



New Zealand Lawyers and Conveyancers Disciplinary Tribunal

ANNUAL REPORT

For the 12 months ended 30 June 2010

Presented to the Minister of Justice, the Hon Simon Power
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

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Introduction

Following the passing into law of the Lawyers and Conveyancers Act 2006 ("the Act"), the New Zealand Lawyers and Conveyancers Disciplinary Tribunal ("the Tribunal") was established pursuant to section 226 of the Act, with effect from 1 August 2008.

The functions of the Tribunal are, broadly, to hear and determine: professional disciplinary charges 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 s231

"responsibilities of chairperson" where subsection (1)(a) refers to the "orderly and expeditious discharge of the functions of the Disciplinary Tribunal".

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".

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.

The purposes of the Act are set out in s3 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."

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Summary of Activity

Appendix 1 contains a summary of the work of the Tribunal for this reporting period. 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.

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Membership and Recruitment

During this reporting period, three of the very experienced and long-serving (of this and the predecessor Tribunal) law practitioner members retired. They are Anne Hinton QC, John Upton QC and Lawrence Cooney. On behalf of the Tribunal I wish to express my gratitude for their hard work and careful and responsible approach to the issues which they were required to consider.

During this past year the Tribunal also lost, with the passing of Lester Dempster, one of the conveyancing practitioner members. Mr Dempster will be remembered as a pioneer in the field of conveyancing practitioners.

During the reporting period we welcomed new law practitioner members appointed by the New Zealand Law Society. The new members are Colin Lucas, Chris Rickit, Stuart Walker, and Stuart Grieve QC. These new members were sworn in under Justice Potter at the High Court in Auckland during a training session held in July 2010.

In the course of the next fiscal year it will be necessary for renewal of warrants to be considered for the Chair, Deputy Chair and lay members, all of whom have a three-year term of appointment

Appendix 2 is the list of current law practitioner, conveyancing practitioner, and lay members of the Tribunal.

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Training

Training for this reporting year was deferred until the Tribunal had heard a sufficient number of cases to provide material for worthwhile discussion amongst the members. The training has since taken place in Auckland, on 16 July 2010.

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Administration

All of the administration is co-ordinated from Tribunal's head office in Wellington. The Tribunal is supported by two part-time case officers under the oversight of Ms Terry Wano as jurisdiction manager.

The Tribunal sits in a number of different venues according to the location of the relevant practitioner, complaints and/or standards committee. Appendix 1 lists the number of and locations of hearings for this reporting period.

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 have been established under s229 of the Act. The divisions are chaired by the Chair and Deputy Chair respectively.

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Practice Note

In the course of this year considerable time was spent in the preparation of a practice note for the Tribunal. Consultation was carried out with the New Zealand Law Society and while the practice note was not in fact issued until after the end of this reporting year, much of the work was carried out during the 2009-2010 year. Therefore I would like to express my thanks to Tribunal's legal and research officer Mr Johan Struwig and to my deputy Mr David Mackenzie for their work and input into this important practice note.

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Determinations

As anticipated, the Tribunal's case load has continued to grow. The Tribunal is now posting all of 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. 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 at its substantive hearings as well as at some of its pre trial hearings, particularly in relation to intervention and suppression.

The Tribunal has had experience of self-represented practitioners facing charges taking every process and point possible, some with little merit. That highlights the importance of the independent judicial function the Tribunal undertakes. Hearings often involve complex factual and legal issues 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.

Appendix 1 sets out the disposition of cases from 1 July 2009 to 30 June 2010.

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Appeals

During the reporting period two appeals against determinations of the Tribunal were lodged with the High Court. Both appeals were subsequently withdrawn and the Tribunal's decision remained undisturbed in each case.

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Performance of the Act

In the course of the past year the Tribunal has become a great deal busier and has from time to time encountered issues with both the interpretation and operation of the Act.

To deal with these issues we are formulating suggestions for alternative drafting of some sections, for discussion with the Ministry of Justice. We also have views on policy issues relating to the Chair's required qualification, and relating to quorum, and these matters will also be raised with the Ministry.

If accepted, the amendments to the Act would remove potential difficulties resulting from interpretation. Acceptance of changes arising from the policy issues would improve cost recovery, and make the Tribunal more efficient, both in an operational and fiscal sense.

This report is not the place for the detail, but, as noted, these matters will be taken up with the Ministry to ascertain if there are amendments or policy changes that may allow issues raised to be addressed.

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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 continue at its current levels, and, following its establishment and commencement in late 2008, 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 fiscally, as an independent statutory tribunal.

Summary of cases for the period 1 July 2009 to 30 June 2010

Number of live cases at 1 July 2009	14
Number of new applications filed	28
Total number of live cases during the period	42
Number of decisions issued during the period *	29
Number of live cases at 30 June 2010	19

* This includes decisions or orders on interim suspension, stay of proceedings, charges laid, penalties and costs, and does therefore not equal the total number of live cases less those still active at 30 June 2010.

Types of Proceedings

Proceedings before the Tribunal fall into two categories, applications filed by a practitioner and charges laid against a practitioner.

For all live cases during the reporting period, applications filed by a practitioner were as follows (some of these may have originally been filed prior to the start of the reporting period):

Type of Application	Number
Appeal against refusal by NZLS to issue a practising certificate	1
Appeal against refusal by NZSC to issue a practising certificate	0
Consent to employ	1
Restoration to the register	0
Restoration to the roll	1
Revocation of an order restricting employment of an employee or former employee	0

For all live cases during the reporting period, charges laid against a practitioner were as follows:

Type of charge	Number
Brings profession into disrepute	4
Misconduct	34
Negligence or incompetence	0
Unsatisfactory conduct	1

Total number of proceedings: 42

Teleconferences

During the reporting period a total of 54 teleconferences were held. Of those 7 were member only teleconferences with the remainder conducted by the Chair or Deputy Chair, and including parties, predominantly to discuss pre trial matters.

Cases heard

During the period the Tribunal held 20 hearings. A range of applications and charges were heard across the individual cases, some requiring more than one hearing. Examples of where more than one hearing for a case is required are:

- an application for interim suspension is received, this application is heard and determined, at a later date the charges are heard and determined;
- an application for stay of disciplinary proceedings is received, this application is heard and determined, at a later date the charges are heard and determined; or
- the charges are heard and determined, at a later date the penalty will be determined in a separate hearing.

Location	Number of Hearings
Auckland	15
Hamilton	2
Napier	1
Christchurch	1
Dunedin	1

Appendix 2

New Zealand Lawyers and Conveyancers Disciplinary Tribunal Membership (as at the time of publishing)

Chairperson

Judge Dale Clarkson

Deputy Chairperson

David Mackenzie

NZ Law Society Practitioner Members

Wayne Chapman
Gary Craig
Jacqui Gray
Stuart Grieve QC
Susan Hughes QC
Colin Lucas
Graham McKenzie
Peter Radich
Chris Rickit
Shelley Sage
Mary Scholtens QC
Brent Stanaway
Ben Vanderkolk
Stuart Walker

Lay Members

Sharron Cole
Jay Clarke
Alison de Ridder
Sandra Gill
Michael Gough
Sue Ineson
Thursa Kennedy
Alasdair Lamont
Ian McAndrew
Christine Rowe
Peter Shaw
William Smith

NZ Society of Conveyancers Practitioner Members

Michael Dale
Vicki Marie Dempster
Kim Matheson