

 1 April 2021

THE Consumer Claims Tribunal and Tribunal for Homebuyer Claims do not allow the disputing parties to be represented by practising lawyers. This is because they are supposed to be low-cost forums for the public's small claims matters.

In many cases, this provision leaves the claimants at a great disadvantage as large businesses often have employees who have legal qualifications. These employees, who are not holding practising certificates from the Bar Council, are assigned to represent their employers at tribunal hearings. For all practical purposes, they are lawyers but are allowed to speak for their employers.

The man in the street can get the help of anyone (including lawyers) to prepare their claim forms for filing. But at the hearing, they may have difficulty presenting their cases. They may not be articulate enough or coherent in their presentation, and may not be able to rebut what the defendants' lawyers are saying.

Thus, some claimants are left in a very disadvantageous position at the hearings not because they have any physical disability, but because their knowledge, experience, confidence and ability to articulate their thoughts are no match for the defendants' lawyers.

A clause in the laws of the tribunals says: "a minor or any other person under a disability may be represented by his next friend or guardian ad litem."

Is a layperson claimant who is facing a lawyer from the defendant's side under a disability as he is no match for the lawyer? How is this section interpreted and applied by the tribunals?

A person can be under a disability if he is a minor, if he is physically handicapped or if he has a mental illness. That is easily understood. But when a person is not intellectually on par with his opponent, is that condition not a form of disability as well?

Do the tribunals recognise intellectual disability, which can result in injustice happening to the intellectually disabled, which must not be confused with the mentally disabled?

The phrase in the tribunal laws is "person under a disability", and this should cover a wider, fuller spectrum of disability than that covered by legal disability.

Could the tribunals throw some light on this and whether they allow persons under intellectual disability to be assisted by anyone other than practising lawyers?

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Source: <https://www.thestar.com.my/opinion/letters/2021/03/31/consumers-left-in-unfavourable-position>