



Annual Report of the

**NEW ZEALAND
LAWYERS AND CONVEYANCERS
DISCIPLINARY TRIBUNAL**

For the 12 months ended 30 June 2023

Presented to the Minister of Justice, the Hon Paul Goldsmith
The New Zealand Law Society
The New Zealand Society of Conveyancers

Pursuant to section 259 of the Lawyers and Conveyancers Act 2006

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

Following the use of virtual hearings, during the periods of lockdowns imposed during the Covid 19 pandemic, we have continued this practice in an increasing number of cases.

While we consider that, wherever possible, face to face hearings are the preferable process, the use of technology to allow remote participation in hearings has reduced costs for the parties and witnesses, and has enabled hearings to proceed when a participant is ill, or unable to travel, thereby avoiding adjournments.

The Tribunal's processes are flexible enough to accommodate overseas participants, by sitting outside of conventional hours.

The number of cases has continued to be relatively low, having regards to the number of lawyers and conveyancers practising in New Zealand. But at the same time these can be lengthy and difficult cases, requiring an individualised approach, and frequently considering complex areas of law. Sensitive cases involving allegations of, for example, sexual harassment, require particularly careful management.

Processes

The Chair and Deputy Chair convene pre-hearing conferences for each case, in order to isolate the issues to be determined, and identify any areas of agreement. Directions are made for the filing of evidence and other matters required to progress to a hearing.

A later, setting-down conference is also held, to estimate as accurately as possible the duration of the hearing.

These conferences are usually conducted by telephone, to minimise costs. Sometimes both the issues and setting down matters are able to be dealt with in the one conference, which assists to further minimise costs.

We aim to keep each matter moving steadily to a hearing at the earliest possible opportunity. Obstacles to swift disposition do occur, quite properly, from the need at times to receive expert evidence, and because of the commitments of counsel representing the parties. Those counsel are normally at a senior level in the profession, and often have limited availability when scheduling hearings.

The lawyer and lay members of the Tribunal make strenuous efforts to be available promptly, even where a hearing is lengthy. Hearings vary in length from half a day to multiple days.

Hearing time is kept to a minimum by the Tribunal's practice of taking all evidence in chief "as read", and directing that affidavits are filed well in advance of the hearing. This means that the hearing can proceed on the basis of cross-examination of witnesses, where required, questions from the Tribunal, and submissions from the parties.

Unless the person charged has indicated in advance that he or she acknowledges the charges, penalty hearings are normally held separately from the liability hearing, so that the Tribunal has the opportunity of first providing a reasoned decision as to the level of liability, and the submissions on penalty can thereby be more focussed.

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 speedier consideration and reduced costs, with agreement of the parties, some hearings have been held remotely (by audio-visual link), or by telephone, or considered on the papers.

Cost recovery

The Tribunal has the jurisdiction (s 249) to order costs against the person charged (and in certain cases against other parties), to reimburse in full, or in part, the costs to the profession as a whole, of upholding disciplinary standards.

In addition there is a mandatory requirement to order the costs of the Tribunal itself, against the New Zealand Law Society (s 257). In the year to 30 June 2023, these orders totalled \$154,620.

The efficient operating of the Tribunal means that this partial-costs-recovery model has been successful in minimising costs to the taxpayer.

The model could be further enhanced by a legislative amendment broadening the range of cases where a s 257 order is mandated.¹

Numbers and Type of Caseload

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

The Tribunal continues to hear cases within a wide variety of contexts. Those involving sexual harassment attract media attention. However, cases involving misuse of funds, conflicts of interests and other breaches of professional standards comprise the bulk of the work undertaken.

¹ At present s 257 only applies on the determination of **charges**, leaving out appeals from refusal to issue a practising certificate, applications for reinstatement to the roll and removal of other practising restrictions.

We do note that there can be a delay of some years before a complaint, having been through Standards Committee and Legal Complaints Review Officer processes, reaches the Tribunal in the form of charges.

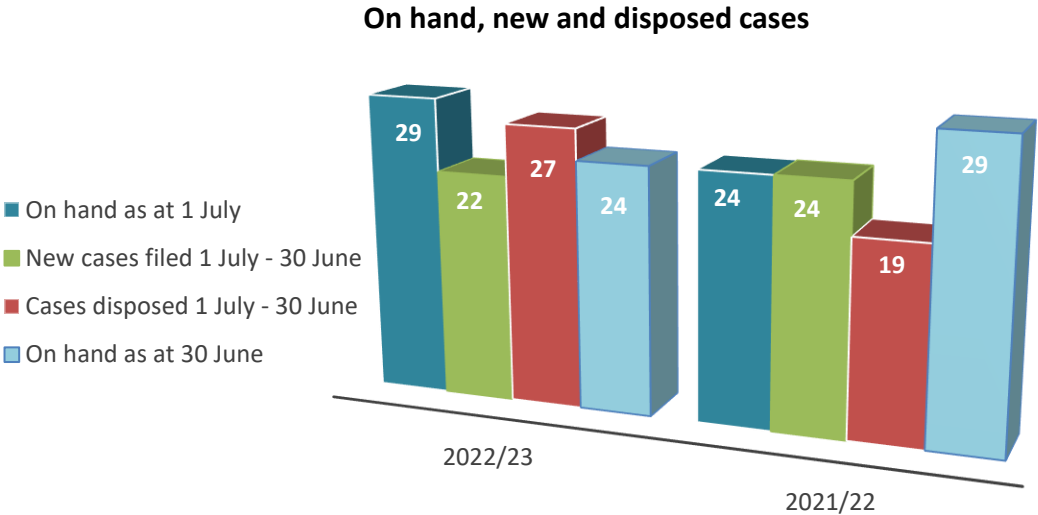
Summary of caseload activity in the reporting period

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 **29** cases on hand. During the period the Tribunal received **22** new cases and disposed of **27** cases. At the end of the reporting period **24** 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 breakdown of the **22** new cases filed during the reporting period is:

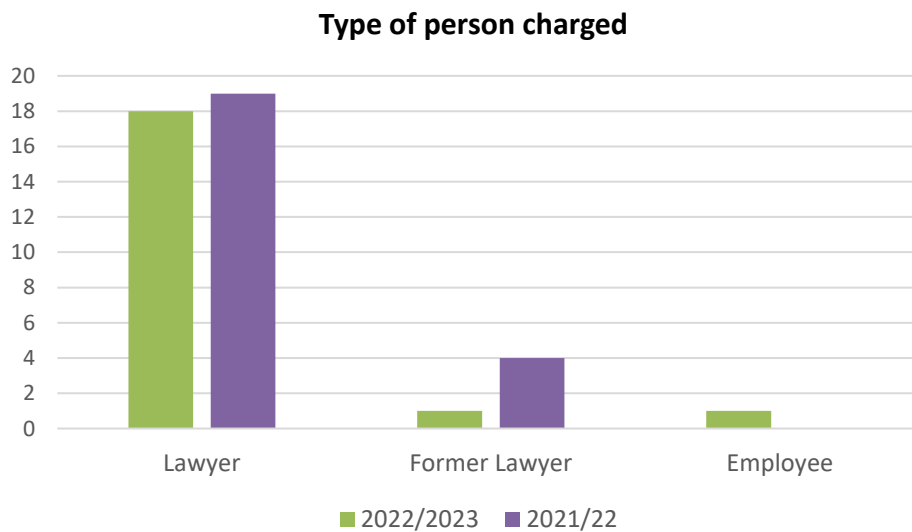
- **20** cases of charges
- **1** application for restoration to the roll
- **1** appeal against refusal to issue practising certificate

For the **20** cases of charges, these were all cases of charges laid by a Standards Committee of the New Zealand Law Society.

For the **20** cases of charges, the breakdown of the type of person charged is:

- **18** lawyers
- **1** former lawyer
- **1** employee

The chart below shows a comparison of the type of person charged for this reporting period, as against the last reporting period.

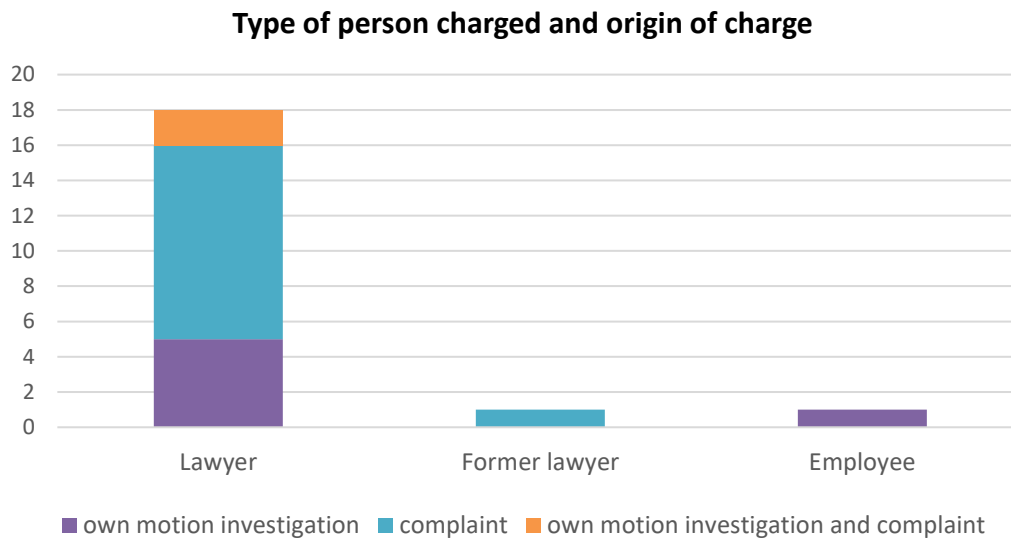


The charges laid arose either from complaints or/and own motion investigations by the New Zealand Law Society. The number of charges in each case is variable and may include charges laid in the alternative. Where this occurs, we have counted the alternatives as one charge.

In the **20** new cases of charges filed, the breakdown of the origin of the charge is:

- **11** cases arose from complaints against lawyers
- **5** cases arose from own motion investigations against lawyers
- **2** cases arose from both an own motion investigation and complaint against lawyers
- **1** case arose from a complaint against a former lawyer
- **1** case arose from an own motion investigation against an employee

The chart below shows the type of person charged broken down by origin of charge, for this reporting period.



Cases disposed

During the period **27** cases were disposed. Hearings were scheduled for all of these cases (either face to face or remote).

The breakdown of the **27** cases disposed during the reporting period is:

- **25** cases of charges (see breakdown below)
- **1** application for restoration to the roll (declined)
- **1** appeal against refusal to issue practising certificate (declined)

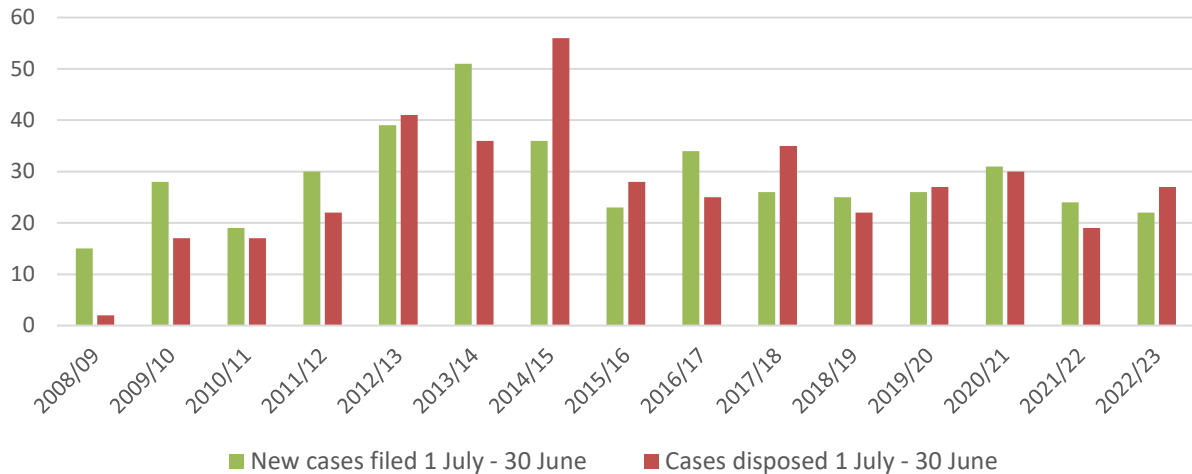
The **25** cases of charges, were disposed of in the following manner:

- In **4** cases the charges were admitted and required a hearing as to penalty only
- In **4** cases the charge was admitted at a lower level but found at the higher level
- In **1** case the charge was admitted, but found at a lower level
- In **1** case one charge was admitted and the other charges proven
- In **1** case one charge was admitted and the other charge dismissed
- In **11** cases the charges were proven following a defended hearing (note in one case an alternative charge was proven rather than the main charge)
- In **2** cases the charges were proven following a formal proof hearing
- In **1** case the charge was dismissed

Comparison of new and disposed cases

The Tribunal has been in existence for 15 years. It is of interest to observe the variations in the number of new cases filed and cases disposed each year, as shown in the chart on the following page, for the period 1 July 2008 to 30 June 2023.

Comparison of new cases and disposed cases 1 July 2008 - 30 June 2023



Hearings

During the period the Tribunal held **40** hearings (this includes face to face and remote hearings), over **33** 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 any travel costs.

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

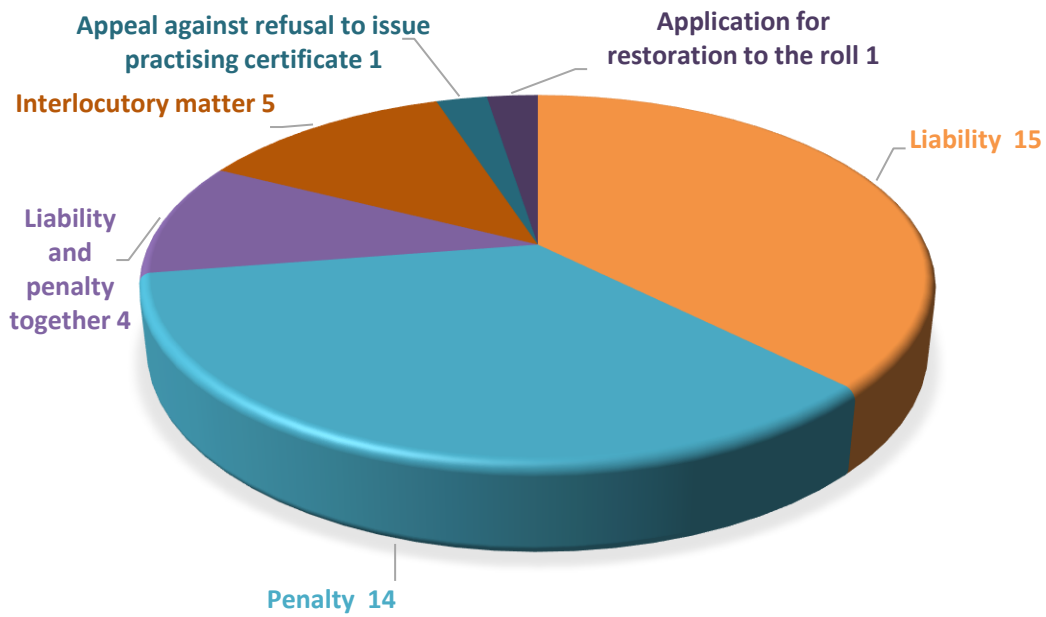
Upcoming hearings are listed on the Tribunal's website and can be found at the link below:

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

Nature of the hearings

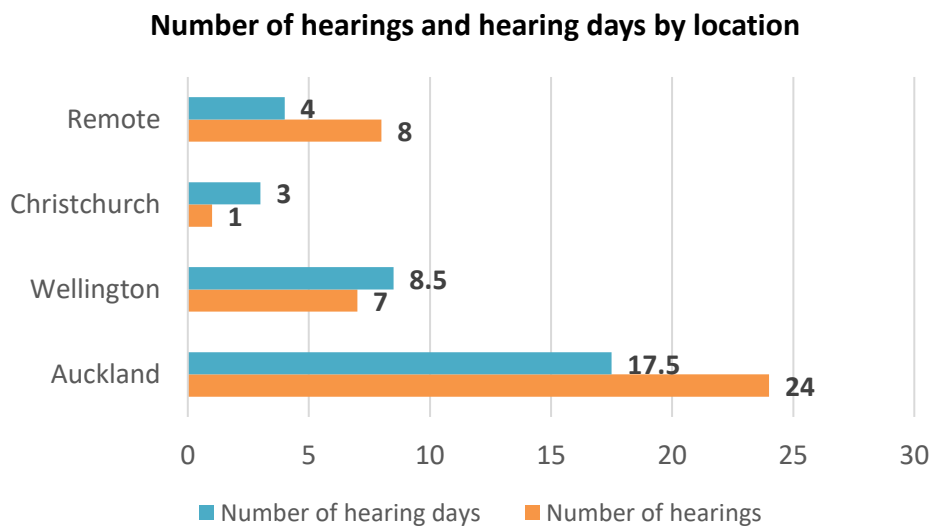
The pie chart on the following page shows the breakdown as to the nature of the **40** hearings held, categorised as to the purpose of the hearing.

Nature of hearings



Location of the hearings

The chart below shows the breakdown of the **40** hearings by location and number of days.



Decisions

During the period **59** decisions were issued.

These were decisions concerning:

- liability (charges proven or dismissed)
- penalty (for charges admitted or charges proven)
- interlocutory applications - various

Penalty orders

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

Type of order	Number of orders
Struck off the roll of barristers and solicitors	5
Suspended from practice	10
Censure	7
Pay compensation	4
Pay fine to the New Zealand Law Society	3
Other	4
Undergo training/education	2
Advice to be taken	1
Not able to practice on own account	1
Refund monies paid	1
Pay/contribute to the New Zealand Law Society costs	20
Reimburse the New Zealand Law Society for Tribunal costs	20

The category of "Other", includes conditions imposed regarding a suspension order; mentoring arrangements; supervision with conditions.

The Tribunal also made **22** mandatory orders in respect of the Tribunal costs, against the New Zealand Law Society. The quantum of that figure is noted in the Executive Summary section, on page 4, under the heading 'Costs recovery'.

Interim suspension orders

During the period the Tribunal made orders for interim suspension of **3** practitioners. One of those orders was made prior to the charges laid being heard and disposed. One was made at an adjourned penalty hearing, and one was made at the hearing regarding liability.

Non-publication orders

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 respondent's name is also granted, at times on an interim basis.

During the period applications for suppression of respondent's name were determined as follows:

Type of order	Declined	Granted
Interim name suppression	1	3
Permanent name suppression	3	4

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 **14** decisions were appealed to the High Court. The breakdown of the type of decision appealed is as follows:

- 3 interlocutory
- 6 penalty
- 3 liability
- 1 liability and penalty
- 1 application for restoration to the roll

During the period appeals against **12** decisions were determined as follows:

- 6 abandoned/stuck out/withdrawn (4 liability, 1 penalty, 1 liability and penalty)
- 1 allowed and cross-appeal dismissed (penalty modified)
- 1 dismissed (liability)
- 2 allowed (penalties modified)
- 2 allowed (interlocutory)

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.

Dale Clarkson, Chair

Dale Clarkson is the first Chairperson of the Tribunal, having been appointed at its inception in 2008. She retired as a full time District Court judge in 2006, then held an acting warrant and sat regularly in the District Court. She is now fully retired as a District Court judge. 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 served more than 32 years as a judicial officer. Ms 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.

Dr John Adams, Deputy Chair

Dr Adams was appointed as a District Court judge (with Family Court warrant) in 1995. He retired as a fulltime District Court judge in 2014, finally retiring in 2022. 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 has considerable experience in teaching a variety of topics, including programmes for the New Zealand Law Society and Te Kura Kaiwhakawā/Institute of Judicial Studies. He has degrees in English from Auckland University including Masters of Creative Writing (2010) and PhD (Auckland 2020). He is a published poet.

Lawyer members

At the start of the reporting period there were 15 lawyer members. In June 2023, the Board of the New Zealand Law Society reappointed 14 of those members for a further term of one year, to 30 June 2024.

Jacqui Gray did not seek reappointment. Ms Gray was a long-standing member, having been a member of the Tribunal from its inception in 2008. She was, throughout, diligent in her preparation, thoughtful in her clear analysis, and practical; bringing a wealth of experience to the Tribunal.

The Board appointed Nura Taefi, to fill the vacancy left by Ms Gray. Ms Taefi's appointment became effective 1 July 2023, for a period of one year.

Conveyancing practitioner members

There have been no changes during the reporting period.

Lay members

At the start of the reporting period there were ten lay members. Member Tino Pereira MNZM resigned in August 2022 due to his many responsibilities. We thank him for his thoughtful approach, for his fresh ideas, and his humour. No new lay member appointments were made during the period. It will be important to appoint some further lay members in the next reporting period, in order to maintain geographical coverage, skill sets and diversity. The recruitment process is underway.

Appendix 1 lists the members during the reporting period.

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.

Training days did not take place during the height of the Covid 19 pandemic, but are planned to resume later this year.

New members are inducted by the chairperson, with a full review of the governing legislation, procedural rules and court etiquette. Ethical duties of members are also carefully outlined, as are evidential rules and the rules underlying natural justice.

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 11 years, and her experience, in particular her attention to detail in proof-reading decisions, is hugely valued. Members continue to be awed by her ability to detect errors in a decision which has already passed 5 sets of eyes a number of times.

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 before the Tribunal in its substantive hearings, as well as at some of its pre-trial hearings, particularly in relation to intervention and suppression. Accredited members of the media attend at times to report proceedings. Permission is also commonly granted to media representatives to attend hearings by audio-visual link. This enables the transparency and openness of process contemplated by s 240.²

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.

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/>

² Lawyers and Conveyancers Act 2006.

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*".³

As at 30 June 2023 there were 16,736 lawyers holding practising certificates⁴. 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 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.

A recent comprehensive review of the regulatory functions of the New Zealand Law Society, has recommended sweeping changes. Such changes do not impinge upon the work of the Tribunal.

D F Clarkson
Chair

³ *Bolton v Law Society* [1994] 2 All ER 486.

⁴ Statistic provided by the New Zealand Law Society.

Membership during the period 1 July 2022 to 30 June 2023

Chair

Dale Clarkson

Deputy Chair

Dr John Adams

New Zealand Law Society Practitioner Members

Natalie Coates
Jacqui Gray
Hon Paul Heath KC
Ian Hunt
Stephen Hunter KC
Susan Hughes KC
Kristine King
Tim Mackenzie
Graham McKenzie
Niamh McMahon
Gaeline Phipps
Shelley Sage
Mary Scholtens KC
Louise Taylor
Reina Vaai

Lay Members

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

New Zealand Society of Conveyancers Practitioner Members

Stefanie Crawley
John de Graaf
Simon Penketh