



Report from the High Court on 2012 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 2012.

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Chief High Court Judge

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Overview

In 2012 the High Court heard cases more promptly. Hearings in Christchurch returned to the court building. Reporting of the High Court's performance became more detailed. The court reported against timeliness standards in the civil jurisdiction including judgment timeliness. In matters of judicial administration, the court published guidelines for judicial settlement conferences and decided to prioritise adjudicative work over judicial settlement conference work. The court also set up lists to deal with earthquake and leaky buildings to provide a consistent overview of similar cases and the best practice in identifying matters for early trial.

A representation of the court, its complement and business as at 31 December 2012 is attached as appendix 1.

The judicial complement

The permanent sitting complement was unchanged comprising 35 Judges and 9 Associate Judges as at 31 December 2012. During the year three judges left the court: French J to the Court of Appeal in August and Gendall J and Potter J to retirement in June and August. Gendall J undertook a 12 month acting warrant from June and Potter J a short term acting warrant late in 2012. Katz J joined the Bench in August. Judges who had been serving on other duties returned to the court: Goddard J from the Independent Police Conduct Authority in June and Panckhurst J from the Pike River Royal Commission in December. Cooper J returns to the permanent sitting complement from the Christchurch Royal Commission in February 2013.

List judges assist the Chief Judge by overseeing the workload in their circuit and providing advice and counsel on matters of policy for the court. Two long serving list judges stepped down last year: Chisholm J in December after more than four years as list judge for the southern circuit, and Miller J in September after over three and a half years as the central circuit list judge. Ronald Young J oversees national roster matters as well as carrying out Wellington list judge duties. The other list judges are Hansen J (Auckland civil), Brewer J (Auckland criminal), Lang J (Waikato/Bay of Plenty liaison) and Heath J (Whangarei, New Plymouth and Gisborne liaison). Fogarty J is to take over as list judge for the Southern circuit in 2013. Judge Doogue is the liaison judge for associate judge work.

High Court highlights

Workload

The court was busy. Jury trials new business for the year ended 31 December rose after reaching a four year low in October 2011. Criminal disposals also rose (in part due to the introduction of sentencing indications). Criminal cases *heard* however dropped due to a large number of very long cases heard during the year. There were six criminal trials that each took at least 30 days to hear.

While new business has dropped in the civil jurisdiction, a beneficial result of the shortening of time to trial has been an increase in the percentage of civil cases going to full hearing. In the calendar year ended 31 December 2012, 9% of general proceedings were disposed by full trial and some 35% of general proceedings were disposed by adjudication (ie, full hearing as well as non-trial adjudication (such as summary judgment and strike-out)). The increased number of civil trials is one of the reasons why the court remains busy, notwithstanding the drop in filings.

Summary of new business and disposals for the year ended 30 November 2012

	Jury trials	Civil proceedings	Criminal appeals	Civil appeals
New business				
2012	212	2889	1158	341
2011	162	3005	1194	353
Disposals				
2012	206	3072	1206	328
2011	184	3164	1213	341
Disposals by trial adjudication				
2012	113	158		
2011	123	136		
Disposals by non trial adjudication¹				
2012		494		
2011		587		

Other workload statistics for the year ending 31 December 2012 can be found at <http://www.courtsofnz.govt.nz/from/statistics/annual-statistics/december-2012/high-court>.

Case management triaging judges now identify the “nature of claim” for each proceeding so that the Court can keep more detailed records of civil proceedings. Eventually this will enable understanding of the disposal patterns for different types of case eg natural disasters, building defects, estate litigation etc.

¹ Non trial adjudications in the civil jurisdiction are summary judgments, strike outs, default judgments and judgments on admission.

Performance standards for civil proceedings

The court set performance standards for civil proceedings in 2012 and the first report against those standards has been published at

<http://www.courtsofnz.govt.nz/from/statistics/annual-statistics/december-2012/high-court/high-court-civil-national-performance-measures>. The standards set clearance

rates, waiting time to trial, earliest available date and time to judgment. In summary for 2012:

Clearance rates

Filings for most case types decreased over the last year and disposals generally kept pace with new filings. This had a positive impact on clearance rates. All categories bar one met the 100% clearance rate. The exception was judicial reviews, where there was an increase of 31% in filings (predominantly in Auckland) over the previous year which meant the clearance rate dropped to 89%.

Waiting time to trial

The court met its targets for waiting time to trial for all case types. Target waiting times to trial are: 12 months for short cause general proceedings, 18 months for long cause general proceedings and six months for originating applications, judicial reviews and appeals. For general proceedings (both short and long cause) this is positive given that the number of such cases awaiting hearing is 16% higher than in December 2011.

Earliest available date for trial

Once ready for hearing, registries are able to provide a fixture date for a case (short or long cause) within 9 months more than 90% of the time.

Time to judgment

The 'time to judgment' target of 90% of judgments delivered within 3 months, was met.

Judgment timeliness and inquiry process

Following the introduction of standard citation in the High Court, the court is now able to accurately report on judgment timeliness. The court has adopted a standard that that 90% of decisions will be delivered within three months of the last day of hearing or receipt of the last submission (excluding court vacations). The table below shows the time to judgment in the High Court, for judgments delivered in 2012.²

Class of Decision	% Delivered Within 1 Month	% Delivered Within 3 Months	% Delivered Within 6 Months	Total Judgments Delivered
Civil	77.7%	91.6%	97.7%	1996
Criminal	96.8%	99.4%	99.9%	1731

In 2013 the court will notify a process for inquiring about judgments which exceed the three month goal.³

Operational changes

The first tranche of Criminal Procedure Act 2011 changes came into force

Changes to suppression, juror quorums, bail laws and the codification of sentencing indication occurred in March. By year end it appeared that sentencing indications in the High Court had led to earlier guilty pleas and consequently faster times to trial for the balance of cases which proceed to trial.

More civil cases proceeding to trial

New scheduling procedures adopted in Auckland in 2010 and more widely in 2012, coupled with a drop in incoming business have seen a greater number of civil cases proceeding to trial, and earlier trial dates. The proportion of general proceedings disposed of by way of trial in the year ended 31 December 2012 was 9% up from 7% in the previous year.

Judicial settlement conferences

In April the court published guidelines for judges, and counsel and parties attending settlement conferences.⁴

The court also undertook a review of how judicial settlement conferences are allocated to proceedings, in large part, because the volume of judicial settlement conference work was leaving inadequate time for associate judges to deal with core judicial (adjudicative) work. Following this review it was decided that a judicial settlement

² Notes and Definitions:

- The source of the data is the court's citation database.
- A judgment is classified as a decision that receives a citation from citation database. It excludes: minutes, undefended summary judgments, judgments on undefended insolvency applications, judgments by default etc.
- Judgments that are delivered within one month include judgments made on the papers.

³ The process was notified in 2013. See <http://www.courtsofnz.govt.nz/from/decisions/high-court-judgment-delivery-expectations-inquiry-process-and-recent-judgment-timeliness/?searchterm=inquiry>

⁴ For more information see <http://www.courtsofnz.govt.nz/business/practice-directions/2012-Settlement-conference-guidelines-Profession.pdf>.

conference will only be allocated where private mediation is for some reason inappropriate.

Following the introduction of the new case management rules in 2013, issues conferences are likely to largely displace the need for judicial settlement conferences in complex litigation.

Case management lists: the Earthquake List and Leaky Buildings List

In 2011, the court made a commitment that earthquake cases would be dealt with as swiftly as the court's resources permit. In fulfilment of that commitment the court established an earthquake list⁵ overseen by Miller J to manage the litigation. All earthquake-related cases (including judicial review and summary judgment applications) are referred to this list upon filing for a decision on whether they should go on the list. Priority is then given to cases within the list which are urgent or which raise issues affecting many homeowners or businesses and their insurers and so have precedential value. As at 31 December 2012, 59 cases had been entered on the list.

The court also now runs a leaky buildings list. Some complex cases benefit from a consistent approach to case management and the list approach also enables cases to be managed so that those with precedential value are heard first.

Scrutiny and outreach

In August the President of the Law Society and the Minister of Justice raised concerns regarding the operation of television in courts following some extremely detailed coverage of certain trials. New Zealand is one of the few countries in the world which allows television coverage of trials and this was introduced to achieve certain objectives. In light of the concerns raised, it was decided in 2013 to undertake a judge-led review of in-court media coverage to assess whether allowing filming in courts was meeting the objectives initially identified and to consider any other issues.⁶

Common rooms continue to run sessions with the profession. *The Life of a File* sessions held in Auckland, Wellington and Christchurch drew large audiences. Judges continue to take opportunities to speak to media, community and educational groups in order to improve understanding of the court, its role and the rule of law.

The nature of public scrutiny of the courts has changed due to the rise of social media. New Zealand has asked to be involved in a Social Media and the Law Working Group of officials set up by the Australian Standing Committee of Law and Justice Ministers.

⁵ For more information see <http://www.courtsofnz.govt.nz/The%20Earthquake%20List%20website.pdf>

⁶ For more information about the guidelines please see the 'In Court Media Coverage Guidelines 2012' at <http://www.justice.govt.nz/media/media-information/media-guide-for-reporting-the-courts-3rd-Ed/appendices/appendix-1-in-court-media-coverage-guidelines-2012/in-court-media-coverage-guidelines-2012>

In December the Justice and Electoral Select Committee noted its concern about the impact of ill-informed and destructive comment on public confidence in the courts. They noted that a number of recent high profile cases had attracted a great deal of attention from lobby groups and strong attacks on the judiciary. They considered that a public response from the Attorney-General or from Crown Law defending judicial independence and explaining relevant background and controversial judgments may be warranted. The Solicitor-General said he wanted to explore ways that he and the Attorney might address the issue, an approach the Select Committee commended.⁷

Civil reforms

Discovery rules

In February 2012 new discovery rules were implemented. These:

- Require initial disclosure to the opposing side of the principal documents relied upon on service of proceedings.
- Include a new default test for relevance, the 'adverse documents' test, with 'tailored discovery' available in appropriate cases.
- Provide that unless otherwise agreed, parties are now to provide an electronic list and exchange documents electronically. The list will be prepared at the beginning of the proceedings.
- Place an emphasis on co-operation between the parties.

Anecdotally the discovery changes are working well to reduce cost and assist in refining issues for trial. To test this, the Ministry of Justice is to design a process to enable a review of the effectiveness of these changes and of the civil case management changes.

Case management changes

In February 2013 changes to civil case management are to be implemented. 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 proceedings.

⁷ 2011/12 financial review of the Crown Law Office, Report of the Justice and Electoral Committee, December 2012.

Christchurch

The judges and their support staff returned to the Christchurch courthouse in December 2011 and the registry returned in early 2012. For most of 2012 almost all High Court hearings in Christchurch were held in the court building. During this time the registry staff was housed in courtroom 2 in less than ideal conditions, however they are to return to a strengthened, repaired registry area in 2013.

In late July the government announced the Christchurch Rebuild Blueprint. A Justice and Emergency Services Precinct is one of 12 anchor projects proposed, and will house the courts, Corrections, the Police and the administrative offices of the fire service and ambulance. The expected completion date for the courthouse element of the precinct, is late 2016.

Property

The availability of courtrooms in some areas remains a constraint upon the hearing of cases. The main areas of concern are Auckland and Waikato/Bay of Plenty. An extremely lengthy and detailed business case process for Auckland higher courts property needs is underway. Access to courtrooms in the Waikato/Bay of Plenty is often difficult but planning work here is less advanced as forecasting future needs was put on hold whilst the District Courts worked through a significant change in service delivery.

In 2012 a number of courts were found to be 'seismically affected'. The only High Court affected where sittings are held was Dunedin. Arrangements are underway to build a temporary jury facility, while civil matters are heard in other facilities in Dunedin.

New ways of dealing with High Court business

Electronic operating

AVL (audio visual link technology) has been used regularly in the associate judge jurisdiction for list work since 2007. It is also regularly used during hearings for witness appearances. This year the High Court has begun to trial AVL callovers in some circuit courts to enable the list or liaison judge to conduct all callovers in order to provide a consistent approach to adjournments. Looking ahead to 2013, the list and liaison judges will hear most second appearances of matters under the Criminal Procedure Act. AVL will often be used for these appearances from circuit courts. Counsel and clients will be in the circuit court and the judge will appear from the home court.

The Ministry of Justice has announced it is upgrading its infrastructure and engaging new service providers for its network and services. This upgraded infrastructure is an essential enabler for eFiling, ePayments, eBundles and related courtroom technology and better in-chambers resources. The Rules Committee is to conclude its work on a protocol for electronic bundles.

Centralisation and service delivery changes

In the second half of 2013, two centralisation initiatives are in prospect for the High Court. The first is a pilot of centralised case management of files whereby Whangarei files will be managed out of the Auckland High Court. If successful, centralised case management of files may rollout throughout the country. The second relates to the centralisation of registries' receipt and front line processing of probate applications in Wellington.

Judicature Act reform

The Law Commission began its review of the Judicature Act in 2010. The Commission's final report was published in November 2012 and the Commission awaits a response from the government on its report.

Looking ahead to 2013

2013 will be a period of transition. All parts of the criminal justice sector are preparing for the Criminal Procedure Act changes commencing on 1 July. In the High Court new operational arrangements for case managing category 4 cases from second call, judge-alone trials and the filing of appeals directly to the High Court are to be developed. The Criminal Procedure Rules underpinning the new Act were gazetted on 13 December 2012. Ronald Young J (Chair) and Simon France J were part of the subcommittee of Rules Committee which developed the Rules. Brewer J is to lead the implementation of the Criminal Procedure Act along with Panckhurst, Ronald Young and Lang JJ.

In order to promote a culture change regarding civil case management the Chief Judge, Fogarty, Miller and Asher JJ will present at the Council of Legal Education seminar in February 2013 on the new civil case management rules.

In addition to these operational changes, the court will place an emphasis on improving public understanding of the court and its role. Judges will meet and discuss matters of mutual interest with the media and take part in a review of the In-Court Media Guidelines.

Public confidence in the High Court is essential for a civil society. In order to improve the quality of information about the court and improve access to judgments the court proposes that there be:

- A summary of the case as a matter of course in judgments over five pages.
- More proactive dissemination of judicial judgments via Decisions of Public Interest on the Courts of New Zealand website with media summaries as appropriate.⁸
- Notification of the court's judgment delivery expectations and the process for inquiry about late delivery of judgments.⁹

⁸ See <http://www.courtsofnz.govt.nz/from/decisions/judgments>

- Continued engagement with the profession and media through formal sessions.

The court will continue to work with the Ministry of Justice on improving information available to court users both before they come to court, and at court.

⁹ See <http://www.courtsofnz.govt.nz/from/decisions/high-court-judgment-delivery-expectations-inquiry-process-and-recent-judgment-timeliness/?searchterm=inquiry>

Appendix 1

Breakdown of workload and factors affecting workload by circuit

