



New Zealand Lawyers and Conveyancers Disciplinary Tribunal

ANNUAL REPORT

For the 12 months ended 30 June 2012

Presented to the Minister of Justice, the Hon Judith Collins
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

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.

The 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.

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 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. 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."

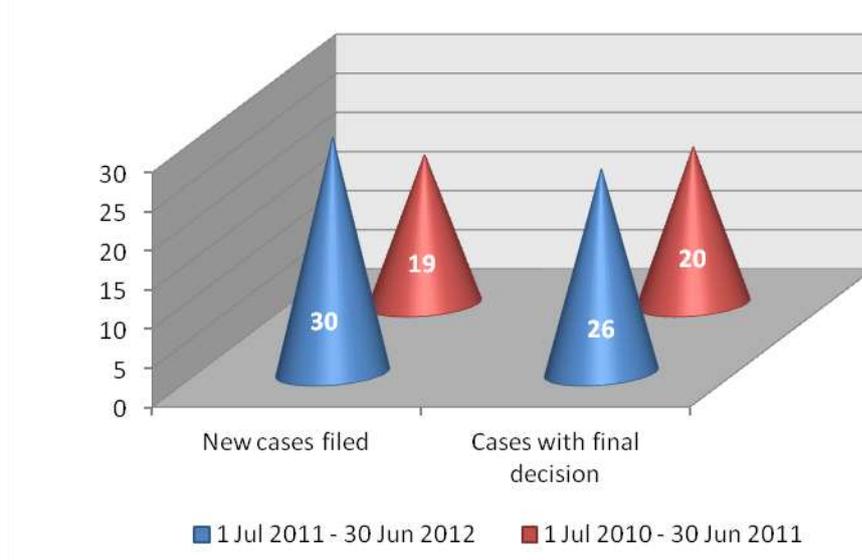
Whilst expeditious disposition of proceedings is important, this must be balanced with the Tribunal’s responsibility under s236 which prescribes that the Tribunal must “in performing and exercising its functions and powers, observe the rules of natural justice”.

As previously reported, in attempting to ensure that proceedings before the Tribunal are effectively progressed, the Chair and Deputy Chair have had a strong sense of the tension in attempting to balance these two, at times competing, factors. This is particularly so in the relatively frequent pre-trial applications which must be considered by the Chair or Deputy Chair, or by the Tribunal as a whole, according to their subject matter. Now that the Tribunal has been functioning for almost four years, we are confident that counsel will appreciate the Tribunal’s expectation of timely compliance with its Judicial Directions, and of steady progression to hearing.

Summary of Activity for the reporting period

Number of new cases filed - 30

Number of cases with final decision - 26



New cases filed

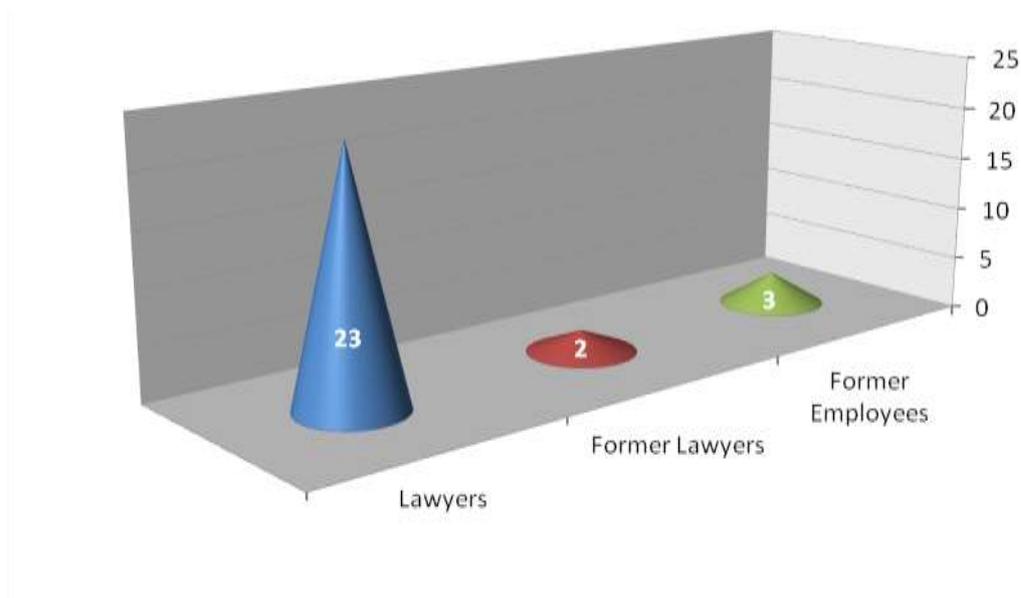
Proceedings before the Tribunal fall into two categories: applications/appeals and charges.

Of the 30 cases filed, 2 were applications and 28 were charges laid against a practitioner. The cumulative number of charges laid over the 28 cases is 77.

As can be seen there has been a 57.89% increase in the number of proceedings filed with the Tribunal.

We expect that this trend will continue for at least the next 12 to 24 months as the large workload of the Standards Committees and the Legal Complaints Review Officer respectively are processed.

Of the 28 cases where charges were laid, the breakdown of the types of person charged is shown in the chart below.



Case progress

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

During the period 70 teleconferences took place.

During the period the Tribunal held 34 hearings. This includes hearings for defended charges, penalty, applications and appeals. Hearing durations varied in length from half a day to three days. The total number of hearing days was 35 (on some days two matters were heard).

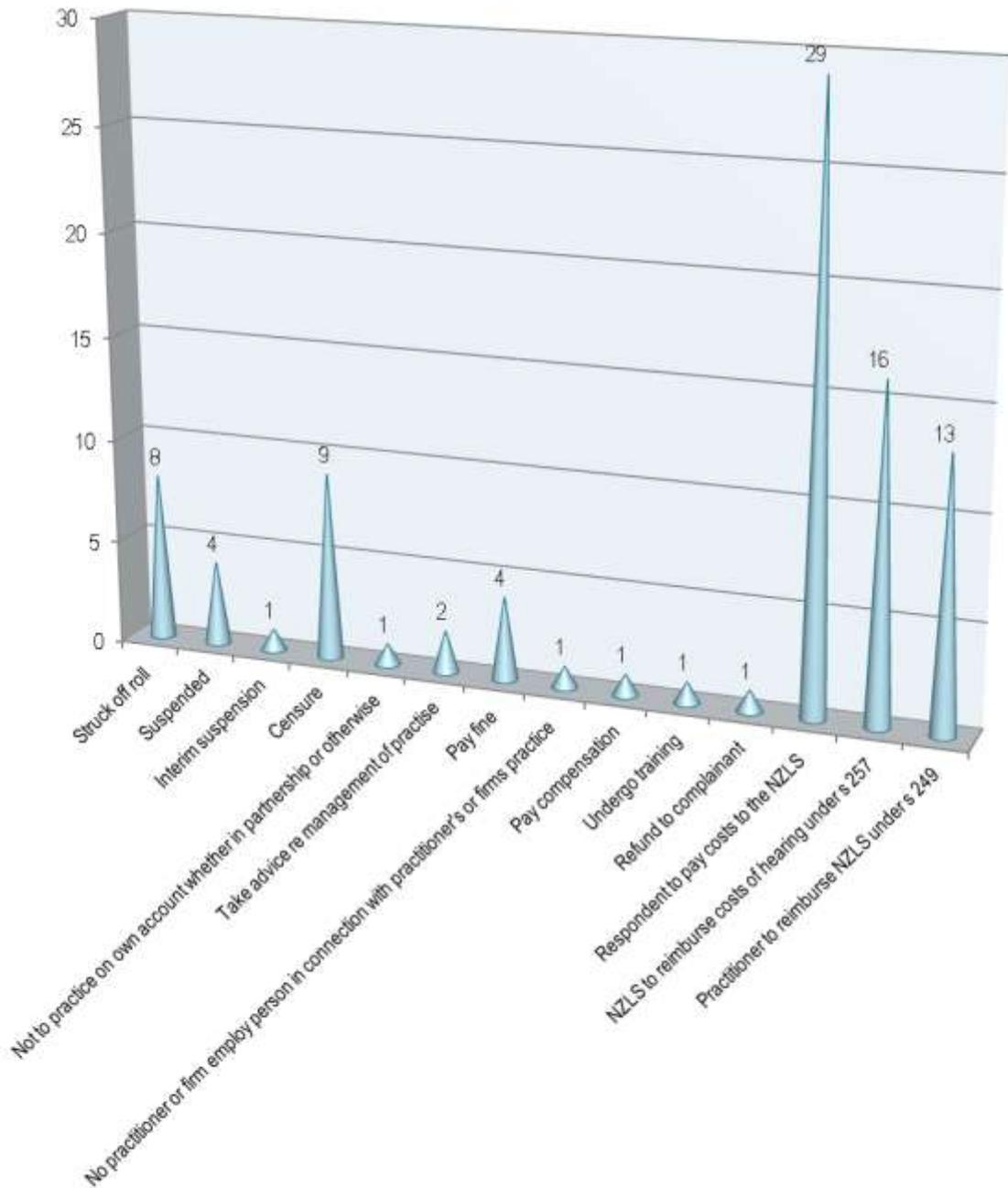
The table below shows the number of hearings by location.

Location	Number of Hearings
Auckland	20
Wellington	8
Nelson	5
Christchurch	1



During the period 43 decisions were issued. These were decisions on charges (proven or dismissed), penalties, applications for name suppression and other. The cumulative number of orders made is 91 (note: a decision may contain more than 1 order).

The table below shows the breakdown of the 91 orders made.



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

Cost recovery

During the period the Tribunal made 16 orders for the New Zealand Law Society to reimburse the Crown for costs of hearings, in the sum of \$115,221.00. There were 13 orders made for practitioners to reimburse the New Zealand Law Society for 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.

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 retired as a full time District Court judge in 2006 but continues to hold an acting warrant. 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 23 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 and Mediation topics nationally and internationally. She was the inaugural President of the New Zealand branch of the International Women Judges Association.

David Mackenzie, Deputy Chair

David Mackenzie was a barrister and solicitor of the High Court until leaving full-time legal practice at the end of 2004. His career included both litigation and corporate advisory experience. He holds a Bachelor of Laws from Otago University, and a Master of Laws (with Honours) from Victoria University of Wellington. As well as his work chairing hearings for the Tribunal, David has various corporate governance roles. He is an experienced company director, sitting on boards of both public and private companies.

During this reporting period Rachael Adams stepped down for a period of twelve months. On behalf of the Tribunal I wish to express my gratitude to Rachael for her contributions thus far and we look forward to welcoming Rachel back.

During the reporting period we welcomed Todd Simmonds, Ian Williams and Sam Maling, new Practitioner members appointed by the New Zealand Law Society.

In this period we also welcomed three new lay members: Pele Walker, Steve Morris, Ken Raureti.

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.

Training and Education

In June I attended the 15th Annual Tribunals Conference run by the Australian Institute of Judicial Administration, in Melbourne. The theme of the conference was "The Tribunal of Tomorrow". A number of forms of new technology and communication were showcased as efforts continue to provide more accessible and efficient means of providing services by various tribunals. The conference provided an excellent opportunity to meet with other Tribunal Heads and discuss improved ways of conducting our business.

This was followed up by an informal visit by me to the State Administrative Tribunal in Western Australia, where I met with its President, Justice John Chaney.

Member training was conducted over one day in May 2012, the last having taken place in July 2010. Various topics were covered including Name suppression, costs awards and the law of evidence.

Administration

Ms Susan Knight has continued to efficiently co-ordinate all of the administration including the complex task of organising 5-member hearings. The workload of this office has significantly increased, with the greater number of hearings and pre-hearing conferences. 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.

The Tribunal sits in a number of different venues according to the location of the relevant practitioner, complaints and/or standards committee.

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

As previously reported, the Tribunal's case load has continued to grow. The Tribunal posts its determinations and decisions on the Ministry of Justice's Lawyers and Conveyancers Disciplinary Tribunal 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 indexing and cross-referencing of this material will be subject to ongoing review and quality control.

There are significant public interest issues arising in the matters the Tribunal deals with its substantive hearings, as well as at some of its pre trial hearings, particularly in relation to intervention and suppression. Members of the media are often in attendance 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 judgments 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 professional, as their contribution is invaluable in completing any decision.

Appeals

During the reporting period 6 appeals against determinations of the Tribunal were filed in the High Court.

Performance of the Act

In the course of the past year the Tribunal has become a great deal busier.

The Chair and Deputy Chair consider further amendments to the Act would remove potential difficulties resulting from interpretation, and quorum requirements. I am aware that the Ministry is working on proposals for amendments which would, if enacted, improve the Tribunal's operating efficiency.

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. There is recognition by the public, and the professions it regulates, that it operates as a separate judicial body outside the regulatory organisations it oversees. That separation enhances public confidence in the disciplinary regime applicable to lawyers and conveyancers.

The Tribunal's workload is expected to increase somewhat over the next year, as members of the public become increasingly aware of their rights and the Law Society's own processes continue to identify issues of concern. The focus of the Tribunal now will be to ensure that it operates as efficiently as possible, both judicially in its public protection role, and as an independent statutory tribunal.

Judge D F Clarkson
Chair

Membership during the period 1 July 2011 to 30 June 2012

Chairperson

Judge Dale Clarkson

Deputy Chairperson

David Mackenzie

New Zealand Law Society Practitioner Members

Rachael Adams
Wayne Chapman
Jacqui Gray
Stuart Grieve QC
Susan Hughes QC
Colin Lucas
Graham McKenzie
Sam Maling
Peter Radich
Chris Rickit
Shelley Sage
Mary Scholtens QC
Todd Simmonds
Brent Stanaway
Ian Williams
Stuart Walker

Lay Members

Jay Clarke
Alison de Ridder
Sandy Gill
Michael Gough
Thursa Kennedy
Alasdair Lamont
Dr Ian McAndrew
Steve Morris
Ken Raureti
Christine Rowe
Peter Shaw
William Smith
Pele Walker

NZ Society of Conveyancers Practitioner Members

Vicki Dempster
Stefanie Crawley
John de Graaf
Kim Matheson
Erin Rasmussen