



New Zealand
Lawyers and Conveyancers
Disciplinary Tribunal

ANNUAL REPORT

For the 12 months ended 30 June 2014

Presented to the Minister of Justice, the Hon Amy Adams
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 six 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*¹. This guidance is of great assistance to the Tribunal.

Summary of Activity for the reporting period

Number of new cases filed - 51

Number of cases disposed - 35

New cases filed

Proceedings before the Tribunal fall into two categories:

- applications/appeals
- charges

The category break down of the 51 cases filed is as follows:

Charges	46 cases
Applications	3 cases
Appeal against the decline of the Law Society to issue practising certificate	2 cases

The table below shows the breakdown and comparison of types of person charged over the past three reporting periods:

	1 Jul 2013 – 30 Jun 2014	1 Jul 2012 – 30 Jun 2013	1 Jul 2011 – 30 Jun 2012
Lawyer	39	28	23
Former lawyer	5	4	2
Former employee	2	2	3
Total	46	34	28

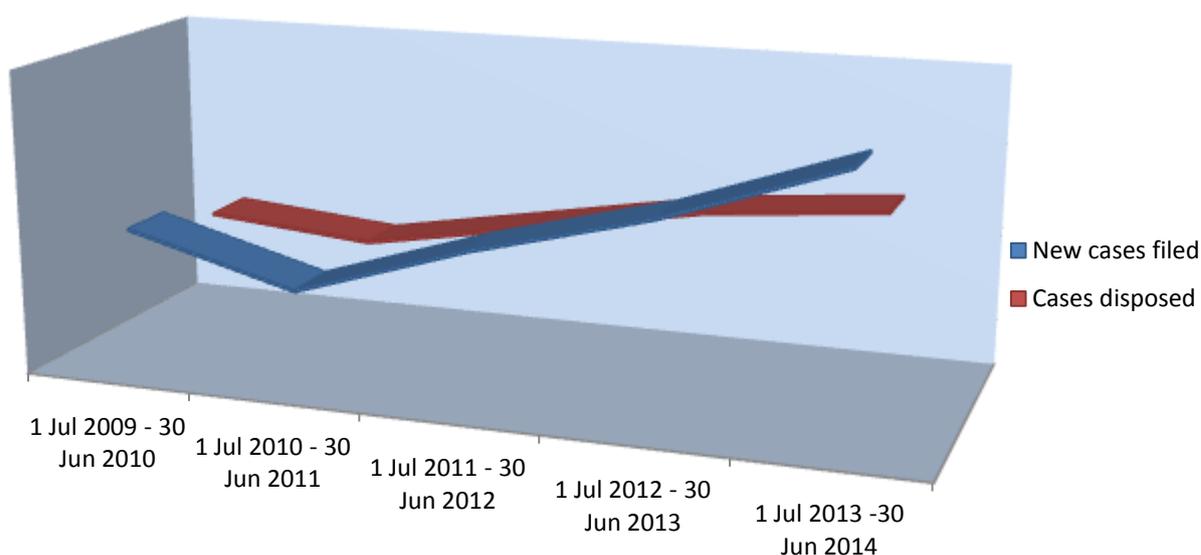
The total cumulative number of charges laid over the 46 cases is 106.

¹ [2013] NZCA 230.

The table below shows the number of new cases filed and cases disposed over the past reporting periods.

	1 Jul 2013 – 30 Jun 2014	1 Jul 2012 – 30 Jun 2013	1 Jul 2011 – 30 Jun 2012	1 Jul 2010 – 30 Jun 2011	1 Jul 2009 – 30 Jun 2010
Number filed	51	39	30	19	28
Number disposed	35	33	26	20	23

As can be seen from the chart below the caseload continues an upwards trend, with the filings for the reporting period having increased by 30% from the last reporting period.



It will be interesting to see whether the inflow of cases begins to level out as the Tribunal moves into its 7th year of operation.

The levelling off of the disposal rate in the past year coincides with a period of some 6 months, following the resignation of the previous Deputy Chair, before the appointment of the new chair was in place. Thus only one division was able to operate during this period.

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 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 Act².

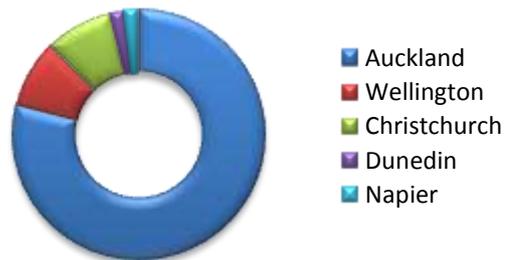
² Lawyers and Conveyancers Amendment Act 2012, ss 15 and 19.

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 58 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 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.

The table and chart below show the number of face to face hearings by location.

Location	Number of Hearings
Auckland	45
Wellington	5
Christchurch	5
Dunedin	1
Hamilton	1
Napier	1



The Tribunal also dealt with some matters on the papers.

During the period 66 decisions were issued. These were decisions on charges (proven or dismissed), penalties, applications for name suppression and other. The total number of penalty orders made is 122 (note: a decision may contain more than 1 order).

The table on the following page shows the breakdown of the 122 penalty orders.

Suppression

Normally, suppression of complainant's names and details occurs, as well, there are instances where personal or medical information about practitioners is not published.

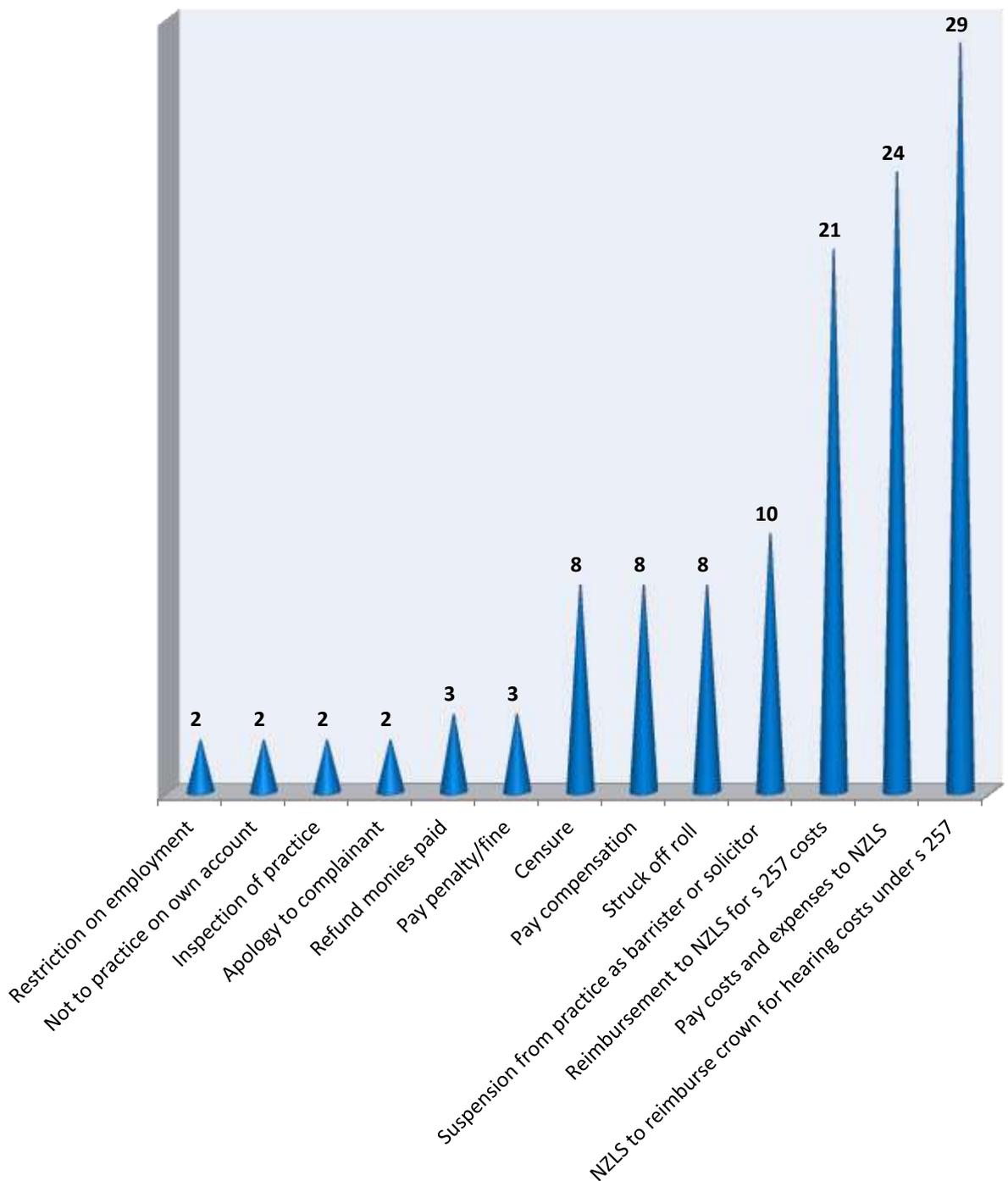
The tables below show the number of applications received and granted:

Application for Interim suppression of name of practitioner

Received	8
Granted	5

Application for final suppression of name of practitioner

Received	6
Granted	5



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

There were 32 s 257 orders the Tribunal made during the period for the New Zealand Law Society to reimburse the Crown for hearing costs, in the sum of \$323,749.

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. In April 2014, the Tribunal was fortunate to have appointed former Judge Bernard Kendall as Deputy Chair. Judge Kendall brings a wealth of experience, not only as a judge, but as an early leader in case management techniques, and his appointment is warmly welcomed.

Judge Dale Clarkson, Chair

Judge Clarkson retired as a full time District Court judge in 2006 but continues to hold an acting warrant and sits regularly in the Family 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 25 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.

Judge Bernard Kendall (retired), Deputy Chair

Judge Kendall has 29 years of experience as a District and Family Court Judge. His further roles have been as a Parole Board - Panel Convenor, Chair of the Representation Commission defining Electoral boundaries, Chair of the District Licensing Committee under the Sale and Supply of Liquor Act 2012, Review Authority under the Legal Services Act 2011 and Chair of Professional Conduct Committee of Midwifery Council.

Member update

Lawyer members

Peter Radich stood down from the Tribunal after a long period of service, with effect 30 June 2014. Chris Rickit resigned from the Tribunal with effect from 30 April 2014.

NZLS Board approved the appointment of Allan Marshall for a period of 3 years from 1 July 2014 and the reappointment of Rachael Adams for a period of 3 years from 1 July 2014, following a two-year stand down.

Lay members

Alison de Ridder resigned November 2013, after serving the Tribunal from its inception.

I wish to express my thanks to all three members as well as to David Mackenzie who retired at the end of 2013. While tribute was paid to Mr Mackenzie in the last report, I wish to reiterate the important part he played in the early days of the Tribunal, when his organisational skills were so valuable.

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

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. 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. Her personal skills are very much appreciated by all 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.

Ongoing training is provided with a full day "update" session scheduled for early November this year.

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 Chair and Deputy Chair aim to build up a body of consistent and credible decisions as an essential data base 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 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 5 appeals 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 has assisted 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. We note that the news media at times refers to the Tribunal as the "Law Society Disciplinary Tribunal", or similar. 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.

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 2013 to 30 June 2014

Chair

Judge Dale Clarkson

Deputy Chair

David Mackenzie

Judge Bernard Kendall (retired)

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