

**Report from the High Court 2014
Te Pūrongo a Te Kōti Matua 2014**

**The Year in Review
He tau arotake**

I am pleased to present a short report on events of note during 2014 in the High Court of New Zealand - Te Kōti Matua o Aotearoa.

Hon Justice Helen Winkelmann
Chief Judge – Te Kaiwhakawā Matua
7 May 2015

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Overview

In 2014 the Court continued to bed-in the new criminal and civil procedural rules. The time to trial continued to drop in the civil jurisdiction, and in that part of the criminal jurisdiction within the Court's control.¹

The judicial complement

As at 31 December 2014 the permanent sitting complement comprised 37 judges and seven associate judges.² The equivalent figures for December 2013 were 36 judges and seven associate judges.

During the year:

- Four judges left the Court. There were three retirements: Rodney Hansen J in March, Associate Judge Abbott in September and Panckhurst J in November. Cooper J was appointed to the Court of Appeal in September.
- Five new judges were sworn in: Thomas J and Associate Judge Smith in January, Dunningham J in February, Moore J in March and Muir J in December.
- Hinton J's appointment was announced with a swearing in date of January 2015.

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. The list judges in 2014 were:

- Venning J (Auckland civil).
- Brewer J (Auckland criminal) until Lang J took over in March 2014.
- Lang J (Waikato/Bay of Plenty liaison) until Brewer J took over in March 2014.
- Heath J (Whangarei, New Plymouth and Gisborne liaison).
- Ronald Young J (Wellington/Central) until Dobson J took over in July 2014.
- David Gendall J (Christchurch/Southern).
- Associate Judge Jeremy Doogue is the liaison judge for associate judge work.

The case management list judges in 2014 were:

- Christchurch earthquake list: Wylie and Kós JJ.
- Auckland leaky buildings list: Fogarty and Faire JJ and Associate Judge Bell.
- Commercial list (Auckland and Wellington): Winkelmann J (supervising judge), Heath, Venning, MacKenzie, Courtney, Asher, Clifford and Gilbert JJ.
- Auckland appeals lists: Katz J (civil) and Woolford J (criminal).
- Judicial review lists: Ellis J (Auckland) and Collins J (Wellington).
- Probate lists: MacKenzie J (Wellington), Faire J (Auckland) and Dunningham J (Christchurch).

¹ That is category 4 cases which are managed from second call by the High Court.

² This figure does not include the Chief High Court Judge who sits part time or Hinton J whose appointment was announced in December but sworn in in January 2015.

Workload

A representation of the Court, its complement and business as at 31 December 2014 is attached as Appendix 1.

Civil

In the civil area, the Court continues to hear general proceedings cases faster and the rate of cases determined by trial remains at nine per cent of filings. Although there have been drops in most new civil filings, the trial and interlocutory work that judges do has remained relatively steady.

Time to hearing continues to drop which appears to be due to a combination of the method of allocation of trial dates³ and the 2012 Rules' approach⁴ to setting down. The Ministry of Justice conducted a review of the 2012 case management and 2011 discovery rules for the Rules Committee.⁵ That review showed that the case management changes are effective in reducing churn and in increasing cooperation between counsel. The report showed that the profession considered the discovery rule changes have resulted in more proportionate discovery. Case management judges are continuing to keep counsel up to the mark on compliance, identification of issues and minimising the number of conferences.

The Earthquake List in Christchurch is functioning well. Some case management techniques in that List are to be adopted in the Leaky Building Lists in Auckland and Wellington such as expert report exchange and property inspection protocols. A report on the operation of the Earthquake List was published in September 2014.⁶ There is however continued pressure on fixture time and the Court is making arrangements to have more hearing time available in 2015.

Criminal

The High Court continued to hear criminal cases under two statutory regimes (the Criminal Procedure Act 2011 and the Summary Proceedings Act 1957). As at 31 December Summary Proceedings Act proceedings made up 24 per cent (28 cases) of the 115 trials on hand.

The statutory protocol regime

Under the Criminal Procedure Act, certain offences (protocol cases) must be reviewed by a High Court judge to see if they are to be heard in the High Court.⁷ Protocol offences include serious sexual and violent offending and drug offending. The full list can be found in the Court of Trial Protocol.⁸

³ In Auckland, the largest registry, short cases of less than five days are allocated dates when the parties expect they will be ready to argue the matter.

⁴ Rule 7.6, High Court Amendment Rules (No 2) 2012 (SR 2012/409).

⁵ Courts of New Zealand "Effectiveness of the 2011-2012 reforms - report to the profession" (February 2015) http://www.courtsofnz.govt.nz/about/system/rules_committee/new.

⁶ Courts of New Zealand "Christchurch Earthquake Litigation List Report as at 30 September 2014" <http://www.courtsofnz.govt.nz/business/high-court-lists/christchurch-earthquake-litigation-list-report/christchurch-earthquake-litigation-list-report/14%2009%2030%20Earthquake%20Litigation%20List%20Report%20for%20CoNZ.pdf>.

⁷ Sections 66 - 68 of the Criminal Procedure Act 2011.

⁸ Courts of New Zealand "Court of Trial Protocol" <http://www.courtsofnz.govt.nz/business/criminal-procedure-act/court-of-trial-protocol/?searchterm=court%20of%20trial%20protocol>.

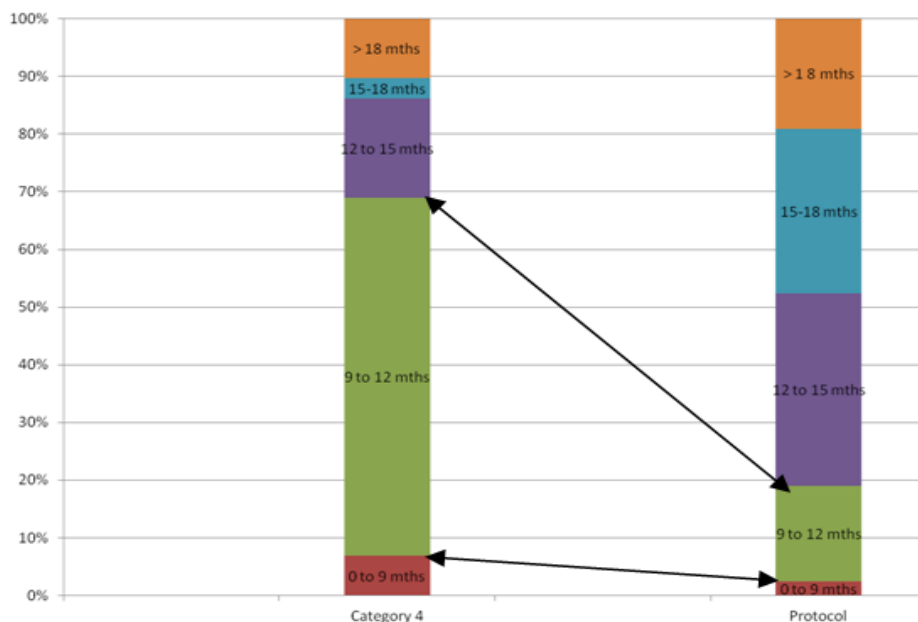
The statutory procedure for identifying and processing protocol cases, prior to a decision being made by a High Court judge, is complex and appears to be causing difficulty and delay. The procedure requires first that the Crown Solicitor identify the offence charged as a protocol offence. Once so identified, the procedure to be followed in the District Court depends on a number of variables. For example if one or other of the prosecutor or the defence seek to have the case heard in the High Court, a District Court judge *must* make a recommendation as to the court of trial. A District Court judge *must* also make a recommendation if the case cannot be heard within in a reasonable time in the District Court. In all other circumstances, a District Court judge *may* make a recommendation, but need not.

The effect of the statutory protocol scheme on timeliness

Category 4 cases (principally murder/manslaughter) are heard in the High Court from second call and as at 31 December 2014, 70 per cent of those cases with a trial date were scheduled to be heard within 12 months of first appearance. This is a pleasing result.

On the other hand, only 20 per cent of protocol cases were scheduled to be heard within the same timeframe. This is concerning because approximately 70 per cent of the High Court criminal caseload comprises protocol cases. The attached graph clearly shows the difference in timeliness.

Age of High Court Trials (CPA) from First Appearance to trial date as at 31/12/14



When considering the timeliness of those protocol cases to be tried in the High Court, the following is relevant. A protocol case will be at least 14 weeks old before a High Court judge directs it is to be heard in the High Court. Those weeks are made up of the 12 weeks required by statutory timeframes for early case management and a further two weeks during which a District Court judge considers whether or not to make a recommendation and the High Court judge makes the final decision. Secondly, as mentioned above, the

statutory protocol procedure is complex which has caused difficulty in both the identification and processing of cases for judicial consideration. That procedure seems to be further delaying the arrival of protocol cases in this Court. By way of a snapshot as at 31 December, about ¾ of the protocol cases on hand took more than the expected 14 weeks to progress from the first appearance to the date of the protocol decision.⁹

The Ministry of Justice has an audit underway to better understand where and why the delays are occurring. Once the reasons are apparent, it may indicate the need for legislative or process changes.

Revision of the Court of Trial Protocol

Each year Parliament enacts new offences, so the Court of Trial Protocol is regularly reviewed to ensure new offences are included as necessary. It was revised and re-issued with a start date of 1 February 2015 to include offences from the Financial Markets Conduct Act 2013. There were also minor wording changes to clarify some existing criteria. Lang and Brewer JJ along with Judge B Davidson form the committee which advises the Chief District Court Judge and the Chief High Court Judge about protocol matters.

Keeping the Criminal Procedure Rules under review

Monitoring the Criminal Procedure Rules 2012 (Criminal Rules) is done by a subcommittee of the Rules Committee. The members are the Chief High Court Judge, Simon France J (chair), Judge Davidson, David Jones QC, Charlotte Brook, Mark Harborow, Lynn Hughes and Megan Anderson. Work before that subcommittee included a pilot of a simpler and shorter Case Management Memorandum¹⁰ in Christchurch and consideration of the timeframe for the filing of formal statements. The subcommittee also reviewed existing Practice Notes aiming to convert as many as possible to criminal rules, so as to reduce the number of rule sources to which practitioners must go. It is hoped in the near future to incorporate the 2014 Sentencing Practice Note into the Criminal Rules.

Criminal appellate jurisdiction

The Criminal Procedure Act 2011 was expected to have an impact on the High Court's workload because it raised the jury trial threshold and changed the method of jury trial election.¹¹ This change was expected to affect the appellate case loads of both the High Court (which deals with appeals from judge-alone trials) and the Court of Appeal (which deals with appeals from jury trials) if there was a significant move by defendants to elect judge-alone trials. By year end there was little change in the balance of appeals between the two courts. This may change and is being kept under review.

For statistics and commentary on work before the Court see Appendix 2 to this report.

⁹ There were 42 protocol cases on hand and 31 of them were over 14 weeks old.

¹⁰ Section 55 of the Criminal Procedure Act 2011.

¹¹ Under that Act, where the offence is "electable", now only the defendant may determine whether the case will be heard as a jury trial.

Making the work of the Court more understandable and accessible

The High Court bench agreed in 2012 that it should work to better reflect New Zealand's two founding cultures and its modern multicultural society. Since February 2014 the formal words for opening and closing court have been done in both English and te Reo.

Resources for litigants and other court participants

In March the Ministry of Justice published web-based resources for unrepresented litigants in the civil jurisdiction. These were developed in consultation with the judiciary to help those taking or defending a claim in the High Court. Usage reports for *Representing yourself in the High Court*¹² show a strong interest in these resources.

There is no trend information to enable us to measure whether the number of unrepresented litigants is increasing. Devising an accurate measure is somewhat problematic as a party's representational status may change during the life of a proceeding. That said, judges and court staff know from observation that unrepresented litigants before the courts are growing in number. The unrepresented litigant is a particular feature of judicial review and appellate work. A snapshot analysis undertaken in November 2014 found in the Auckland High Court registry, 40 per cent of judicial review cases had one or more unrepresented litigant, and 30 per cent of appeals had one or more unrepresented litigant. In the Wellington High Court at the same time, 35 per cent of active judicial review and 20 per cent of active appeals involved unrepresented litigants.

Resources are also being reviewed for jurors. In recognition of the important role they play in deciding criminal cases, judges and the Ministry of Justice are undertaking a thorough review of the information jurors receive from receipt of the jury summons until after the verdict is given.

Media matters

During 2014 Ronald Young J, Asher J and Judge Russell Collins undertook a review of in-court media on behalf of the Chief Justice. Television reporting of court proceedings was introduced by the judiciary in 1995 and operates under the In-Court Media Coverage Guidelines 2012 (Guidelines). While the existing Guidelines emphasise the need for a fair trial, the desirability of open justice, the importance of fair and balanced reporting of trials, and the interests of victims, there have been concerns expressed that some media coverage of high profile cases might have had a negative impact on the fair trial process, on the victims of crime and on those who participate in the court process. The purpose of the review was to consider how the Guidelines were operating, whether there were sufficient safeguards in place and whether there should be changes to the Guidelines. The draft report to the Chief Justice was published in March 2015.¹³

¹² Ministry of Justice "Representing yourself in the High Court of New Zealand"
<http://www.justice.govt.nz/courts/high-court/self-represented-litigants>

¹³ Courts of New Zealand "In-Court Media Review" (18 March 2015) www.courtsofnz.govt.nz/In-Court-Media-Review/?searchterm=%22in%20court%20media%20review%22.

Making decisions more available and accessible

The Court publishes all its decisions online except for those where there are court-ordered suppressions or statutory prohibitions against publication. The main database is Judicial Decisions Online.¹⁴ Decisions likely to be of particular interest to the public are also published for 28 days on Decisions of Public Interest.¹⁵

The Court speaks through its decisions. Because of the nature of the High Court's work, such decisions can be long and complex. A focus for the bench in 2014 was to have more judgments on Decisions of Public Interest, a greater number of summaries in lengthy and complex decisions and improved understanding of suppression and privacy issues by the public and the media.

Ensuring suppression orders and statutory prohibitions on publication are observed is an ongoing area of work. To assist the media, the Court refreshed information about statutory publication prohibitions on the media portals of the Courts of New Zealand and Ministry of Justice websites.¹⁶

During the year the Chief Judge spoke to journalism students in Auckland and Christchurch about the respective roles of the courts and media, the importance of fair trial rights and how to avoid breaching suppression orders and reminders.

Guidelines were provided to judges to encourage the use of Decisions of Public Interest when:

- The judgment is a murder or manslaughter sentencing.
- There has been regular media attendance during trial.
- There has been reporting of the case during trial.
- Media organisations have left their card or made a specific request for the judgment.
- The judge directed delivery of a copy to a specific media outlet.

Outreach

During the year the Chief Judge visited registries and the profession in Tauranga, Hamilton and Dunedin. Many judges take the opportunity to present at professional seminars and speak to community groups which is an important part of the Court's outreach to both the profession and community.

The Court regularly provides material for the professional press. In addition to the release of the *2013 Report from the High Court* published on Courts of New Zealand in April, a number of press releases were made during the year. These are listed in Appendix 3.

¹⁴ Ministry of Justice "Judicial Decisions Online" <https://forms.justice.govt.nz/jdo/Introduction.jsp>

¹⁵ Courts of New Zealand "Judicial Decisions of Public Interest"
<https://www.courtsofnz.govt.nz/from/decisions/judgments>

¹⁶ Courts of New Zealand "Media Centre" <http://www.courtsofnz.govt.nz/business/media-centre>.

Property

The availability of courtrooms in some areas remains a constraint upon the hearing of cases. The growth of the complement in Auckland to match the work in that circuit means more judges' chambers are needed in the Auckland High Court for both the short and medium term. Building work began in late 2014 to accommodate another judge's chamber. In 2015 the Ministry of Justice plans to build a jury-capable courtroom, another judge's chamber and associated staff space and to co-locate all registry staff on one floor.

There is no planning work underway for courtrooms and chambers in Tauranga to allow the Court to provide a full range of High Court hearings there. Associate judges have sat regularly in Tauranga since April 2009 and there have been civil hearings since October 2010. There are insufficient facilities for the Court to do more than short (five-day) Tauranga-sourced criminal trials. The Court will begin holding short criminal trials in Tauranga in 2015.

The building in which the High Court in Dunedin is located was found to be "seismically affected" in 2012 following a nationwide review of courthouse safety. During 2014 High Court work was carried out in interim facilities in John Wickliffe House and High Street. This will continue in 2015. Decisions on funding to repair the category one heritage building are awaited.

In Christchurch work is well underway on the new courthouse which forms the bulk of the Christchurch justice and emergency precinct. The Court is expected to occupy the courthouse in early 2017.

Looking ahead to 2015

Some changes are in prospect.

The Judicature Modernisation Bill envisages the operation of a commercial panel in the High Court. Once passed, the provisions requiring this are to come into force by Order in Council.

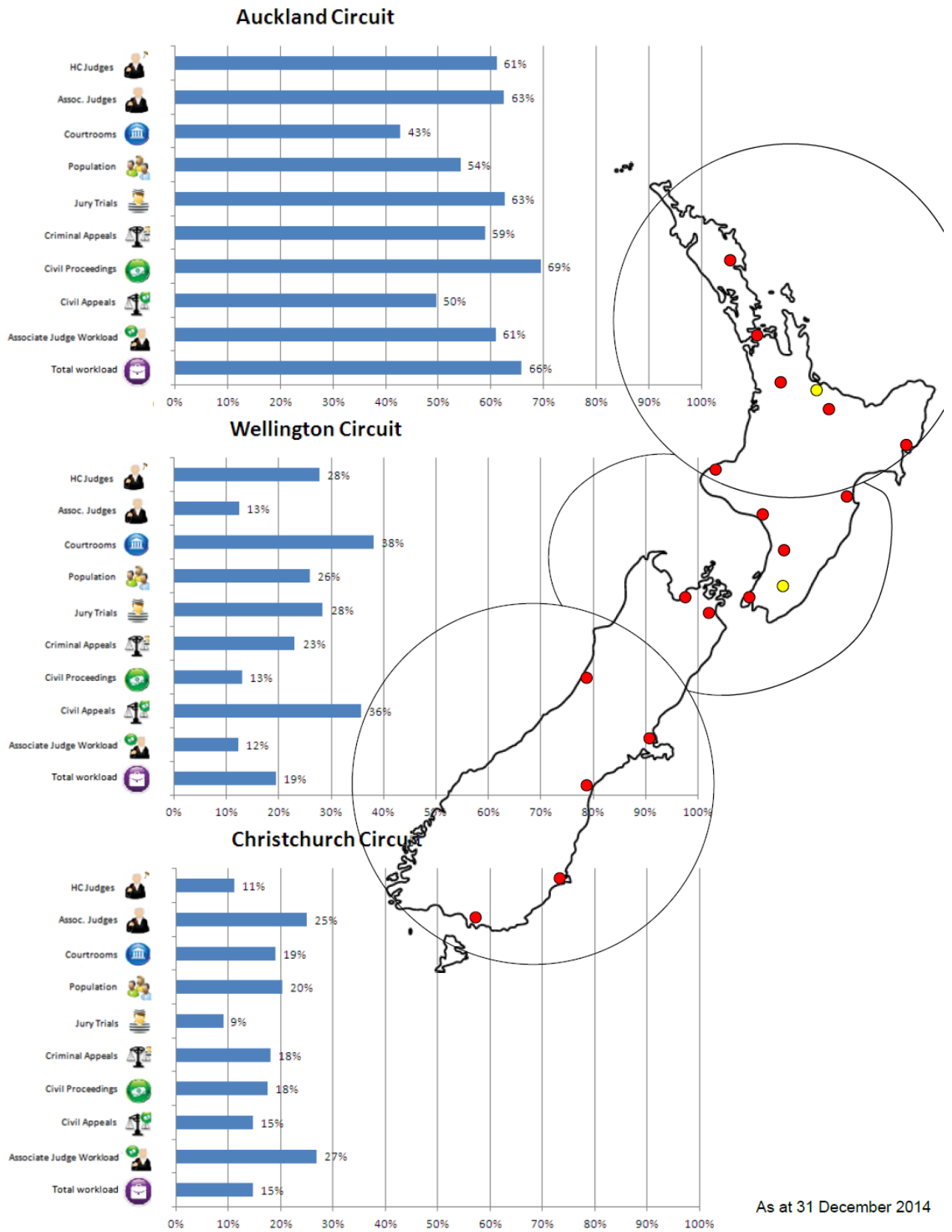
The Rules Committee is to consult with the profession on a set of rules for access to court documents. These rules are designed to be easier to follow. They will provide a better indication of the Court's approach to applications made at different stages of the proceeding. They also combine rules for access to both civil and criminal records.

In addition to these operational changes, the Court will continue to:

- Improve its own performance;
- Improve public understanding of the Court and its role;
- Work with the Ministry of Justice on improving information available to court users both before they come to court, and at court.

**Appendix 1 - Breakdown of workload and factors affecting workload by circuit
– Court at a Glance**

Breakdown of workload and factors affecting workload by circuit



As at 31 December 2014

Appendix 2 - Selected workload figures for the year ended 31 December 2014

For the full range of statistics see the Annual Statistics on the Courts of New Zealand website.¹⁷

Summary of new business and disposals for the year ended 31 December 2014

	Criminal trials	Civil proceedings ¹⁸	Criminal appeals	Civil appeals
New business				
2014	179 ¹⁹	2526	1139	320
2013	215	2669	1032	317
Disposals				
2014	208	2473	1178	302
2013	222	2598	1045	317
Disposals by trial adjudication				
2014		340		
2013		383		
Disposals by non trial adjudication				
2014		658		
2013		801		

The number of summary judgments has reduced since the peak of Global Financial Crisis-related litigation. New business has returned to pre-GFC levels.

Top six nature of claim categories for matters filed between 1 January 2013 and 31 December 2014

Nature of Claim type	Number of claims	% of total
Debt recovery	388	14
Natural disasters (Chch EQ)	320	12
Contractual disputes	275	10
Estate litigation	143	5
Other trust litigation	135	5
Building defects – leaky bldgs	126	5

2014 was the second year “nature of claim” data was collected for new general proceedings. Ultimately this will provide a dataset for the Ministry to provide better information to the High Court about how various types of civil proceedings, such as natural disasters, building defects, estate litigation etc, behave.

¹⁷ Courts of New Zealand “Annual Statistics for the High Court” (December 2014)

<http://www.courtsofnz.govt.nz/from/statistics/annual-statistics/latest-december-2014/high-court>.

¹⁸ “Civil proceedings” includes general proceedings, originating applications and judicial reviews.

¹⁹ Includes new trials plus retrials directed (See definition of “New Business” on the Courts of NZ website).

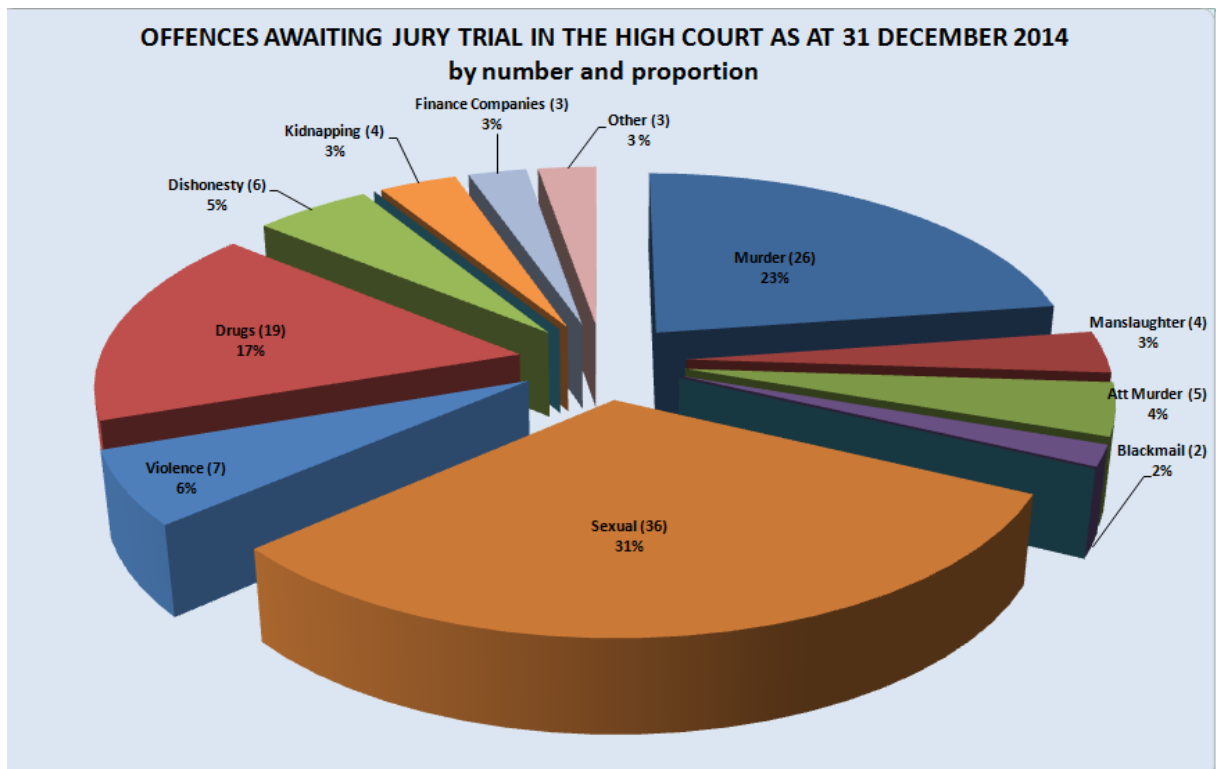
The top six claim types, for general proceedings filed in the High Court between 1 January 2013 and 31 December 2013 were:

- Debt recovery: 17 per cent (239 claims).
- Natural disasters – Christchurch earthquakes: 13 per cent (185 claims).
- Contractual disputes: 10 per cent (141 claims).
- Building defects – weathertight claims: six per cent (79 claims).
- Estate litigation: five per cent (76 claims).
- Other trust litigation: five per cent (73 claims).

The top six claim types, for general proceedings filed in the High Court between 1 January 2014 and 31 December 2014 were:

- Debt recovery: 11 per cent (149 claims).
- Natural disasters – Christchurch earthquakes: 10 per cent (135 claims).
- Contractual disputes: 10 per cent (131 claims).
- Estate litigation: five per cent (67 claims).
- Other trust litigation: five per cent (62 claims).
- Insolvency - related claims: four per cent (53 claims).

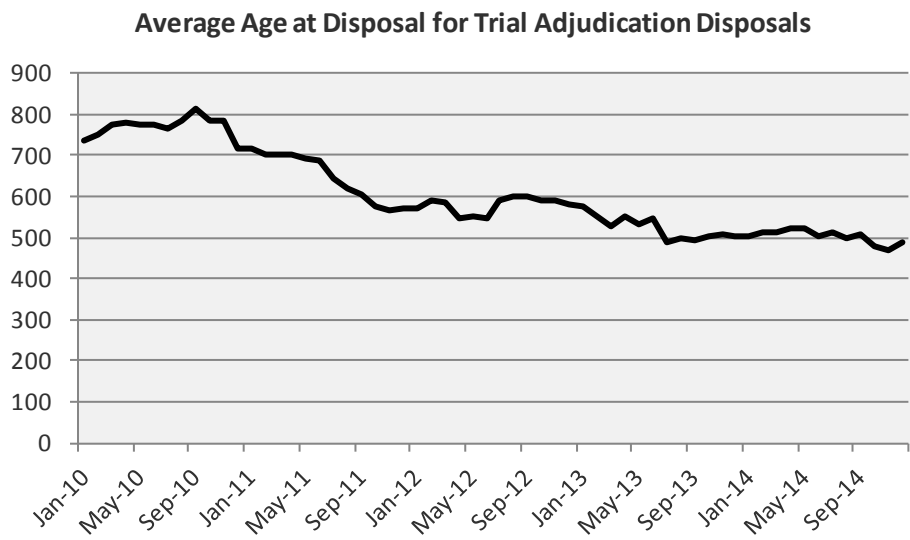
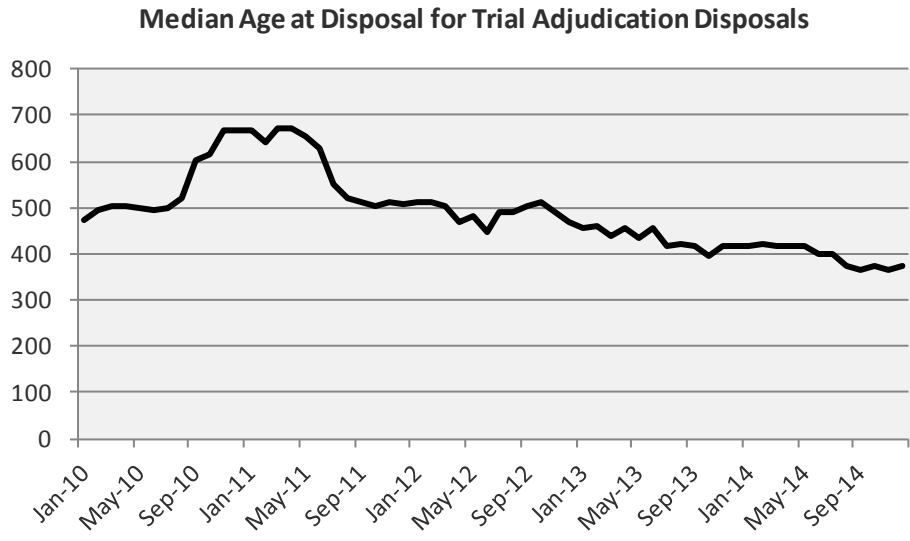
The makeup of trials in the criminal jurisdiction at year-end



The pie graph shows the makeup of the criminal caseload. Thirty percent of cases on hand were High Court-only or category 4 cases. They comprise murder, manslaughter, attempted murder and blackmail (under the Summary Proceedings Act). The remaining 70 per cent

were cases directed to be heard in the High Court under the Court of Trial Protocol or middle-band cases. Sexual offending forms the largest proportion of these cases.

Time to disposal for trial dispositions (civil)



Time to trial for general proceedings trial adjudications continues to improve. The graphs above show the median age at disposal has dropped 42 days from 415 days in December 2013 to 373 days in December 2014. The average age has dropped 12 days from 501 days to 489 days over the same period.

Performance standards

Judgment timeliness statistics for the 12 months ending 31 December 2014

	Time from hearing to judgment delivery	Number of cases	Percentage
Civil	≤1 Month	1487	77.2%
	≤3 Months	1787	92.7%
	≤6 Months	1906	98.9%
	≤9 Months	1920	99.6%
	≤12 Months	1926	100.0%
Criminal	Time from hearing to judgment delivery	Number of cases	Percentage
	≤1 Month	1407	96.2%
	≤3 Months	1448	99.0%
	≤6 Months	1459	99.7%
	≤9 Months	1460	99.9%
	≤12 Months	1463	100.00%

The Court's judgment timeliness statistics remain at similar levels to last year. The standard of 90 per cent of judgments delivered within three months of hearing or last submissions was met.

Civil clearance rate

	General Proceedings	Originating Applications	Judicial Review	Appeals	Insolvency	Probates
Target compliance	100%					
Actual (12 month rolling)	98%	98%	93%	94%	100%	98%

Filings for general proceedings, originating applications and judicial reviews, decreased over the last year and only very slightly increased for insolvency proceedings and appeals.

The number of disposals over the past year matched the number of new filings for insolvency proceedings.

In the case of general proceedings, originating applications and judicial reviews the drop in disposals over the past year slightly exceeded the drop in new filings.

Disposals of judicial reviews have almost caught up with the substantial increase in new filings of judicial reviews between 31 October 2011 and 31 July 2013.

Waiting time to trial

	General Proceedings – Short cause	General Proceedings – Long cause	Originating Applications	Judicial Review	Appeals
Performance standard	≤12 months	≤18 months	≤6 months		
Target compliance	80%				
Actual compliance	90%	87%	73%	79%	84%

Targets for waiting time to trial are being exceeded for both long and short cause general proceedings. The waiting time to trial for originating applications is below the target, and slightly below the target for judicial reviews. The waiting time to trial is above the target for appeals.

Criminal performance standards

The Court has discontinued reporting against earlier criminal performance standards as the achievement of the standards was not sufficiently within the control of the Court. In 2015 a review of performance measures and workload information will be carried out.

Appendix 3 – Press releases and reports from the High Court

1. Notification of Judicial Review Lists - June 2014

<http://www.courtsofnz.govt.nz/business/high-court-lists/high-court-lists/140627JRlistMaterialforpublication.pdf>

2. Changes to the minimum service period for applications for summary judgment - August 2014

http://www.courtsofnz.govt.nz/from/announcements/announcements/140801Summaryjudgmentchanges3_papersinopposition_forlegalpublications.pdf

3. Christchurch Earthquake Litigation List Report as at 30 September 2014

http://www.courtsofnz.govt.nz/business/high-court-lists/earthquake-list-christchurch/140930_EarthquakeLitigationListReport.pdf

4. Statutory Prohibitions on Publication for the Media as at November 2014

<http://www.courtsofnz.govt.nz/business/media-centre/statutory-prohibitions-on-publication/StatutoryProhibitionsPublication10November2014media.pdf>