



New Zealand Lawyers and Conveyancers Disciplinary Tribunal

ANNUAL REPORT

For the 12 months ended 30 June 2011

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

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Introduction

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

The functions of the Tribunal are, broadly, to hear and determine: professional disciplinary charges 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 s231 "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 s3 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."

Whilst expeditious disposition of proceedings is important, this must be balanced with the Tribunal's responsibility under s236 which prescribes that the Tribunal must "in performing and exercising its functions and powers, observe the rules of natural justice".

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 almost three years, we are confident that counsel will appreciate the Tribunal's expectation of timely compliance with Directions, and of steady progression to hearing.

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Summary of Activity

Appendix 1 contains a summary of the work of the Tribunal for this reporting period. 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.

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Membership and Recruitment

During this reporting period Owen Vaughan, one of the experienced and long-serving law practitioner members resigned. On behalf of the Tribunal I wish to express my gratitude for Owen's hard work and careful and responsible approach to the issues which he was required to consider. The Practitioner members volunteer their services without reward, and their commitment and contribution is of enormous value to the Tribunal.

During the reporting period we welcomed Rachael Adams, a new law practitioner member appointed by the New Zealand Law Society.

Appendix 2 is the list of law practitioner, conveyancing practitioner, and lay members of the Tribunal during the reporting period.

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Training and Education

In June I attended the 14th Annual Tribunals Conference run by the Australian Institute of Judicial Administration, in Melbourne. The theme of the conference was "Promoting Tribunal Excellence" and included a Master Class on Oral Decisions. The conference provided an excellent opportunity to meet with other Tribunal Heads and some of the material will form the basis for member training in 2012.

Member training will be scheduled for early 2012, the last having taken place in July 2010. The Deputy Chair and I are keen to review sentencing patterns with the members in order to maintain consistency of approach.

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Administration

At the beginning of 2011 the Tribunal's administration base was moved to Auckland. We were fortunate to secure the services of Ms Susan Knight as Case Manager. Ms Knight has efficiently co-ordinated all of the administration including the complex task of organising 5-member hearings. The workload of this office has steadily increased.

The Tribunal sits in a number of different venues according to the location of the relevant practitioner, complaints and/or standards committee. Appendix 1 lists the number of and locations of hearings for this reporting period.

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 s229 of the Act. The divisions are chaired by the Chair and Deputy Chair respectively.

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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 at its substantive hearings as well as at some of its pre trial hearings, particularly in relation to intervention and suppression.

Hearings often involve complex factual and legal issues 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.

Appendix 1 sets out the disposition of cases from 1 July 2010 to 30 June 2011.

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Appeals

During the reporting period 4 appeals against determinations of the Tribunal and 1 Judicial Review application were lodged with the High Court.

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Performance of the Act

In the course of the past year the Tribunal has become a great deal busier.

The Chair and Deputy Chair consider further amendments to the Act would remove potential difficulties resulting from interpretation, and quorum requirements. In turn this could improve cost recovery, and make the Tribunal more efficient, both in an operational and fiscal sense.

This report is not the place for the detail, but, as noted, these matters will be taken up with the Ministry to ascertain if there are amendments or policy changes that may allow issues raised to be addressed.

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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 is recognition by the public, and the professions it regulates, 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 and 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 fiscally, as an independent statutory tribunal.

Judge D F Clarkson
Chair

Summary of cases for the period 1 July 2010 to 30 June 2011

Number of new cases filed 19
 Number of cases determined 20

New cases filed

Proceedings before the Tribunal fall into two categories: applications/appeals filed by a practitioner and charges laid against a practitioner.

Of the 19 cases filed, 3 were appeal/applications and 16 were charges laid against a practitioner. The cumulative number of charges laid over the 16 cases is 69.

Cases heard

During this period the Tribunal held 22 hearings. This includes hearings for defended charges, penalty and applications for stay of proceedings.

The cumulative number of charges heard over these hearings is 77.

Location	Number of Hearings
Auckland	15
Wellington	4
New Plymouth	1
Nelson	1
Christchurch	1

Orders made where charges proven

Order made	Number of orders made
Name be struck off the roll of barristers and solicitors	6
Prohibiting the practitioner from practising on his or her own account, whether in partnership or otherwise, until authorised by the Disciplinary Tribunal to do so	2
Practitioner be suspended from practice as a barrister or as a solicitor or as both, for such period not exceeding 36 months	4

Membership during the period 1 July 2010 to 30 June 2011

Chairperson

Judge Dale Clarkson

Deputy Chairperson

David Mackenzie

New Zealand Law Society Practitioner Members

Rachael Adams
Wayne Chapman
Gary Craig
Jacqui Gray
Stuart Grieve QC
Susan Hughes QC
Colin Lucas
Graham McKenzie
Peter Radich
Chris Rickett
Shelley Sage
Mary Scholtens QC
Brent Stanaway
Ben Vanderkolk
Owen Vaughan
Stuart Walker

NZ Society of Conveyancers Practitioner Members

Vicki Dempster
Stefanie Crawley
John de Graaf
Kim Matheson
Erin Rasmussen

Lay Members

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