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Annual Report of the

**NEW ZEALAND  
LAWYERS AND CONVEYANCERS  
DISCIPLINARY TRIBUNAL**

For the 12 months ended 30 June 2020

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Presented to the Minister of Justice, the Hon Kris Faafoi  
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

2020 has been a different and memorable year for many reasons. It began badly for the Tribunal, with the death, in January, of one of our longest-standing and most valuable members, Wayne Chapman. Wayne was a lawyer member, who gave his time generously, even more so over recent years when he had retired from full time practice. Wayne was not only a highly skilled and experienced lawyer, who brought that expertise to the panels on which he sat, but he was also such a wise and compassionate person that his presence is sorely missed. Along with the Deputy Chair, Judge Kendall, and Tribunal Case Manager, Ms Knight, I attended his funeral and the celebration of his life held at Wellington Boys College. Wayne's contribution to the legal profession, his firm, and his particular skill in mentoring young men and women in their legal careers was rightly honoured.

The onset of the COVID-19 pandemic and consequent lockdown had immediate consequences of delaying four hearings for some weeks. However, the Ministry of Justice responded quickly to the crisis and facilitated the distribution of laptops, additional Virtual Meeting Rooms (VRM) and other technology which enabled the Tribunal to continue to function remotely.

We have always conducted as much pre-hearing work as possible by telephone conferences, so were well-prepared to adapt. Once we had returned to Level 2, we managed some hearings by using the VRM technology, so that travel was avoided. This posed some challenges, particularly where all members were not in the same room and involved separate connections to ensure out of court conferring among members and Chair, but we managed this well on the whole.

There was an anticipated delay after lockdown before the Standards Committees began to file charges again, but since then a steady stream of charges has been filed.

The Tribunal has continued to ensure those cases which could be progressed quickly were heard at the earliest possible date, mindful of the "just and expeditious" standards imposed by the legislation.

The pages following summarise the cases received and disposed of during the reporting period.

Judge D F Clarkson  
Chair

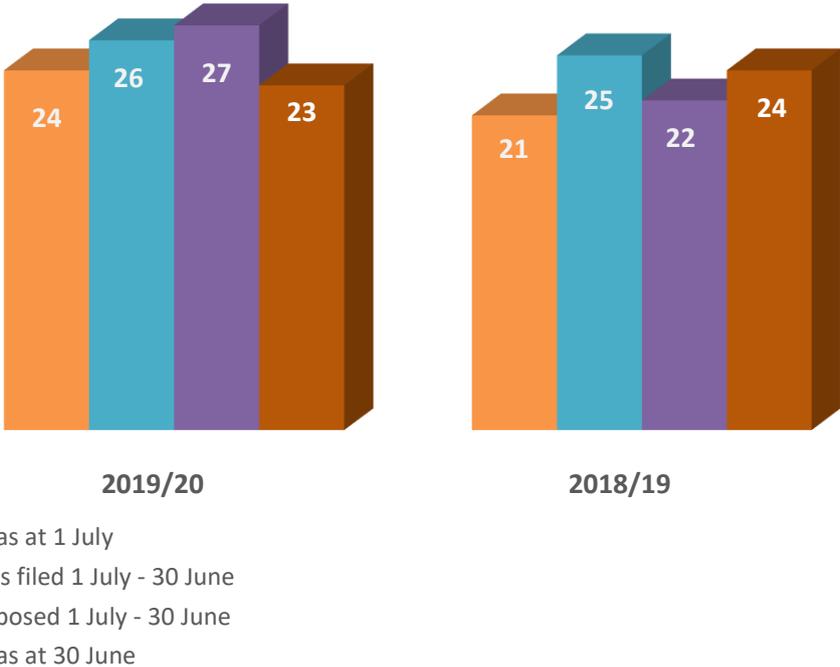
# Summary of caseload activity in the reporting period

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 of name to the roll or register
  - consent to employ
  - revocation of an order in respect of an employee
  - to practise on own account

At the start of the reporting period the Tribunal had **24** cases on hand. During the period the Tribunal received **26** new cases and disposed of **27** cases. At the end of the reporting period **23** 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.



## New cases filed

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



Type of proceedings	Number of cases
Charges	23
Application for consent to employ	1
Application to practise on own account	1
Application for restoration of name to the roll	1

In the **23** new cases of charges filed, the breakdown of the type of person charged is:

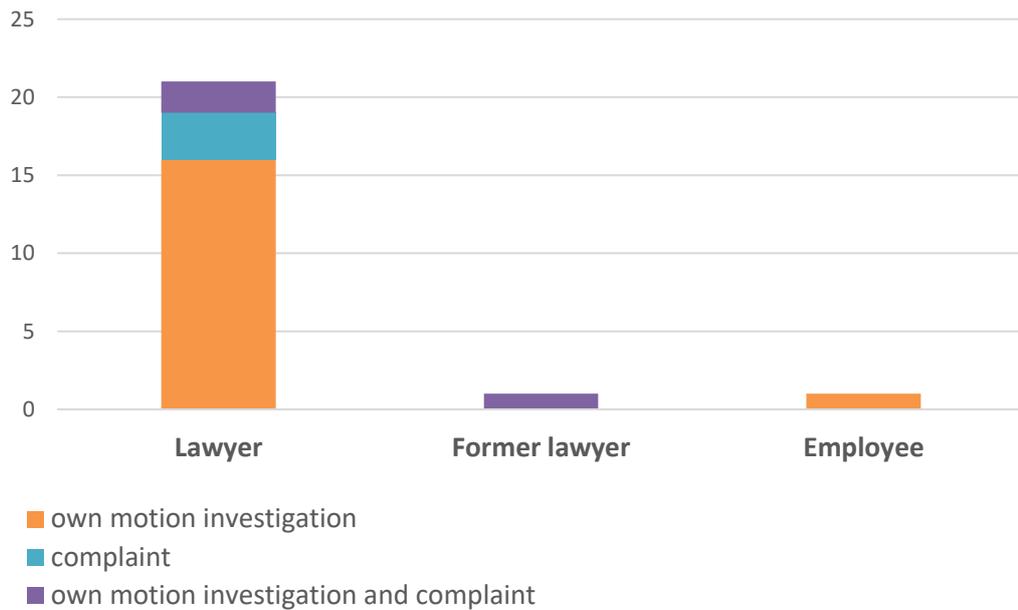
- **21** cases of charges laid against lawyers
- **1** case of charges laid against a former lawyer
- **1** case of charges laid against an employee



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

In the **23** new cases of charges filed, the breakdown of the origin of the charge is:

- **16** cases of charges arose from own motion investigations against lawyers
- **1** case arose from an own motion investigation against an employee
- **3** cases arose from complaints against lawyers
- **2** cases arose from both an own motion investigation and complaint against lawyers
- **1** case arose from both an own motion investigation and complaint against a former lawyer



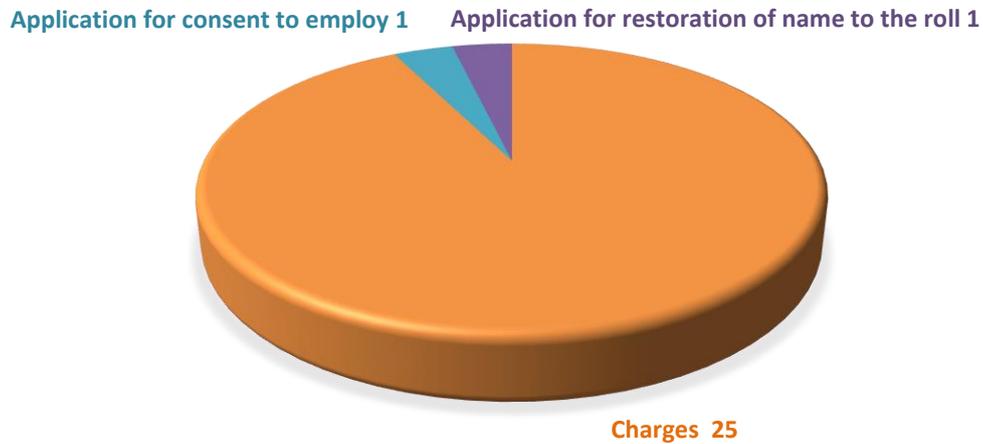
### Comparison of number of new cases

The chart below shows the number of new cases filed since the Tribunal began.



## Cases disposed

The **27** cases disposed are broken down by category (type of proceedings), in the pie chart and table below.



Type of proceedings	Number of cases
Charges	25
Application for restoration of name to the roll	1
Application for consent to employ	1

The **25** cases of charges disposed, were disposed of in the following manner:

- In **10** cases the charges were admitted and required a hearing as to penalty only
- In **9** cases the charges were proven following a defended hearing
- In **2** cases the charges were proven following a formal proof hearing
- In **2** cases the charges were withdrawn at the request of the Standards Committee
- In **1** case the charge was admitted at a lower level but proven at a higher level
- In **1** case some charges were admitted, some were proven and some withdrawn by leave

The other types of proceedings were disposed of in the following manner:

Application for restoration of name to the roll: **1** withdrawn

Application for consent to employ: **1** granted

## 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, or considered on the papers.

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/>

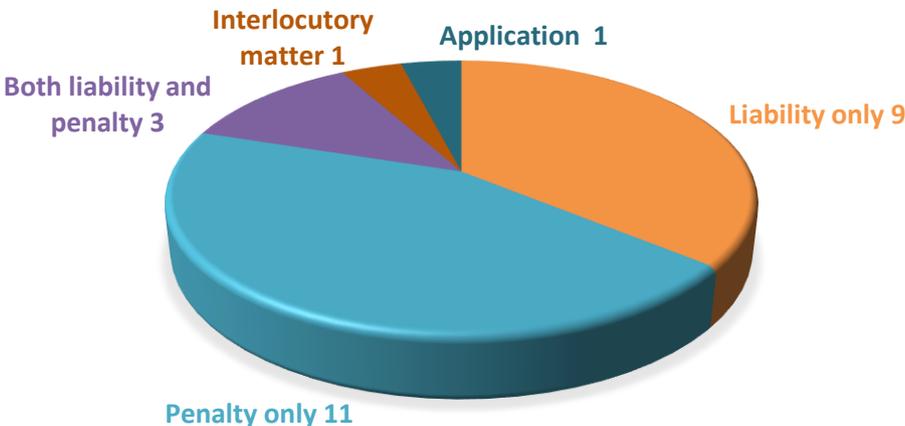
During the period the Tribunal held **25** hearings (this includes any appearances via AVL and/or telephone), over **18** sitting days. Where the person charged has more than one set of proceedings against them, where possible, the proceedings will be heard at the same time, and are counted as one hearing.

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.

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

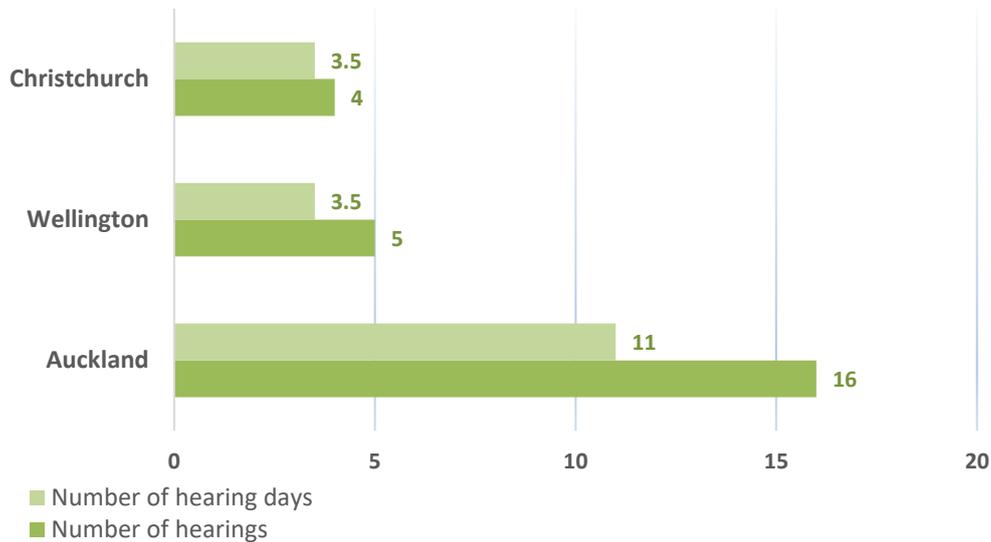
**Nature of hearings**

The pie chart below shows the breakdown as to the nature of the **25** hearings held (categorised as to the original purpose of the hearing):



## Hearings by location

The chart below shows the breakdown of the **25** hearings by location and includes the number of hearing days at each location.



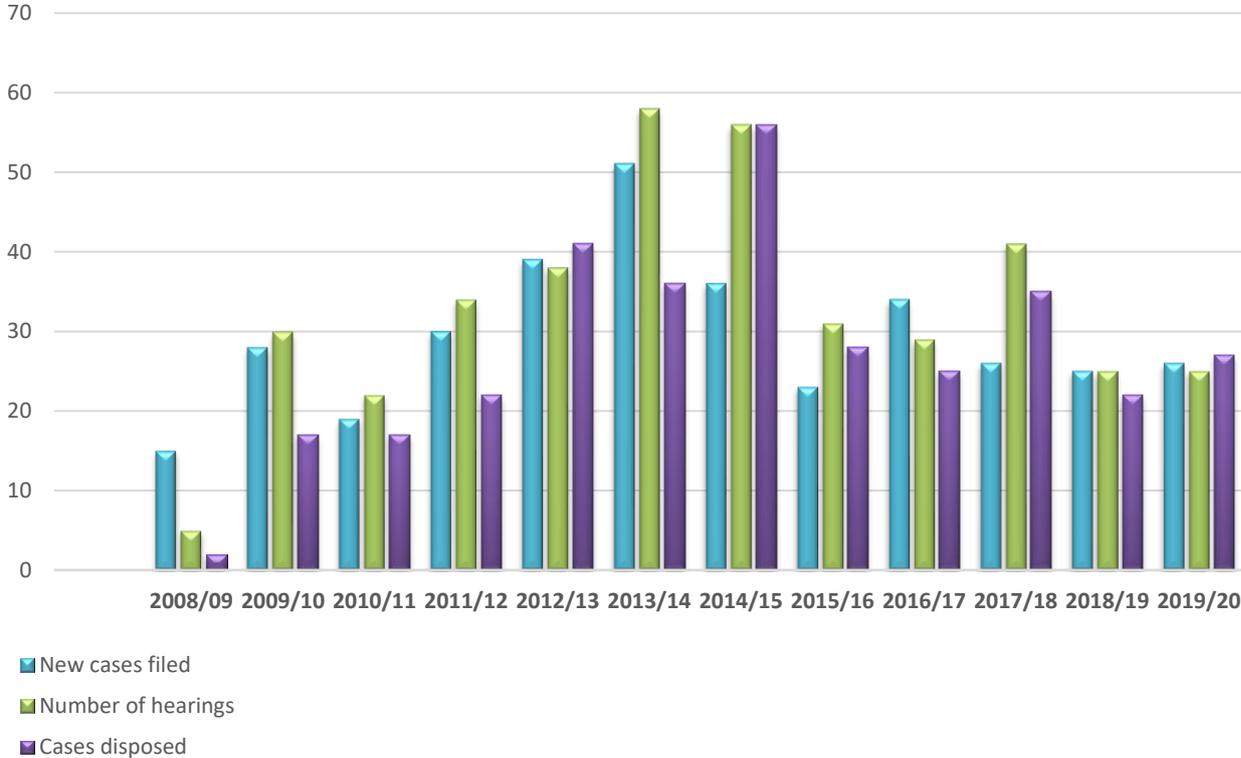
Comparison table showing number of hearings held by location, since the Tribunal began:

	19/20	18/19	17/18	16/17	15/16	14/15	13/14	12/13	11/12	10/11	09/10	08/09
Auckland	16	21	30	23	23	32	45	22	20	15	15	2
Hamilton	-	-	-	-	-	2	1	-	-	-	2	
Tauranga	-	-	-	-	1	-	-	-	-	-	-	
Rotorua	-	-	-	-	-	2	-	-	-	-	-	
Napier	-	-	-	-	-	-	1	-	-	-	1	
Hastings	-	-	-	1	-	1	-	1	-	-	-	
New Plymouth	-	-	-	-	-	-	-	-	-	1	-	
Wellington	5	1	6	3	5	12	5	7	8	4	-	1
Nelson	-	1	-	-	-	-	-	-	5	1	-	
Christchurch	4	2	5	2	1	4	5	4	1	1	1	1
Timaru	-	-	-	-	1	-	-	-	-	-	-	
Dunedin	-	-	-	-	-	3	1	3	-	-	1	
Invercargill	-	-	-	-	-	-	-	1	-	-	-	
<b>Total</b>	<b>25</b>	<b>25</b>	<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>	<b>5</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.

Now that the Tribunal has been in existence for more than 10 years, it is of interest to observe the variations in the number of new cases filed, cases heard and cases disposed each year.

As noted above, in addition to hearings, some matters were considered on the papers with the consent of the parties.



### Decisions

During the period **42** decisions were issued.

These were decisions concerning:

- liability (charges proven or dismissed)
- penalty (for charges admitted or charges proven)
- interim name suppression
- costs
- witness summons
- adjournment
- interim suspension
- consent to employ

## Penalty orders

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

Type of order	Number of orders
Censure	7
Not able to practise on own account	3
Pay compensation	3
Pay/contribute to the New Zealand Law Society costs	21
Pay fine to the New Zealand Law Society	5
Refund monies paid	4
Reimburse the New Zealand Law Society for Tribunal costs	20
Restriction on employment	1
Struck off the roll of barristers and solicitors	3
Take advice in relation to management of practice	3
Suspended from practice	9
Other	1

The Tribunal also made **20** 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 orders

During the period the Tribunal also made the following orders:

Type of order	Number of orders
Interim suspension from practice until charges heard and disposed of	1
Consent to employ	1

## 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, at times on an interim basis. There were no permanent name suppression applications granted during the period.

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 small conveyancing profession.

## Appeals

During the period 4 appeals were filed in the High Court.

During the period 5 appeals in the High Court were determined. This number includes appeals filed prior to and during the reporting period:

- 1 abandoned/discontinued
- 2 dismissed/decision of the Tribunal upheld
- 2 allowed in part

At the end of the reporting period there were 2 appeals awaiting determination. This includes appeals in the High Court and Court of Appeal, filed prior to and during the reporting period.

## Cost recovery

The sum of \$111,470 was ordered against the New Zealand Law Society, as per s 257 of the Lawyers and Conveyancers Act 2006, to reimburse the Crown for Tribunal hearing costs.

## 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.

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.

During the period Judge John Adams was appointed as the new Deputy Chair, to replace Judge Bernard Kendall QSO who retired from his position. There were also new law practitioner appointments.

Judge Kendall served as Tribunal Deputy Chair for six years. His judicial acumen, ability to get the best from his team and tremendous efficiency were valued by all who worked with him. He will be missed. His generosity in taking early retirement to provide continuity for the Tribunal was very much appreciated by me as Chair.

Judge Adams brings not only judicial skills, but new energy and literary skills to the position of Deputy Chair. His judicial skills and work ethic are already making their mark on his caseload. His teaching skills are a bonus as we plan ongoing training for the members.

### ***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 fulltime District Court Judge in 2006 but continues to hold an acting warrant and sits regularly in the District 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 more than 31 years as a judicial officer. Judge Clarkson 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 John Adams, Deputy Chair***

Judge Adams retired as a fulltime District Court Judge in 2014 having served for 20 years. He is an Acting District Court Judge and Family Court Judge. He graduated with a Bachelor of Laws from Auckland University in 1970 and was admitted as a barrister and solicitor in the same year. He teaches programmes for the New Zealand Law Society and the Institute of Judicial Studies. With degrees in English, including Master of Creative Writing (Auckland, 2010), he has completed all the requirements for the degree of PhD in English at Auckland University. He is a published poet.

### ***Lawyer members***

The Board of the New Zealand Law Society reappointed 10 members and appointed three new members: Hon Paul Heath QC and Kristine King, from Auckland; and Natalie Coates from Whakatane. These appointments became effective 1 July 2020, with the exception of Ms King's appointment which became effective 1 August 2020.

Ian Williams completed his term during this year. Ian has "given back" to the profession, particularly in the regulatory field for many years. His thoughtful approach and excellent legal and writing skills will be sincerely missed.

Stuart Grieve QC also completed his term with the Tribunal. His acumen and many years of court experience were of tremendous value, particularly in cases involving the conduct of litigation. Although Stuart was not seeking reappointment we appreciated his allowing his term to be continued in order for matters in which he was involved to be completed.

Arti Chand resigned following her appointment to the Board of the New Zealand Law Society, we were sorry not to have her contribution for a longer period, but warmly thank her for being available for that period.

The loss of our longstanding member, Wayne Chapman, has been recorded in the Executive summary - we miss him still.

No changes to the members appointed by the New Zealand Society of Conveyancers.

## ***Lay members***

No new lay member appointments were made during the period. Long standing members Dr Ian McAndrew and Bill Smith completed their terms. Members like Ian and Bill make we wish appointments could be for longer terms. Bill brought his many years of hearing experience as a Justice of the Peace, and commissioner, together with a thoroughness of preparation and his clear thinking which proved invaluable to all of us working with him. They are both sincerely thanked for their valuable contributions.

Appendix 1 lists the members as at 30 June 2020.

## **Performance standards of members**

Members are kept apprised of recent decisions and a comparative study of those decisions assists 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.

New members are inducted with a full review of the governing legislation, procedural rules and court etiquette. Ethical duties of members are also carefully outlined.

## **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, at various hearing venues.

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: <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>1</sup>

As at 30 June 2020 there were 15,109 lawyers holding practising certificates<sup>2</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.

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<sup>1</sup> *Bolton v Law Society* [1994] 2 All ER 486.

<sup>2</sup> Statistic provided by the New Zealand Law Society.

## 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 still 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.

## **Membership as at 30 June 2020**

### **Chair**

Judge Dale Clarkson

### **Deputy Chair**

Judge John Adams

### **New Zealand Law Society Practitioner Members**

Anne Callinan  
Jacqui Gray  
Susan Hughes QC  
Ian Hunt  
Stephen Hunter QC  
Graham McKenzie  
Niamh McMahon  
Gaeline Phipps  
Shelley Sage  
Mary Scholtens QC  
Brent Stanaway  
Louise Taylor

### **Lay Members**

Amanda Kinzett  
Hector Matthews  
Steve Morris  
Marj Noble  
Tino Pereira MNZM  
Ken Raureti  
Professor Dugald Scott  
Susanna Stuart  
Daniel Tulloch  
Pele Walker MNZM

### **Practitioner Member appointments made during the period**

Natalie Coates  
Hon Paul Heath QC  
Kristine King

### **NZ Society of Conveyancers Practitioner Members**

Stefanie Crawley  
John de Graaf  
Vicki Dempster  
Erin Rasmussen