

# Asian parties in the courts

Mai Chen, Barrister and President of NZ Asian Lawyers, on employment disputes, real estate issues, and the New Zealand Bill of Rights Act 1990

There is a dearth of data on which to base a much-needed analysis of Asian parties in the courts. The need arises from their growing numbers in New Zealand's population from less than 1 per cent 50 years ago to 17.25 per cent in the 2023 census (Statistics NZ, "2023 Census" <[www.stats.govt.nz/2023-census/](http://www.stats.govt.nz/2023-census/)>). Such data is needed to confirm and analyse otherwise anecdotal problems such as a disproportionate increase in the number of Asian civil litigants in the New Zealand court system, a comparatively lower rate of early resolution and a higher rate of matters proceeding to trial and appeal, as described below, and to find practical solutions to those problems.

The article immediately following this, co-authored with Yvonne Mortimer-Wang, entitled "The data gap" emerges from our work so far on a research project funded by the Michael and Suzanne Borrin Foundation. The research aimed to examine two key questions. First, is there empirical evidence to support the anecdotal observation that there is a disproportionate increase in the number of Asian civil litigants in the New Zealand court system and a comparatively lower rate of resolution and higher rate of matters proceeding to trial and appeal? Second, what can the judiciary and legal profession do to mitigate any identified trends while ensuring equal access to justice? The project was initiated following observations by New Zealand judges at senior judicial conferences about an apparent increase in the number of Asian civil litigants and a perception that matters involving Asian litigants appeared less amenable to settlement. The Hon Justice David Goddard KC invited research into these anecdotal observations.

The latest area of the law I am analysing from an Asian parties in the court perspective is in the Employment Court and the Employment Relations Authority. This is because, once again, the anecdotal evidence is that there is a disproportionate increase in the number of Asian litigants/applicants, a comparatively lower rate of resolution and a higher rate of matters proceeding to trial/hearing and appeal.

There is no data on the ethnicities of parties before the Employment Relations Authority (ERA) and the Employment Court. We only have ethnicity data collected by the Employment Mediation Service from individuals who voluntarily self-identify in their applications for mediation or early resolution. The mediation may occur before any statement of problem has been filed in the ERA or be directed by the ERA after the filing of a statement of problem or by the Employment Court. Due to voluntary self-identification, the data may not be fully representative and may have a higher margin of error or be distorted as some parties may be more likely to voluntarily self-report ethnicity. With that caveat,

the ethnicity data that the Employment Mediation Service collects for mediation and early resolution from 2022–2025, for all ethnicities is set out below (Official Information Act response, 22 October 2025).

The data appears to show that a larger portion of those applicants who voluntarily self-identify are Asian compared to what you would expect given their overall proportion in the population and that the demand for interpreters appears to be overwhelmingly from Asian parties.

TABLE 1: Mediation: Applications by Ethnicity

	FY2022/ 2023	FY2023/ 2024	FY2024/ 2025
Asian	103	130	140
Unknown	19	13	21
European	275	296	289
Māori	91	79	74
Not collected	5,528	6,536	6,662
Other Ethnicity	30	41	38
Pacific Peoples	21	29	15
Grand Total	6,091	7,142	7,254
Annual % rate of Asian complaints in proportion to the total complaints across ethnicity	1.7%	1.8%	1.9%

TABLE 2: Early Resolution: Applications by Ethnicity

	FY2022/ 2023	FY2023/ 2024	FY2024/ 2025
Asian	229	299	273
European	600	548	498
Māori	112	92	67
Middle Eastern/ Latin American/ African	56	47	69
Not collected	658	1312	1563
Other Ethnicity	152	184	168
Pacific Peoples	42	35	24
Grand Total	1,849	2,517	2,662
Annual % rate of Asian complaints in proportion to the total complaints across ethnicity	12.4%	11.9%	10.3%

Note: Early resolution capability was established around April 2022 as part of MBIE Dispute resolution services.

TABLE 3: Mediation: Parties Using Interpreters — Application Count by Financial Year

	FY2022/ 2023	FY2023/ 2024	FY2024/ 2025
Asian	33	69	71
Unknown	0	C	C
European	C	C	0
Māori	5	C	C
Not collected	193	291	310
Other Ethnicity	C	C	6
Pacific Peoples	C	C	0
Middle Eastern / Latin American / African	6	7	0
Grand Total	247	379	393

“C” means confidential to protect the privacy of the applicants as the number is fewer than five total responses.

In applications for mediation only 7–9 per cent of applicants self-identified over the past three years. The Asian proportion of those who have self-identified has risen from 19.8 per cent in FY 22/23 to 22.6 per cent in FY 23/24 and 25.2 per cent in FY 24/25. In applications for early resolution between 41–65 per cent of applicants self-identified over the past three years. Again, the Asian proportion of those who do self-identify has risen from 19.2 per cent in FY 22/23 to 24.8 per cent in FY 23/24 and remained steady at 24.8 per cent in FY 24/25. In terms of parties using interpreters, between 20–25 per cent of mediation parties self-identified over the past three years. The proportion of those mediation parties using interpreters, of those that did self-identify their ethnicity as Asian was 55.9 per cent in 22/23, 71.9 per cent in FY 23/24 and 86.6 per cent in FY 24/25.

The very limited data available appears to show that relatively large numbers of Asian parties already mediate employment disputes. But much more data and research are needed to confirm that these Asian parties are not settling at mediation disproportionate to their percentage of the population and are turning up in the ERA and the Employment Court. This research is needed to ensure only cases requiring ERA and Employment Court resolution go to full hearing in the best interests of all parties needing timely access the ERA and the Employment Court. The recently released Chief Justice’s Annual Report for 1 January 2024 to 31 December 2024 (at 49) is a good reminder of the importance of increasing out of court settlement of disputes with “[t]imeliness in the courts” being recognised as a key priority.

The latest NZ Asian Lawyer seminar held on 12 November 2025 was initiated by the Real Estate Authority (REA) because the REA is focused on understanding the experience of Asian consumers and licensees engaged in real estate transactions in New Zealand, and in particular the risks and issues that can arise. This is an increasingly important issue given the 35 per cent rise in complaints to the REA in the 2024/25 financial year, and the \$1.65 trillion value of the New Zealand residential real estate sector (<otality.com/nz/insights> “Monthly NZ Housing Chart Pack,” October 2025).

Recognising the increasing diversity in New Zealand, the growing number of real estate licensees who identify as Asian and the appearance of Asian parties in complaints, the REA is exploring whether there are issues arising that are distinct

to Asian communities and which could be addressed through targeted guidance and information for Asian consumers and licensees who engage with them. The REA collects voluntary demographic data from licensees, which indicates that twenty-three per cent of real estate licensees identify as at least one Asian ethnicity (10 per cent Chinese (1,503 licensees) and 9 per cent Indian (1,419 licensees)) (Belinda Moffat, CEO of REA, presentation at NZ Asian Lawyer Seminar, 12 November 2025). It also collects voluntary demographic data from complainants.

The REA CEO/Registrar, Belinda Moffat, discussed consumer research commissioned by the REA showing that the proportion of Asian consumers with “lack of knowledge about the real estate transaction process — how to go about it” has improved for some Asian groups and become worse for others — from 20 per cent of Asian consumers surveyed lacking knowledge in 2023 to 23 per cent in 2025 (Annual Consumer Perceptions Survey report, Nielsen IQ).

Andrew Tringham, General Counsel, REA, identified the following key issues arising in residential property transactions which may impact consumers who may be vulnerable due to unfamiliarity with the New Zealand system: (presentation to NZ Asian Lawyer Seminar, 12 November 2025):

- “Early release of deposit” clauses in Sale and Purchase Agreements have become more common and concerning. Deposits must be held for 10 working days, unless parties agree otherwise (s 123 Real Estate Agents Act 2008). Early release means the vendor (or their agent) can access the funds before the mandatory 10 working day period has passed. If the sale does not proceed, recovering the money can be difficult, costly and stressful for a buyer. Consumers unfamiliar with their rights or the statutory requirements may feel pressured to agree to the early release.
- Advertising that promises “no upfront marketing” or “free marketing” can have issues. Consumers may believe they can walk away without cost if the property doesn’t sell. Consumers need to read the details and be certain that the terms do not allow later recovery through higher commission or deduction from the sale proceeds.
- Increasing reliance on electronic signatures and digital messaging is another risk. Issues around consent when signing electronically or approving documents online requires careful oversight by licensees. Use of social media as means of documenting consent can have risks if the message is deleted. Language barriers and informal communication styles can lead to misunderstanding and other issues.

Tina Hwang, a practitioner advising Asian parties on residential property matters, identified the following issues at the coalface including increased urgency and pressure to sign agreements quickly; some parties being pushed to sign agreements without legal advice (particularly purchasers); certain multi-offer situations being mishandled; some agents pushing for deposit release and waivers within the contract; missing mandatory disclosures (for example, s 146 of the Unit Titles Act); no Purchase Price Allocation (PPA) for deals over \$7.5M (for residential property); and increasing complexity and regulatory gaps (“Fair Real Estate Transactions” presentation to NZ Asian Lawyer Seminar, 12 November 2025).

The contract risks include the rise of use of waivers without legal advice on title requisitions; and early release of deposits; agents advising purchasers that they can sign agreements without legal advice as there is a due diligence condition (but actually inserting a purchaser's approval condition instead — lack of understanding of the difference); legal advice often sought too late; Kiwisaver clauses poorly drafted or missing (especially on deposits); misunderstanding of generic finance pre-approvals; purchasers making “cash” offers without confirmed finance for that property; and lack of awareness of flooding and insurance risks. There are also risks relating to vendor's agents being misunderstood to be acting as the purchaser's agent; misunderstanding of “purchaser's agent” in general; non-licensed individuals doing licensed work; agents giving misleading advice on finance and conditions; and agents' misrepresentation and misconduct.

Kathleen Morrison, another practitioner advising Asian parties on residential property matters, identified the ingrained culture of the country they were born in as a major factor affecting the behaviour of superdiverse Asian parties as both consumers and licensees.

There is a fundamental right to justice under the New Zealand Bill of Rights Act 1990 (NZBORA) aimed at ensuring access to courts without discrimination. This may include the need for all branches of government subject to NZBORA to address systemic barriers to justice for specific groups. That requires data to confirm any issues blocking access to justice to Asian parties for example, as a precursor to curing such problems. The studies we do have show that superdiverse people not born in New Zealand may have less information about the law and how it operates (see Mai Chen “Mediating Between and With Asian Parties in Dispute” [2025] NZLJ 298 and Mai Chen and Alice Strang “Asian Parties and the Property (Relationships) Act 1976: Unique challenges and issues” (2025) 19(1) Otago Law Review (forthcoming)).

Section 24(g) of the NZBORA does provide that “[e]veryone who is charged with an offence ... shall have the right to have the free assistance of an interpreter if the person cannot understand or speak the language used in the court”. There are some statistics kept of which languages are sought for interpretation in courts. For example, the Chief Justice observed in the Chief Justice of New Zealand Annual Report for the period 1 January 2023 to 31 December 2023 at 70 that “[i]n 2023, interpreters were used in 10,150 court and tribunal court events using over 99 distinct languages”. Here, the issue is more the quality of the interpretation including whether the interpreter is properly matched with the person requiring interpretation. For example, a manda-

rin interpreter from Singapore may not be best placed to accurately interpret a person from Heilongjiang province in China since language, cultural context and local slang are indivisible. There may also be issues as to whether the person charged really “cannot understand or speak the language used in the court”.

The Supreme Court in *Abdula v R* [2011] NZSC 130, [2012] 1 NZLR 534 at [43] held that the standard of interpretation “must reflect the accused person's entitlement to full and contemporaneous knowledge of what is happening at the trial”. The Supreme Court held:

Interpretation will not be compliant if, as a result of its poor quality, an accused is unable sufficiently to understand the trial process or any part of the trial that affects the accused's interests, to the extent that there was a real risk of an impediment to the conduct of the defence.

Section 20 of the NZBORA provides that individuals belonging to certain minorities shall not be denied the right, in

community with other members of their minority, to enjoy their culture, to profess and practise their religion, or to use their language. However, the provision does not impose a positive duty on the government to actively promote or support the use of minority languages. Instead, it is framed as a negative obligation, meaning that the government must refrain from actions that would deny or interfere with the right. The purpose of this provision, as outlined in the White Paper to the NZBORA, is to prevent government actions that would enforce cultural conformity by removing the rights of minorities to enjoy their language, culture, or religion.

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The judicial branch of government is independent. It is not that better data kept about Asian parties in the courts may better allow the courts to refrain from actions that enforce cultural (including language) conformity. But, better data may assist in educating judges about which cultures they need to have capability in to better determine who did what to whom and why, when determining adjudicative facts and issues with parties from different cultural and language backgrounds. If data confirms that there are proportionally higher numbers of Asian parties in courts than their percentage of the population this may show a greater need to educate/inform those parties about ADR, for example.

That is why I set out in the next article, with Yvonne Mortimer-Wang, why the data gap for Asian parties in the civil courts needs to be filled, and what is being done to fill it. Given the above the data gap needs also to be filled for all courts and for statutory authorities at the coalface of ensuring access to justice for all New Zealanders. □