



Report from the High Court on 2011 The Year in Review

Foreword

I am pleased to present a short report on events of note in the High Court of New Zealand during 2011. This is the first report in this format. In the future the Court intends to report annually on the previous calendar year.

Hon Justice Helen Winkelmann
Chief High Court Judge
23 February 2012

Overview

In 2011 the Court made progress towards the goals of improvements in case management and increasing timeliness in the hearing of High Court cases and delivery of judgments.

Some of the highlights were:

- A new approach to scheduling civil cases in Auckland has reduced time to trial in that registry. Civil trial dates are now available within 12 months in registries throughout New Zealand, with the exception of Hamilton. The provision of timely hearings in all registries remains a key focus for the Court.
- A focus on scheduling of work in Auckland has enabled more timely allocation of judgment writing time. Judgment timeliness has improved now that judgment writing time is scheduled close to hearing.
- Case management changes have been developed and discussed with the profession, and changes to the High Court Rules to implement those changes are likely to come into force in mid 2012. These changes are, in part necessary, in light of the new discovery regime, but are also intended to make case management proportionate to the complexity and subject matter of the cases.
- Newly committed criminal cases are able to be offered dates within 12 months of committal (and increasingly within 12 months of charge) in most centres.
- Case disposals throughout the country from 1 January to 31 December 2011 were 185 jury trials, 1007 civil proceedings on the ready list and 1144 civil and criminal appeals. For more detailed information on court workload see below, and also <http://www.courtsofnz.govt.nz/from/statistics>

The judicial complement

The permanent sitting complement grew by one Associate Judge to 44 comprising 35 judges and nine associate judges. The appointment of a further Associate Judge for the South Island follows a long term increase of associate judge work in that region. Associate Judge Matthews was appointed in February to Christchurch. Two appointments were made to cover judges on Royal Commission duties. In February Whata J was appointed to cover the absence of Panckhurst J (Pike River Coal Mine Tragedy Royal Commission), and in March Toogood J was appointed to cover Cooper J's absence (Canterbury Earthquakes Royal Commission). In May Kós J replaced Wild J who began sitting in the Court of Appeal in February. During this period of change, Associate Judge Faire was appointed as an acting High Court judge from 28 February until 3 June to provide continuity to the roster.

Three Wellington judges have been appointed to the Commercial List in Auckland (Mackenzie, Miller and Clifford JJ).

Christchurch

The February earthquakes caused massive disruption to High Court operations and personnel. The court buildings were in the red zone and access to them impossible. Following the February earthquakes, judges and staff were housed for many months in a variety of temporary premises including private homes and converted warehouses - a stressful situation.

Re-entry to the main court building for judges and their support staff occurred in the second week of December and marked a significant milestone in the recovery. Most importantly court hearings in the Tower Block itself are due to recommence in February. In the court precinct, demolition of other court buildings is to occur in early 2012 and temporary buildings for other jurisdictions are to be erected. In the general area, fences control access because construction nearby is set to continue for some time yet.

Despite the earthquakes, the Court continued to conduct its business throughout 2011 as a result of efforts by judges, registry and support staff and the co-operation of counsel and other court users. The number of Christchurch criminal trials in the High Court on hand is at similar levels to last year as trials and sentencings have been held in other centres. Christchurch civil work on hand has not changed markedly as hearings have been held in a variety of non-court venues and in other centres, where that has been practical.

The Chief Judge stated in an open letter to the profession on 29 June 2011 that the Court accepts a responsibility to ensure that cases relating to the earthquakes and the reconstruction phase proceed to hearing swiftly to assist in the recovery of the Canterbury region. All earthquake-related proceedings filed to date have been dealt with in accordance with that undertaking. Proceedings adjudicated upon have included issues arising from leases, insurance policies, a scheme under the Unit Titles Act and demolition notices. The Court remains ready to hear proceedings as soon as the parties are ready to proceed.

Workload trends

In the years prior to 2011, the Court struggled with a surge in workload. The time from charge to criminal trial was longer than is desirable particularly in Auckland and the busy Waikato-Bay of Plenty circuit registries. There were a number of reasons for this:

- Population growth in Auckland and Tauranga in particular.
- The unintended results of re-categorisation of methamphetamine as a Class A drug which required low complexity, high volume matters to be heard in the High Court from 2003 until 2008.
- The effect of the loosening of building regulations in the 1990s leading to a surge in civil litigation.
- Historic multi-party abuse cases relating to care in psychiatric institutions and children's homes.

The prevalence of leaky homes cases was greater in Auckland and the incidence of methamphetamine offending was widespread in the upper North Island. These two situations occurred together and caused a rapid and unsustainable rise in caseload particularly in the Auckland High Court and its circuit registries.

Following a legislation change allowing middle-banding of suitable methamphetamine trials and the development of case law to assist in attributing liability between those involved in the design, build and inspection of homes which were not weathertight, much of the backlog caused by these factors have been cleared.

Criminal jurisdiction

The Court has lower numbers of criminal cases on hand than in the previous five calendar years. There were 121 trials on hand in December 2011, down from 160 in December 2010, significantly fewer than the highs of 230 to 250 trials seen in 2006 – 2008 whilst methamphetamine trials were heard solely in the High Court.

Cases on hand are longer and more complex than in previous years. For this reason the estimated sitting days remain at similar levels to the previous five years notwithstanding the lower number of trials. That said at present newly committed cases are able to be offered dates within 12 months of committal (and increasingly within 12 months of charge) in most centres.

A new feature of the Court's workload in 2011 was the retention and hearing of a number of long judge-alone trials against finance company directors.

Civil jurisdiction

The filing of general proceedings and insolvency related proceedings rose rapidly over the period 2005-2011, with filings peaking in 2010. These patterns are most likely explicable by economic conditions. Notwithstanding the growth in volumes, the earliest available dates are now well within 12 months for short, medium and long trials throughout most of the country. Much of this is due to the new setting down policy for short trials (5 days or less) in Auckland.

A small percentage of long trials (15 days or more) continue to make up a large proportion of the estimated hearing days. In December 2011 some 6% of civil proceedings accounted for over 35% of the total estimated hearing days for civil trials. A substantial number of "leaky homes" proceedings remain to be heard in Auckland.

Improved timeliness

There has been significant progress in two areas of concern: allocation of fixtures and judgment delivery. A new approach to scheduling civil cases in Auckland has been successful in bringing back trial dates. Rather than scheduling at the end of the queue, short cases of five days or less are scheduled for dates when the parties agree they will be ready. As cases tend to settle in "the shadow of the trial", this leads to earlier settlements which has had a twofold effect: fewer cases on hand and earlier trial dates for new filings.

The prompt delivery of judgment following a hearing is of great importance to parties. There have been particular problems with judgments in the Auckland circuit in recent years where, due to high levels of work, Auckland based judges have not received regularly scheduled judgment writing time near to hearing. In 2011 regular and timely judgment time was made available and led to a decrease in the number of outstanding judgments and their age.

Adoption of timeliness standards

Timeliness standards for hearings are under consideration for public reporting purposes. The Court proposes to adopt such standards when there is sufficient data to allow reliable reporting against those standards.

Civil data project

Understanding court caseloads is a challenging task. There are many factors such as inflows, the complexity or otherwise of the cases on hand, the predictability of settlement, the availability of judges to hear the cases, and the availability of courtrooms. These can all affect timeliness and the number of cases on hand. Alteration of one factor can affect others, and so the solution to a presenting problem may not be obvious or simple. The Court needs good quality information about all of these factors to enable it to manage the workload and to ensure that reporting of its performance accurately depicts its true performance.

In conjunction with the Chief Judge and Miller J, the Ministry of Justice has developed measures that better reflect the current workload and the needs of the Court for information to manage its caseload. Concurrently the Ministry is working with registries to ensure that all information inputted into the electronic Courts Management System is done in an accurate and timely fashion so that reports are reliable and can be more easily obtained. Once this is complete by the end of the first quarter of 2012, the Ministry will shift its focus to criminal data.

Civil reforms

Discovery changes

After several years' consultation, the discovery changes were concluded by the Rules Committee and came into effect on 1 February 2012. In the latter part of 2011 judges took part in New Zealand Law Society sessions with the profession. The changes are:

- Initial disclosure to the opposing side of the principal documents relied upon on service of proceedings.
- A new default test for relevance, the “adverse documents” test, with “tailored discovery” available in appropriate cases.
- Unless otherwise agreed, parties are now to provide an electronic list and exchange documents electronically. The list will be prepared at the beginning of proceedings.
- There is an emphasis on cooperation between the parties.

Case management changes

In 2011 draft case management changes were discussed with the profession in five well attended forums in the main centres in August/September. The proposal is that there will be fewer and more intensive case management conferences directed at identifying the issues and ensuring that the extent of interlocutories is proportionate to the subject matter of the proceeding. We received useful comment on the proposals at the forums and were able to discuss case management generally with a wider audience.

The next iteration of the case management changes is to be reviewed by the Rules Committee in February following receipt of submissions from the profession on the detail of the changes.

The forums also provided an opportunity to receive the profession's feedback on case management. The general themes that emerged were:

- The renewed focus on the early identification of issues was welcomed and existing obstacles were identified. The discovery reforms, and in particular initial disclosure and the emphasis on parties' co-operation, were expected to assist in the early identification of issues by parties.
- Fewer and more intensive case management conferences directed at identifying the issues rather than simply setting and monitoring timetables were supported.
- Under the present system, counsel fail to adhere to the requirements of the existing rules (particularly those relating to pleading) and to timetable orders without meaningful sanction. There was support for firmer sanctions in appropriate cases.
- The prompt delivery of judgment following a hearing is of great importance to parties.

Judicial settlement conferences

A review of the desirability of offering judicial settlement conferences was completed leading to a re-prioritising of adjudicative work over settlement work in the associate judge jurisdiction and the development of guidelines as to what parties can expect in a settlement conference. Those guidelines will be released to the profession in 2012.

Passage of the Criminal Procedure Act 2011

The Act was passed in October and will come into force in two tranches. It will make significant changes to the court's criminal and appellate jurisdiction by mid-2013. The High Court will manage "High Court only" cases after the first call in the District Court and the middle-band process will be replaced by a Protocol. The Protocol is intended to be a more sophisticated and flexible tool to identify cases which should be heard in the High Court. There is anticipated to be a sizeable rise in the number of appeals the Court hears as a consequence of the changed jury threshold.

To implement the changes, a subcommittee of the Rules Committee is working swiftly to develop the rules for trial work which are expected to be ready for consultation by the end of February 2012.

Property

The restoration of the basement courtrooms in the Wellington High Court, which previously housed the Supreme Court, occurred this year. In Gisborne, High Court registry services moved back into the courthouse following expansion of that building and the substantial Invercargill renovations were completed in early 2011. In Tauranga, construction work on the Tauranga District Court and the provision of additional facilities there, have enabled the High Court to expand sittings in Tauranga and to take some pressure off the Rotorua courthouse which is inadequate for the High Court purposes.

The Court needs additional facilities to assist with the timely disposition of the workload in Auckland and the Waikato-Bay of Plenty.

The Court in Auckland needs further courtrooms, chambers and associated areas. After a year's work on potential future property needs and the results of a forecasting model, a project has been agreed for phase 1 – the development of a strategic 20 year property plan for the Higher Courts in Auckland. One of the first steps is consideration of information about the capability of the current facilities to accommodate expansion. Stakeholders will be included in this planning process.

In the Waikato-Bay of Plenty, forecasting the future needs of the Hamilton, Rotorua and Tauranga courts is underway.

A representation of the Court, its complement and business as at 31 December 2011 is attached as appendix 1.

Looking ahead

2012 will see:

- Major changes to the civil jurisdiction to speed resolution of matters and reduce costs to parties with the introduction of the new discovery rules in February and the case management changes mid-year.
- The introduction of the first tranche of Criminal Procedure Act changes. For 2012 the main changes to affect the Court are changes to the power to clear the court and restrictions on reporting (suppression), statutory recognition of sentencing indication and new provisions for proceeding with 10 or fewer jurors. Work on the Rules to implement the main procedural changes in 2013 will continue throughout the year.
- The adoption of a standard form for citing all High Court judgments from 1 January. Judgments are to be numbered sequentially upon delivery in the following format [2012] NZHC x.

- The Law Commission is expected to publish its review of the Judicature Act.
- Implementation of changes regarding the provision of legal aid and prosecution services.
- Judges continuing to seek and take opportunities to speak with the profession on matters of common interest.
- Building on discussions with the profession on the new case management rules, the Chief Judge intends to begin a programme to visit all High Court centres to discuss matters of mutual interest with the profession.
- Following the introduction of timeliness standards, more regular reporting by the Court to the profession and the public will begin.

Breakdown of workload and factors affecting workload by circuit

Auckland Circuit

