



**New Zealand
Lawyers and Conveyancers
Disciplinary Tribunal**

ANNUAL REPORT

For the year ended 30 June 2009

**Presented to the Minister of Justice, the Hon. Simon Power
The New Zealand Law Society
The New Zealand Society of Conveyancers**

Pursuant to s259 Lawyers and Conveyancers Act 2006

Judge Dale Clarkson

New Zealand Lawyers and Conveyancers Disciplinary Tribunal

Preliminary

Following the passing into law of the Lawyers and Conveyancers Act 2006 (“the Act”), the New Zealand Lawyers and Conveyancers Disciplinary Tribunal (“NZLCDT”) was established pursuant to s.226 of the Act, with effect from 1 August 2008.

The functions of the Tribunal are (broadly) to hear and determine applications in relation to charges laid against a legal or conveyancing practitioner or in relation to applications to have persons restored to the roll or register of practitioners.

The Tribunal may impose a range of sanctions in relation to its determinations including suspension or striking off the roll or the imposition of up to \$30,000 as a fiscal penalty.

I was appointed as the first Chair of the Tribunal in late January 2008 and my Deputy Mr David Mackenzie was appointed shortly after that time. This is my first annual report covering the period of the Tribunal’s establishment and its first 11 months of operation from 01 August 2008 to 30 June 2009.

The Tribunals Unit of the Ministry of Justice provides the Tribunal with case management and administrative support. The Jurisdiction Manager appointed is Ms Terry Wano, and in July 2008, Ms Rachel Honeychurch was appointed as Case Manager for the Tribunal.

Recruitment

Recruitment of lay members of the Tribunal was undertaken in the early part of 2008, and I am told some 200 applications were received. From those initial applications a list of 48 potential candidates were selected for interview.

During May 2008, I headed a selection panel of three who interviewed these candidates. The calibre of the applicants was exceptional.

Although the Act allows for up to 15 lay members to be appointed, in the end the panel recommended the appointment of 12 people. This will allow for further members to be appointed, to ensure the future membership is able to be refreshed to continue to properly reflect the make up of New Zealand society.

The Minister approved and appointed the 12 lay members recommended.

The New Zealand Law Society in turn nominated 15 senior lawyers as the lawyer members of the Tribunal, although one withdrew prior to being sworn in.

The New Zealand Society of Conveyancers nominated four conveyancers as members of the Tribunal.

Appendix 1 is the list of current lay conveyancer and lawyer members of the Tribunal.

Membership

The Chairperson and Deputy Chairperson of the Disciplinary Tribunal must have had not less than 7 years practice as a lawyer.

These are Governor General appointments, made on the recommendation of the Minister of Justice.

When sitting, a quorum of the Tribunal consists of a Chairperson and four members (two lay members and two practitioner members).

The Tribunal is able to sit in divisions, and holds hearings in public.

Training

With the assistance of the Project Team who had been responsible for the setting up of the new Tribunal, I designed a two-day Induction and Training Workshop, to follow on immediately after the swearing in of the new members. This was held in August 2008.

Although the training was aimed primarily at the lay members, it was well attended by lawyer members, who also contributed to the training, and thereby had the opportunity of working with the lay members, thus setting the scene for a collaborative and team approach intended by the legislation.

Topics such as an understanding of the Rule of Law and Natural Justice and proper legal process were covered, together with assessment of credibility, and some rules of evidence.

In addition, Ministry staff inducted the members, in relation to expenses and other claims.

Procedures

The Tribunal may from time to time make rules not inconsistent with the Act, in respect of hearing and determining applications and appeals, and other proceedings before it.

Except as provided by the Act, the Disciplinary Tribunal may determine its own procedure.

Practice Note

Considerable effort has been put into drafting a Practice Note, produced in conjunction with The Tribunal's Legal and Research Officer, Mr Johan Struwig. When finalised, it will comprehensively set out the rules and procedures for all matters before the Disciplinary Tribunal.

Determinations

As anticipated, there has been a delay in filing of applications with the new Tribunal. This is because, in most cases, there are a number of preliminary stages before a complaint reaches this level.

In addition to that, the predecessor of the Tribunal, the NZ Law Practitioners Disciplinary Tribunal, had until 1 February 2009 to complete the matters which were before it. In fact that tribunal was unable, for a number of reasons, to complete 10 of the cases, and these were taken over by this Tribunal from that date.

It is anticipated that the workload of the Tribunal will increase gradually over the next 12 months.

Appendix 2 sets out the disposition of cases to 30 June 2009, covering the first 11 months of the operation of the Tribunal.

Appeals

Parties may appeal to the High Court against any order or decision of the Disciplinary Tribunal.

Judge D F Clarkson
Chair

Appendix 1

New Zealand Lawyers and Conveyancers Disciplinary Tribunal

Judge Dale Clarkson	Chairperson
David Mackenzie	Deputy Chairperson

Lay Members

Alasdair Lamont
Alison de Ridder
Christine Rowe
Ian McAndrew
Jay Clarke
Michael Gough
Peter Shaw
Sandra Gill
Sharron Cole
Sue Ineson
Thursa Kennedy
William Smith

NZ Law Society Practitioner Members

Anne Hinton QC
Ben Vanderkolk
Brent Stanaway
Gary Craig
Graham McKenzie
Jacqui Gray
John Upton QC
Laurence Cooney
Mary Scholtens QC
Owen Vaughan
Peter Radich
Shelley Sage
Susan Hughes QC
Wayne Chapman

NZ Society of Conveyancers Practitioner Members

Kim Matheson
Lester Dempster
Michael Dale
Vicki Marie Dempster

Appendix 2

Disposition of Cases as at 30 June 2009

Number of cases:

As at 30 June 2009, 15 cases had been filed.

Of those, 3 were new charges and 2 were new applications. The remaining 10 cases were those handed over from the former Tribunal, all of which relate to charges against law practitioners.

Hearings/decisions:

Case name	Heard	Decision issued
H v New Zealand Law Society	10/03/09	05/05/09
Canterbury DLS v Horne	22/04/09	02/06/09
Auckland DLS v Dorbu (interlocutory)	24/04/09	18/05/09
Auckland DLS v Comeskey	18/05/09	Adjourned part heard
Auckland DLS v Doyle	18/05/09	18/05/09
Canterbury DLS v Iosefa	21/05/09	22/06/09
Auckland DLS v Dorbu (interlocutory)	16/06/09	22/06/09

Teleconferences:

Case name	Date of conference(s)
H v NZLS	19/02/09
Canterbury DLS v Horne	25/02/09
Auckland DLS v Faleauto	09/03/09
Auckland DLS v Comeskey (5 telephone conference)	12/03/09, 24/03/09, 01/04/09, 15/05/09, 02/06/09
Canterbury DLS v Wood	20/03/09
Guest v NZLS (3 telephone conferences)	25/03/09, 09/06/09, 17/06/09
Auckland DLS v Doyle	07/04/09
Auckland DLS v Garnett	06/05/09