



New Zealand  
Lawyers and Conveyancers  
Disciplinary Tribunal

**ANNUAL REPORT**

**For the 12 months ended 30 June 2013**

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".

Whilst expeditious disposition of proceedings is important, this must be balanced with the Tribunal's responsibility under s 236 which prescribes that the Tribunal must "in performing and exercising its functions and powers, observe the rules of natural justice".

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."

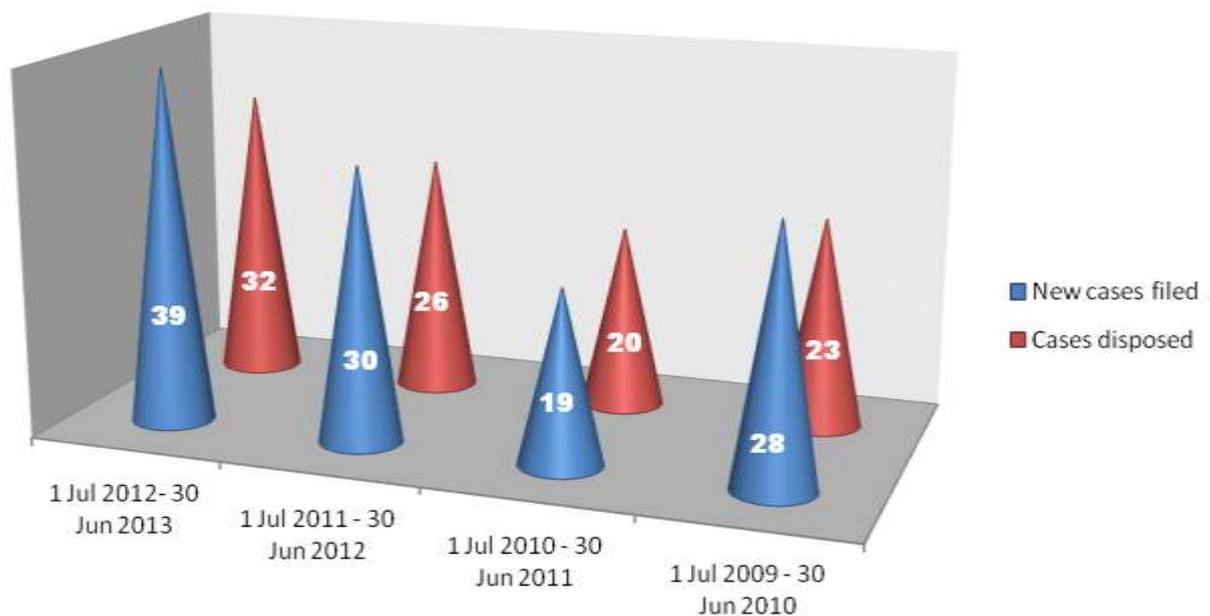
As previously reported, in attempting to ensure that proceedings before the Tribunal are effectively progressed, the Chair and Deputy Chair have had a strong sense of the tension in attempting to balance these two, at times competing, factors. This is particularly so in the relatively frequent pre-trial 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 five 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.

Furthermore, the need for expeditious disposition has recently been reinforced in a number of decisions of the higher courts, the most recent of which is from the Court of Appeal in *Orlov v. Auckland Lawyers Standards Committee and Ors*<sup>1</sup>. This guidance is of great assistance to the Tribunal.

## Summary of Activity for the reporting period

Number of new cases filed - 39

Number of cases disposed - 32



### New cases filed

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

The category break down of the 39 cases filed is as follows:

<sup>1</sup> [2013] NZCA 230.

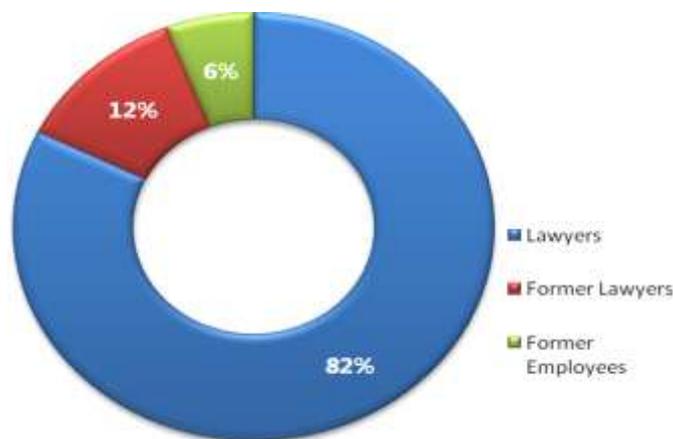
Charges against lawyers or former legal employees	34 cases
Applications	3 cases
Appeal against the decline of the Law Society to issue A practising certificate	2 cases

The cumulative number of charges laid over the 34 cases is 77.

As can be seen from the chart above, there has been a 30% increase in the number of proceedings filed with the Tribunal from the last financial year. This caseload continues an upwards trend, with the filings for the year having increased by more than 100% from two years ago.

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 (LCRO) respectively are processed. In respect of the latter, the recent appointment of an additional LCRO will undoubtedly result in a faster flow of work to the Tribunal and an anticipated bulge over the next few months to a year, depending, of course, on the outcomes of the respective reviews awaiting hearing.

Of the 34 cases where charges were laid, the percentage 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.

In addition there are many 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. The circumstances where a reduced quorum is permitted has been extended by recent amendment to the Act<sup>2</sup>.

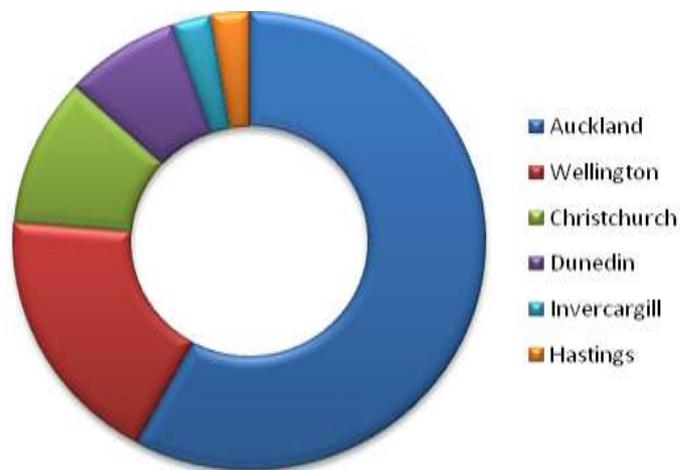
<sup>2</sup> Lawyers and Conveyancers Amendment Act 2012, ss 15 and 19.

This change has allowed 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.

During the period the Tribunal held 38 face to face hearings. The nature of the hearings are: the substantive hearing of defended charges; hearings as to penalty; applications; and appeals against refusal of practising certificate. These hearings varied in length from half a day to three days. On some days, more than one matter was heard, in order to best utilise the time of the members, and minimise travel costs.

The table below shows the number of face to face hearings by location.

Location	Number of Hearings
Auckland	22
Wellington	7
Christchurch	4
Dunedin	3
Invercargill	1
Hastings	1

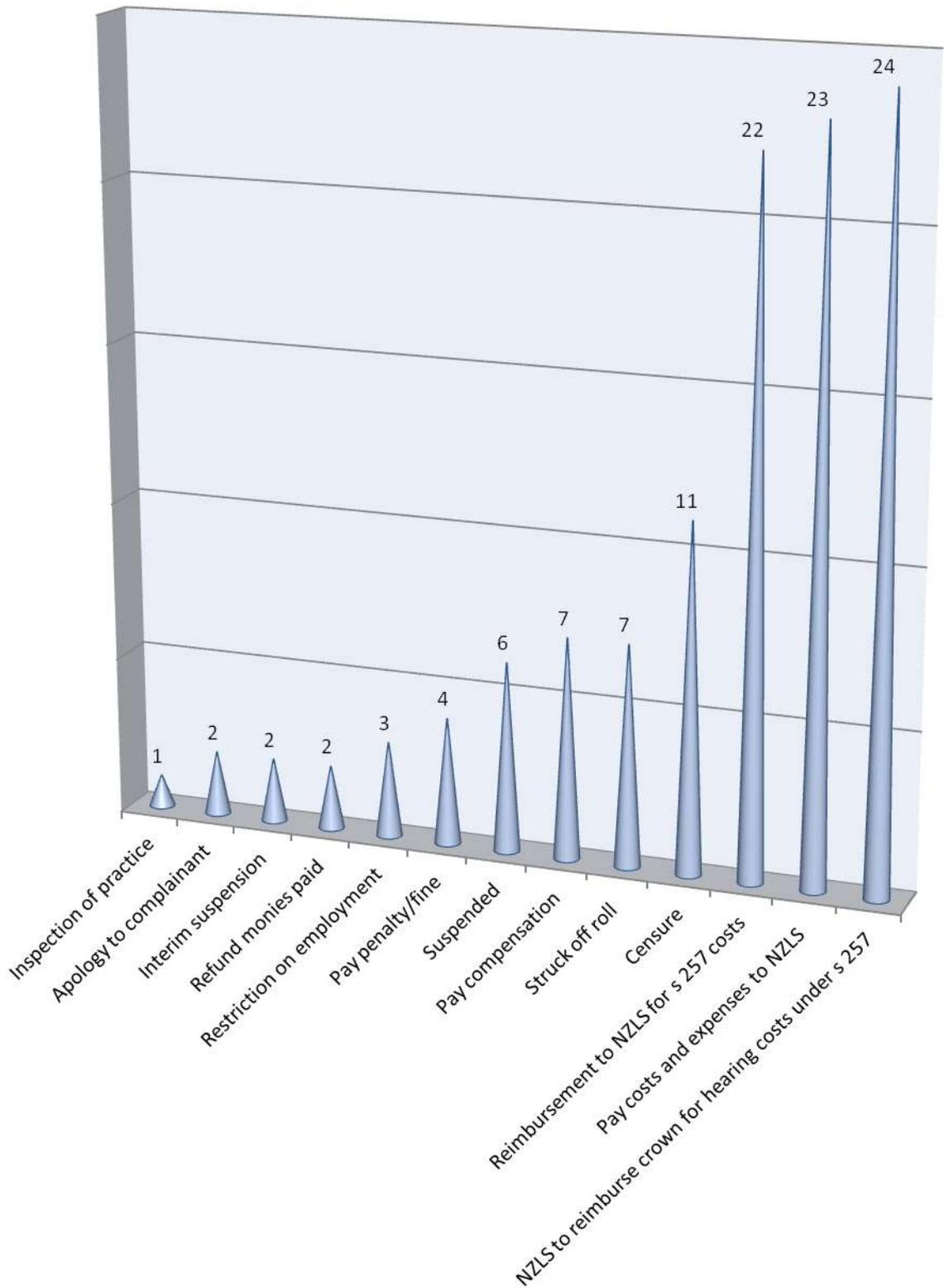


As well as the physical hearings, the Tribunal held 3 telephone hearings. The nature of these hearings were interlocutory applications. These hearings were an average duration of one hour.

The Tribunal also dealt with some matters on the papers.

During the period 48 decisions were issued. These were decisions on charges (proven or dismissed), penalties, applications for name suppression and other. The cumulative number of penalty orders made is 114 (note: a decision may contain more than 1 order).

The table below shows the breakdown of the 114 penalty orders.



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

The 24 orders the Tribunal made during the period for the New Zealand Law Society to reimburse the Crown for hearing costs, were in the sum of \$178,513.00. There were 22 orders made for the person charged to reimburse the New Zealand Law Society for some of those 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. 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. Practitioners are advised in advance of the hearing of the composition of the Tribunal, to ensure an unanticipated conflict does not arise.

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 24 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.

The Deputy Chair has indicated that he will not seek reappointment when his current term expires in January next year. Mr Mackenzie was first appointed at the time the Tribunal was established in 2008, and has acted as Chair of one of the Tribunal's divisions since then, dealing with a wide range of judicial issues. I am extremely grateful to Mr Mackenzie for his sound judgment, willingness to take on difficult cases and support during the early years of the Tribunal's operation.

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.

## **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 7 appeals and 1 Judicial Review application were filed in the High Court.

## **Performance of the Act**

The recent amendments referred to at page 4 permits a three member Tribunal, comprised of the Chair or Deputy Chair sitting with one lay member and one lawyer member, to make orders relating to Interim Suppression of Name and related details. The Chair and Deputy Chair consider this will assist in improving the efficiency of the Tribunal.

## **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 could perhaps be greater recognition by the news media 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 2012 to 30 June 2013

### Chair

Judge Dale Clarkson

### Deputy Chair

David Mackenzie

### New Zealand Law Society Practitioner Members

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