



Annual Report of the

**NEW ZEALAND
LAWYERS AND CONVEYANCERS
DISCIPLINARY TRIBUNAL**

For the 12 months ended 30 June 2021

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

Once again, lockdowns imposed in relation to the Covid 19 pandemic, had an immediate effect on Tribunal hearings. These were able to be rescheduled but the delays have certainly impacted on our efforts to meet the usually achievable goal of expeditious disposal. 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 conducted hearings by using the virtual meeting room 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 worked 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. Other than this, the pattern of charges filed followed that of previous years.

As this summary is prepared, later in the calendar year, we have had a further very lengthy lockdown for Auckland, where the majority of cases are heard. Face to face hearings were not possible until we moved into the "traffic light" system. It is predictable that this will cause a considerable delay in disposition rates.

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. We aim to keep the 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.

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. In this reporting period there was a case in which the liability phase only occupied five 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.

Unless a lawyer 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.

Costs recovery

The Tribunal has the jurisdiction (s 249) to order costs against a practitioner (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 June 2021, these orders totalled \$111,462.50.

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.

One notable case to report is that the Tribunal for the first time considered a case of sexual harassment involving legal staff members.² This is a case which involved considerable media attention. The Tribunal found six charges of misconduct proved.

Because of the Auckland lockdown, the penalty decision is pending as at the date of this report.³

Following the revelations of the allegations on which the case is founded, in 2018, there was a strong reaction which led to significant recognition of the need for clearer professional standards and reporting obligations in this area of conduct. New Rules were promulgated by the New Zealand Law Society and took effect as of 1 July 2021.

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

² The Tribunal has previously considered cases of sexual misconduct, but which involved clients.

³ Although the allegations emerged in 2018, the case did not reach the Tribunal until late 2020. It was heard over 5 days in mid- May 2021 and the decision released on 24 June 2021.

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**

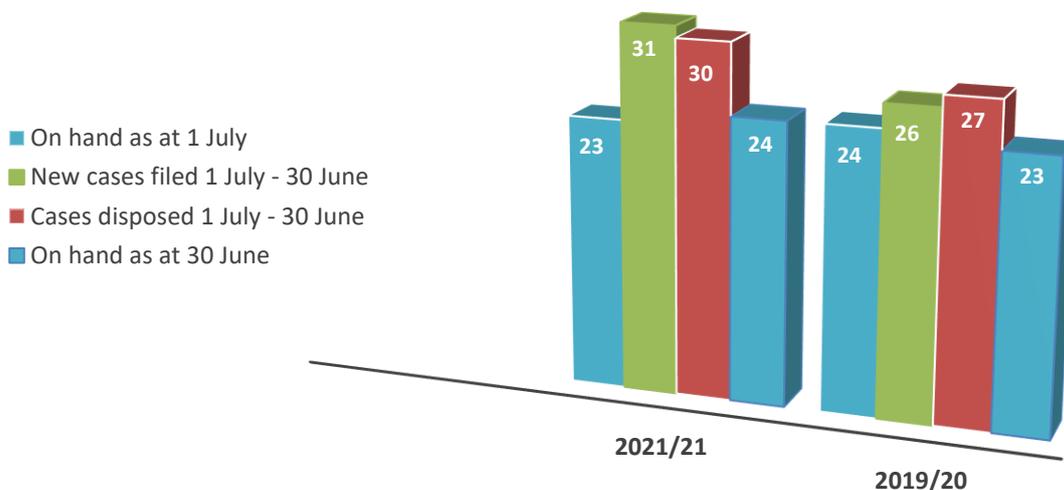
Various applications including:

- 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 **23** cases on hand. During the period the Tribunal received **31** new cases and disposed of **30** 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.

On hand, new and disposed cases



New cases filed

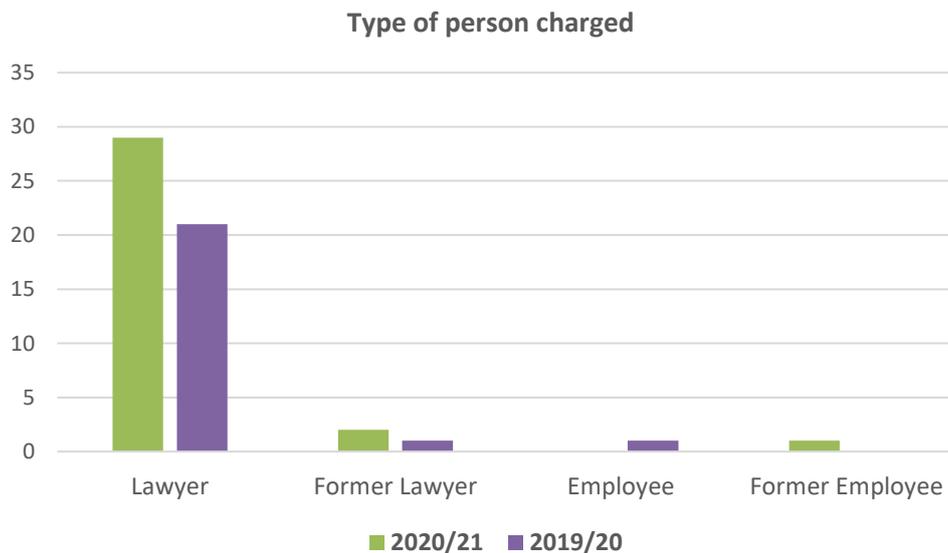
The **31** new cases filed during the reporting period were all cases of Charges, laid by a Standards Committee of the New Zealand Law Society.

The breakdown of the type of person charged is:

- **29** lawyers
- **2** former lawyers
- **1** former employee

Note: The number of persons charged is higher than the number of new cases as there is one case of charges against two lawyers.

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

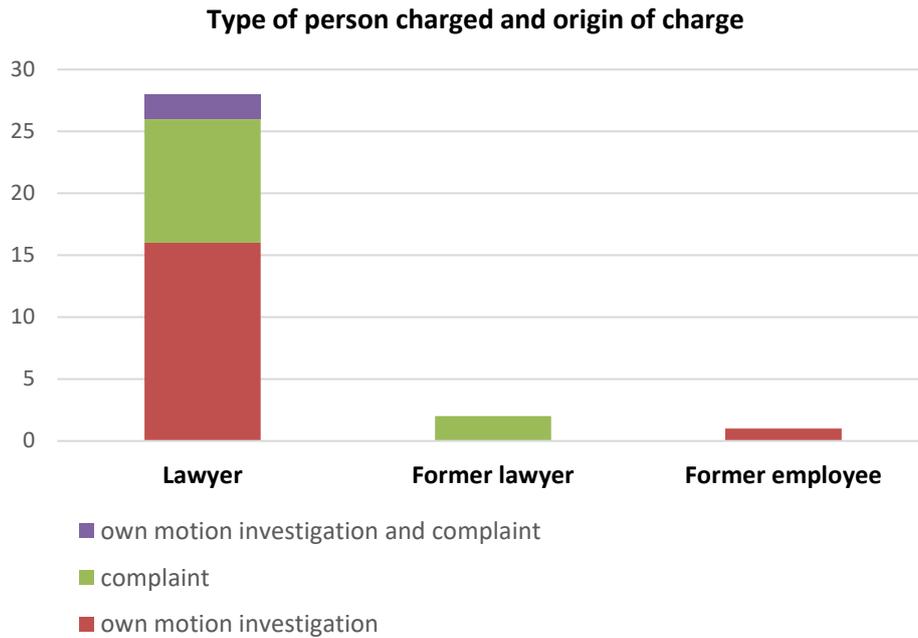


The charges laid arose either from complaints or/and own motion investigations by the New Zealand Law Society. The number of charges in each case is variable and may include charges laid in the alternative. Where this occurs, we have counted the alternatives as one charge.

In the **31** 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
- **10** cases arose from complaints against lawyers
- **2** cases arose from complaints against former lawyers
- **2** cases arose from both an own motion investigation and complaint against lawyers
- **1** case arose from an own motion investigation against a former 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 **30** cases were disposed. Three cases were determined on the papers, one was withdrawn, the remainder of cases had hearings scheduled.

The breakdown of the type of proceeding for the **30** cases is:

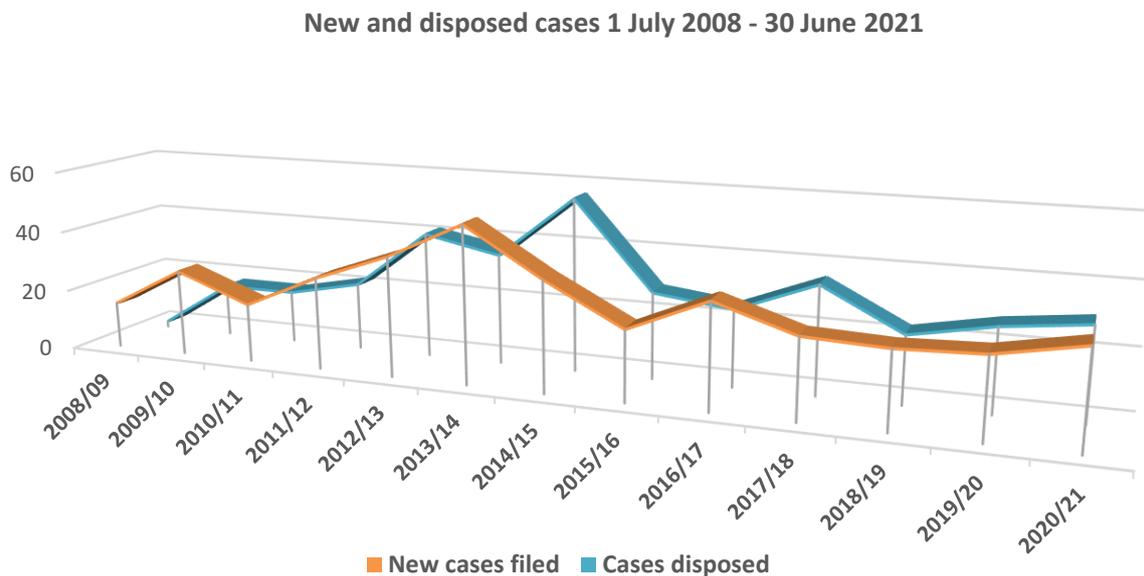
- **29** cases were charges
- **1** case was an application to practise on own account (which was withdrawn)

The **29** cases of charges were disposed of in the following manner:

- In **17** cases the charges were admitted and required a hearing as to penalty only
- In **4** cases the charges were proven following a defended hearing
- In **1** case the charges were proven following a formal proof hearing
- In **2** cases the charge was admitted at a lower level and found at that level
- In **2** cases the charge was admitted at a lower level but found at the higher level
- In **1** case amended charges were admitted and required a hearing as to penalty
- In **1** case some charges were admitted, some were proven and some withdrawn by leave
- In **1** case the charge against the lawyer was dismissed

Comparison of new and disposed cases

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 and cases disposed each year.



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/>

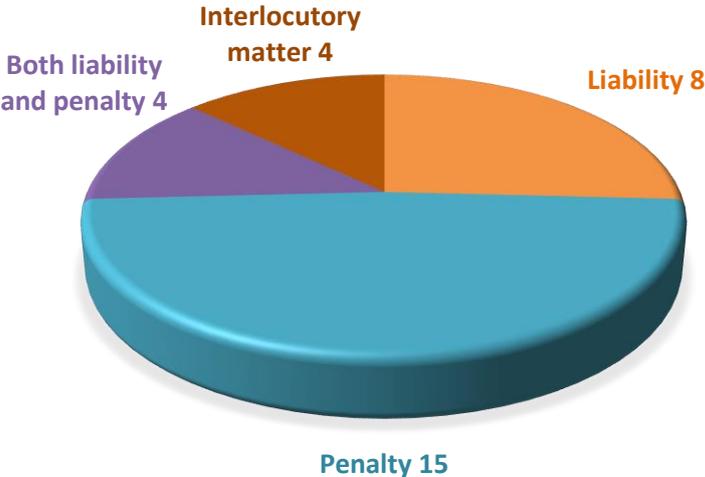
During the period the Tribunal held **30** face to face hearings (this includes any appearances via video link and/or telephone), over **23.5** sitting days. Where the person charged has more than one set of proceedings against them, where possible, the proceedings will be heard at the same time, and are counted as one hearing.

The *viva voce* hearings varied in length from one hour to five 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.

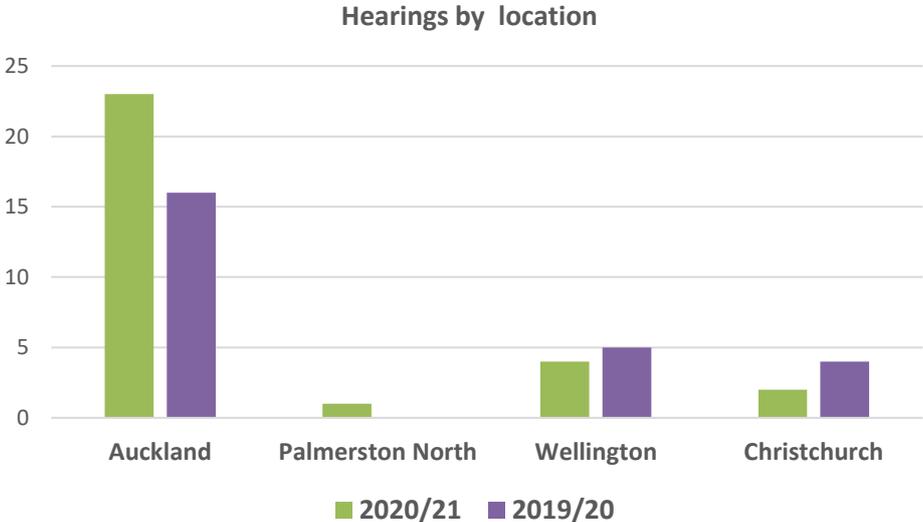
Nature of hearing

The pie chart below shows the breakdown as to the nature of the **31** hearings held (categorised as to the purpose of the hearing):

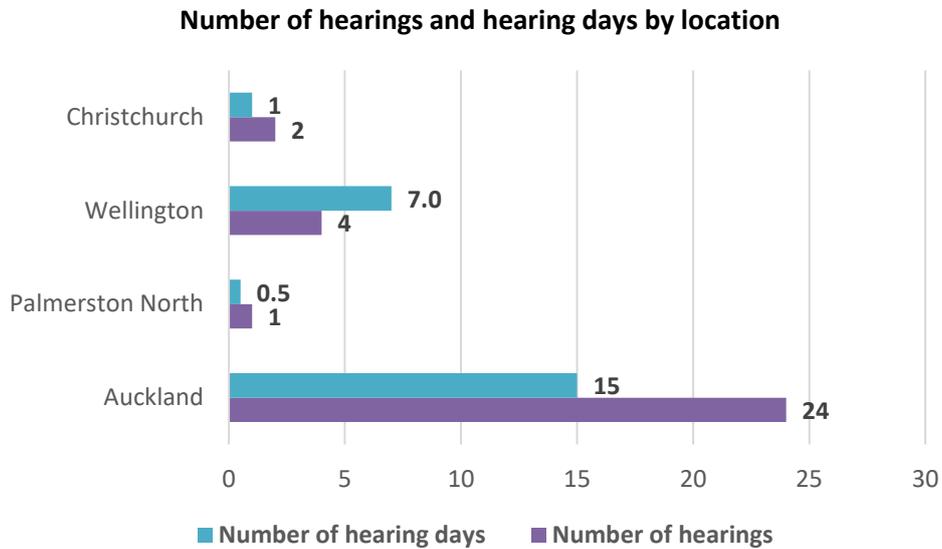


Hearings by location

The chart below shows the breakdown of the **31** hearings by location, along with the comparison of the hearings during the previous reporting period.



The chart below shows the breakdown of the **31** 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:

	20/21	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	24	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	-	
Palmerston North	1												
Wellington	4	5	1	6	3	5	12	5	7	8	4	-	1
Nelson	-	-	1	-	-	-	-	-	-	5	1	-	
Christchurch	2	4	2	5	2	1	4	5	4	1	1	1	1
Timaru	-	-	-	-	-	1	-	-	-	-	-	-	
Dunedin	-	-	-	-	-	-	3	1	3	-	-	1	
Invercargill	-	-	-	-	-	-	-	-	1	-	-	-	
<i>Total</i>	31	25	25	41	29	31	56	58	38	34	22	20	5

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 **46** 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
Cancel fees	1
Censure	15
Inspect Practice	1
Not able to practise on own account	3
Not to be employed in connection with practitioner or incorporated firm's practice	2
NZLS to pay the Tribunal costs	25
Pay compensation	1
Pay/contribute to the New Zealand Law Society costs	20
Pay fine to the New Zealand Law Society	5
Reimburse the New Zealand Law Society for Tribunal costs	21
Restriction on employment	1
Struck off the roll of barristers and solicitors	2
Suspended from practice	9
Other	3
Undertakings (various)	3

The Tribunal also made **25** 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'.

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

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 respondent's name is also granted, at times on an interim basis. During the period:

Type of order	Declined	Granted
Interim name suppression	1	3
Permanent name suppression	4	2

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 decisions were appealed to the High Court. The breakdown of those appeals is as follows:

- 2 interlocutory decisions
- 1 penalty decision
- 1 liability decision

Of those 4 decisions appealed, 2 were determined during the period:

- 1 interlocutory decision appeal dismissed
- 1 interlocutory decision appeal allowed

Five other decisions that had been appealed prior to the start of this reporting period were also determined:

- 3 penalty decision appeals dismissed
- 2 liability decision appeals

At the end of the reporting period there were 2 appealed decisions awaiting determination.

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.

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 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. He has degrees in English from Auckland University including Masters of Creative Writing (2009) and PhD (2021). He is a published poet.

Lawyer members

At the start of the reporting period there were 15 lawyer members. During the period the Board of the New Zealand Law Society reappointed 14 members and appointed one new member, Tim Mackenzie from Christchurch. Mr Mackenzie's appointment became effective 1 July 2020.

Brent Stanaway completed his term with the Tribunal and did not seek reappointment. Mr Stanaway has been with the Tribunal since it began in 2008. His many years of court experience, thoughtful approach and excellent legal and writing skills will be sincerely missed.

Conveyancing practitioner members

At the start of the reporting period there were four conveyancing practitioner members. Erin Rasmussen resigned before renewals at 30 June 2021.

Lay members

At the start of the reporting period there were ten lay members. No new appointments were made during the period.

Appendix 1 lists the members during the reporting period.

Performance standards of members

Members are kept appraised 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*".⁴

⁴ *Bolton v Law Society* [1994] 2 All ER 486.

As at 30 June 2021 there were 15,842 lawyers holding practising certificates⁵. 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.

Judge D F Clarkson
Chair

⁵ Statistic provided by the New Zealand Law Society.

Membership during the period 1 July 2020 to 30 June 2021

Chair

Judge Dale Clarkson

Deputy Chair

Judge John Adams

New Zealand Law Society Practitioner Members

Anne Callinan
Natalie Coates
Jacqui Gray
Hon Paul Heath QC
Ian Hunt
Stephen Hunter QC
Susan Hughes QC
Kristine King
Tim Mackenzie *
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

New Zealand Society of Conveyancers Practitioner Members

Stefanie Crawley
John de Graaf
Vicki Dempster
Erin Rasmussen **

* Appointment prior to end of reporting period, becoming effective 1 July 2021.

** Resigned prior to the end of the reporting period.