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The data gap

Mai Chen and Yvonne Mortimer-Wang on why ethnicity statistics are missing from New Zealand's civil courts

INTRODUCTION

This article 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.

In the process of commencing this research, we initially discovered that not only does ethnicity data for civil litigants not presently exist in New Zealand, there appears to have been no formal research conducted on this matter in either New Zealand or other comparable common law jurisdictions, despite similar anecdotal observations being made as to the potentially disproportionate rise of Asian litigants (see, for example, Cam Truong KC and William Lye KC OAM *The Rise of Asian Litigants in Commercial Disputes* (Foley's List Commercial Disputes Seminar Series, 15 March 2017) at [3]).

THE PROBLEM: ANECDOTE WITHOUT EVIDENCE

At an event earlier this year, judges and practitioners explored the question as to whether there are misunderstandings that result in matters going to a hearing when parties are unaware of settlement opportunities that would be in their best interest (a report of the event can be found at Mai Chen "Considering possible settlement: Asian parties in court" [2025] NZLJ 149 at 149).

Similar observations have been made by judicial officers in the last ten years. For example, Justice Matthew Palmer, writing extra-judicially in 2018, reflecting on his own experience sitting as High Court Judge in Auckland and Wellington, stated that "often first-generation Chinese litigants are in court with each other over matters which most Pākehā or Māori usually settle without reaching the courts" (Matthew Palmer "Impression of Life and Law on the High Court Bench" (2018) 49 VUWLR 297 at 299).

Without statistical data being collected and analysed, observations about ethnic differences in settlement rates and litigation patterns will remain anecdotal. This creates a higher risk of potentially wrong attributions being made as to what is occurring, and the reasons for that phenomenon.

Relying purely on whether parties have "Asian sounding names" is also an inadequate and potentially dangerous way of identifying ethnic origin and is likely to misidentify people who for any number of reasons, have changed the spelling of their names or changed their names through marriage or deed poll. There are also many surnames which have the potential of belonging to multiple ethnic origins or groups (for example, Lee). Any study derived from a review of past cases or records based on the names of the parties alone will never be sufficiently accurate to support reliable conclusions.

THE DATA GAP

Through various government departments and agencies, New Zealand collects and publishes statistics about immigration data, property investment data, and census data broken down by ethnicity (Statistics NZ *2023 Census* <www.stats.govt.nz/2023-census/>).

Ethnicity data exists for criminal justice proceedings through Statistics NZ's Integrated Data Infrastructure (IDI) (Statistics NZ *Data in the IDI* (June 2025) <www.stats.govt.nz/integrated-data/integrated-data-infrastructure>), and the Family Court collects demographic data including the ethnicity of applicants of protection orders (Ministry of Justice "Data tables" (including protection order applications with ethnicity data) <www.justice.govt.nz/justice-sector-policy/research-data/justice-statistics/data-tables/>), but no specific ethnicity data appears to be kept for general civil litigation in New Zealand Courts.

In theory, there is a possibility of Statistics NZ building a bespoke dataset which cross-references historic information kept by the Ministry of Justice (MOJ) about parties in civil proceedings (that is, names and addresses). However, we have been informed that there is insufficient historical data collected by the Ministry (for example, the date of birth and the address of the party may not have been captured) to be relied upon as the basis for the bespoke dataset to be built reliably, and the exercise would likely be costly, time-consuming, and deprioritised given the importance of Statistics NZ's other ongoing objectives.

Engagement with senior officials at MOJ also elicited the following practical difficulties:

(a) The historical information kept by MOJ is not complete and/or may not be accurate, given that it had not been an intentional or consistent approach to collecting the data. Some key information missing from the data collection are the litigant's date of birth and/or residential addresses. These are critical pieces of datapoints in terms of being able to accurately match the litigant to other information held by Statistics NZ across its other datapoints.

(b) There are inherent limitations to the description of the litigant's ethnicity given that a not insignificant portion

of civil litigation concerns companies, trusts and other types of entities. In addition to a potential conceptual debate as to what is the ethnicity of the litigant in those circumstances, there is also less (reliable) data being kept of the human agents (for example, directors) involved. It may also be possible to exclude aspects of the cases from analysis, however this process of exclusion may amplify any issues which already exist within the dataset — in terms of any reliable statistical inferences which may be drawn from the dataset.

(c) Consequentially, MOJ considers that the output an integration process generates on currently available historical data would not produce particular reliable outcomes.

(d) In light of the uncertainty as to the reliability of the outcome, such a process cannot be adequately justified given the costs and impact it will have on the limited capacity of Statistics NZ (which also has other priorities and ongoing projects, and cannot in any event, commence such a process until mid-2026).

(e) These outlined difficulties do not preclude considerations as to if, and how, future demographic data may be collected and/or integrated. This is a topic for separate consideration going forward.

The authors are now working on a solution with the MOJ and the judiciary to undertake a more manual review process, focusing on a more limited dataset of cases decided in the Auckland High Court, including judgments on interlocutory matters/summary judgment applications.

This data gap is not unique to New Zealand. Our review of statistics published by comparable common law jurisdictions reveals a general absence of published ethnic statistics relating to civil justice. In contrast, ethnicity and other demographic data appears to be commonly collected and published by the governments in the criminal justice area. This disparity in the treatment and availability of demographic statistics between civil and criminal justice appears consistent across comparable jurisdictions:

(a) The United Kingdom publishes biennial reports *on Ethnicity and the Criminal Justice System* with comprehensive data on arrests, prosecutions, convictions, sentencing, and remand status broken down by ethnic groups (Ministry of Justice (UK) *Statistics on Ethnicity and the Criminal Justice System, 2022* (March 2024)). However, we are unable to locate any similar public reports of ethnicity statistics of parties in civil litigation in the United Kingdom.

(b) We can find no public reports of ethnicity statistics of parties in civil litigation in Australia. Ethnic and demographic data are collected primarily in the criminal justice context, for example the makeup of prison population based on prisoners' country of birth (Australian Bureau of Statistics *Prisoners in Australia* <abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/2024>).

(c) In the United States, the United States Sentencing Commission publishes detailed demographic differences in federal sentencing, including race and ethnicity breakdowns (United States Sentencing Commission *2023 Demographic Differences in Federal Sentencing* (August 2024)). However, we cannot locate any data published on the racial identities of civil parties. Researchers must rely on automated prediction tools to predict race/ethnicity and gender of plaintiffs based on names and available data (Pellaton P and others "Trading Diversity? Judicial Diversity and Case Outcomes in Federal Courts" (2024) American Political Science Review at 841).

(d) In Canada, the government collects race-based and Indigenous identity data primarily in the context of criminal justice, including police-reported data on victims and accused persons (Statistics Canada *Collection of Police-reported Indigenous and Racialized Identity Data through the Uniform Crime Reporting Survey (UCR)* (January 2024)). We can find no published record of the government routinely collecting ethnicity data from parties in civil proceedings.

CRIMINAL-CIVIL DIVIDE

The authors acknowledge the practical difficulties outlined by the MOJ in terms of why demographic data for civil litigants has not been integrated with the rest of Statistics NZ's databases. However, we do recommend that demographic information of litigants ought to be collected by the MOJ on civil cases in the future.

The conceptual justification for not collecting and analysing data for criminal and civil cases do not appear to be well founded — or at least not seriously considered by researchers or policy makers. In this article, we consider some potential reasons for this divide, and open discussion about why it would be beneficial for New Zealand as a society to collect and analyse data about civil justice outcomes and ethnic characteristics. This is further to Mai Chen's article, "Asian Parties in the court", which precedes this article.

While the traditional distinction between criminal and civil proceedings emphasises that civil disputes are between private parties rather than involving government power, this characterisation oversimplifies the government's role and obligations in civil justice. The government cannot simply step aside from civil proceedings on the basis that they involve private disputes.

As a fundamental tenet of the rule of law, the government has an obligation to ensure access to justice for all citizens, as articulated by Mai Chen in "Asian Parties in the court", under the New Zealand Bill of Rights Act 1990. The principle that access to justice is a vital component of the rule of law has been consistently articulated by New Zealand's senior legal officials (see, for example, Hon Andrew Little "Speech to Law Foundation Awards Dinner" <www.beehive.govt.nz/speech/speech-law-foundation-awards-dinner>).

The obligation to ensure access to justice extends beyond merely providing court facilities and includes ensuring that civil proceedings can be heard swiftly and efficiently. When the court system includes cases that could potentially be resolved through early settlement or alternative dispute resolution, access to justice is compromised for all litigants. Access to the courts, tribunals and other dispute resolution bodies enables matters to be heard and determined in accordance with the law and the principles of natural justice, which is a critical aspect of the rule of law.

There is also potentially different access to civil justice issues experienced by people from a non-majority ethnicity background. Inequality of means and inequality of access to legal information and assistance "tilt the playing field when it comes to obtaining the protection of the law" (Rt Hon

Dame Helen Winkelmann "Address to the New Zealand Law Society" (Auckland, 15 May 2025)). Further, the New Zealand Law Society reported that "some of the main barriers to accessing justice include the use of confusing and inaccessible 'legal jargon', and difficulties accessing comprehensive, accurate and up-to-date information about legal rights, responsibilities and ways to prevent, contain and resolve disputes" (New Zealand Law Society *Strengthening the rule of law in Aotearoa New Zealand* (June 2025) at [5.7]).

If certain ethnic groups have lower settlement rates due to barriers such as lack of information about settlement processes, cultural misunderstandings about how the New Zealand legal system operates, or inadequate access to culturally competent legal advice or interpretation and translation in court of a sufficient quality, this directly undermines access to justice. The resulting court delays affect not only the parties in those specific cases but the entire justice system, creating a ripple effect that denies timely justice to all users of the civil courts.

The government cannot adequately fulfil its access to justice obligations without having visibility on the demographic information in the civil justice space. Without this information, policy makers will not know if particular communities face systemic barriers which require targeted intervention. While a majority of the population will never be charged with a crime, many will have disputes over property, commercial, employment and family matters. Other individuals will also come to interact with State bodies through civil proceedings (for example, regulatory, civil pecuniary, disciplinary, judicial review proceedings, and rights litigation).

VALUE OF DEMOGRAPHIC (ETHNICITY) DATA

The value of collecting and analysing ethnic data in the justice system can be demonstrated by reference to how often criminal justice data forms the basis of academic studies. Statistics New Zealand's IDI has enabled a substantial body of academic research examining ethnic disparities in the criminal justice system (Statistics NZ *Research papers based on microdata* <statsnz.contentdm.oclc.org/digital/collection/p20045coll17/search/searchterm/ethnicity%20justice> (filtered to Ethnicity and Justice)).

Government entities routinely rely on ethnicity data from the IDI to inform policy and practice. The MOJ, the Department of Corrections, and New Zealand Police all use ethnic statistics to monitor outcomes, identify disparities, and develop targeted interventions (<www.stats.govt.nz/integrated-data/integrated-data-infrastructure/>). The IDI contains comprehensive justice data including sentencing and remand data from 1998, court charges from 1992, and recorded crime data from 2009.

Statistical data provides a sound basis for researchers conducting studies involving different treatment of ethnic groups in the justice system. By way of example, a recent study led by Senior Research Fellow Alexander Plum at the New Zealand Policy Research Institute at Auckland University of Technology examines court outcomes for first-time offenders prosecuted for violating drink-driving restrictions (Michael and Suzanne Borrin Foundation *Same crime — different outcomes: do court outcomes differ systematically by ethnicity?* <www.borrinfoundation.nz/same-crime-different-outcomes-do-court-outcomes-differ-systematically-by-ethnicity/>). The project uses the IDI to link offenders' socio-demographic characteristics, including ethnicity, with their court outcomes, allowing comparison between Māori, Pacific peoples, and Pākehā offenders.

This study demonstrates the kind of rigorous analysis that ethnic data collection enables. By controlling for relevant factors such as age, education, and income, researchers can identify whether ethnic disparities in outcomes reflect genuine inequities in the justice system or are explained by other variables.

Understanding litigation and settlement patterns

A primary benefit of ethnic data collection would be helping the legal profession and the judiciary understand whether there are noticeable differences in patterns of behaviour between different ethnic groups and their approach to litigation and settlement. Current observations about settlement rates and litigation patterns remain anecdotal and risk wrong attributions about what is occurring.

The ability to analyse litigation patterns by ethnicity would also enable examination of whether certain ethnic groups are more likely to proceed to trial, appeal decisions, or discontinue proceedings at particular stages. Such analysis could reveal systemic barriers that prevent effective participation in the civil justice system or identify opportunities for better support at critical junctures in litigation.

Reliable ethnicity data would allow researchers to go further and examine the underlying reasons for any differences. If higher court participation rates among certain ethnic groups result from higher levels of participation with property and/or commercial ventures, then it may not require further redresses. If there is a cultural preference for formal adjudication, then that is probably also a legitimate choice that the system should accommodate. However, if lower settlement rates result from lack of information about settlement opportunities or barriers to accessing mediation services, targeted interventions could improve outcomes.

The cross-reference of ethnicity data and litigant's country of birth could also enable assessment of whether preconceptions about the New Zealand legal system based on home country legal systems create barriers to effective participation. If so, then more resources can be directed at educating first-generation immigrants as to resolution opportunities and mechanisms within the civil justice space.

Understanding the ethnic composition of civil litigants and their specific experiences with the justice system would enable targeted training for lawyers, judges, and court staff about cultural considerations relevant to civil litigation. Such training could address communication styles, cultural frameworks for understanding legal concepts, appropriate use of interpreters, and culturally responsive approaches to settlement and case management.

Supporting evidence-based policy and resource allocation

Demographic data would also assist to identify whether more assistance is required for groups whose language or culture differs from the dominant Eurocentric or English-based approach to litigation. Such analysis would provide an evidence base for resource allocation decisions by courts regarding expert appointments, interpreter services, and culturally appropriate support services.

Decisions about where to locate community law centres, which languages to prioritise for translated materials, and

how to design culturally responsive services proceed without empirical evidence about the ethnic composition of civil litigants and their specific needs.

If at a future point, civil litigants' demographic data can be integrated into the IDI, policymakers could link civil litigation patterns with other administrative data on income, education, housing, and health to develop comprehensive understandings of how different communities experience both civil justice issues and broader social challenges. This integrated approach would enable development of holistic interventions addressing the root causes of civil justice problems rather than merely responding to litigation after disputes have escalated.

Detecting systemic discrimination and regulatory enforcement patterns

Beyond understanding litigant behaviour and access to justice barriers, ethnic data collection could reveal patterns of systemic discrimination, including potential indirect discrimination in how different ethnic groups are treated by prosecution agencies bringing civil regulatory actions or by the courts themselves. This represents a particularly compelling argument for data collection, as it directly challenges the distinction between criminal and civil proceedings based on state power.

The existence of such studies in the criminal justice space demonstrates the feasibility of this type of analysis. There is no principled reason why similar analysis should not occur in the civil justice context, particularly for regulatory and disciplinary proceedings.

Applying this framework to civil regulatory proceedings, ethnicity and other demographic data could reveal whether particular enforcement regimes, while facially neutral, impose disproportionate burdens on certain ethnic communities without adequate justification. For example, there appears to be a high level of civil forfeiture proceedings brought by the Commissioner of Police against respondents with "Asian sounding" names. Without systematic ethnic data collection, it cannot be determined whether proceedings disproportionately target particular ethnic communities, and if so, whether there are legitimate justifications or whether this pattern indicates problematic enforcement priorities. The absence of ethnicity data in civil proceedings means these critical questions will remain unanswered.

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LOOKING FORWARD

The MOJ's Long-Term Insights Briefing identifies court timeliness, navigation assistance, potential structural reform, and addressing unmet legal need as critical priorities (Ministry of Justice "The Future Operation of the Courts and Justice Services: Draft Long-term Insights Briefing" (October 2025)).

Ethnicity data collection should be integrated with these initiatives, enabling analysis of whether delays disproportionately affect particular communities, determining which communities face greatest barriers to navigating the court system, informing evidence-based structural reforms, and designing targeted interventions for unmet legal needs.

The new digital case and court management system, Te Au Reka, presents a unique opportunity to embed ethnicity data collection from its inception (Ministry of Justice *Te Au Reka* <www.justice.govt.nz/justice-sector-policy/key-initiatives/te-au-reka/>). Te Au Reka is being implemented in three phases starting with the Family Court in 2026, followed by the District Court and High Court, and then the Supreme Court, Court of Appeal, specialist courts, and tribunals (Ministry of Justice *The Future Operation of the Courts and Justice Services: Draft Long-term Insights Briefing* (October 2025) at 39). The system includes an online portal for commencing and responding to claims in civil courts and tribunals.

In the authors' view, the portal should incorporate additional data fields, with self-identification as the preferred methodology. The design should allow for multiple ethnicity recording, provide clear explanations to litigants about why ethnicity data is being collected and how it will be used, include appropriate privacy safeguards, and enable optional completion while encouraging participation. The system should be designed with data integration considerations that enable future transfer and integration of de-identified ethnicity data to Statistics NZ for inclusion in the IDI. ❐