



**New Zealand High Court  
Te Kōti Matua o Aotearoa**  
Christchurch Earthquake Litigation List Report  
As at 30 September 2020

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:

<https://www.courtsofnz.govt.nz/the-courts/high-court/high-court-lists/earthquake-list-christchurch>

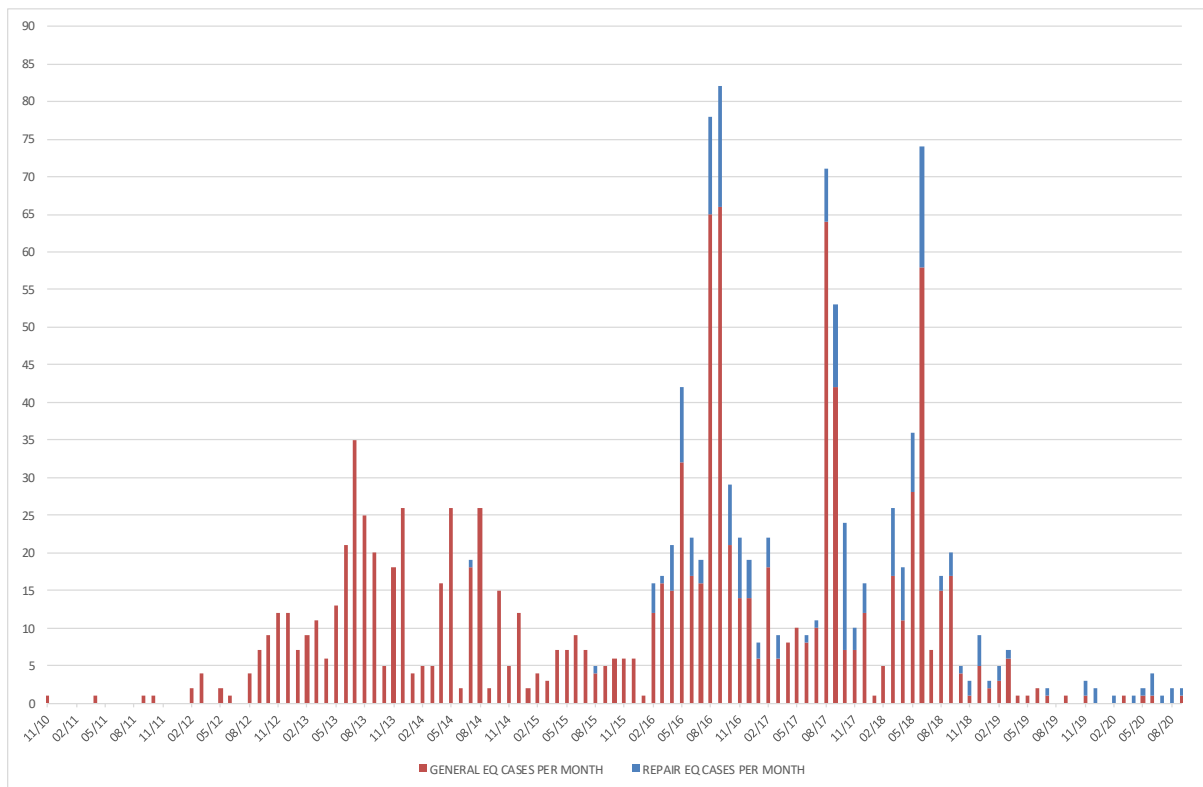
**Update on management of the Earthquake List**

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, 1338 earthquake-related proceedings have been filed and placed on the Earthquake List. There was a pattern of high filing numbers in 2016-2018. In 2019 these dropped, with 39 new proceedings filed that year. In 2020 this pattern has continued, with 19 new proceedings filed. The graph below shows the number of filings per month since earthquake-related filings began in 2010. It illustrates the high number of filings 2016–2018 and the more recent reduction in filings.

## Filings per month: earthquake proceedings and defective repairs



The below table compares the number of recent filings with those in earlier years. It is evident that there are now likely to be relatively few unresolved purely legal issues, most of the remaining cases turning on their facts.

Average Earthquake-related filings per month for years ending 30 September	
<b>2013</b>	15.0
<b>2014</b>	12.8
<b>2015</b>	6.8
<b>2016</b>	26.3
<b>2017</b>	22.6
<b>2018</b>	21.2
<b>2019</b>	3.3
<b>2020</b>	1.6

As nine years have passed since the February 2011 earthquake, the reduction in filings was to be expected as settlement negotiations or trials were concluded and repairs or rebuilds were undertaken. Cases raising issues over repairs now account for an increasing proportion (approximately one third) of all active Earthquake List cases.

## 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 is that certain cases are identified for hearing as they can best provide a legal precedent to assist with settlement.

In 2019, the Supreme Court's decision of *Xu v IAG New Zealand Limited* [2019] NZSC 68 clarified the law on the assignment of rights upon sale of the property which led to several proceedings settling.

In 2020, the Court of Appeal released its decision of *Southern Response Earthquake Services Limited v Dodds* [2020] NZCA 395 which upheld the 2019 decision of this Court in *Dodds v Southern Response Earthquake Services Limited* [2019] NZHC 2016. After the release of the Court of Appeal's decision, the Government announced its intention not to appeal to the Supreme Court. The case established the right of the policy holders to recover damages when they had settled their insurance claim less favourably than otherwise would have been the case because the insurer gave them incomplete information as to the costs of remediation.

In 2020, *Sleight v Beckia Holdings Ltd* [2020] NZHC 2851 was also heard by this Court. As at the date of this Report, the judgment was awaited. The Judgment was subsequently issued on 30 October 2020. The plaintiffs established that repairs effected by Farrells, project managed by Hawkins (both companies since in liquidation) under IAG's Managed Repair Programme, were defective. Ultimate liability was apportioned 79.64% to IAG and 20.36% to QBE (Hawkins' insurer).

During the past year, it has been determined that representative claims being pursued in *Ross v Southern Response Earthquake Services* are to proceed on an 'opt out' basis. This was determined by the Court of Appeal in September 2019 ([2019] NZCA 431) and subsequently by the Supreme Court ([2020] NZSC 126). There are understood to be some 3000 policy-holders represented, all of whose claims (unless they 'opt out') will now be determined through this single proceeding. The claim asserts that the policy-holders settled their insurance claims in circumstances parallel to those in the *Dodds* litigation (above).

In the year to 30 September 2020, disposals by settlement were again the predominant type of disposal (151 out of 182 total disposals – 83%), continuing the pattern of earlier years. Since the list began, 1065 cases have been settled or discontinued by the parties.

The Court has continued to allocate Judicial Settlement Conferences wherever appropriate. These, together with external mediation services, have resulted in many cases settling.

Cases are not set down for trial until they are ready for trial. 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.

The table below shows the number of filings by year and what numbers and percentage of those yearly filings have been resolved. The Earthquake List Judges continue to audit older cases to ensure that there is justification for older cases remaining active.

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	301	95%
2017	271	239	88%
2018	254	181	71%
2019	39	17	44%
2020	19	0	0%

### Canterbury Earthquakes Insurance Tribunal

The Canterbury Earthquakes Insurance Tribunal commenced operation on 1 July 2019. A High Court Practice Note (HCPN2019/2 (Civ)) issued that day stipulated how transfer applications are to be dealt with in the High Court. As at 30 September 2019, 13 cases had been transferred from the High Court to the Tribunal. As at 30 September 2020, 39 cases in total have now been transferred. Of the 39 cases transferred, only 3 were opposed. One application to transfer was unsuccessful. Where there has been opposition, the Court has promptly heard and determined the transfer application in accordance with the Practice Note.

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. As at 30 September 2020, the Tribunal had referred 2 such cases to the High Court, both of which have been determined.

### Active cases

There are now 162 active cases on the Earthquake List (down from 325 at 30 September 2019). Of the 162 cases, 38 are set down for trial, the balance being actively case-managed. The table below gives the historical record of filings, disposals and active cases.

## Table of filings, disposals and active cases

Year ending 30 September	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total
<b>Total Cases Filed (since September 2010)</b>	24	180	154	81	316	271	254	39	19	1338
Judgments - following hearing*	2	20	9	9	2	7	4	7	4	64
Settled or Discontinued	1	28	59	86	125	178	185	252	151	1065
Other**	0	0	0	0	0	4	2	14	27	47
<b>Total Disposals</b>	3	48	68	95	127	189	191	273	182	1176
<b>Total Active Cases</b>	21	153	239	225	414	496	559	325	162	

\* - 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 late 2019 and early 2020, the Christchurch registry had a high criminal trial workload. Also, due to COVID-19, criminal jury trials scheduled for hearing from late March to the end of July 2020 had to be vacated and new trial dates allocated. That combination of circumstances reduced the time available for Earthquake List fixtures. Earliest available dates show when the Court can provide a fixture. As at 30 September 2020, the earliest available date for a 5 or 10-day hearing was 30 August 2021. The availability of counsel and witnesses means that not all parties can accept fixtures on the earliest available dates.

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

## Court of Appeal proceedings

The Court of Appeal operates its own list of earthquake-related proceedings. As at 30 September 2020, the cumulative figures for the Court of Appeal Earthquake List since 2010 are —

Filed	54
Judgments released	39
Abandoned pre-hearing	14
Awaiting hearing	1

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

### **General**

The Earthquake List has continued to function effectively during 2020. It is pleasing to see the increase in the number of resolutions during 2020 and the consequential reduction in the number of cases on hand. The Court is committed in 2020/2021 to ensuring that the List continues to function effectively, especially in relation to the increased number of repair cases that are being filed.

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

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**Hon Justice Thomas**  
**Chief High Court Judge – Te Kaiwhakawā Matua**