

NEW ZEALAND LAW SOCIETY

Report on the Exercise of Regulatory Functions and Powers for the period of 11 months ending on 30 June 2009

Presented to the House of Representatives pursuant to
Section 76 of the Lawyers and Conveyancers Act 2006

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Introduction

The Lawyers and Conveyancers Act 2006 (the Act) came into force on 1 August 2008. Under Section 76 of the Act, the New Zealand Law Society (the NZLS) is required to report on the exercise of its regulatory functions and powers during each year ending on 30 June. This is the report for the period 1 August 2008 to 30 June 2009.

The NZLS regulatory functions are as set out in Section 65 of the Act, ie -

- to control and regulate the practice of the profession of law;
- to uphold the fundamental obligations imposed on lawyers;
- to monitor and enforce the provisions of the Act and regulations and rules made under it;
- to assist and promote the reform of the law.

The NZLS regulatory powers are contained in Section 67 of the Act.

Constitution

The NZLS is required by Section 70 of the Act to have a Constitution providing for a Council, membership, general meetings, voting, officers, Executive Board and Executive Director.

The Constitution was made on 18 July 2008 and duly registered with the Registrar of Companies as required by Section 71 of the Act.

In accordance with Section 372 of the Act, the 14 district law societies existing before the commencement of the Act dissolved after six months.

Following a resolution of its members, the Auckland District Law Society continued as an incorporated society in terms of Section 373 of the Act. The remaining 13 districts (including Canterbury and Westland, which subsequently merged) have continued as branches established and maintained by the NZLS in accordance with the Constitution. The NZLS also established an Auckland branch.

The assets of the Auckland District Law Society became those of ADLS Inc, with the exception of its library assets, which were transferred to the NZLS as at 1 February 2009 pursuant to Section 374 of the Act. The assets of all other district law societies were transferred to the NZLS as at 1 February 2009 by operation of Section 373(2) of the Act.

The NZLS Council now consists of the President, four Vice-Presidents, a representative of each branch, the chair of each NZLS section (Corporate Lawyers Association, Family Law and Property Law), the President of the NZ Bar Association and a representative of the Large Firm Corporation.

Regulations and Practice Rules

By Orders in Council dated 30 June 2008, regulations were made relating to -

- Trust accounts
- Disciplinary Tribunal
- Legal Complaints Review Officer - form and fee
- Complaints service and standards committees

Practice rules
Lawyers' fidelity fund
Senior Counsel and Queen's Counsel

Also made by Order in Council of 30 June 2008 were Lawyers and Conveyancers Act (Lawyers: Admission) Rules 2008, High Court Amendment Rules and District Courts Amendment Rules.

On 18 July 2008 the NZLS, with the approval of the Minister of Justice, made rules relating to indemnity, nominee companies and lawyers' conduct and client care, each being duly registered with the Registrar of Companies.

Admission and Enrolment of Lawyers

Pursuant to the Lawyers and Conveyancers Act (Lawyers: Admission) Rules 2008, the NZLS must respond to applications for certificates of character from people seeking admission under Section 49(2) or (3) of the Act. From applications approved, 445 new practising certificates were issued.

Issue of Practising Certificates

In accordance with the practice rules, the NZLS Council set 21 November 2008 as the date on which all certificates issued under the Law Practitioners Act 1982 would expire and 31 October 2008 as the date by which applications for new practising certificates were required to be made. This transitional application and renewal process operated from 1 August 2008, with the required declarations and payments able to be made electronically through a central database.

As at 30 June 2009, there were 10552 current practising certificates. Of those, there were 103 new barristers' certificates and 1112 new barristers and solicitors' certificates.

Renewal of practising certificates for the full year from 1 July 2009 to 30 June 2010 commenced in May 2009.

Register of Holders of Practising Certificates

As part of the exercise of its regulatory functions and in accordance with its powers, the NZLS established (from 1 August 2008) a register of people who hold practising certificates as barristers or as barristers and solicitors. The register facilitates the administration of a central database of all lawyers and matters associated with practice, including the issuing of practising certificates, collecting fees, levies and subscriptions, handling applications for certificates of character or standing, and approving practice on own account.

Modes of Practice

The 10552 lawyers (ie holders of practising certificates) as at 30 June 2009 reported that they practised in the following areas -

	%
Private practice (barristers and solicitors)	66.8
Private practice (barristers)	13.5
Government lawyers	10.8
Corporate lawyers	7.6
Professional/trade association	0.6
Other	<u>0.7</u>
	100

Some 3383 lawyers were practising on their own account as barristers and solicitors and 1307 on their own account as barristers sole.

Practising Fees, Levies and Subscriptions

The setting of an NZLS regulatory budget for the 11-month period to 30 June 2009 was a complicated exercise because of -

- the deferment of the commencement of the Act from 1 July 2008 to 1 August 2008;
- the changes the Act made to the NZLS financial year and the practising fee year;
- the 6-month transitional period in which district law societies continued with transitional matters;
- the implications of a new unitary Law Society model;
- the new regulatory obligations under the Act, eg the Legal Complaints Review Officer, the funding for the Council of Legal Education and the funding for the Lawyers and Conveyancers Disciplinary Tribunal.

On 1 August 2008 the NZLS Council set, and the Minister of Justice subsequently approved, the following practising fees -

	\$ <i>excluding GST</i>
For lawyers not holding a practising certificate on 31.7.08	787
For lawyers holding a practising certificate on 31.7.08	637

Also on 1 August 2008 the NZLS Council set the following fees, levies and subscriptions -

Lawyers' Fidelity Fund subscription (payable, in general terms, by barristers and solicitors practising on their own account)	293
NZ Council of Legal Education levy (payable by every lawyer)	17
Legal Complaints Review Officer levy (payable by every lawyer)	101
Inspectorate fee (payable by barristers and solicitors practising on their own account)	345

The total of fees, levies and subscriptions for lawyers practising as barristers and solicitors on their own account was \$1543 less a credit of \$338 where a Law Practitioners Act 1982 certificate was held for the period to 31 January 2009.

The total fees, levies and subscriptions for lawyers practising as barristers sole or as employed lawyers was \$905 less a credit of \$150 where a Law Practitioners Act 1982 certificate was held for the period to 31 January 2009.

Complaints and Discipline

Part 7 of the Act provides a framework in relation to complaints and discipline. The framework is one within which there may be expeditious processing and resolution of complaints, as well as hearing and determination of disciplinary charges.

Complaints service

The complaints service was established under Regulation 6 of the Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees) Regulations 2008 (CS Regulations).

As required by CS Regulation 6(3), the NZLS provides an 0800 telephone line dedicated to receiving and responding to inquiries concerning complaints and complaints service. Approximately 50 calls per week have been made through that line.

The NZLS has attended to the publication of information about the complaints service in accordance with the requirements of Regulation 7 of the CS Regulations.

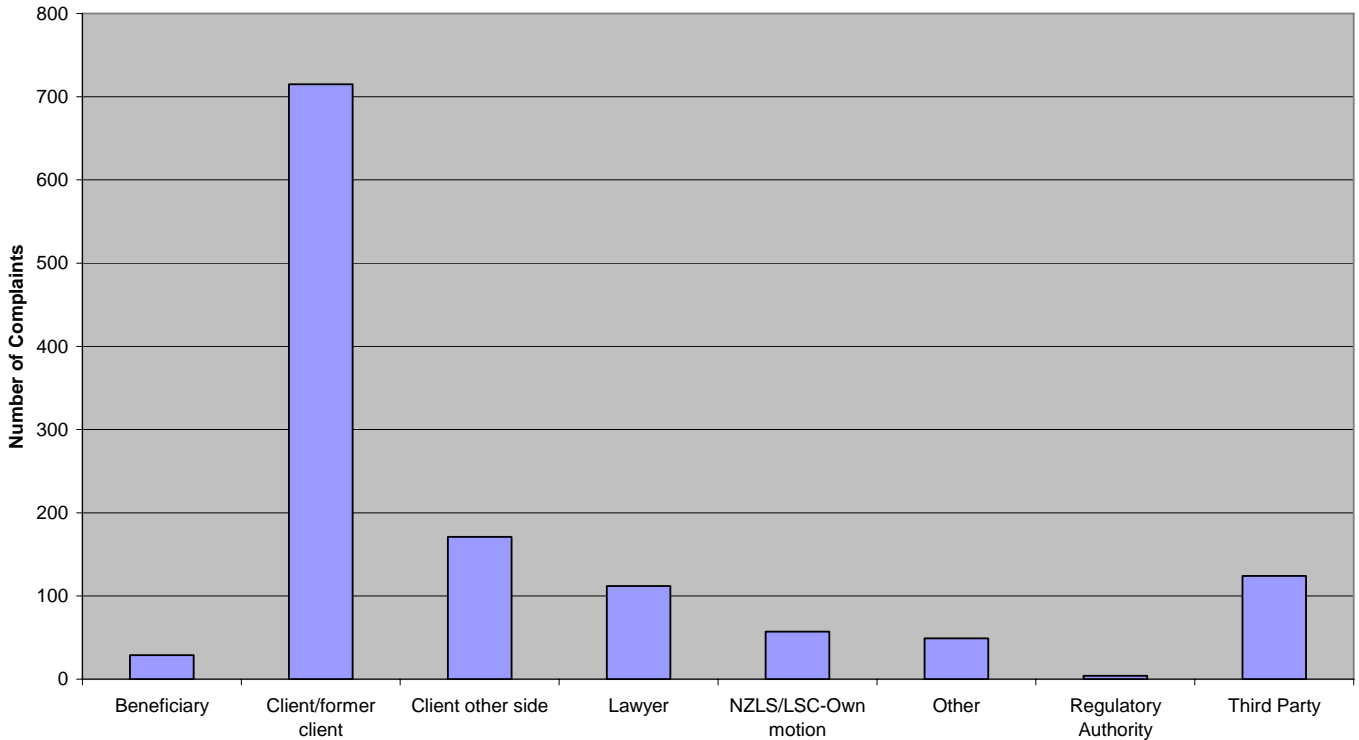
The following information on the outcomes and performance of the complaints service is provided pursuant to the requirements of CS Regulation 11 as follows:

Complaints received	1261
- against lawyers	1180
- " former lawyers	54
- " non-lawyer employees	16
- " incorporated law firms	10
- " former non-lawyer employee	1
	<hr/>
	1261
Complaints where a decision to take no action was made	565
Complaints referred to and resolved by negotiation, conciliation or mediation	9
Complaints withdrawn, discontinued or settled	29
Complaints where Orders were made by a Standards Committee pursuant to Section 156 or 157 of the Act	35
Complaints where decision made to refer matter to the Tribunal under Section 152(2)(a) of the Act	14
Complaints outstanding as at 30 June 2009	609
Complaints closed as at 30 June 2009	652
Orders by Standards Committees for publication of lawyer's name	7
Orders by Standards Committees for publication of facts of complaint	3

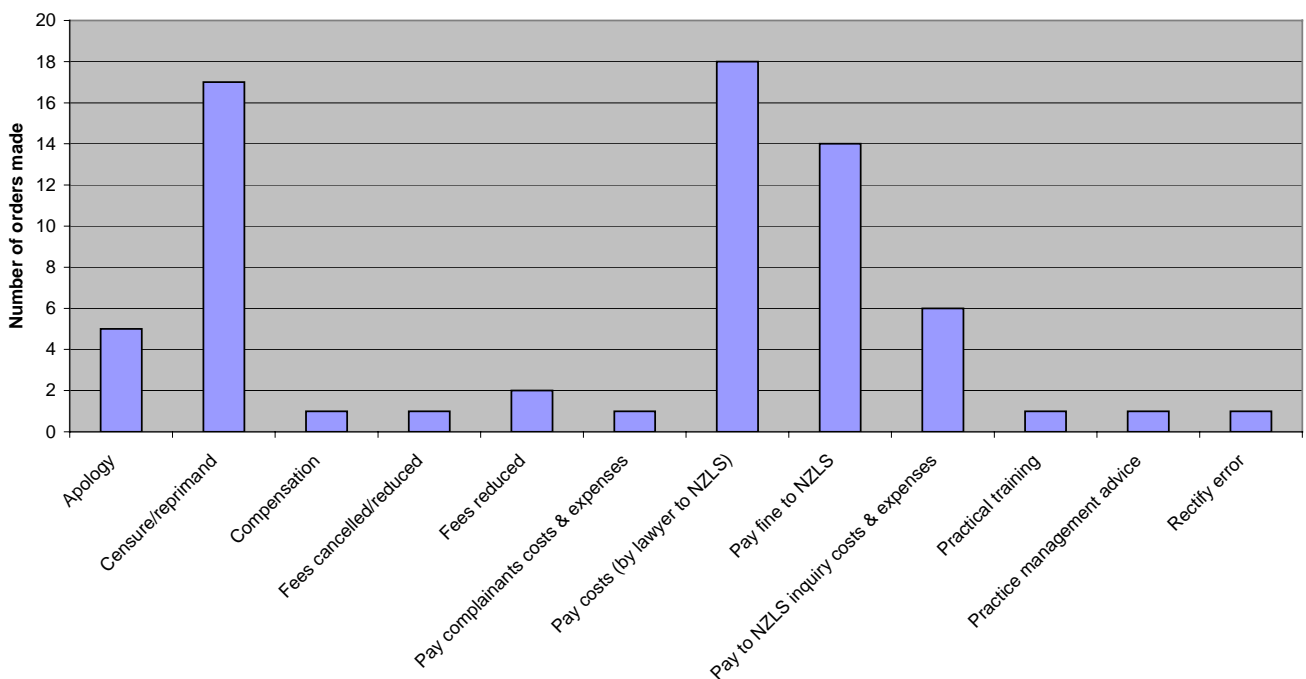
The average time taken to conclude complaints closed as at 30 June 2009 was 104 days.

Illustrated information

Source of Complaints for period 1 August 2008 to 30 June 2009

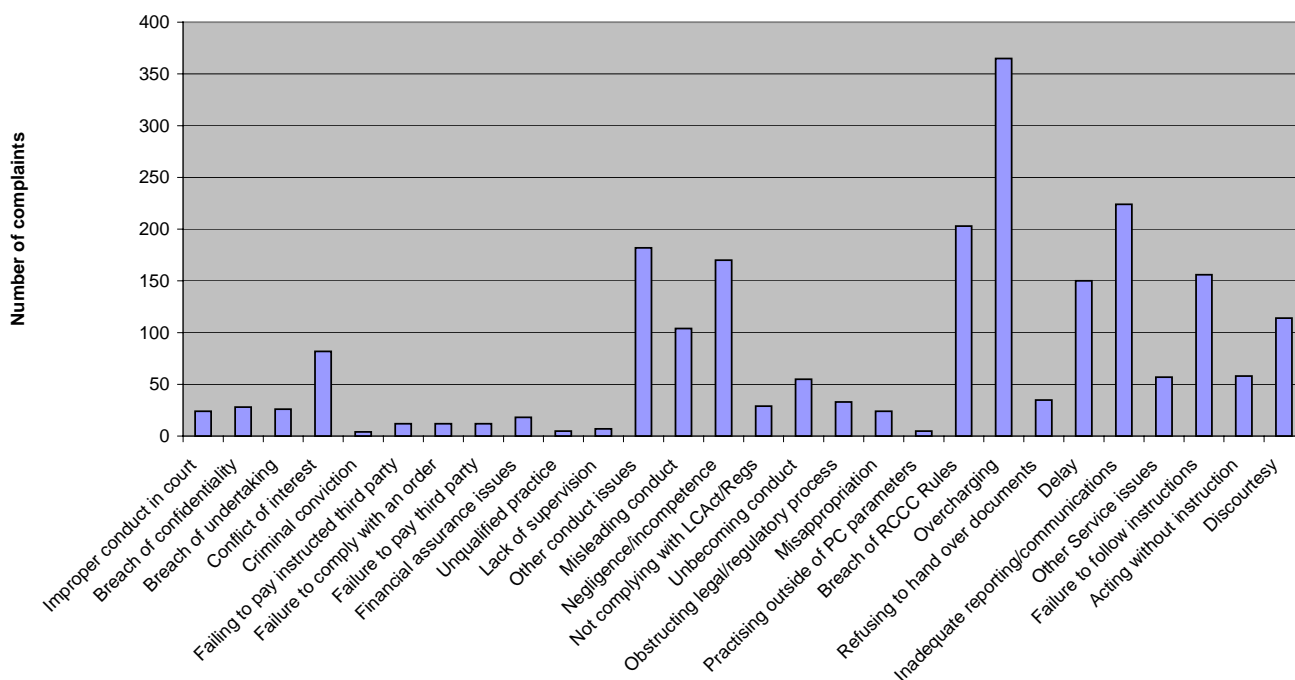


Orders made for period 1 August 2008 to 30 June 2009 pursuant to Ss 156 or 157 of the LCA



(Note: More than one order might be made per recorded complaint)

Nature of complaints for period 1 August 2008 to 30 June 2009



(Note: More than one type of complaint might be indicated per recorded complaint)

Standards Committees

Regulation 12 of the CS Regulations established 18 regional, 2 national and 15 reserve committees. All the regional committees and one of the national committees were declared by the NZLS Board to be Operational Standards Committees in accordance with Regulation 12(2). The NZLS Board made appointments of lawyer members and lay members in accordance with the provisions of the CS Regulations.

Legal Complaints Review Officer (LCRO)

The Minister of Justice consulted the NZLS on the appointment of the LCRO as required by Section 190 of the Act.

The LCRO consulted the NZLS on the rate of the levy determined by the Minister of Justice in accordance with Section 217 of the Act and the amount paid to the Ministry of Justice was \$1.064m GST excl.

Quarterly meetings are held between the NZLS and the LCRO to discuss, in terms of Section 192(c) of the Act, issues relating to the manner in which complaints are received and dealt with.

The LCRO is required by Section 223 of the Act to report each year to the Minister of Justice and to the NZLS.

New Zealand Lawyers and Conveyancers Disciplinary Tribunal (the Tribunal)

The NZLS appointed 15 lawyer members to the Tribunal in accordance with Section 233(2) of the Act and was consulted by the Minister of Justice on the appointment of lay members.

Pursuant to Section 358 of the Act, 10 proceedings not determined by 1 February 2009 were transferred to the Tribunal by the New Zealand Law Practitioners Disciplinary Tribunal.

No payment was required to be made to the Crown Bank Account by way of reimbursement under Section 257 of the Act.

New Zealand Council of Legal Education (the NZCLE)

The NZLS was consulted by the NZCLE as required by Section 276 of the Act.

From the levy of \$17 (GST excl) imposed on every lawyer under the authority of Section 277 of the Act, the NZLS paid to the NZCLE the sum of \$152,000 (GST excl).

Under Section 273 of the Act, the NZCLE was continued in being and renamed. The NZLS Council has power to nominate 5 people to be members of the NZCLE in accordance with Section 282 of the Act, as it did under Section 31(2) of the Law Practitioners Act 1982. Members serving as at 1 August 2008 continued in office. No appointments have yet been made under the new provision.

Lawyers and Conveyancers Special Fund

The NZLS Special Fund was continued in existence by Section 289 of the Act but to be known as the Lawyers and Conveyancers Special Fund (the Special Fund). The Special Fund is vested in the NZLS and the New Zealand Society of Conveyancers (NZSC) jointly and it is held by them in trust for the purposes specified in the Act.

Under Sections 292(2) and 293 of the Act, the Special Fund is managed by the Management Committee of the Lawyers and Conveyancers Special Fund, comprising 2 people appointed by the NZLS and 1 person appointed by the NZSC, with one of the NZLS appointees appointed as chairperson. Appointments were duly made on 1 August 2008 by the NZLS and the NZSC.

The financial position is as set out in the Special Fund special purpose financial statements appended to this report. Interest received on trust accounts and bank deposits was approximately \$6.5m. The sum of \$31000 was applied to administrative costs and the balance was paid to the Legal Services Agency pursuant to Section 298 of the Act.

Fidelity Funds

Lawyers Fidelity Fund

For the purpose described in Section 304(a) of the Act, this fund was established by Regulation 5 of the Lawyers and Conveyancers Act (Lawyers: Fidelity Fund) Regulations 2008. Those Regulations also provide for the maintenance and management of this fund by the NZLS. In addition, they set (by Regulation 10) the minimum size of the fund and (by Regulation 11) the sum of \$100,000 as the maximum amount payable to an individual claimant.

The purpose of this fund is to compensate, in whole or in part, people who suffer pecuniary loss in certain circumstances as set out in Part 10 of the Act - mainly theft of money or property entrusted to a lawyer or an agent of a lawyer.

Solicitors Fidelity Guarantee Fund

The provisions of Part IX of the Law Practitioners Act 1982 relating to this fund remain in force until repealed when Section 370 of the Act comes into force. That will occur on the completion of the process of winding up of this fund as set out in Section 367 of the Act.

The purpose of this fund is to compensate people in relation to theft committed before 1 August 2008.

In terms of Section 367(1) of the Act, the NZLS has not yet formed the opinion that all claims against this fund have been received and fully dealt with.

Financial position

Special purpose financial statements for both the Lawyers Fidelity Fund and the Solicitors Fidelity Guarantee Fund are appended to this report.

Financial Assurance Scheme and the Inspectorate

The NZLS has continued, in accordance with Regulation 36(1) of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008 (the Trust Account Regulations), the scheme for the protection of money entrusted to practices known as the Financial Assurance Scheme. The Financial Assurance Scheme includes an Inspectorate established and maintained in accordance with Part 5 of the Trust Account Regulations.

The Inspectorate comprises a manager who is also an inspector. There are 8 other inspectors. The inspectors are supported by one full time and one part time staff member.

The Inspectorate engaged 7 chartered accountancy firms for compliance reviews of practices which are assessed as not of sufficient risk to require a full inspection.

The Inspectorate has functions as set out in Regulation 25 of the Trust Account Regulations as follows:

- (a) Review lawyers' trust accounts
- (b) Ensure compliance by lawyers with Sections 110-114 of the Act and with the Trust Account Regulations
- (c) Conduct investigations of the affairs of practices and lawyers under Part 7 of the Trust Account Regulations
- (d) Administer the Financial Assurance Scheme
- (e) Assist in the education of lawyers and incorporated law firms and their staff in the matters to which the Trust Account Regulations relate

In the discharge of these functions, the Inspectorate has:

- conducted 499 reviews of the trust accounts of practices - 404 by the inspectors and 95 by chartered accountants.
- appointed 2 people to investigate the affairs of practices under Section 109 of the Act.

- participated in compulsory courses for lawyers intending to practise on their own account as barristers and solicitors. They also maintained and presented programmes for trust account supervisors and administrators as well as conducting seminars on trust account-related issues and preparing articles for publication to lawyers by the NZLS.

In addition, lawyers have access to the Inspectorate where individual advice is required.

Assisting and Promoting the Reform of the Law

This is the regulatory function set down in Section 65(e) of the Act. The purposes are to uphold the rule of law and to facilitate the administration of justice.

The NZLS examined all Bills introduced to Parliament and made submissions on 20 Government Bills. It appeared before select committees on six of those Bills. The submissions were prepared by the voluntary contribution of members of the NZLS Legislation Committee with assistance from specialist committees and sectional interest groups.

The specialist committees prepared submissions on six Law Commission documents and 44 submissions on discussion documents from Government departments and statutory bodies. The NZLS representatives on the Rules Committee contributed to reviews of the Supreme Court Rules and High Court Rules as well as discussion documents on class actions and case management.

The NZLS Rule of Law Committee monitors instances of threats to the rule of law.

The NZLS provided assistance to the Ministry of Justice Courthouse Design Committee.

Libraries

Library assets transferred from District Law Societies pursuant to Sections 373 and 374 of the Act are held for the purposes of NZLS regulatory functions and funded from practising fees under Section 74 of the Act and other charges. There are library holdings in Auckland, Wellington, Christchurch and Dunedin as well as minor collections at other locations around the country. In most cases, the libraries are located in Court buildings. The annual cost of operating libraries is approximately \$2.5m.

Miscellaneous Statistical Information

Lawyers' nominee companies

Under Rule 4.1 of the Lawyers and Conveyancers Act (Lawyers: Nominee Companies) Rules 2008 the NZLS has given written consent to the formation, name and registered office of 1 lawyers' nominee company. Under Rule 5.1 the NZLS approved the change of name of 39 lawyers' nominee companies.

Real estate services

Under Rule 16 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, 15 lawyers have notified the NZLS of intention to commence providing real estate services on a regular or systematic basis.

Reviews Pending

Intervention rule

Under Rule 14.5 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 the NZLS must review and determine whether to keep in force the intervention requirements by which a barrister sole must accept instructions only from a person who holds a practising certificate as a barrister and solicitor. The NZLS has not yet commenced this review but must do so by 30 January 2010 and must then proceed with it with reasonable expedition.

Indemnity

Under Rule 5(1) of the Lawyers and Conveyancers Act (Lawyers: Indemnity) Rules 2008 the NZLS must within two years from 1 August 2008 consider and determine whether to require lawyers and incorporated law firms, or any class of them, to hold professional indemnity insurance. This review as not yet been commenced.

Financial Statements

Pursuant to Section 76(2) of the Act, the following are financial statements in relation to the exercise of the NZLS regulatory functions and powers for the period of 11 months ending on 30 June 2009:

The Lawyers and Conveyancers Special Fund - Income Statement

	2009 \$	2008 \$
Revenue		
Interest on trust accounts	6,453,943	9,533,339
Interest on bank deposits	5,282	10,219
Total revenue	6,459,225	9,543,558
Expenses		
Administration	26,458	26,433
Audit fees	3,812	4,399
Legal Services Agency	6,428,955	9,512,726
Total expenses	6,459,225	9,543,558
Operating surplus	-	-

The Lawyers and Conveyancers Special Fund – Balance Sheet

	2009	2008
	\$	\$
<i>Assets</i>		
Current assets		
Cash at bank	3,989	4,279
Other receivables	364,967	714,297
Total current assets	368,956	718,576
Total assets	368,956	718,576
<i>Equity and Liabilities</i>		
Current liabilities		
Other payables	368,956	718,576
Total current liabilities	368,956	718,576
Total liabilities	368,956	718,576
Equity		
Retained earnings	-	-
Total equity	-	-
Total equity and liabilities	368,956	718,576

Solicitors' Fidelity Guarantee Fund – Income Statement

	11 months ended 30		8 months ended 31	
	June 2009		July 2008	
	\$000	\$000	\$000	\$000
Revenue				
Annual contributions		-		3
Interest	667		593	
Less tax on interest	(200)	467	(195)	398
Total revenue		467		401
Expenses				
Claims admitted and claims settled as to				
consequential loss	155		139	
Investigation and other costs	53		19	
Administration	95		64	
Total expenses		303		222
Operating surplus		164		179

Solicitors' Fidelity Guarantee Fund – Balance Sheet

	30 June 2009		31 July 2008	
	\$000	\$000	\$000	\$000
<i>Assets</i>				
Current assets				
Cash at bank	268		127	
Bank deposits	11,075		10,985	
GST refunds	-		18	
Debtors	310		525	
Total current assets		11,653		11,655
Total assets		11,653		11,655
<i>Equity and Liabilities</i>				
Current liabilities				
GST payable	1		-	
Other payables	5		12	
NZ Law Society Regulatory	7		-	
Claims payable	75		151	
Current tax liabilities	7		98	
Total current liabilities		95		261
Total liabilities		95		261
Equity				
Retained earnings		11,558		11,394
Total equity		11,558		11,394
Total equity and liabilities		11,653		11,655

Lawyers' Fidelity Fund – Income Statement

	11 months ended 30 June 2009	
	\$000	\$000
Revenue		
Annual contributions		899
Interest	23	
Less tax on interest	(7)	16
Total revenue		915
Expenses		
Administration	5	
Total expenses		5
Operating surplus		910

Lawyers' Fidelity Fund – Balance Sheet

	30 June 2009	
	\$000	\$000
<i>Assets</i>		
Current assets		
Cash at bank	100	
Bank deposits	850	
GST refunds	17	
Debtors	909	
Total current assets		1,876
Total assets		1,876
<i>Equity and Liabilities</i>		
Current liabilities		
Other payables	959	
Current tax liabilities	7	
Total current liabilities		966
Total liabilities		966
Equity		
Retained earnings		910
Total equity		910
Total equity and liabilities		1,876

New Zealand Law Society, Regulatory – Income Statement

	11 months ended	
	30 June 2009	
	\$000	
Revenue		
Practicing and other service fees		11,816
Interest income		259
Transfer of District Law Societies' library books at fair value		1,855
Total revenue		13,930
Expenses		
Presidential honorarium and employee expenses		5,065
Other costs		7,353
Total Expenses		12,418
Surplus before income tax		1,512
Income tax expense		(77)
Surplus after income tax		1,435

New Zealand Law Society, Regulatory – Balance Sheet

	30 June 2009
	\$000
<i>Assets</i>	
Current assets	
Cash and cash equivalents	17,470
Trade and other receivables	173
Tax refund	9
Total current assets	17,652
Non-current assets	
Property, plant and equipment	1,913
Intangible assets	50
Total non-current assets	1,963
Total assets	19,615
<i>Equity and Liabilities</i>	
Current liabilities	
Trade and other liabilities	17,641
Tax payable	77
Total liabilities	17,718
Equity	
Retained earnings	1,897
Total equity	1,897
Total equity and liabilities	19,615