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Annual Report of the

**NEW ZEALAND  
LAWYERS AND CONVEYANCERS  
DISCIPLINARY TRIBUNAL**

For the 12 months ended 30 June 2018

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Presented to the Minister of Justice, the Hon Andrew Little  
The New Zealand Law Society  
The New Zealand Society of Conveyancers

Pursuant to section 259 of the Lawyers and Conveyancers Act 2006

Judge Dale Clarkson

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# New Zealand Lawyers and Conveyancers Disciplinary Tribunal

## Introduction

The New Zealand Lawyers and Conveyancers Disciplinary Tribunal (the Tribunal) was established with effect from 1 August 2008 by the Lawyers and Conveyancers Act 2006 (the Act).

The formal functions of the Tribunal are, broadly, to hear and determine: professional disciplinary charges of a more serious nature laid against a legal or conveyancing practitioner; applications to have persons restored to the roll or register of practitioners, or to allow their employment by a practitioner; appeals against a refusal to issue a practising certificate to a practitioner; and, various associated applications, including orders affecting non-practitioner employees of practitioners.

Indirectly, however, it is to be hoped that the processes and determinations of the Tribunal assist the two professions in maintaining the high standards of conduct, which the public are entitled to expect.

The Tribunal may impose a range of sanctions in relation to its determinations including suspension of a practitioner from practice, striking off from the roll of barristers and solicitors, cancelling registration as a conveyancing practitioner, the imposition of a fine of up to \$30,000 as a fiscal penalty, and the prohibition of employment in respect of non-practitioner employees working in a legal or conveyancing practice.

As can be seen, the Act has a more consumer oriented approach than its predecessor, the Law Practitioners Act 1982. It also seeks to put in place a "more responsive regulatory regime". This latter aspect is reinforced as part of s 231 "responsibilities of chairperson" where subsection (1)(a) refers to the "orderly and expeditious discharge of the functions of the Disciplinary Tribunal".

The purposes of the Act are set out in s 3 as follows:

### "3 Purposes

- (1) The purposes of this Act are—
  - (a) to maintain public confidence in the provision of legal services and conveyancing services;
  - (b) to protect the consumers of legal services and conveyancing services;
  - (c) to recognise the status of the legal profession and to establish the new profession of conveyancing practitioner.
- (2) To achieve those purposes, this Act, among other things, —
  - (a) reforms the law relating to lawyers;
  - (b) provides for a more responsive regulatory regime in relation to lawyers and conveyancers;
  - (c) enables conveyancing to be carried out both—
    - (i) by lawyers; and
    - (ii) by conveyancing practitioners;
  - (d) states the fundamental obligations with which, in the public interest, all lawyers and all conveyancing practitioners must comply in providing regulated services;
  - (e) repeals the Law Practitioners Act 1982."

## Executive summary

This year has been a relatively quiet one for the Tribunal, in terms of new filings.

It can hardly be said to have been a quiet one for the legal profession. The outpouring of stories following the complaints made by women about certain conduct at the firm Russell McVeagh, (and many other firms), shocked many members of the legal profession, as well as the public.

The reported surveys conducted by the New Zealand Law Society, and other professional organisations, revealed a staggeringly high proportion of practitioners having experienced sexual harassment, bullying and discrimination.

Given that the Tribunal has never been asked to consider a case of this nature in which the complainant was a practitioner (rather than a client), it would seem axiomatic that there is a problem with the complaints process in this sensitive area. The Tribunal is unaware if any complaints have been considered at a lower level, because Standards Committee proceedings are normally private.

It is commendable that the New Zealand Law Society moved so quickly to appoint a working group to investigate this area of concern. We note that the report back to the New Zealand Law Society proposes significant changes to the complaints process, indeed a separate track for sensitive complaints. This is a matter for the Legislature, but if the expertise which resides in the Tribunal's membership can be of assistance in discussing any proposals for change, we are willing to assist.

We have received a steady stream of charges filed by the Standards Committees, and one new case in which charges have been laid by the Legal Complaints Review Officer.

The Tribunal has continued to ensure those cases which could be progressed quickly were heard at the earliest possible date.

Some administrative frustration occurs when events beyond the control of the Chair or Deputy Chair delay expeditious process.

However, efficiency cannot be allowed to come at the expense of a practitioner's right to legal representation and other natural justice principles. Where criminal charges are extant concurrently with disciplinary charges, the practitioner's right to silence may mean delay in hearing the latter.

The Tribunal is always conscious that these are cases where a lawyer's career (often lengthy) is at stake.

On the other hand, we are mindful of the clear statements of the higher courts about expeditious disposition. In the *Orlov*<sup>1</sup> decision, the Court emphasised the statutory objectives:

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<sup>1</sup> *Orlov v. New Zealand Law Society and Ors* [2013] NZCA 230, referring to a complaint that was almost five years old.

[166] As a legal practitioner, Mr Orlov is subject to his profession’s disciplinary regime. It exists primarily for the benefit of the consumers of legal services. That is, people who include Mr Orlov’s own clients. But it exists also for the benefit of all legal practitioners, not least Mr Orlov himself.

[167] We mentioned at the outset of this judgment, and we reiterate, that one of the central objectives of the Act is to provide for “a more responsive regulatory regime in relation to lawyers and conveyancers”.

[168] By raising the numerous procedural objections this judgment considers and rejects, Mr Orlov has thwarted and delayed the disciplinary process. He now complains of these largely self-inflicted delays.”

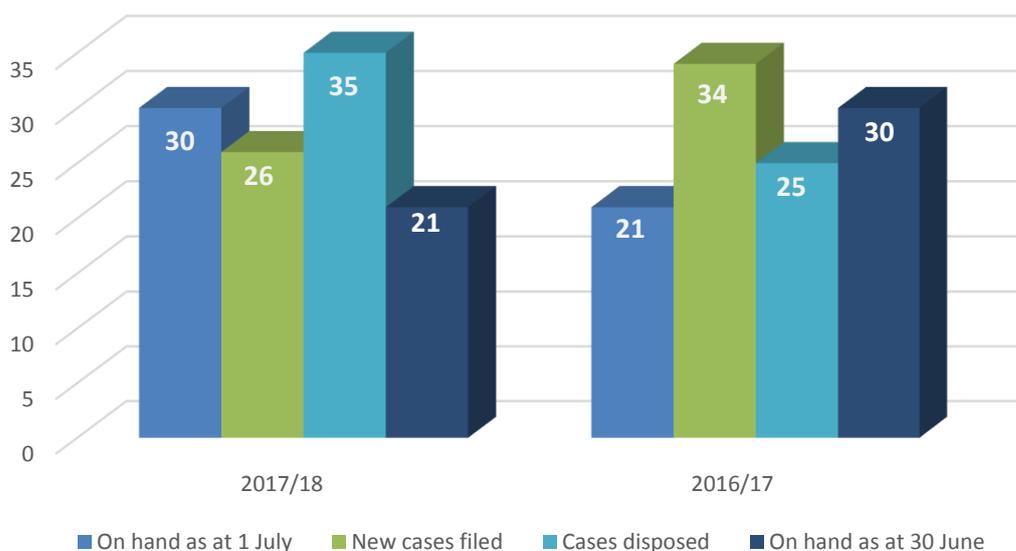
It is to be hoped that lawyers, and their counsel, appearing before the Tribunal, will take note of such clear direction. There are still, however, some examples of unmeritorious procedural applications which are brought, if not for the purpose, at least with the consequence of, delay.

It is also of assistance that it is now settled law that challenges by way of judicial review should await the completion of the substantive disciplinary process, including the penalty phase.<sup>2</sup>

## Summary of caseload activity

At the start of the reporting period the Tribunal had **30** cases on hand. During the period the Tribunal received **26** new cases and disposed of **35** cases. At the end of the reporting period **21** cases were on hand.

The chart below shows a comparison of the on hand, new and disposed cases for this reporting period, as against the last reporting period.



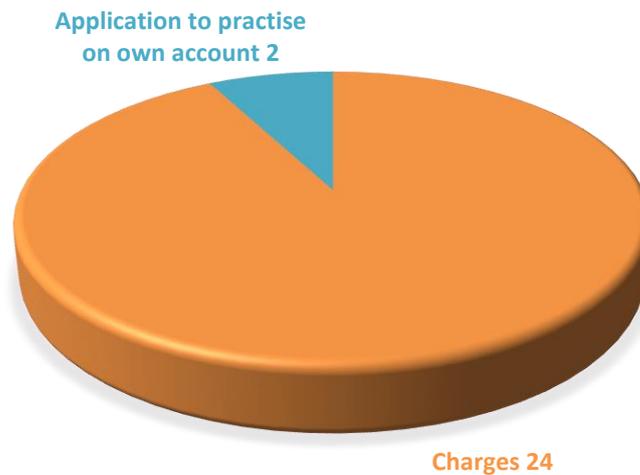
<sup>2</sup> *Orlov v. New Zealand Law Society and Ors* [2013] NZSC 94 (Supreme Court).

## New cases filed

Proceedings before the Tribunal fall into three categories: Charges, Appeals and Applications.

- **Charges**  
Laid by a Standards Committee of the New Zealand Law Society or New Zealand Society of Conveyancers, or the Legal Complaints Review Officer.
- **Appeals**  
A person may appeal to the Tribunal against any decision of the New Zealand Law Society or the New Zealand Society of Conveyancers to decline to issue, or to refuse to issue, a practising certificate to the person.
- **Applications**  
Various applications including:
  - restoration to the roll or register
  - consent to employ
  - revocation of an order in respect of an employee
  - to practise on own account

The **26** new cases filed are broken down by category (type of proceedings), in the pie chart and table below.



Type of proceedings	Number of cases	Number of lawyers or former lawyers
Charges	24	21
Application to practise on own account	2	2

The **24** new cases of charges, were charges laid against lawyers or former lawyers. There were no charges laid against non-lawyers.

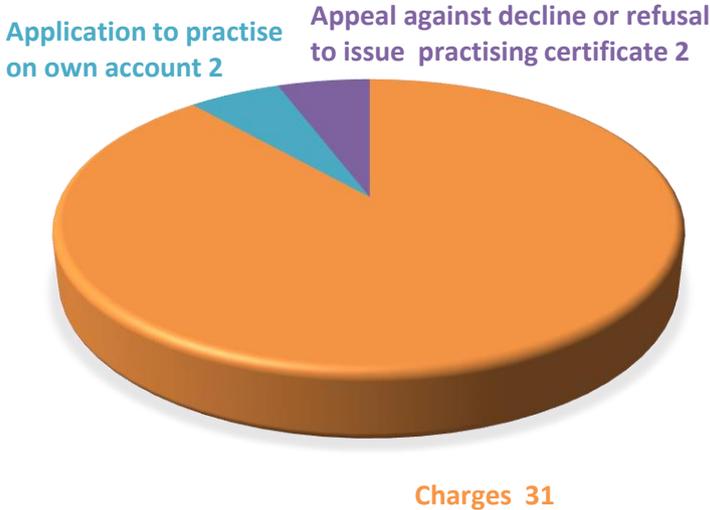
The number of lawyers or former lawyers is fewer than the number of new cases of charges. This is explained by the fact that some lawyers or former lawyers had more than one set of proceedings filed against them.

The number of charges in each case is variable and may include charges laid in the alternative. Where this occurs, we have counted the alternatives as one charge.

The charges laid arose either from complaints or own motion investigations by the New Zealand Law Society.

**Cases disposed**

The **35** cases disposed are broken down by category (type of proceedings), in the pie chart and table below.



Type of proceedings	Number of cases	Number of lawyers or former lawyers
Charges	31	27
Appeal against decline or refusal to issue practising certificate	2	2
Application to practise on own account	2	2

Again, as the number of lawyers or former lawyers is fewer than the number of cases of charges disposed, some lawyers or former lawyers had more than one set of proceedings filed against them.

The **31** cases were disposed of in the following manner:

- in 12 cases the charges were admitted
- in 12 cases the charges were proven following a defended hearing
- in 2 cases the charges were proven following a formal proof hearing
- in 1 case the charges were dismissed
- in 4 cases the charges were withdrawn at the request of the Standards Committee

## Case progress

Hearings are preceded by issues and/or setting down conferences which are usually conducted by telephone, to minimise costs.

In addition, there are often interlocutory applications requiring adjudication prior to hearing, some of which (of a procedural nature) can be considered by the Chair alone, and some of which require the convening of the full, or reduced number Tribunal.

A reduced quorum, consisting of three members (Chair, one lay member and one lawyer member), is permitted under the Act to consider applications for Interim Suppression of Name and for Interim Suspension Orders.

These provisions allow speedier consideration of such applications at a considerably reduced cost. At times, in order to achieve both of these outcomes, and with agreement of the parties, such hearings have been held by telephone.

Upcoming hearings are listed on the Tribunal's website and can be found at the link below:

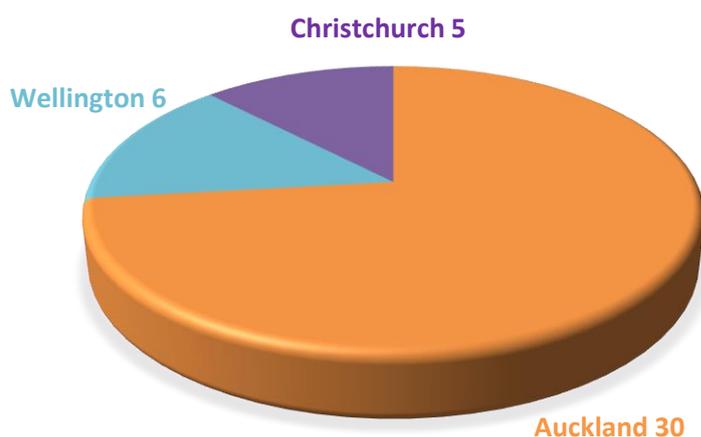
<https://www.justice.govt.nz/tribunals/lawyers-and-conveyancers/lc-disciplinary-tribunal/about/upcoming-hearings/>

During the period the Tribunal held **41** hearings (this includes any appearances via AVL and/or telephone)

In addition to hearings, the Tribunal also considered some matters on the papers, with the consent of the parties.

The *viva voce* hearings varied in length from one hour to three days. On some days more than one matter was heard, in order to best utilise the time of the members and minimise travel costs.

The pie chart below shows the locations of the 41 hearings held. The table further below shows the number of hearings by location, by financial year.



## Number of hearings by location

	2017/18	2016/17	2015/16	2014/15	2013/14	2012/13	2011/12	2010/11	2009/10
Auckland	30	23	23	32	45	22	20	15	15
Hamilton	-	-	-	2	1	-	-	-	2
Tauranga	-	-	1	-	-	-	-	-	-
Rotorua	-	-	-	2	-	-	-	-	-
Napier	-	-	-	-	1	-	-	-	1
Hastings	-	1	-	1	-	1	-	-	-
New Plymouth	-	-	-	-	-	-	-	1	-
Wellington	6	3	5	12	5	7	8	4	-
Nelson	-	-	-	-	-	-	5	1	-
Christchurch	5	2	1	4	5	4	1	1	1
Timaru	-	-	1	-	-	-	-	-	-
Dunedin	-	-	-	3	1	3	-	-	1
Invercargill	-	-	-	-	-	1	-	-	-
<i>Total</i>	<b>41</b>	<b>29</b>	<b>31</b>	<b>56</b>	<b>58</b>	<b>38</b>	<b>34</b>	<b>22</b>	<b>20</b>

**Note:** The table in the annual report for the period ending 30 June 2015 was incomplete as showed a lesser number of hearings than had been held, for the periods ending 30 June 2014, 2013 and 2010. The table has been amended.

## Decisions

During the period **48** decisions were issued.

These were decisions concerning:

- liability (charges proven or dismissed)
- penalty (for charges admitted or charges proven)
- appeals against refusal to issue practising certificate
- interlocutory applications
- applications for interim suspension
- applications to practise on own account

## Penalty orders

The table below shows a breakdown of penalty orders made during this period.

Type of order	Number of orders made
Censure	11
Not able to practise on own account	2
Pay compensation/refund monies paid	4
Pay/contribute to the New Zealand Law Society costs	24
Pay fine to the New Zealand Law Society	5
Reimburse the New Zealand Law Society for Tribunal costs	23
Restriction on employment	1
Struck off the roll of barristers and solicitors	5
Supervision in respect of Trust Account management	1
Suspended from practice	10
Undergo training	2

The Tribunal also made **24** mandatory orders in respect of the Tribunal costs, against the New Zealand Law Society. The quantum of that figure is noted below under the heading 'Cost recovery'.

## Other outcomes

Appeal against refusal to issue practising certificate: **1** allowed, **1** dismissed

Application to practise on own account: **2** granted

Application for interim suspension of practitioner: **1** declined

Charges withdrawn at request of the Standards Committee: **4** cases

## Suppression

Normally, suppression of complainant's names and details is agreed. In addition, there are instances where personal or medical information about practitioners is not published.

Less frequently, suppression of the practitioner's name is also granted. During the period **4** applications for permanent name suppression were granted.

Once again, I record that all of the Tribunal's work has related to the legal profession, with no matters coming forward in respect of the relatively new, and small, conveyancing profession.

## Appeals

During the period **7** appeals were filed in the High Court.

Appeals determined during the period:

- 1 withdrawn
- 1 abandoned
- 1 struck out

There are **5** appeals awaiting final determination. This includes appeals in the High Court and applications for leave to appeal to the Court of Appeal, filed prior to and during the reporting period.

## Cost recovery

The Tribunal made **s 257** orders during the period for the New Zealand Law Society to reimburse the Crown for hearing costs, in the sum of \$139,837.00.

## Membership and recruitment

The Tribunal comprises of a Chair, Deputy Chair, law and conveyancing practitioners, and lay members. The practitioner members volunteer their services without reward, and their commitment and contribution is of enormous value to the Tribunal. They are senior practitioners who are appointed by the New Zealand Law Society. They have a broad range of experience and are located in different centres of the country. In convening a panel of members to sit, effort is made to use local members in order to minimise costs, provided no conflict of interest arises. Parties are advised in advance of the hearing of the composition of the Tribunal, to ensure an unanticipated conflict does not arise.

Appendix 1 lists the Tribunal members during the reporting period. Below is a summary of the backgrounds of the Chair and Deputy Chair.

### *Judge Dale Clarkson, Chair*

Judge Clarkson is the first Chairperson of the Tribunal, having been appointed at its inception in 2008. Judge Clarkson retired as a full time District Court judge in 2006 but continues to hold an acting warrant and sits regularly in the Family Court. She graduated with a Bachelor of Laws from Auckland University in 1978 and was admitted to the Bar in 1979. She was appointed to the Bench in 1989 and has now served 29 years as a judicial officer. She is on the Editorial Board of Lexis Nexis Family Law Service and New Zealand Family Law Journal. She has presented papers on Family Law, Mediation and Professional Discipline topics nationally and internationally. She was the inaugural President of the New Zealand branch of the International Women Judges Association.

### ***Judge Bernard Kendall QSO (retired), Deputy Chair***

Judge Kendall has 30 years of experience as a District and Family Court Judge. His other current roles are Chair of the District Licensing Committee under the Sale and Supply of Liquor Act 2012, Review Authority under the Legal Services Act 2011 and Chair of Professional Conduct Committees under the Health Practitioners Competence Assurance Act 2003. His further roles have been as a Parole Board - Panel Convenor and Chair of the Representation Commission defining Electoral boundaries.

## **Member update**

### ***Lawyer members***

Colin Lucas, Andy Marshall and Todd Simmonds completed their terms.

The Board of the New Zealand Law Society appointed two new lawyer members in late June, the appointments becoming effective from 1 July 2018. The new members are Niamh McMahon from Auckland and Gaeline Phipps from Wellington.

### ***Lay members***

Fay Freeman, John Bishop and Alasdair Lamont completed their terms.

One new lay member was appointed, Susanna Stuart from Auckland.

The Chair and Deputy Chair both record their thanks to the members for their continued diligence and commitment to the difficult and important work of the Tribunal. In particular, it is to be noted that the lawyer members give their time without charge and willingly make themselves available, at times for extended periods, while still maintaining their busy practices.

## **Performance standards of members**

Member training was held in November 2017. This was well-attended by both lawyer and lay members.

One-on-one training for the new lay member took place in early May 2018.

Members are kept apprised of recent decisions and a comparative summary of decisions assist them in achieving consistency of decision-making. In training we have discussed the implications of recent High Court and Court of Appeal decisions on disciplinary issues.

## Administration

The Tribunal's Case Manager, Ms Susan Knight has continued to efficiently co-ordinate all of the administration including the complex task of organising 5-member hearings.

The Chair and Deputy Chair wish to record their particular gratitude to Ms Knight for her exceptional performance in her role, and for the ongoing support she provides to all Tribunal members. Her personal skills are very much appreciated by all members. Ms Knight has now been with the Tribunal for a number of years, and her experience, in particular her attention to detail in proof-reading decisions is hugely valued.

The Tribunal sits in a number of different venues according to the location of the relevant practitioner, complainant and/or Standards Committee. The Tribunal lists upcoming hearings on the Ministry of Justice's Lawyers and Conveyancers Disciplinary Tribunal website.

The very peripatetic nature of the Tribunal and the large sitting numbers (a quorum of five members is required) does create difficulties for locating hearing rooms from time to time.

To ensure efficiency in dealing expeditiously with case load two divisions were established in 2009 under s 229 of the Act. The divisions are chaired by the Chair and Deputy Chair respectively.

## Determinations

The Tribunal posts its substantive decisions on the Ministry of Justice website so that they are generally accessible to the public and the profession. This requires careful editing to preserve anonymity in some cases, particularly to prevent the identification of complainants where suppression has been ordered.

The Chair and Deputy Chair aim to build up a body of consistent and credible decisions as an essential database for the Tribunal's work. The careful editing skills of the Tribunal's Case Manager are an integral part of this process.

There are significant public interest issues arising in the matters the Tribunal deals with in its substantive hearings, as well as at some of its pre-trial hearings, particularly in relation to intervention and suppression. Members of the media attend at times to report proceedings.

Hearings often involve complex factual and legal issues, frequently involve Senior Counsel, and can extend for some days. That complexity is reflected in the length and style of the Tribunal's written judgments which frequently run to many pages to adequately deal with all issues raised by a case.

Tribunal decisions are normally written by the Chair or Deputy Chair in respect of hearings they have chaired, but I should also express my thanks and appreciation for the significant input of Tribunal members, both lay and lawyer, as their contribution is invaluable in completing any decision.

The Tribunal decisions published on the Ministry of Justice website can be accessed at the link below:

<https://www.justice.govt.nz/courts/decisions/>

## Performance of the Act

The consumer focus of the Act is a consistent theme in the determinations of the Tribunal and appellate court decisions. The Act would appear to be achieving its aims in this regard, but also in ensuring the continuing high reputation of the profession. It is well understood that the reputation of the legal profession is its greatest asset and that there is a collective responsibility amongst lawyers to uphold professional standards.

As stated in one of the leading cases in lawyers' discipline, a person entrusting a lawyer with possibly the most important transaction or problem of a lifetime, must be able to trust that lawyer "*to the ends of the earth*".<sup>3</sup>

As at 30 June 2018 there were 14,177 lawyers holding practising certificates<sup>4</sup>. The very small number of lawyers (less than 0.2%) appearing before the Tribunal in comparison with the total number of lawyers practising in New Zealand suggests that these high standards are being upheld.

## Looking ahead

The Tribunal is becoming more widely known as an independent statutory tribunal as it becomes involved in more professional disciplinary cases and applications. We note, however, that the news media, and even members of the legal profession can refer to the Tribunal as the "Law Society Disciplinary Tribunal", or similar, which tends to confuse the independent nature and role of the Tribunal.

There could perhaps be greater recognition by the media that we operate as a separate judicial body outside the regulatory organisations we oversee. That separation enhances public confidence in the disciplinary regime applicable to lawyers and conveyancers.

We observe that the New Zealand Law Society is very efficient at providing press releases following the release of Tribunal decisions, which assists the transparency of the process and provides important information to the public.

Judge D F Clarkson  
Chair

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<sup>3</sup> *Bolton v Law Society* [1994] 2 All ER 486.

<sup>4</sup> Statistic provided by the New Zealand Law Society.

## Membership during the period 1 July 2017 to 30 June 2018

### Chair

Judge Dale Clarkson

### Deputy Chair

Judge Bernard Kendall QSO (retired)

### New Zealand Law Society Practitioner Members

Anne Callinan  
Wayne Chapman  
Jacqui Gray  
Stuart Grieve QC  
Susan Hughes QC  
Colin Lucas  
Graham McKenzie  
Sam Maling  
Andy Marshall  
Shelley Sage  
Mary Scholtens QC  
Todd Simmonds  
Brent Stanaway  
Ian Williams  
Stuart Walker

### Lay Members

John Bishop  
Fay Freeman ONZM  
Michael Gough  
Alasdair Lamont  
Hector Matthews  
Dr Ian McAndrew  
Steve Morris  
Ken Raureti  
Chris Rowe  
Peter Shaw  
William Smith  
Susanna Stuart  
Pele Walker MNZM

### NZ Society of Conveyancers Practitioner Members

Stefanie Crawley  
John de Graaf  
Vicki Dempster  
Erin Rasmussen