NEW ZEALAND LAW SOCIETY

Report on the Exercise of Regulatory Functions and Powers for the year to 30 June 2010

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

Contents

Introduction	3
Constitution	3
Regulations and Practice Rules	4
Admission and Enrolment of Lawyers	4
Issue of Practising Certificates	4
Fitness for Practice	4
Register of Holders of Practising Certificates	4
Modes of Practice	4
Practising Fees, Levies and Subscriptions	5
Complaints and Discipline	5
Legal Complaints Review Officer	8
New Zealand Lawyers and Conveyancers Disciplinary Tribunal	8
New Zealand Council of Legal Education	8
Lawyers and Conveyancers Special Fund	8
Fidelity Funds	9
Competency Assurance	9
Financial Assurance Scheme and the Inspectorate	10
Assisting and Promoting the Reform of the Law	11
Libraries	11
Miscellaneous Statistical Information	11
Reviews	12
Financial Statements	12

Introduction

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 year to 30 June 2010.

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 made on 10 July 2008 and duly registered with the Registrar of Companies as required by section 71 of the Act has remained unchanged.

The NZLS Council continues to consist 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 New Zealand Bar Association and a representative of the Large Firm Corporation.

Individuals on the Council are:

President: Jonathan Temm

Vice-Presidents: Andrew Gilchrist (Auckland), Bruce Gilmour (North Island), Mary

Jeffcoat (Wellington), Anne Stevens (South Island)

Branch Representatives: Chris Moore (Auckland), Allister Davis (Canterbury-Westland),

Adam Simperingham (*Gisborne*), Ingrid Squire (*Hawke's Bay*), Chris Robertson (*Manawatu*), Quentin Davies (*Marlborough*),

John Fitchett (Nelson), Alastair Logan (Otago), Fergus More (Southland), Rajan Rai (Taranaki), Michael McIvor (Waikato Bay of Plenty),

John Unsworth (Wanganui), Nerissa Barber (Wellington)

Sections: Jeremy Valentine (Chair, Corporate Lawyers' Association of New

Zealand)

Antony Mahon (Chair, Family Law Section) Chris Moore (Chair, Property Law Section)

Other Representatives: Colin Carruthers QC (New Zealand Bar Association)

David Simcock (Large Firm Corporation)

The Executive Board comprises the President and the four Vice-Presidents.

Christine Grice is the Executive Director.

Regulations and Practice Rules

With one exception, there has been no change to the regulations and rules made before the Act came into force on 1 August 2008. The exception is the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Amendment Regulations 2010 which were made on 31 May 2010. With effect from 1 July 2010, the Regulations tighten the legal experience requirements for lawyers wishing to practise on their own account. In the case of lawyers wishing to practise on their own account as barristers and solicitors, the new requirement is at least three years' legal experience in New Zealand in the previous five years (changed from the previous eight years). The same requirement will apply to those wishing to practise as barristers sole (previously no minimum requirement).

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 1 July 2009 to 30 June 2010, 898 applications were approved, 601 candidates were admitted and 533 new practising certificates were issued.

Issue of Practising Certificates

As at 30 June 2010 there were 11223 current practising certificates. Of those, 1594 were holding barristers' certificates and 9629 barristers and solicitors' certificates.

Renewal of practising certificates for the full year from 1 July 2010 to 30 June 2011 commenced in May 2010 with 11160 renewal invoices being created.

Fitness for Practice

For the year to 30 June 2010, a National Fitness for Practice Committee considered five applications for certificates of character, 11 applications for practising certificates and 10 applications for practising on own account and related matters. It was also involved in the implementation of a national standardised process for the issue of certificates of character.

Register of Holders of Practising Certificates

As part of the exercise of its regulatory functions under the Act and in accordance with its powers, the NZLS has 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, approving practice on own account, and trust account information.

Modes of Practice

The 11223 lawyers (ie holders of practising certificates) as at 30 June 2010 reported that they practised in the following areas:

%

Private practice (barristers and solicitors)	66.85
Private practice (barristers)	14.01
Government lawyers	10.96
Corporate lawyers	7.31
Professional/trade association	0.57
Other	0.30
	100

Some 3470 lawyers were practising on their own account as barristers and solicitors and 1536 on their own account as barristers sole.

Practising Fees, Levies and Contributions

The following fees, levies and contributions were set by the NZLS Council with (in the case of the practising fee and Lawyers' Fidelity Fund contribution) the approval of the Minister of Justice:

	\$ excluding GST
Practising fee	1110
NZ Council of Legal Education levy Legal Complaints Review Officer levy Total for barristers and employed lawyers	20 45 \$1175
Inspectorate fee	<u>380</u>
Total for barristers and solicitors practising on their own account without a trust account	\$1555
Lawyers' Fidelity Fund contribution	320
Total for barristers and solicitors practising on their own account with a trust account	\$1875

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 Lawyers 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 the complaints service. Approximately 75 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.

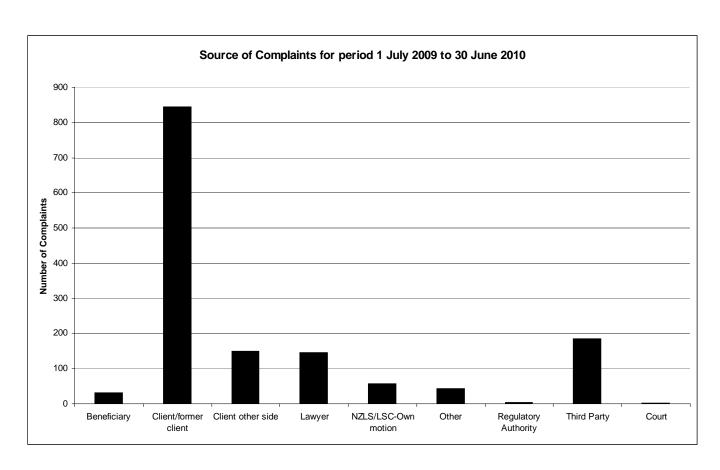
The following information on the outcomes and performance of the complaints service is provided pursuant to the requirements of CS Regulation 11 as follows:

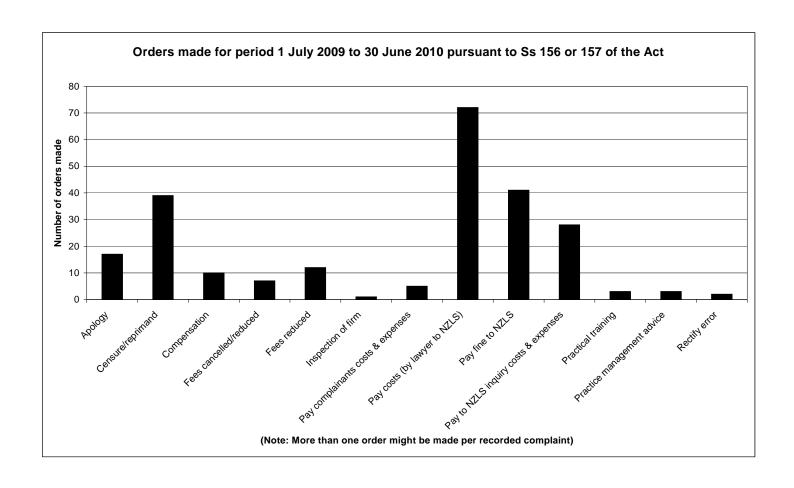
Co	mplair	nts received 1.7.09 to 30.6.10		1461
-	agains	t lawyers	1381	
-	"	former lawyers	56	
-	"	non-lawyer employees	16	
-	"	incorporated law firms	4	
-	"	former non-lawyer employee	3	
-	"	former incorporated law firm	1	
			1461	

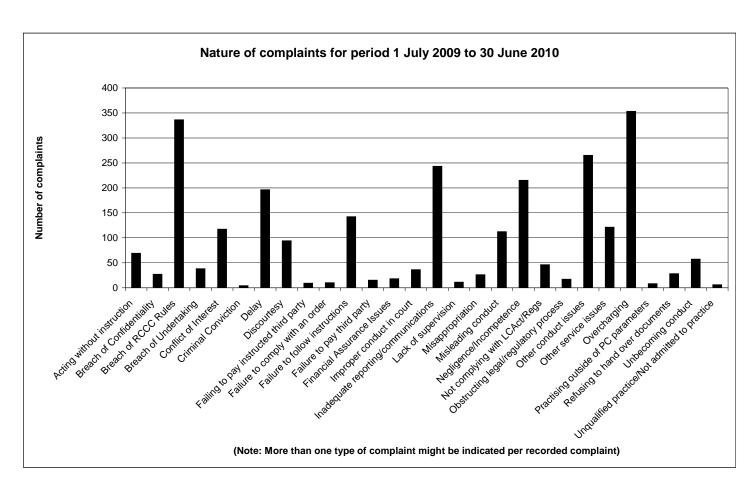
Complaints where a decision to take no action was made	1061
Complaints referred to and resolved by negotiation, conciliation or mediation	11
Complaints withdrawn, discontinued or settled	90
Complaints where Orders were made by a Lawyers Standards Committee pursuant to Section 156 or 157 of the Act	123
Complaints where decision made to refer matter to the Tribunal under section 152(2)(a) of the Act	76
Complaints outstanding as at 30 June 2010	702
Complaints closed between 1.7.09 and 30.6.10	1377
Orders by Lawyers Standards Committees for publication of lawyer's name	10
Orders by Lawyers Standards Committees for publication of facts of complaint	41

The average time taken to conclude complaints closed as at 30 June 2010 was 110 days.

<u>Illustrated information</u>







Lawyers Standards Committees

Regulation 12 of the CS Regulations established 18 regional, two national and 15 reserve committees. All the regional committees and one of the national committees had been declared by the NZLS Board to be Operational Standards Committees in accordance with regulation 12(2) at 30 June 2009. The NZLS Board made further appointments of lawyer members and lay members in accordance with the provisions of the CS Regulations following resignations and expiry of terms.

By 30 June 2010 the NZLS Board had declared two further reserve committees to be Operational Standards Committees.

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 following the resignation of the incumbent. As at 30 June 2010 no announcement had been made about a replacement.

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 \$273,000 GST excluded.

Quarterly meetings were 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 on 22 April 2010 appointed four new lawyer members to the Tribunal in accordance with section 233(2) of the Act following the resignation or expiry of terms of existing members.

The sum of \$6500 was paid 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 \$20 (GST excluded) imposed on every lawyer under the authority of section 277 of the Act, the NZLS paid to the NZCLE the sum of \$222,000 (GST excluded).

The NZLS Council has power to nominate five people to be members of the NZCLE in accordance with section 282 of the Act. One new nomination was made to fill a vacancy and the appointment was made by the Governor-General on the advice of the Attorney-General on 5 May 2010.

Lawyers and Conveyancers Special Fund

The Lawyers and Conveyancers 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 two people appointed by the NZLS and one person appointed by the NZSC, with one of the NZLS appointees appointed as chairperson. The appointments made on 1 August 2008 by the NZLS and the NZSC remain unchanged.

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 \$4.0 million. The sum of \$27000 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.

This fund has made no payments since its inception. An amount of \$238,000 has been set aside to cover future payments of claims relating to known or suspected thefts.

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.

This fund paid out \$6600 on one claim. An amount of \$1,091,000 has been set aside to cover future payments of claims relating to known or suspected thefts. The sum of \$230,000 was recovered from lawyers or their estates relating to previous payments from the fund.

Financial position

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

Competency Assurance

The NZLS Executive Board approved in principle the development and introduction of a new Competency Assurance Scheme. Work on the Scheme was subsequently accelerated as a result of concern over legal aid. Changes will include strengthening requirements for lawyers wishing to practise on their own account. Specific education on the Rules of Conduct and Client Care will be part of that. The changes to the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Amendment Regulations 2010 mentioned on page 4 also form part.

It is expected that there will be some form of mandatory continuing legal education, along with other changes aimed at improving overall competency.

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, and eight other inspectors. The inspectors are supported by one full time and one part time staff member.

The Inspectorate engaged three 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 544 reviews of the trust accounts of practices;
- overseen 26 systematic compliance reviews carried out by chartered accountants;
- referred 29 reviews to local Lawyers Standards Committees. Five were referred on to the Disciplinary Tribunal, 15 are still with the Standards Committees pending further action, six were ordered to improve in particular areas and three required no further action:
- investigated the affairs of seven practices under section 109 of the Act. Three resulted in reports to the New Zealand Police, five were referred to the Disciplinary Tribunal, one is held pending further inquiries and one resulted in no further action;
- 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 32 Government Bills. It appeared before Select Committees on 26 of those Bill. The submissions were prepared by the voluntary contribution of members of the NZLS Law Reform Committee with assistance from specialist committees and sectional interest groups.

The specialist committees prepared submissions on four Law Commission documents and 61 submissions on discussion documents from Government departments and statutory bodies.

NZLS representatives on the Rules Committee commented on Rules Committee papers on a review of daily recovery rates, reform of the rules relating to written briefs and discovery, and the duty of parties and lawyers.

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

The NZLS Courthouse Committee provides assistance to the Ministry of Justice Courthouse Design Committee and monitors issues such as courthouse design and security.

Libraries

Library assets transferred from District Law Societies in February 2009 pursuant to sections 373 and 374 of the Act continued to be held for the purposes of NZLS regulatory functions. Libraries are funded from practising fees under section 74 of the Act and other charges.

Longer term contracts were signed with the three main publishers, CCH, Thomson Reuters and LexisNexis. These contracts allow for significant access to online publications for all lawyers at NZLS locations (mainly court buildings) around the country. In addition, hard copy purchases were rationalised and are now maintained at the main libraries in Auckland, Wellington and Christchurch. The research and document delivery services of these main libraries ensure that lawyers have access to this information.

The net cost of operating the libraries was \$2.2 million.

Miscellaneous Statistical Information

Lawyers' nominee companies

Within the period covered by this report, the NZLS has not been requested to give written consent to the formation, name and registered office of any lawyers' nominee company under rule 4.1 of the Lawyers and Conveyancers Act (Lawyers: Nominee Companies) Rules 2008. Nor has the NZLS approved the change of name of any lawyers' nominee company under rule 5.1 of those Rules.

Real estate services

Under rule 16 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, 21 lawyers have notified the NZLS of intention to commence providing real estate services on a regular or systematic basis.

Reviews

Intervention rule

Under rule 14.5 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, the NZLS is required to 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 was required to commence the review by 30 January 2010 and it did so by the establishment of a working group which has undertaken preliminary soundings. The working group is now preparing options in a structured way for the full consultation contemplated by rule 14.5.

Indemnity

Under rule 5(1) of the Lawyers and Conveyancers Act (Lawyers: Indemnity) Rules 2008 the NZLS was required within two years from 1 August 2008 to consider and determine whether to require lawyers and incorporated law firms, or any class of them, to hold professional indemnity insurance.

The issue was duly considered in terms of the rule and it is appropriate to record the outcome in this report, notwithstanding that the actual date of determination by the Executive Board (28 July 2010) falls outside this reporting period.

The determination was that cover not be required for lawyers, incorporated law firms, or any class of lawyers or incorporated law firms on a mandatory basis in the meantime, but the issue should remain under review.

The Minister of Justice has been advised of this consideration and determination and is himself looking to the Ministry of Justice to monitor the situation and to report to him on the need for any reform.

The NZLS Executive Board has authorised the President and Executive Director to continue to explore options for future consideration.

Financial Statements

Pursuant to section 76(2) of the Act, the financial statements in relation to the exercise of the NZLS regulatory functions and powers for the year to 30 June 2010 are included on the following pages.

	Year ended	11 months ended
	30 June 2010	30 June 2009
	\$000	\$000
Revenue		
Interest on trust accounts	4,065	6,454
Interest on bank deposits	2	5
Total revenue	4,067	6,459
Expenses		
Administration	25	26
Audit fees	3	4
Legal Services Agency	4,039	6,429
Total Expenses	4,067	6,459
Operating Surplus	-	-

	As at 30 June 2010	As at 30 June 2009
	\$000	\$000
Assets		
Current Assets		
Cash at bank	1	4
Other receivables	330	365
Total current assets	331	369
Total Assets	331	369
Equity and Liabilities		
Current liabilities		
Other payables	331	369
Total current liabilities	331	369
Equity		
Retained earnings	-	-
Total equity	-	-
Total equity and liabilities	331	369

Solicitors' Fidelity Guarantee Fund - Income Statement			
	Year ended 30 June 2010	11 months ended 30 June 2009	
	\$000	\$000	
Revenue			
Recoveries for claims paid	230	-	
Interest	572	667	
Less tax on interest	(188)	(200)	
Total revenue	614	467	
Expenses			
Claims on fidelity funds	1,019	155	
Investigation and other costs	46	53	
Administration	60	95	
Total Expenses	1,125	303	
Operating Surplus	(511)	164	

	As at 30 June 2010	As at 30 June 2009
	\$000	\$000
Assets		
Current Assets		
Cash at bank	64	268
Bank deposits	11,840	11,075
Other receivables	305	310
Total current assets	12,209	11,653
Total Assets	12,209	11,653
Equity and Liabilities		
Current liabilities		
Claims payable	1,091	75
Other payables	71	20
Total current liabilities	1,162	95
Equity		
Retained earnings	11,047	11,558
Total equity	11,047	11,558
Total equity and liabilities	12,209	11,653

Lawyers' Fidelity Fund - Income Statement		
	Year ended 30 June 2010	11 months ended 30 June 2009
	\$000	\$000
Revenue		
Annual contributions	974	899
Interest	87	23
Less tax on interest	(29)	(7)
Total revenue	1,032	915
Expenses		
Claims on fidelity funds	238	-
Investigation and other costs	-	-
Administration	2	5
Total Expenses	240	5
Operating Surplus	792	910

Lawyers' Fidelity Fund - Statement of Financial Position			
	As at 30 June 2010	As at 30 June 2009	
	\$000	\$000	
Assets			
Current Assets			
Cash at bank	986	100	
Bank deposits	1,870	850	
Other receivables	53	926	
Total current assets	2,909	1,876	
Total Assets	2,909	1,876	
Equity and Liabilities			
Current liabilities			
Income in advance	966	954	
Claims payable	238	-	
Other payables	3	12	
Total current liabilities	1,207	966	
Equity			
Retained earnings	1,702	910	
Total equity	1,702	910	
Total equity and liabilities	2,909	1,876	

New Zealand Law Society, Regulatory - Statement of Comprehensive Income		
	Year ended 30 June 2010	11 months ended 30 June 2009
	\$000	\$000
Revenue		
Practising and other service fees	16,470	11,816
Interest	406	259
Transfer of District law Societies' library books	-	1,855
Total revenue	16,876	13,930
Expenses		
Honorarium and employee expenses	7,754	5,065
Other costs	8,328	7,353
Total Expenses	16,082	12,418
Surplus before tax	794	1,512
Income tax	(111)	(77)
Operating Surplus	683	1,435

New Zealand Law Society, Regulatory - Statement of Financial Position		
	As at 30 June 2010	As at 30 June 2009
	\$000	\$000
Assets		
Current Assets		
Cash at bank	835	2,145
Bank deposits	16,503	15,325
Other receivables	445	182
Total current assets	17,783	17,652
Non-current assets		
Property, plant and equipment	2,137	1,913
Intangible assets	151	50
Total non-current assets	2,288	1,963
Total Assets	20,071	19,615
Equity and Liabilities		
Current liabilities		
Practising fees in advance	13,366	13,354
Trade and other payable	3,654	3,862
Other current liabilities	471	502
Total current liabilities	17,491	17,718
Equity		
Retained earnings	2,580	1,897
Total equity	2,580	1,897
Total equity and liabilities	20,071	19,615