



New Zealand High Court
Te Kōti Matua o Aotearoa
Christchurch Earthquake Litigation List Report
As at 30 September 2019

The High Court releases this report on the operation of the Christchurch Earthquake List for the 12 months since the last report.

About the Earthquake List

The Earthquake List was set up in May 2012, to manage litigation arising from the Christchurch earthquakes. The purpose of the Earthquake List is to deal with earthquake related cases as swiftly as the Court's resources permit.

Further information about the Earthquake List is available on the Courts of New Zealand website.

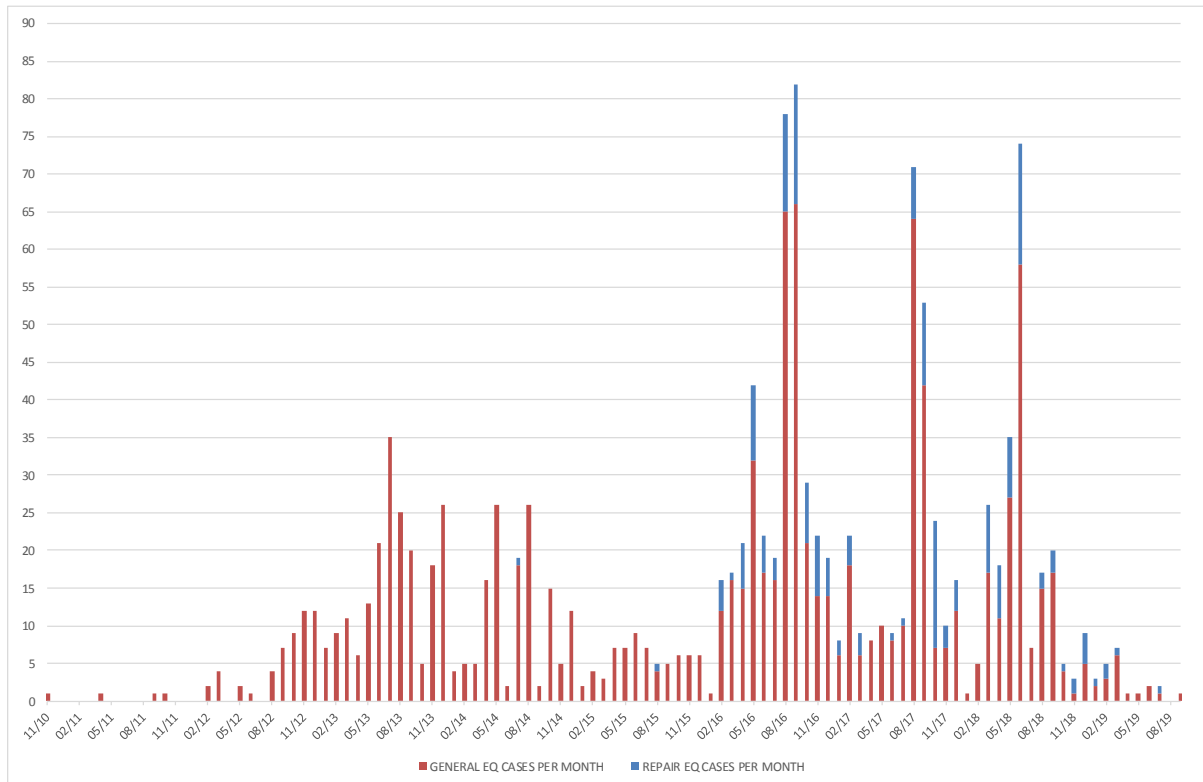
Update on management of the Earthquake List

In the past year there have been changes to the Earthquake List judges. The list is now managed by three Christchurch based Judges (Justices Gendall, Osborne and Associate Judge Lester). Judges from other circuits often assist. The Judges are provided with dedicated analytical and case management support from a Judicial Support Advisor and the Christchurch registry.

Filings and outcomes

Since the List was established, 1318 earthquake-related proceedings have been filed and placed on the Earthquake List. The pattern of high filings, which was evident in 2016 - 2018, has not continued in 2019. Only 39 new proceedings have been added to the List since the last Earthquake Litigation List Report. The graph below shows the number of filings per month since earthquake-related filings began in 2010. It illustrates the high number of filings around August 2016, August 2017 and June 2018 and the more recent reduction in filings.

Filings per month: earthquake proceedings and defective repairs



The year to 30 September 2018 saw an average of 21 proceedings filed per month. By comparison the year to 30 September 2019 has had an average of 3 proceedings filed per month.

| Average Earthquake-related filings per month for years ending 30 September | |
|--|----|
| 2013 | 15 |
| 2014 | 13 |
| 2015 | 7 |
| 2016 | 26 |
| 2017 | 23 |
| 2018 | 21 |
| 2019 | 3 |

The decrease in new filings is principally related to the expiry of the extended limitation periods agreed to by a number of insurance companies. It is now over eight and a half years since the February 2011 earthquake. In addition, a limited number of claims are now being dealt with by the Greater Christchurch Claims Resolution Service and the Canterbury Earthquakes Insurance Tribunal as noted below.

Disposals

The aim of any case management list is to assist the parties to resolve the proceedings. The most common and cost-effective outcome for both parties is settlement.

A feature of case management lists is that certain cases are selected for hearing as they can best provide a legal precedent to assist with settlement. The Supreme Court's decision of *Xu v IAG New Zealand Limited* [2019] NZSC 68 has clarified the law on the assignment of rights upon sale of the property and has led to a number of settlements.

There are still some cases before the Courts which are likely to be of important precedent including a class action against the Earthquake Commission and *Dodds v Southern Response* [2019] NZHC 2741 which concerns the failure to disclose a document alleged to be relevant, prior to a signed settlement (currently before the Court of Appeal).

In the year to 30 September 2019, almost all disposals were by settlement (254 out of 275 total disposals – 92%), continuing the pattern of earlier years. Since the list began, 916 cases have been settled or discontinued by the parties.

The Court has allocated judicial settlement conferences wherever appropriate. These, and private mediation or mediation through the Greater Christchurch Claims Resolution Service, have resulted in many cases settling.

This year has seen the highest number of cases resolved since the list commenced.

Settlements are a positive indication that the Earthquake List framework provides parties with a process to reach a determination of matters in dispute.

Cases are not set down for trial until they are ready. As all the relevant information and expert reporting is complete before a case is set down, the parties can have meaningful settlement discussions at the point a hearing date is allocated. The disposal statistics suggest that the current approach to trial allocation encourages focused settlement discussions before the costs of final trial preparation are incurred.

Almost all proceedings filed in 2010 - 2015 have been resolved. The Earthquake List Judges continue to audit older cases to ensure that there is a good reason relating to the state of a particular claim to justify it remaining open. The table below shows the number of filings by year and what numbers and percentage of those yearly filings have been finally resolved.

| Table of disposals for years ending 30 September | | | |
|--|----------------|----------|------------|
| Year | Yearly Filings | Disposed | Percentage |
| 2011 | 3 | 3 | 100% |
| 2012 | 21 | 21 | 100% |
| 2013 | 180 | 180 | 100% |
| 2014 | 154 | 153 | 99% |
| 2015 | 81 | 81 | 100% |
| 2016 | 316 | 280 | 89% |
| 2017 | 271 | 177 | 65% |
| 2018 | 253 | 97 | 38% |
| 2019 | 39 | 4 | 10% |

Canterbury Earthquakes Insurance Tribunal

The Canterbury Earthquakes Insurance Tribunal commenced operation on 1 July 2019. I released a practice note on the same day which stipulates how transfer applications are to be dealt with in the High Court. At 30 September 2019, 13 cases had been transferred from the High Court to the Tribunal. Of the 13 cases transferred, 3 were opposed. One application to transfer was unsuccessful. Where there has been opposition, the Court has promptly heard and determined the transfer application.

The Tribunal may refer questions of law to the High Court for direction on legal questions under s 53 Canterbury Earthquakes Insurance Tribunal Act 2019. These are known as case stated proceedings. At 30 September 2019, the Tribunal had not referred any cases for the opinion of the High Court. Case management processes are in place for any such references.

Active cases

The number of active cases now stands at 322 (down from 558 on 30 September 2018). Of the 322 cases, 23 are set down for trial. The balance remain actively managed.

Table of filings, disposals and active cases

| Year ending 30 September | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | Total |
|---|-----------|------------|------------|------------|------------|------------|------------|------------|-------------|
| Total Cases Filed (since September 2010) | 24 | 180 | 154 | 81 | 316 | 271 | 253 | 39 | 1318 |
| Judgments - following hearing* | 2 | 20 | 9 | 9 | 2 | 7 | 4 | 7 | 60 |
| Settled or Discontinued | 1 | 28 | 59 | 86 | 125 | 178 | 185 | 254 | 916 |
| Other** | 0 | 0 | 0 | 0 | 0 | 4 | 2 | 14 | 20 |
| Total Disposals | 3 | 48 | 68 | 95 | 127 | 189 | 191 | 275 | 996 |
| Total Active Cases | 21 | 153 | 239 | 225 | 414 | 496 | 558 | 322 | |

* - includes 6 judgments that did not require a hearing.

** - includes files consolidated, removed from list and transferred (to the District Court or to the Canterbury Earthquakes Insurance Tribunal).

Available hearing dates

The Court has to deal with criminal work within a reasonable timeframe. During 2019 the Christchurch registry faced an unusually high criminal workload. This delayed the allocation of some fixtures and notification to the parties in earthquake cases. Earliest available dates show when the Court can provide a fixture. At 30 September 2019, the earliest available date

for a 5-day hearing was 30 November 2020 and, for a 10-day hearing, was 15 February 2021. Not all parties can accept the earliest dates due to the availability of counsel and witnesses.

In anticipation of settlements, the court loads its earthquake fixture list to 500% so that court time does not go unused.

Court of Appeal proceedings

The Court of Appeal operates its own list of earthquake related proceedings. At 30 September 2019, the cumulative figures for the Court of Appeal Earthquake List since 2010 were:

| | |
|-----------------------|----|
| Filed | 52 |
| Judgments released | 36 |
| Abandoned pre-hearing | 12 |
| Awaiting hearing | 4 |

The Court of Appeal statistics relate to all earthquake matters before it, including substantive hearings, interlocutory applications and costs.

General

The Earthquake List has continued to function effectively during 2019. It is pleasing to see the increase in the number of resolutions during 2019 and the consequential reduction in the number of cases on hand.

I once again recognise the commitment of the supervising Judges, the Judicial Support Adviser and the Christchurch registry team.

Hon Justice Venning
Chief High Court Judge – Te Kaiwhakawā Matua