

2001 – 2003 High Court Report

Criminal Workload

For the period, 1 January 2001 to 31 December 2003, the number of outstanding criminal jury trials awaiting hearing in the High Court has remained reasonably stable, with a monthly average of 154 trials outstanding at the end of any particular month. However, during the same period, the number of hearing days estimated to hear the outstanding jury trials has increased from 683 as at 1 January 2001 to 832 days as at 31 December 2003. It is not possible to provide a detailed explanation but it is considered that this increase is related to case characteristics such as multiple accused, numbers of witnesses, need for interpreters and greater use of scientific evidence and expert witnesses. There is an urgent need to quantify the influences of these factors.

It should also be noted that, with the increased hearing time required to dispose of cases, the age of jury trials disposed of and awaiting hearing has increased over the last three years. That is generating more pro-active management by registries of jury trials, in particular the focus is on ensuring that depositions are heard within the practice note standard of 84 days.

In May 2003, methamphetamine was reclassified as a class A drug and, as a consequence, all drug dealing offences involving methamphetamine are now required to be heard in the High Court. It is expected that this will result in an increase in drug related workload for the High Court but it is too soon to determine the impact on High Court resources.

Civil Workload

The High Court heard 821 civil cases in 2001 (compared to 819 in 2000), but there was a significant decrease in 2002 (577) and in 2003 (433). Along with a significant decrease in new business in 2002 and again in 2003, the number of outstanding civil cases during the year has decreased from 408 in 2000 to 401 in 2001, and 323 in 2002. As at 31 December 2003, the number of outstanding civil cases was 290. The latest workload statistics from the Ministry of Justice may be found under the heading Work Volumes and Statistics.

The current complement of 30 Judges of the High Court is spread between Auckland (17), Wellington (8) and Christchurch (4). In addition, one Wellington based Judge is on full-time secondment to the Law Commission. The creation of the Supreme Court resulted in the appointment of four High Court Judges to fill vacancies at the Court of Appeal. As at the end of December 2003, two vacancies remain unfilled. Both are Auckland positions.

High Court Management

Since the 1970s, the work of the High Court has been managed by Executive Judges in each of the centres in which High Court Judges are resident. The Executive Judges are appointed by the Chief Justice and responsible to the Chief Justice for the management of judicial work in each of the three regions. Since the end of 2001, Judges are no longer resident in Hamilton and to ensure better liaison and management of the work in the Hamilton and Rotorua courts, an Executive Judge for Hamilton and Rotorua was appointed. The Executive Judges'

committee meets on a quarterly basis with weekly phone conferences in between quarterly meetings.

In recognition of the fact that better co-ordination between regions in the despatch of court business would be more efficient, work has been done on setting up a national rostering and scheduling system. To progress the national focus and to keep under review the timely disposal of High Court cases, the High Court Management Committee, comprising Ministry of Justice as well as judicial members, has been set up. The appointment of a new General Manager, Higher Courts Group in March 2003 by the then Department of Courts, has assisted in the focus on the requirements of the High Court and in better administration. Members of the High Court Management Committee meet quarterly with the Executive Judges. It is expected that the national focus provided will permit judicial resources to be better matched with workload. Judicial support issues are dealt with by a joint committee of Judges and Ministry officials. That committee deals with matters of direct judicial support, including secretarial support and research assistance, as well as issues of judicial health and safety.

Inter-bench committees deal with judicial security, judicial libraries and criminal practice. In addition, Judges serve on a number of external or statutory committees including the Rules Committee, the Council of Legal Education, the New Zealand Council of Law Reporting, a joint insolvency committee (under the co-ordination of the Ministry of Commerce) and the Law Society's Continuing Education Board. All these matters of judicial administration require significant time commitment from the Judges who serve on them.

Key Projects

Key projects developed by the Judiciary include the following:

- Issue of revised guidelines for media coverage of court proceedings with effect from 1 February 2004.
- Establishment of a judicial decisions of public interest web page in June 2003. The purpose of the web page is to provide immediate media and public access to judicial decisions of public interest for a specified period. It is not a site to publish judgments. The Department for Courts (now Ministry of Justice) is working on a separate project to establish an Internet-based searchable database for judgments.
- Agreement to establish a separate judicial website.
- Development of a rostering and scheduling system that will assist the High Court to allocate judicial resources on a national basis – ongoing.
- Review of existing criminal practice notes which resulted in a large number of unnecessary and outdated criminal practice notes being revoked with effect from 2 September 2002. The remaining criminal practice notes are in the process of being considered for inclusion in either rules or statute, or are to be updated and re-issued. A similar project is envisaged for civil practice notes. The objective is to have a complete and up-to-date set of criminal and civil practice notes available on the internet - ongoing.

Legislation and Law Reform

During 2001, 2002 and 2003, submissions to select committees were made on behalf of the judiciary on the following Bills:

- Victims Rights Bill and Supplementary Order Paper 112 (March 2001).
- Court Fees (Waiver) Bill 2001 (August 2001).
- Human Rights Amendment Bill (October 2001).
- Sentencing and Parole Reform Bill (November 2001).
- Judicial Matters Bill (December 2003).

During 2001, 2002 and 2003, comments to government departments were made on behalf of the Judiciary on proposals and issues which included:

- Proposals relating to the increase in civil court fees (March 2001-June 2003) – Department for Courts.
- Insolvency law reform – Tier 2 (July 2001) – Ministry of Economic Development.
- Proposed Evidence Bill (August 2001 and July 2003) – Ministry of Justice.
- Proposed Preliminary Hearing Reform and Criminal Disclosure Bill (January and July 2003) – Ministry of Justice.
- Review of Queen's Counsel (September 2001) – Crown Law Office.
- Proposals surrounding the simplification of criminal procedure (November 2001) – Ministry of Justice.

- Further amendment to the Human Rights Amendment Bill (October 2001) – Ministry of Justice.
- Terrorism (Bombings and Finance) Bill (November/December 2001) – Ministry of Justice.
- Proposals relating to the review of Sexual Crimes under the Crimes Act 1961 (May 2002)
- Ministry of Justice.
- Proposed Criminal Records (Clean Slate) Bill (December 2002) – Ministry of Justice.
- Proposals to reform the procedure for dealing with applications for the exercise of the Royal Prerogative of Mercy (July 2003) – Ministry of Justice.
- Proposals relating to reform of criminal defences (July 2003) – Ministry of Justice.
- Coroners' Review (October 2003) – Ministry of Justice.
- Bill of Rights Notice Procedure (October 2003) – Ministry of Justice.
- Courts and Criminal Matters Bill (November 2003) – Department for Courts.
- Proposed Criminal Procedure Bill (March 2004) – Ministry of Justice.
- The judges also regularly bring to the attention of the Ministry of Justice minor or technical issues which may require attention. Where legislative change is suggested, such amendments tend to be included in the annual Statutes Amendment Bill.

The judiciary has also been required to consider the following significant law reform proposals:

- Proposals relating to the abolition of the Privy Council and establishment of the new Supreme Court.
- Proposals contained in the Judicial Matters Bill relating to the establishment of part-time judges and the introduction of a statutory procedure to investigate alleged serious misconduct which might warrant consideration of removal from office.
- Proposals from the Law Commission relating to court restructuring.

Complaints

The Judicial Complaints Process refers complaints about judicial conduct to the appropriate Head of Bench. Complaints about the outcome or decision of a case are outside the process.

In order for a complaint to be noted in the Judicial Report, the complaint must have identified a specific High Court Judge and/or Associate Judge and made a complaint about that judicial officer.

The number of complaints does not include issues raised in correspondence with the Chief Justice relating to requests for assistance or intervention with government agencies or other agencies, concerns about the law (including complaints regarding the inability to pursue review or appeal of judicial decisions), and requests for the Chief Justice to intervene in proceedings. Nor does it include complaints about legal practitioners, complaints about judicial officers from other benches, or complaints about court staff.

Two complainants have made a number of complaints against Judges since 2000, and have been in correspondence with the Chief Justice since then. No complaint made so far by either

complainant has been considered to be within the Judicial Complaints Process as they do not relate to judicial conduct, but rather complain about decisions. The decisions of the court can be challenged only by appeal or other judicial process. The complaints system does not provide a vehicle for collateral administrative challenge to a judicial decision.

Complaints about other Heads of Bench come to the Chief Justice.

Complaints concerning Heads of Bench

In 2001, 1 complaint concerned the Chief District Court Judge and was dealt with as follows:

- The complaint (from a member of the public) concerned the refusal of the Chief District Court Judge to provide the complainant with a letter the Judge had written to an external agency. The complainant was advised that the Judge could not be compelled to provide the letter and that the complainant could approach the external agency for a copy.

In 2003, 3 complaints concerned Heads of Bench and were dealt with as follows:

- The complainant (a self-represented litigant) requested that the Chief Justice instruct the Court of Appeal to allow the complainant to file an appeal out of time. The Court of Appeal had dismissed such an application by the complainant. The complainant considered that the judgment was flawed and alleged that the President of the Court of Appeal and other Justices of the Court of Appeal had acted dishonestly in dealing with submissions made by the complainant. The complainant was advised that there was nothing in the material provided that disclosed a complaint that the Chief Justice was able to consider in terms of the Judicial Complaints Process. Every complaint made concerned a judicial decision of the Court. The allegations of improper conduct by the Judges concerned were inseparable from the complainant's view that the court had acted in error.
- The complainant (a party to the proceedings) considered that the length of time to set a hearing date in proceedings before the Chief Māori Land Court Judge was unacceptable, and that overall the case had not been handled fairly. Judicial proceedings were still on foot before the Court. The complainant was advised that the Chief Justice could not investigate the exercise of judicial function. The complaint was part and parcel of the judicial proceedings before the Court. The concerns expressed could form part of an appeal or review, such as the complainant had advised he intended to pursue.
- The complainant (who was tried for a criminal offence), considered that the Chief District Court Judge had pre-determined her guilt and had acted disrespectfully to her during the proceedings. The complainant was advised that, if she considered that she had been dealt with unfairly by the Judge, the appropriate remedy to pursue was appeal.

Complaints concerning the High Court

2001

During 2001 there were 22 new complaints considered by the Chief Justice about High Court judges. Fourteen complaints challenged judicial decisions. They were therefore outside the scope of the complaints process. The remaining 8 complaints were dealt with as follows:

The complainant (a legally represented litigant) considered that the judge was unprepared, limited his counsel's opportunity for cross-examination, and cross-examined the complainant harshly; that the judge appeared distracted and inattentive; and that the judgment was unnecessarily delayed (five months). The Chief Justice, after consultation with the complainant's counsel (at the complainant's invitation) did not accept the complaint. The complainant was advised that the matters of complaint turned substantially on impression, and that Judges adopt different methods to achieve understanding of a complex case. Some prefer to have affidavit evidence read aloud in court (as the judge had done). That is a matter of choice for the judge and is not an indication of lack of preparation.

The questions asked by the judge were not considered harsh and the Judge considered he needed to ask them to assist in determining the reliability of the evidence. The delivery of the judgment was not considered to be unreasonably delayed in the circumstances.

- The complainant (a self-represented litigant) had been advised in 1999 that suggestions of bias and impropriety on the part of two judges affecting the complainant's proceedings before the court were without foundation. In response to a further letter from the complainant in 2001, the complainant was asked to clarify whether a complaint was being made against the same judges in relation to the same proceedings. The complainant has not responded to this request.
- The complainant (a legal practitioner) complained that the judge had unfairly criticized his conduct of a case. An explanation on behalf of the judge by the Chief Justice resolved the matter. The complainant (a relative of the victim of a homicide) considered that the judge presiding in the subsequent trial lacked compassion and sensitivity towards the victim's family. It was also considered by the complainant that the Judge was biased when summing up to the jury, and should not have excluded the jury from the court when hearing legal argument. The complainant was advised that judges needed to take an objective and dispassionate approach in such cases, and that it is important that judges remain vigilant to ensure that the case is fairly conducted according to the standards required by the criminal law. To ensure that the accused has a fair trial, judges must not appear to take the part of the victim, particularly in cases where the victim's conduct is an issue at trial (as it is when defences of self-defence or provocation are raised). The complainant was also advised that it is critical that the Judge provides a summing up which, while properly directing the jury on questions of law, leaves the jury to decide the questions of fact. The exclusion of the jury was appropriate when the judge was hearing legal argument, questions of law being for the judge alone.
- The complaint (from a self-represented litigant) concerned critical comments made by a master in a settlement conference about the testator's disposition of his estate. The complainant was advised that the comments by the Master could not be seen in

- isolation from the proceedings. The point being made by the master was that the failure of a testator to organise his or her affairs fairly and clearly will in some cases lead to legal proceedings which can be frustrating and emotionally distressing for the family as a whole. The comment was, in context, aimed at assisting the relatives who were litigating about the estate to resolve their differences. The complainant was also advised that if judicial officers are to progress matters efficiently they must be firm.
- The complainant (who was tried for a serious offence) considered that the judge was sympathetic to the victim and biased against him. In addition, the complainant considered that parts of the judge's summing up were inaccurate. No details of the way in which the judge was said to display prejudice were given. There was nothing in the summing up to suggest any partiality. The complainant was advised that, if he considered the trial to have been unfair, he should appeal.
 - The complainant (a legally represented litigant) considered that a judge had made a political statement in a judgment and that the judgment should be recalled. The complainant was advised that the Chief Justice is unable to interfere with a judicial decision taken by another judge and had no power to recall a judgment or direct another Judge to do so. In respect of the "political" comment, the Chief Justice noted that where politically contentious matters come before the court, or are part of the background to litigation, it can be difficult for a Judge to decide the legal controversy without referring to the political controversy. The judge in this case had acknowledged that the subject matter of the litigation was controversial and might require political resolution. In context, that was not an inappropriate view to express.
 - The complainant (a self-represented litigant) considered that a Judge had made an offensive comment relating to the history of her country of ethnicity in what was apparently an attempt at humour. The complainant also considered that the decision of the Court was wrong. The complainant was advised that the Judge concerned had no recollection of having made the remark, but expressed regret if anything he said during the trial gave offence. To the extent that the complaint challenged the decision made by the Judge, it could be addressed only by appeal.
- All complaints, other than the two of an ongoing nature, were completed by the end of 2001.

Complaints concerning the High Court 2002

During 2002 there were 13 new complaints considered by the Chief Justice about High Court judges. Five complaints challenged judicial decisions. They were therefore outside the scope of the complaints process. The remaining eight complaints were dealt with as follows:

- The complainant (a legally represented litigant) considered that a judge was indifferent, biased, and had a closed mind in civil proceedings in which the complainant was the defendant. It was also suggested that the judge had fallen asleep in the court. The complainant was advised that it is common for the Judge in question to sit with his eyes closed so that he is better able to concentrate. The allegations were

considered unsubstantiated and not supported by the judgment. In any event appeal rights would have been available.

- The complainant (a relative of the victim in a criminal trial) considered that delays in the progress of a murder trial were due to the judge's other commitments and the Judge's accommodation of jury members, and that the judge adopted a casual attitude to the case. The complainant was advised that, as one juror had been discharged and there was illness amongst the jurors, the judge needed to ensure the lengthy trial would not have to be abandoned. Sickness of jurors needed to be accommodated. Other adjournments were due to judicial duties the judge could not avoid. As the trial was still proceeding when the complaint was received, the complainant was invited to advise the Chief Justice at the end of the trial of any remaining complaints. None were subsequently received.
- The complainant (a self-represented litigant) considered that the health of the judge adversely impacted on the decision. The complainant was advised that any concern with the decision could be addressed by appeal.
- The complainant (a member of the public, apparently relying on media reports), considered that a judge had made unjustified scathing and critical comments in a judgment regarding the defendants. The letter was passed to the judge for his information.
- The complaint (from the editor of a newspaper) concerned comments made in court by a full court to a reporter following breach of a name suppression order. The manner of communication was considered to be unnecessarily embarrassing. The complainant was advised that, as the issue was being considered by the Solicitor-General, the Chief Justice would not take any action until his inquiry was concluded. At that stage the matter could be brought back to her attention. The Chief Justice also raised the general question with all judges so that they could consider the process by which such matters should be dealt with in future cases.
- The complainant (the CEO of a government department) considered that the sentencing remarks of a judge suggested that the Department had failed in carrying out its duties. The complainant was advised that such an inference could not be fairly taken from the sentencing remarks. The judge had properly drawn an issue to the attention of the Department through his sentencing remarks. Comment in the media based on the sentencing remarks was not within the control of the Judge.
- The complaint (from self-represented litigants) concerned claims of inappropriate behaviour. The judge was said to have raised his voice. It was alleged he was intoxicated. There were claims of collusion between the Judge and opposing Counsel. The complainants were advised that the comments regarding the Judge were unfair, shocking, and completely without foundation.
- The complainant (a self-represented litigant) made unsubstantiated scandalous allegations against a judge following an adverse ruling. The complaint was not accepted. The complainant subsequently apologised and withdrew his complaint.

All complaints, other than the two of an ongoing nature, were completed by the end of 2002 or in early 2003.

Complaints Concerning the High Court 2003

During 2003 there were 18 new complaints considered by the Chief Justice about High Court judges. Seven complaints challenged judicial decisions. They were therefore outside the scope of the complaints process. The remaining 11 complaints were dealt with as follows:

- The complainant (a self-represented litigant) considered that a judge had ignored the arguments put forward in proceedings in which the complainant was involved, and that the judge had behaved in a demeaning and rude manner. The complainant also appeared critical of other judges involved in subsequent related proceedings before the court. The complainant was requested to detail what aspects of the judge's behaviour were considered to be demeaning and rude, and to clarify whether she wished to pursue any complaints against the other judges and, if so, to also provide details of any such complaints. The complainant has not responded to these requests. To the extent the complainant had raised issues regarding judicial decisions, she was advised that the judicial complaints process cannot be used to complain about the conduct of another party in the proceedings or to investigate judicial decisions. To the degree that there was dissatisfaction with any decision of the court, the complainant would need to consider options of either review or appeal of those decisions.
- The complaint (from a legally represented litigant) concerned the release of a judgment to the media that in error contained the names and residential addresses of the parties in a case where suppression orders were in place. They were subsequently contacted by the media. The complainant was advised that the judgment in the form released should not have contained the names and residential addresses of the parties. The error had arisen due to a combination of circumstances including failure to ensure that all documents generated in the court used abbreviated initialling to preserve anonymity of the parties, as recommended by existing guidelines. The Chief Justice accepted the complaint and conveyed the apologies of the judges concerned to the complainant. She accepted that responsibility for the proper publication of judgments must be with the courts (judges and court staff). The Chief Justice also advised that as a result of the complaint all Judges have been reminded of the guidelines and the need for particular care in cases where suppression orders are in effect. The then Department for Courts has been requested to set up a system to provide additional checks to ensure that judgments subject to suppression orders are properly checked before distribution.
- The complainant (a legally represented litigant) considered that the judge had denied him a fair hearing, both in an injunction hearing and at the substantive hearing, and that the judge had made errors in the judgments following these hearings. In addition, the complainant considered that the judge and opposing counsel had treated him with contempt. The complainant was advised that the Judicial Complaints Process cannot be used to review judicial decisions. His claims of error could not therefore be

considered within the process. In respect of the complainant's concerns about the judge's manner, the complainant was advised that the judge concerned was surprised and disappointed at the allegations made and did not accept that he behaved in a manner suggestive of contempt. The complainant was also advised that it is difficult to assess such behaviour because it is often a matter of perception and in this case it was particularly difficult to assess, given that the events occurred more than three years previously. The complainant was also advised that the role of the judge, particularly in dealing with urgent applications, does from time to time require firm intervention.

- The complainant (a self-represented litigant) considered that a Master at a pre-trial conference had given inadequate consideration to the issues raised by the complainant and unfairly criticised the complainant's statement of claim. The complainant was advised of, and provided with a copy of, the High Court Civil Case Management Practice Note (now replaced by rules) which sets out the purpose and approach in such conferences. One matter to be dealt with at an initial conference is to review the pleadings, including the statement of claim. Such consideration may involve some criticism by the judicial officer of what has been filed. In addition, the complainant was advised that the purpose of a pre-trial conference is not to range into the substantive merits of the case, but to encourage the parties to identify the issues the court must consider. The statement of claim is key to such identification of issues. Lay litigants, as well as counsel, must be prepared to accept criticism if the substance of their claim is not clear or is legally deficient.
- The complainant (a legal practitioner) considered that there had been an inexcusable delay in the delivery of a judgment; that the judge made an inappropriate comment and attempted to intimidate counsel in a court minute; and that the judge had improperly offered to backdate a minute. The complainant was advised that the complaint relating to the judge's minute, and the way in which he had disposed of the application before the court, were matters for the Court of Appeal in an appeal already filed. It was inappropriate for the Chief Justice to consider this aspect of the complaint, given the appeal. In respect of the issue regarding the delay in delivering judgment, the judge expressed regret at the length of the delay within the judgment delivered. That was considered an appropriate and sufficient response to the question of delay in the circumstances.
- The complainant (a member of the public) considered from a media report that the judge in sentencing had made a politically sensitive remark about cannabis reform which was inappropriate. The complainant was advised that the comment was made in the context of the specific proceedings before the court, and the comment was not inappropriate. The letter from the complainant was passed to the judge for his information.
- The complainant (a legally represented litigant) considered that the judge had acted with bias and had taken a hostile approach to the complainant, his counsel, and witnesses and the outcome of the case was consequently pre-determined. A relative of the complainant also made a separate complaint based on substantially the same grounds. Both complainants were advised that an allegation of bias is a ground for appeal and is not appropriately investigated through the complaints process. The

complainants were also advised that perceptions of discourtesy are very difficult to assess. They turn on impression and can easily be misinterpreted. The complainants were further advised that judges are obliged to manage the court processes effectively and this can often mean being firm with parties' counsel and witnesses. The complainants had received a judgment that fully set out the reasons for rejecting the claim.

- The complainant (a legal practitioner) considered that the judge had suggested incompetence in his conduct of the proceedings. The complainant was advised that if, as suggested, the judge had proceeded in error of fact, the correct remedy was the appeal already lodged. Any such mistake of fact arose out of an explanation given by counsel at the hearing (at which the complainant was not present) and the irritation of the complainant was misdirected at the judge.
- The complaint (from a relative of a victim of a homicide) related to an apparent order of a judge in a criminal trial to remove a "victim support" sign placed on one of the doors in the court foyer. The complainant was advised that the Judge had made no such order. He had, upon application, ordered the removal of a sign advising those entering the court that they might need to submit to a search. The removal of the "victim support" sign either by police or court staff was based on a misunderstanding of the judge's order to remove the "subject to search" sign.
- The complainant (a member of the public) considered that the Judge had made inappropriate comments in a judgment. The complainant was advised that the comments were part of the judge's reasons, and that there can be no administrative inquiry through the complaint mechanism as to the appropriateness of the reasoning. If there is disagreement with a judge's reasons, the appropriate option is to appeal. All complaints, other than the two of an ongoing nature, were completed by the end of 2003 or in early 2004.