



New Zealand Lawyers and Conveyancers Disciplinary Tribunal

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Practice Note

Issued by the Chairperson of the Lawyers and Conveyancers
Disciplinary Tribunal

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1. Introduction

- 1.1 The rules that are contained in this Practice Note are issued pursuant to ss 227(g), 250 and 252 of the Lawyers and Conveyancers Act 2006 (“the Act”) and set out the practices and procedures which are to apply to all matters that may be heard and determined by the Lawyers and Conveyancers Disciplinary Tribunal (“the Tribunal”).
- 1.2 The practices and procedures contained in this Practice Note are in addition to the rules that are contained in the Act or any Regulations enacted under s 339 of the Act, and should be read together with the Act and any such Regulations.
- 1.3 The practices and procedures contained in this Practice Note do not replace any rules contained in the Act or in Regulations made thereunder; and in instances where any practice or procedure contained in this Practice Note is in conflict with the stipulations of the Act or any such Regulations, the Act and the Regulations shall have precedence.
- 1.4 This Practice Note is subject to review and change from time to time as the need may arise and as may be considered appropriate. The revised Practice Note will be published on the website of the Ministry of Justice and the New Zealand Law Society and the New Zealand Society of Conveyancers will be notified of changes in this Practice Note within ten (10) working days of such amendment.

2. Commencing proceedings

- 2.1 In respect of Charges and Applications under Part 1 of the Lawyers and Conveyancers Act (Disciplinary Tribunal) Regulations 2008 (“2008/184”):
 - 2.1.1 Charges should be commenced and served as set out in 2008/184.
 - 2.1.2 Responses to charges should be filed and served as set out in 2008/184.
 - 2.1.3 Applications should be filed and (where applicable) served as set out in 2008/184.
 - 2.1.4 Any fees payable in respect of an application shall be paid on filing (see reg 37 of 2008/184).
- 2.2 In respect of Appeals, and Applications other than those dealt with under Part 1 of 2008/184:
 - 2.2.1 An application to the Tribunal under s 246 of the Act, for restoration of an applicant’s name to the roll or register, must:
 - Be in **Form H**,
 - State the grounds for restoration,
 - Be supported by an affidavit giving particulars of those grounds, and;
 - Be accompanied by the prescribed fee (see reg 37 2008/184).

The applicant must file the application with the Tribunal and serve, without delay, notice of the application on the New Zealand Law Society, or as the case may require, the New Zealand Society of Conveyancers.
 - 2.2.2 An application to the Tribunal under s 247 of the Act, for the revocation of an order prohibiting employment, must:
 - Be in **Form I**,
 - State the grounds for revocation of the order,
 - Be supported by an affidavit giving particulars of those grounds, and;
 - Be accompanied by the prescribed fee (see reg 37 2008/184).

The applicant must file the application with the Tribunal and serve, without delay, notice of the application on the New Zealand Law Society, or as the case may require, the New Zealand Society of Conveyancers.

2.2.3 An application to the Tribunal under s 248 of the Act, for consent to employ, must:

- Be in **Form F**,
- State the grounds for the application,
- Be supported by an affidavit giving particulars of those grounds, and;
- Be accompanied by the prescribed fee (see reg 37 2008/184).

The applicant must file the application with the Tribunal and serve, without delay, notice of the application on the New Zealand Law Society, or as the case may require, the New Zealand Society of Conveyancers.

2.2.4 An appeal under s 42 of the Act, appealing against the issue of a practising certificate being declined or refused, must:

- Be made within 20 working days of the appellant being notified that the appellant's application for the issue of a practising certificate has been declined or refused,
- Be in **Form J**,
- State the grounds for appeal,
- Be supported by an affidavit giving particulars of those grounds, and;
- Be accompanied by the prescribed fee (see reg 37 2008/184).

The appellant must file the appeal with the Tribunal and serve, without delay, notice of the appeal on the New Zealand Law Society, or as the case may require, the New Zealand Society of Conveyancers.

2.3 In order to prevent unnecessary delays of proceedings before the Tribunal, any appeal or application made to the Tribunal, or any charge laid with the Tribunal, should only be made or laid when the person making the application, or laying the charge, is ready to proceed with their case, having obtained all the necessary information, relevant documents or any other evidential material intended to be submitted to the Tribunal in support of such appeal, application or charge. Notwithstanding this provision, an appellant under s 42 of the Act, may lodge such an appeal at any time prior to the expiry of the time frame referred to in clause 2.2.4 above.

2.4 All Forms lodged in respect of proceedings (including affidavits) should contain, or have attached to them, sufficient information to fairly inform the Tribunal and any other parties of the substance of, and issues relating to, the proceedings.

3. Responses

3.1 Charges: In respect of a proceeding commenced before the Tribunal by the laying of charges under Part 1 of 2008/184, a respondent must file a response as set out in that Part. While there is provision for the Tribunal to extend this time limit, an extension is only likely to be approved where the charge has been amended or there is a reasonable requirement for further clarification before a response can be completed.

3.2 Appeals and Applications: In respect of an appeal under s 42 or an application under any of ss 246, 247, or 248 of the Act, notice of appearance or notice of no submission shall be filed with the Tribunal by the respondent Society within 20 working days of being served with the appeal or application, or within a time specified by the Tribunal. A copy of such notice of appearance or no submission shall

be served forthwith on the appellant or applicant (as the case may be). The notice shall be in **Form K**, and, in the case of opposition, shall give sufficient information for the appellant or applicant, and the Tribunal to understand the grounds of opposition.

4. Issues and setting down conferences

- 4.1** The stipulations of regs 16 and 17 2008/184 shall apply to any application or appeal under clauses 2.2.1, 2.2.2, and 2.2.4 above, in the same way as they apply to an application under clause 2.2.3 above, as if regs 16 and 17 also referred to those applications or appeals.
- 4.2** For the purposes of reg 32 2008/184, the Chairperson of the Tribunal may convene an issues conference of the parties or counsel representing such parties and give directions to them, to:
- Ensure that all issues to be considered relating to the proceeding are identified,
 - Ensure that the parties understand what they are required to do, in order for the matter to proceed to a hearing at the earliest possible time,
 - Confirm the parties' details, including those of their legal or other representatives,
 - Ensure the provision and exchange of relevant documents by the parties, where applicable,
 - Timetable the hearing,
 - Ascertain who may be giving evidence and who are required for cross-examination, and whether any witness summons will be sought,
 - Ascertain whether interpreters or other assistance may be required, and;
 - Deal with any other procedural issue identified.
- 4.3** All parties are required to attend (either in person or by counsel) conferences with the Chairperson of the Tribunal. All conferences will generally be convened by teleconference or video link (unless counsel request otherwise), which will be arranged by the case manager responsible for the Tribunal.
- 4.4** The Tribunal has a strict policy regarding adjourning preliminary conferences. Whilst a party or their counsel may file a request for an adjournment, a preliminary conference will only be adjourned in special circumstances.

5. Provisions relevant to all proceedings

- 5.1** All documents to be relied on at a hearing must be provided to the Tribunal and all other parties within the timeframes set by direction or as prescribed by this Practice Note, the Act, or any Regulations made under the Act.
- 5.2** Evidence must be given by affidavit unless the Tribunal directs otherwise. Affidavits should be typewritten and double-spaced, with headings and subheadings used where possible. All witnesses must be available for cross-examination if required by another party to the proceedings. Indications as to required witnesses and the position regarding any witness summons should be available at the time of setting down.
- 5.3** In general, the Tribunal does not require the formal "discovery" of documents. However, parties are required to provide documents in accordance with clause 5.1 above, and have access to documents held by other parties, that are relevant to the proceeding.

- 5.4** Parties are required to provide these documents, or make them available for inspection, to all other parties. Parties may prefer to carry out this process informally, with each advising the other party of the documents held or able to be accessed and then arranging for inspection or provision of requested documents.
- 5.5** The Tribunal will inform the parties to the matter whether an upcoming conference will be an issues or setting down conference.
- 5.6** For the setting down conference each of the parties is to have filed and served a Memorandum with the Tribunal that:
- 5.6.1** Lists all documents, including evidential affidavits, that have been filed by that party in the proceeding, with confirmation that service of such documents has been effected on the other parties in the proceeding.
- 5.6.2** Confirms the name of each witness (if any required to be present) that party will have available at the hearing of the proceeding.
- 5.6.3** Confirms that all directions that party was required to perform or observe have been so performed or observed.

6. Compliance with Tribunal timetables and adjournments

- 6.1** Compliance with the timetable, fixture dates and other directions set by the Tribunal is mandatory, and cannot be altered, even if the parties consent, except with the leave of the Tribunal.
- 6.2** Applications for adjournment must, unless precluded by the circumstances, be made in writing and as soon as a party becomes aware of a matter that may require an application for adjournment. Applications for adjournment must clearly state the reasons for the application, and be accompanied by supporting documentation, where available. The party seeking the adjournment must advise the other parties to the proceeding, and ascertain and obtain the written consent of the other parties, where possible.
- 6.3** Unless an adjournment is expressly granted, the parties should assume that the conference or hearing for which the adjournment is sought will proceed, and attend as directed with all appropriate witnesses, representatives and documentation.
- 6.4** If parties wish to depart from any other direction made by the Tribunal, they must seek leave.
- 6.5** Applications for leave to depart from Tribunal directions, including the Chairperson's directions, will be required to establish that the departure from directions is necessary for the adequate running of the case, was not avoidable by management of the proceedings with due diligence, and that the leave, if granted, will not unduly disadvantage any other party.

7. The hearing

- 7.1** The purpose of the hearing is to clarify and test the evidence that will have been provided prior to the hearing by the parties and their witnesses. The focus of the process will be an inquiry on the part of the Tribunal.
- 7.2** Pursuant to s 238 of the Act hearings are conducted in public, which means that any member of the public or the media may attend the hearing. Hearings are reported unless the Tribunal, in its discretion directs that it will hold the hearing in private. If there is such an issue, the Tribunal would expect that it would have been raised at an issues conference, so that all parties are clear about the position by the time of

the hearing. Applications for restrictions on publication (s 240) may be made at any time.

- 7.3** All evidence will be taken as read, and need not be read out at the hearing. Parties must indicate in advance of, or at the time of, the conference at which the proceeding will be set down for hearing, which of the other parties' witnesses they will require to be present at the hearing for cross-examination. All witnesses who have filed statements or reports are expected to be available to attend the hearing if required, so they can answer questions put to them.
- 7.4** No person shall, without the leave of the Chairperson be called as a witness unless that person's statement or report has been filed with the Tribunal and served on the other parties or unless the person is appearing under Witness Summons.
- 7.5** No document shall be relied upon, without the leave of the Chairperson, unless it is included in the party's material previously provided as prescribed by this Practice Note.
- 7.6** All hearings are recorded. A party may apply to the Tribunal for a copy of the transcript of the hearing. The costs will be met by the person seeking the transcript.

8. Notice of hearing

- 8.1** The hearing of proceedings under Parts 1 and 2 of 2008/184 will be notified as therein prescribed.
- 8.2** The hearing of any other proceedings before the Tribunal will be notified as follows.
- 8.2.1** The case manager must, no later than 10 working days before the date of the hearing, give written notice of the hearing to the applicant/appellant and to:
- The New Zealand Law Society, if the applicant/appellant is a lawyer or an incorporated law firm, or;
 - The New Zealand Society of Conveyancers, if the applicant/appellant is a conveyancing practitioner or an incorporated conveyancing firm.
- 8.2.2** In the case of an application for restoration to the Roll or Register, or an application to revoke a previous order, the case manager shall also arrange for the application and the hearing to be advertised by:
- Publication in the *New Zealand Gazette*,
 - Publication in the daily newspapers principally available in Auckland, Wellington, and Christchurch. In addition, publication shall occur in the principal daily newspaper available in the area where the applicant was last practising or employed before the order striking from the Roll, cancelling from the Register, or prohibiting employment (as the case may be) was made, if that area is not an area principally served by the Auckland, Wellington, or Christchurch daily newspaper, and;
 - Publication in any other manner directed by the Chairperson.
- 8.3** Where an application for restoration to the Roll or Register, or revocation of an employment restriction, has been advertised under clause 8.2.2, a person who wishes to make an objection to it must, by the date specified in the advertisement:
- 8.3.1** File a written notice with the Tribunal stating the grounds, and particulars thereof, of the objection.
- 8.3.2** Serve the notice on:
- The New Zealand Law Society, if the applicant is a lawyer or incorporated law firm,

- The New Zealand Society of Conveyancers, if the applicant is a conveyancing practitioner or an incorporated conveyancing firm, and;
 - The applicant.
- 8.4** The case manager must, without delay, provide the Tribunal and the applicant with a copy of any written objection received.
- 8.5** In addition to the applicant, the following people or entities may appear and be heard at the hearing of an application for restoration to the Roll or Register or revocation of an order prohibiting employment, under the Act:
- The New Zealand Law Society in respect of applications for restoration to the Roll or revocation of employment prohibition,
 - The New Zealand Society of Conveyancers in respect of applications to restore to the Register or revocation of employment prohibition, and;
 - An objector who has given notice of objection under clause 8.3.

Dated at Auckland this 28th day of September 2012

Signed

Judge D Clarkson

Chairperson

Lawyers and Conveyancers Disciplinary Tribunal