally there is no written submission by a claimant or a respondent for the referee to consider, other than for any documentary evidence of payment, receipt, etc., submitted by any party. This makes it important for referees to record their understanding of the case before them. Such records become important in cases of appeals.

Case recording is a skilled exercise. The SCT ought to develop a standard template for case recording by all referees. Referees ought to also be trained in utilising this template. The Referee's Manual provides an example of a recording (2006: 33). But this is not in the form of a template that can usefully be utilised by referees. The consequence is that there is a continuing problem of either lack of or incomplete, case records.

Other Staffing Issues: Bailiffs

A major problem facing the SCT is the delay in serving documents to respondents. This is especially the case with the bailiffs that the SCT utilises to serve documents. Claimants are advised that they could utilise their own bailiffs or pay SCT to allow SCT bailiffs to serve documents. There is evidence that the incidence of non-service where claimants utilise SCT bailiffs is higher than the incidence of non-service where claimants opt to serve the respondents themselves directly or through their bailiffs.

Lack of timely service of documents leads to adjournment of hearings, thereby delays, increased costs, and inefficiencies. It also tends to discourage claimants, leading to cases being closed without hearings. Claims lapse if documents remain unserved for a period of at least 12 months after the date of lodgement (s2, SCT (Amendment Rules), 1997).⁶

⁶ The issue of service of documents needs to be examined from the legal point of view. Under the Magistrate's Court Rules, it is the responsibility of the Registrar to ensure that documents are served on parties to the dispute. The Referee's Manual (2006: 20) lists the methods for serving documents. It, how-

The Functioning of the SCT

The SCT maintains operations in Suva, Lautoka, and Labasa. Each of the offices compiles its own annual reports. An analysis of the claims filed in Suva from the commencement date in 1996 to June 2008, shown in Table 3, provides interesting insights into the operations of the SCT.

Table 3: SCT Cases in Suva

Year	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	June 2008	Total
Total Claims	858	3006	3015	2861	2810	2399	3440	3954	3187	2625	2643	3771	1696	36265
Total Claims From (%)														Avg: 97-08
Businesses	28	51	47	41	50	45	54	48	47	48	46	59	55	49
NGOs	0	3	2	7	10	2	2	6	2	1	3	1	2	3
SE*	45	8	7	6	3	3	9	5	2	5	13	8	2	6
State	0	7	2	3	2	0	0	0	0	0	0	0	0	1
Individuals	27	30	41	43	38	50	35	41	48	46	38	31	41	40
Total Claims Against (%)														
Businesses	8	11	12	13	15	17	9	9	11	12	15	13	12	12
NGOs	1	0	0	1	2	0	0	1	1	0	0	0	0	0
SE	0	0	0	0	0	0	0	0	0	0	0	0	0	0
State	0	0	1	1	1	0	0	1	0	0	1	0	1	1
Individuals	91	88	87	85	82	82	90	90	88	88	83	86	87	86

* SE is state enterprises

The following features emerge from the analysis of the data given in Table 3 – on average from 1997 to 2008:

- approximately 3,000 cases have been dealt with by the Suva Tribunal annually.
- approximately a half of all claims (49%) were claims by businesses.
- claims from private citizens (individuals) comprised 40% of all claims.

ever, does not list any fee to be charged by the SCT for service of documents. The relatively low degree of efficiency of service by SCT bailiffs raises the issue of good governance and transparency within the SCT system, with the continuing suspicion that SCT administration is not doing enough to raise service efficiency.

- 86% of all claims were against individuals.
- claims against businesses comprised only 12% of all claims.

A major issue that emerges from the fact that 49% of all claims are from businesses, of which most are against individuals, concerns the utilisation of the SCT by commercial interests. An examination of the claim records in Suva show that a vast majority of the claims by businesses concern non-payment of money in breach of some form of a contractual agreement. Such claims are nothing but a method of debt collection.

Since a not an insignificant portion of the SCT resources is spent on cases that deal with debt recovery, the issue that arises is whether the SCT was intended to be a debt recovery instrument in the first place.

The SCT Decree provides the ambit of the SCT. S15 of the Decree lists the primary function of the SCT: 'The primary function of a Tribunal is to attempt to bring the parties to a *dispute* to an agreed settlement' (emphasis added). S15(2) states: 'If it appears to the Tribunal to be impossible to reach a settlement ... within a reasonable time, the Tribunal shall proceed to determine the *dispute* (emphasis added).

The operative term is 'dispute'. A dispute is generally defined as a disagreement or a difference of opinion. In this case, the term would refer to a disagreement of rights or interests or obligations that relate to money.

The issue, then, is whether debt recovery where the parties do not have any dispute on any aspect of the debt, can be treated as a subject of dispute and, thus, be within the ambit of the SCT. Would, for example, a matter like 'I do not have the money to pay the debt' be regarded as a dispute? If it were, then the party disputing this statement would have to demonstrate that the party making this claim has the money to pay.

There could be a strong basis to a proposition that the 'I know I have a debt and I have to pay this, but at this moment I do not have the money to pay' is not a dispute on the rights or obligations of parties, and as such, they ought not to be matters taken to the SCT. For debt recovery, other legal channels could be resorted to.

The SCT Decree is, however, not entirely clear on this matter. While s15 states specifically the primary function of the Tribunal, the long title of the Decree provides the objective of the decree to

‘provide prompt and inexpensive relief to claimants’.

It may even be imputed that those tasked to administer the SCT Decree were also not certain of the jurisdiction of the SCT. The SCT Referee’s Manual, written in 1996 and revised in 2006 makes no reference to businesses or commercial enterprises specifically. Its introduction, for example, states: ‘The Tribunal will attract a board [sic] range of litigants ... including citizens, consumers, trades people, artisans and others providing goods and services’ (2006: 6). The terms ‘citizens’ and ‘others providing goods and services’ include business houses. But one would wonder why there is no direct reference to the commercial sector in the manual.

There are at least three probable ways out of this dilemma of interpretation. One option is for the state to consider amending the SCT Decree to clarify the objective of the SCT and to clearly delineate the functions and perimeters of the SCT.

Another option is for raising the lodgement fee for claims that are in the nature of debt collection/recovery from the current \$5.65 per claim to a cost recovery fee. A premium fee (cost+fee) could be considered for claims that are of this nature.⁷ Revenue from such fees could be used to expand the scope and efficiency of the SCT.

The third approach to resolving this problem is to consider the establishment of a special household consumer claims tribunal with the specific jurisdiction of claims emanating from non-business and non-official entities. Such a tribunal could be established as a special division of the SCT.

Further analysis of the claims lodged in Suva is provided in Tables 4 and 5. As shown in Table 4, of all claims by individuals between 1996 and June 2008, 58% were by ethnic Indians and 36% by ethnic Fijians. A gender decomposition shows that 74% of all claims were by males. Table 4 also shows that a relatively greater proportion of female claimants were from the ethnic Fijian community compared to the ethnic Indian community.

An analysis of individual respondents shows that 38% of the claims were against ethnic Indians and 57% of the claims were against ethnic Fijians. 83% of all claims were against male respondents and 17% against females. About 8% of all claims against ethnic Indians were against ethnic Indian females, while 20% of all claims against ethnic Fijians were against ethnic Fijian females.

⁷ The suggestion for a fee was provided by a former SCT referee, Ikbal Jannif.

Table 4: Individual Claimants			
	Male	Female	Total
Indians	46%	11%	58%
Fijians	23%	12%	36%
Others	4%	2%	7%
	74%	26%	

Table 5: Individual Respondents*			
	Male	Female	Total
Indians	35%	3%	38%
Fijians	45%	12%	57%
Others	3%	1%	4%
	83%	17%	

* Respondents' claims from all types of claimants (business, individuals, etc)

Awareness, Reach and Perceptions of SCT

To establish the views of the people on the SCT, a random sample survey was conducted. A decision to interview heads of households of 1,000 residents in Fiji through a random sample survey on the main islands was taken. The primary reason for this number and geographical scope was funding.

After the usual processes of questionnaire design, piloting and sampling, 1,062 questionnaires were returned. Of this, 1029 were selected as acceptable for analysis. 65% of the sample coverage was urban, of which 5% point more ethnic Fijians were in the sample than ethnic Indians. Of the 35% of households in rural areas, 2% more ethnic Indians were included in the sample. In terms of provincial distribution, Ba, Naitasiri, Rewa and Macuata predominated. These characteristics correspond approximately to the national population distribution.

Awareness

Overall 55% of the households are aware that there exists an institution called Small Claims Tribunal. This is in sharp contrast to the expected universal awareness of the existence of other courts in the country. Table 6 provides the provincial breakdown of awareness of the existence of SCTs.

	Aware	Not Aware
Ba	60.0%	40.0%
Bua	80.0%	20.0%
Cakaudrove	59.1%	40.9%
Macuata	48.8%	51.2%
Nadroga	45.0%	55.0%
Naitasiri	47.7%	52.3%
Namosi	55.0%	45.0%
Ra	17.8%	82.2%
Rewa	68.9%	31.1%
Tailevu	60.0%	40.0%
Average	54.9%	45.1%

An interesting feature is that even in areas that are not in close proximity to the SCT offices, there is some awareness of SCT. The least aware province was Ra. Of those who were not aware of SCT, a vast majority (67%) relied on the police to resolve their disputes involving money. This was followed by relying on chiefs, village leaders or religious leaders (20%), and lawyers (8%). 2% relied on other courts, while 1% each relied on bailiffs, thugs and witchdoctors. However, only 48% of all these had any overall success in their disputes.

Respondents who were not aware of the existence of SCT, were provided brief explanations on what a SCT was. The following information was given to them:

SCT is like a small court where you take any claim upto a value of \$5,000. There is no need for you to go to a lawyer or police. You can go straight to the SCT office, get some forms and fill these to give the details of the claim and lodge the form. You will then be given a date on which you can go and represent your case to a person appointed by the government. This person, called the Tribunal, will see if your claim is fair and just. It does not take much time or money to get justice this way.

On this basis, 96% of those who were not aware of SCT stated that they would take any of their case involving money dispute to

the SCT. In terms of the sources that were the primary basis of awareness approximately a fifth stated these to be their friends and relatives. 13% indicated these to be newspapers, followed by Radio (15%), TV and School (both 14%), and newspapers (13%). A quarter of the respondents learnt of the SCT through other sources like the military, colleagues and workmates, community police, and SCT itself through the claimants when respondents were taken to the SCT for claims.

Use of SCT

Of those who were aware of SCT 16% had utilised SCT. There was a relatively greater utilisation of SCT by urban residents than rural residents; 13% of rural dwellers utilised the services, while 17% of urban dwellers had done the same. By province, as Table 7 shows, the largest proportion of those who were aware of SCT and who used the services of SCT were from Rewa, Tailevu and Ba. Ra is an outlier as 2 out of the 8 households who resided in Ra had utilised the services of the SCT. As expected, however, Bua and Cakaudrove had no household utilising SCT. The surprising result, however, is from Naitasiri as a relatively smaller proportion than other provinces utilised SCT services.

	Yes	No	Total
Ra	25.0%	75.0%	8
Rewa	24.8%	75.2%	125
Tailevu	24.0%	76.0%	25
Ba	16.8%	83.2%	179
Nadroga	14.8%	85.2%	27
Macuata	11.1%	88.9%	63
Namosi	9.5%	90.5%	21
Naitasiri	7.3%	92.7%	96
Cakaudrove	0.0%	100.0%	12
Bua	0.0%	100.0%	9
	15.8%	84.2%	565

It is estimated that 3.7% of all residents in Fiji had cases filed against them sometime during 1996-2008. While a large majority

of those surveyed had not themselves utilised SCT for their redress, 44% knew of someone who had done so. Approximately a third also knew of someone who was taken to SCT as a respondent. A quarter knew of someone who had given evidence on behalf of either of the parties before the SCT.

Redress

Of those who sought redress through the SCT, 58% succeeded in getting a positive outcome. Of those who did not succeed, 34% indicated that they had either appealed the decision, or were going to appeal (if the decision was more recent). Table 8 provides further details on those who sought redress through the SCT.

Table 8: Experience with SCT		
	Yes	No
Were any lawyers involved in your dispute?	15%	85%
Did your opponent take the Tribunal seriously?	91%	9%
Were proceedings easily understandable?	96%	4%
Any need to followup on payment	19%	81%

The results show that people take the SCT seriously, and that language is not a barrier to seeking redress through the SCT. 15% stated that lawyers were involved with the matter. Details of such involvement could not be ascertained. However, it is probable that the claimants would have consulted lawyers prior to seeking the avenue of SCT.

An underlying philosophy behind the establishment of the SCT was that the SCT would provide a comfort zone for people with monetary disputes to air their claims and counter-claims, compared to the highly legalistic court system. The 2006 revision of the SCT Referees Manual states:

Referees observe that parties are allowed to air their grievances in a relaxed forum, say what is important to them even if of no strict legal significance, talk directly to their opponents and hear the other point of view, and receive quick decisions which they are in a position to understand and therefore accept (2006: 6).

This observation is confirmed by the respondents in this survey. The SCT provides a non-intimidationist environment in which

claimants and respondents can interact to resolve their monetary disputes.⁸

Processes

Respondents were asked to recall the time it took for them to complete the various processes for a redress at the SCT. A clear majority (73%) stated that the redress was provided in less than 6 months. For 93% of the claimants the process was completed within a year. In terms of the actual time for a case, for 83% of the claimants, the actual hearing and decision took less than an hour.

One major problem, however, was in relation to getting payments if the decisions went for the aggrieved. Table 9 shows the lag between the decision and the full payments.

Payment within 2 Weeks of Decision	27%
Payment Between 2 wks & 1 month	28%
Payment between 1 Month & 1 Year	13%
Payment over 1 year	3%
No payment	29%

While 55% of the claimants received the payment as decided within a month of the decision, approximately 30% did not receive the payment decided on despite winning their claims. A majority of those who did not receive the necessary payments stated that they followed up with the SCT office on the lack of payments, but lost hope given the delays and the costs of chasing up on payments. The frustrations of those who did not receive the payments as per payment orders, was generally captured in their comment that they felt it was a waste of time to take the matter to the SCT. Suggestions were made that decisions ought to include mandatory payment through a respondent's superannuation funds.

⁸ The intent of providing a non-intimidating environment is strengthened by the personal qualities that the judicial department lists as those required in a Referee: ability to listen, ability to relate to and communicate with a wide variety of people, ability to respond positively and appropriately to cultural differences, ability to assess information, fair mindedness and impartiality, commonsense and practical judgments, self awareness, and ability to express herself/himself clearly (SCT Referees Manual, 2006: 14-15).

User Rating

Overall, two-thirds of the SCT users stated that the services of the SCT were satisfactory. 9% stated that the services were excellent. 23% rated SCT services between unsatisfactory and extremely poor. The detailed breakdown of the ratings by various services of the SCT is given in Table 10.

	V. Poor	Unsatisfactory	Satisfactory	Excellent
Customer Service/Registry Staff	5	17	70	5
Professionalism/competency of Referee/Tribunal	5	19	66	10
Independence of Referee/Tribunal	3	18	64	14
Summons delivery service	3	15	74	8
Speed & Efficiency	7	33	53	7
Cost Effectiveness	5	17	68	10
Overall Experience in using Customer Service	6	14	68	13
Your overall confidence in SCT	7	13	67	13
Ease of access to Tribunal	0	12	74	15

While there was an overall satisfaction with the services provided by the SCT, about 40% of those who had utilised the SCT claimed lack of satisfaction with the speed with which SCT resolved their cases. A quarter of the respondents utilising SCT also expressed unhappiness with the competence of the referees.

Overall Perception

The overall perception of those who had heard of the SCT was overwhelmingly positive. As Table 11 shows, 92% perceived the SCT as overall worthwhile. 87% perceived the SCT as efficient in delivering redress to complainants seeking financial redress. 89% viewed the SCT as delivering good results.

A total of 124 general comments were received. Of these, 16% praised the establishment of the SCT. The rest suggested various areas of improvements.

Table 11 Overall Perception of SCT (%)					
	Strongly Agree	Agree	Disagree	Strongly Disagree	Agree + Strongly Agree
Efficient	10	77	11	3	87
Timely	9	56	30	5	66
Delivers good results?	11	78	8	3	89
Fair/Just	13	78	7	2	91
Professional/Reliable	11	76	11	1	87
Corrupt	3	16	63	18	19
Another of govt's stupid schemes	1	26	56	17	27
Overall worthwhile	14	78	7	1	92

Over a third (36%) of the comments contained expressions of concern on the efficiency of the SCT. Included in these were calls for greater professionalism of staff manning the SCT offices, need for more staff, and better bailiff services. 22% called for greater publicity on the SCT. 15% commented on poor quality of referees, even to the extent of suggesting that there was a need to improve the education levels and quality of referees hired by the SCT. Claims of bias of some referees were also made. 7% of the comments were specifically related to the need for SCT to ensure that payments are made promptly after a decision is handed down. 6% of the comments called for the establishment of SCT in other areas in Fiji.

Tribunal's accomplishments and failings

This study shows that there are 3 major accomplishments of the SCT. First, the SCT is a major avenue for redress on disputes involving small sums of money. Until 2007, this limit was \$2,000; from 2007, the limit was raised to \$5,000. Second, approximately 5,000 claims are lodged in the SCT annually. Of this, about 3,000 cases are lodged annually in the Suva SCT alone. This is a large number of cases, which otherwise would have either remained unresolved or would have found their way to the Magistrate's court, thereby further clogging the already crowded Magistrate's Court system. Third, the access to judiciary has increased significantly with the SCT.

The major potential risk of the SCT is that the SCT has been used by the commercial sector as a debt collection agency. The risk of SCT losing focus has increased with the increase in claim jurisdiction to \$5,000. This risk can be countered by a premium for all claims from the commercial sector. The fee could generate sufficient revenue, which could be targeted to improving the efficiency and geographical coverage of the SCT. The premium could be established as a proportion of the sum claimed by businesses. For efficiency in the functioning of this, the present SCT, together with the current fee regime, could be bundled as the Household/Consumer Claims Tribunal, and a separate division created to handle small commercial claims (Small Commercial Claims Tribunal), with a commercial fee for service being levied.

Concluding Remarks: Tribunal's Strengths and Weaknesses

The SCT has a number of strengths. First for the government, the average cost is less than \$100 per claim. As such, it is significantly cheaper than the Magistrate's Court for redress. For the consumers as well, the SCT is an inexpensive redress for claims involving small sums of money. The SCT is significantly less 'legalistic' in its dealings. The objective of attaining a just resolution as against a legalistic resolution determined by precedents, provides a less adversarial environment for dealing with claims. This is an important factor in ensuring social harmony in a small society like Fiji. Third, the SCT provides a greater access to redress. Claimants find a higher degree of comfort in the SCT than in courts. Courts, with the presence of 'strangely dressed' (wigged) persons, speaking 'strange tongues' are seen as too 'threatening' by ordinary citizens. Finally, the SCT is more efficient and speedier than other mechanisms that claimants could resort to.

It, however, has some major limitations as well. First for long, the SCT operations were limited to Suva and Lautoka. A SCT was established in Labasa during 2008. This leaves claimants from other areas great distances to travel in order for them to utilize these services, or to go without them. A mobile SCT service could be a possible way out of this dilemma. A mobile SCT would enable a wider spread of the SCT mechanism in Fiji. While a mobile SCT system would incur costs, the overall advantages of enabling monetary claims upto \$5,000 be resolved in the SCT system rather than

through the Magistrate's court, would continue to hold for spreading the SCT system widely in Fiji.

Second, the relatively limited funding of the SCT, and the inefficient administration (for example by not appointing a full complement of referees as allowed for under the budgetary provisions), caps the potential of the SCT.

Third, the difficulties that those who feel genuinely aggrieved by the SCT decisions have in taking their grievances to higher courts through appeals, tends to reduce public confidence in the SCT. While there is credible basis for limiting appeals to Magistrate's courts from SCT decisions, the option of creating an appeals mechanism within the SCT framework needs to be considered.⁹ The technical/legal and financial feasibility of the establishment of a Small Claims Appeals Tribunal would establish its viability.

Fourth, training of referees is relatively limited, with progressively lower profiled persons being appointed as referees. In the absence of quality on-going training of referees, the risks to sub-optimal outcomes are significant. A greater scrutiny of potential referees at the time of appointment, coupled with screening examinations, would alleviate a perception of incompetence of referees that exists with some people who have utilized SCT. Former referee, Ikbal Jannif suggests that routine peer reviews, and possible random reviews by the Magistrate's Court of the determinations by the SCT would also strengthen the perception of independence and professionalism in the SCT. This would require all SCT decisions to be adequately recorded.¹⁰

Regular adjournments indicate that there may be a tendency for some referees to create a system that may see them in engagement virtually on a full-time basis; each referee is paid an allowance of \$160 per full day and \$80 per half day

While disallowing barristers and/or solicitors from appearing in

⁹ The possibility of this mechanism emerged from discussions between the author and former referee Ikbal Jannif.

¹⁰ Currently there is no formal record of decisions other than records in the individual case files. Judgments, as they are recorded in other divisions of the court system, are not available for the SCT. The issue of whether such judgments are to be filed is a matter of public policy. Any formal recording of judgments and/or making them public will have resource pressure, which the current funding levels of the SCT would not be able to sustain. In addition, any requirement of formal recording needs to be balanced by the negative consequences of any temptation for the referees to act like magistrates/judges.

the SCT has a sound basis, the exception provided for corporations and/or public bodies to be represented by barristers/solicitors if they are employees of these organisations, creates an uneven playing field in the Tribunal. Disallowing the Consumer Council of Fiji from utilising its employee(s) who may be lawyers from representing consumers in the SCT further lop sides the field.

A major problem facing the SCT is the delay in serving documents to respondents. This is especially the case with the bailiffs that the SCT utilises to serve documents. Lack of timely service of documents leads to adjournment of hearings, thereby delays, increased costs, and inefficiencies. It also tends to discourage claimants, leading to cases being closed without hearings. Claims lapse if documents remain unserved for a period of at least 12 months after the date of lodgement.

On average approximately a half of all claims filed in the Suva Tribunal between 1997 and 2008 were claims by businesses. Since a significant portion of the SCT resources are spent on cases that deal with debt recovery, the issue that arises is whether the SCT was intended to be a debt recovery instrument in the first place. This matter needs to be dealt with by the SCT and its line ministry. Some options in this regard have been proposed in this paper.

Finally, awareness of the SCT, and/or its potential is relatively limited, vis-à-vis the awareness of Magistrate's courts. Awareness campaigns on the SCT, including its scope, procedures, and limitations, would significantly raise the profile and the utility of the SCT. A major merit of the SCT system is that it provides a non-intimidationist environment in which claimants and respondents can interact to resolve their monetary disputes.

Overall, the perception of the SCT for those who heard of the SCT, has been overwhelmingly positive. This study shows that the major accomplishment of the SCT is the vastly increased access of ordinary people to the judiciary.

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