

TWENTIETH REPORT OF THE

NEW ZEALAND

COUNCIL OF LEGAL EDUCATION

(from 1 January 2010 to 31 December 2010)

LAI D BEFORE THE HOUSE OF REPRESENTATIVES
PURSUANT TO
SECTION 150 OF THE CROWN ENTITIES ACT 2004

STATEMENT OF RESPONSIBILITY

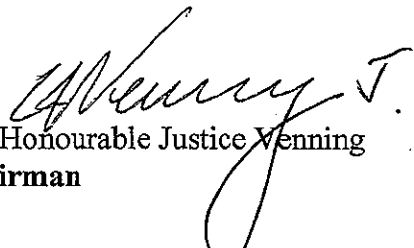
THE NEW ZEALAND COUNCIL OF LEGAL EDUCATION


**FINANCIAL STATEMENTS FOR THE YEAR ENDED
31 DECEMBER 2010**

The Council is responsible for preparation of the Financial Statements and Statement of Service Performance, and for the judgments used in the production of these statements.

The Council is also responsible for establishing and maintaining a system of internal control designed to provide reasonable assurance as to the integrity and reliability of financial reporting and non-financial reporting.

In the Council's opinion, the attached financial statements, the Statement of Service Performance, and the notes which should be read in conjunction with those statements, fairly reflect the operations of the Council of Legal Education for the year ended 31 December 2010 and the financial position of the Council at that date.


The Honourable Justice Venning
Chairman


Dr the Honourable Richard Worth
Council Member

27 April 2011

NEW ZEALAND COUNCIL OF LEGAL EDUCATION ANNUAL REPORT

REPORT OF THE CHIEF EXECUTIVE FOR THE YEAR FROM 1 JANUARY 2010 TO 31 DECEMBER 2010

1. BACKGROUND

Between 1841 and 1930 legal education, and the requirements for admission to the profession in New Zealand, were the responsibility of the Judiciary of New Zealand pursuant to a number of Colonial Ordinances and Acts of Parliament, and prescribed in consecutive sets of Judges' Rules. After the establishment of the University of New Zealand in 1870 the practical implementation of the admission requirements was progressively delegated by the Judiciary to the University.

In 1925, a Royal Commission which had been commissioned to examine a number of matters relating to University education in New Zealand, recommended that – ¹

...a Council of Legal Education representative of the Judges, the leaders among practising barristers and solicitors, and the University teachers of law is the most satisfactory method for providing and for watching over a course of legal education which shall comply with the requirements of a good professional education, and at the same time satisfy the demand for a training which is strong enough on the practical side.

Accordingly in 1930 the Council of Legal Education was established.² The original Council consisted of six members: two judges of the Supreme Court, two representatives of the New Zealand Law Society, and two law professors or teachers from the University of New Zealand. The Council was given recommendatory powers for the purpose of enabling the University to discharge its functions, which concurrently with the establishment of the Council had been given the responsibility for prescribing and conducting the necessary legal qualifications and examinations.³

However, in 1961 the University of New Zealand was dissolved and the constituent Colleges established in their own right.

In order to preserve uniformity across law degrees, to maintain standards, and to secure input from representatives of all, rather than one particular category of stakeholder in legal education, the Council of Legal Education was reconstituted in 1961 as an independent statutory body⁴ to take over the role of defining, prescribing and arranging for the provision of courses of study, including practical training, for those persons (from New Zealand and overseas) wishing to be admitted as barristers and solicitors, and generally to supervise legal education in New Zealand.

¹ *University Education in New Zealand* (Royal Commission) (AJHR 1925, E-7A), page 45.

² New Zealand University Amendment Act 1930.

³ Law Practitioners Amendment Act 1930.

⁴ Law Practitioners Amendment Act 1961.

In 1961 the membership of the Council consisted of representatives from the Judiciary, the New Zealand Law Society, and the Law Schools. By 1982 membership had been extended to encompass a District Court Judge and law student representation, and by 1990 a non-lawyer member nominated by the Minister of Justice.

A major change to the operation and funding of the Council occurred in 1990 with the disestablishment of the University Grants Committee, as from 30 June of that year.⁵

The Council's activities had previously been carried out within the framework of the University Grants Committee and it had been a source of funding for the Council which was no longer available, although the Council was subsequently given the power to charge fees for its services.

The 1990 Amendment Act amended the Law Practitioners Act 1982. Some major consequences for the Council were –

- (a) It expanded the membership of the Council to strengthen the interests of the public without affecting the balance between academic and professional legal interests which had always been a characteristic of the Council.
- (b) It established the Council as a body corporate with perpetual succession, a common seal, and the rights, powers and privileges necessary to carry out its functions.
- (c) It established the basis for the Council to be subject to Part V of the Public Finance Act 1989 as if it were a Crown entity specified in the Fourth and Fifth Schedules to that Act.
- (d) It authorised the charging of fees for work done or services performed by the Council and for entry into the Council's examinations.
- (e) It made requirements of the Council as an employer, including consultation with the State Services Commission.
- (f) It set out the Council's financial responsibilities and exempted it from income tax.
- (g) It set out the Council's duty to report annually to the Minister of Justice.

The Lawyers and Conveyancers Act 2006 was passed in March 2006 and came into force on 1 August 2008.

The Council is covered by Part 8 of the Act. The Council was reconstituted with its current form and membership. Some changes have been made to the Council's operations as noted below.

- (a) The Council has been renamed the New Zealand Council of Legal Education.

⁵ Education Amendment Act 1990.

- (b) The functions and powers of the Council, whilst remaining essentially the same as in the 1982 Act, have been sharpened and modernised to reflect current terminology and practices.
- (c) A new function has been introduced into the Council's role and that is responsibility for recognition of qualifications for the purposes of the principles set out in section 15 of the Trans-Tasman Mutual Recognition Act 1996.
- (d) The Act makes the Council responsible for making the final decision in respect of the assessment of applications of all overseas graduates and admitted practitioners.
- (e) The Act confirms that the Council may deliver courses itself, or arrange for the delivery of courses by other providers.
- (f) There is a specific power enabling the Council to license other providers of practical legal training.
- (g) The funding mechanism for the Council has changed so that rather than be funded through the New Zealand Law Foundation, the Law Society is required to levy practitioners to secure the necessary funds for the Council.
- (h) With respect to the Institute, new provisions are included in the Act. Under these provisions the Council is statutorily required to maintain the Institute in its current form as a committee of Council. An express requirement to ensure that the Institute continues to provide practical legal training for candidates for admission as barristers and solicitors of the High Court is imposed on the Council.

2. MEMBERSHIP OF THE COUNCIL

APPOINTED BY THE GOVERNOR-GENERAL As at 31 December 2010

<u>Member</u>	<u>Nominated By</u>
The Hon Justice Venning (Chair)	Chief Justice
The Hon Justice Asher	Chief Justice
His Honour Judge Osborne	The Council (under section 282(1)(g) Lawyers and Conveyancers Act 2006)
Her Hon Judge MNE O'Dwyer	Chief District Court Judge
Mr W Chapman	New Zealand Law Society
Ms C Grice	New Zealand Law Society
Mr S Maling	New Zealand Law Society
Mr D Nolan	New Zealand Law Society
Dr the Honourable R Worth	New Zealand Law Society
Mr J Eng	New Zealand Law Students Assoc
Mr P Thomson	New Zealand Law Students Assoc
Ms D Matahaere-Atariki	Minister of Justice

EX OFFICIO-DEANS OF LAW FACULTIES/SCHOOLS

Professor M Henaghan	Otago
Professor P Rishworth	Auckland
Professor B Morse	Waikato
Associate Professor R Scragg	Canterbury
Professor A Smith	Victoria
Professor I Eagles	AUT (by invitation)

3. CHIEF EXECUTIVE

The Chief Executive is responsible for discharging all responsibilities and duties required by the role pursuant to the Council's operations under Part 8 of the Lawyers and Conveyancers Act 2006.

The Chief Executive is statutorily responsible for the efficient operation of the organisation, including the Institute of Professional Legal Studies, and must ensure and promote compliance with all statutory obligations imposed on the Council.

The Chief Executive is responsible for ensuring that the Council's operations are conducted in a manner that conveys the highest personal and professional standards, and conforms to standards and values expected of a public sector entity.

The Chief Executive of the Council is Rosemary Gordon, a Wellington lawyer.

Other staff in the Chief Executive's Office in 2010 included Senior Legal Officer Ruiping Ye, Credits and Operations Manager Breid Keating, Policy Adviser and NZLP Examination Academic Coordinator Catherine Iorns Magallanes, the Credits Consultant Professor AH Angelo, HR Advisor Anne Ratliff, and Assistant Legal Officers Timothy Fletcher, Esther Pang and Danica McGovern.

4. MEETINGS

The full Council met twice in 2010. The Annual meeting took place in April 2010 and the Second meeting in November 2010.

5. OVERALL WORK OF THE COUNCIL

Major Tasks

The major tasks of the Council during the year in discharge of its functions in the Lawyers and Conveyancers Act 2006 were –

- maintaining the work of the Council;
- maintaining the work of the Institute (see section 18 on Professional Legal Studies);
- meeting the requirements of the legal status of the Council;
- securing funding for the general work of the Council;
- reviewing the servicing arrangements for the Council; and
- reviewing the organisation and work of the Institute, in particular, practical legal training in New Zealand.

General Activities

The Council is a regulatory body and is responsible for the regulation, quality and provision of legal training for those wishing to be admitted as barristers and solicitors to the profession in New Zealand.

These activities include –

- setting courses of study for the examination and practical legal training of persons wishing to be admitted as barristers and solicitors in New Zealand;

- providing, or arranging for the provision of, those courses of study;
- arranging for the moderation and assessment of those courses of study;
- assessment of qualifications particularly those of overseas law graduates and legal practitioners wishing to practise in New Zealand;
- arranging for the provision of research as necessary, and tendering advice on legal education;
- administering and conducting certain examinations.

To carry out its tasks in discharge of its functions set out in Lawyers and Conveyancers Act 2006, the Council maintained its general liaison with the Judiciary, the legal profession, the Universities and law students, and specifically undertook the activities detailed below.

6. PROVISION OF COURSES

Compulsory Law Subjects

The Council prescribes the core curriculum for the bachelor of laws degree and monitors these subjects through a moderation system.

The five compulsory subjects which are moderated are –

Law of Contracts
 Law of Torts
 Criminal Law
 Public Law
 Property Law (or Land Law and Equity and Succession where Property Law is not offered.)

In respect of the above subjects the examination papers are settled by a University teacher and a moderator appointed by the Council of Legal Education. Moderation is also required for Legal Ethics which is a compulsory course for admission to the profession. A sixth Council prescribed core degree subject (Legal System) is not moderated owing to the introductory nature of the course and variations between courses.

The role of the moderator is threefold. The moderator ensures that the examination paper is of a satisfactory standard, and must be satisfied that there has been adequate coverage of the Council of Legal Education prescription. The moderator also ensures that the standard of examination is comparable between Faculties.

The moderators are required to report each year to the Council on the moderation process in their subject area. The Reports provide valuable information for the Council on the examinations, and the courses generally in the compulsory subjects of the law degree, and also provide an opportunity for the Council to be informed of any administrative or substantive

difficulties, to take action to remedy any problems, and to ensure that the courses are generally taught in a manner which conforms to the Council's requirements.

It is also valuable for the Faculties to receive an independent outside view on the operation of these courses particularly vis-à-vis other Universities. The moderation procedures also ensure fairness for students in that a uniform system is shown to be operating over all the compulsory subjects.

During 2010 in the course of administering the moderation system the Council, inter alia, approved the appointment as moderators, of legal practitioners nominated for their academic ability and legal experience, and members of the Judiciary. The Council also received and analysed the moderators' reports. The Council also revised the Moderators' and Examiners' Guidelines, and gave advice to the Universities and moderators on matters relating to the compulsory law subjects, and the Council's expectations in these areas.

Subjects Compulsory for Admission

During 1997 the Council introduced a requirement for all law students who completed their bachelor of laws, or bachelor of laws with Honours degrees after 31 July 2000 to pass a university course in legal ethics as a further requirement for admission. On 1 August 2008 the requirement was extended to all applicants for admission regardless of the completion date of their degree.

The course which was prescribed and moderated by the Council, has as its broad principles –

- an introduction to ethical analysis including an examination of various theories of ethics;
- the applicability of ethical analysis to legal practice;
- the concept of a profession and the ethical professional duties of practitioners (which includes, among other topics, conflicts of interest, confidentiality, duties to the Court, duties of loyalty and fidelity);
- the wider responsibilities of lawyers in the community.

The course was introduced in response to a report⁶ which had recommended that courses in legal ethics be required at three levels of legal education: academic, vocational training and continuing education after admission to the Profession. In New Zealand this was implemented by the Council by the introduction of the undergraduate university course in legal ethics which, while not a compulsory degree subject, is required for those students wishing to be admitted to the profession. The requirement was further implemented by the introduction of Ethics and Professional Responsibility components into the Council's Professional Legal Studies Course.

During the year the Council continued to monitor the subject, giving advice through the Chief Executive's Office, as required, to Faculties, Registry administrators and students, on the legal

⁶ WB Cotter QC and C Roper *Report on a Project on Education and Training in Legal Ethics and Professional Responsibility for the Council of Legal Education and the New Zealand Law Society* (Wellington, 1996).

ethics requirement and its implementation. The Council also introduced the Legal Ethics requirement into its overseas qualification assessment system in 2001.

Moderators

Moderators during the year were –

Mr D Goddard QC	-	Law of Contract
The Honourable Justice Winkelmann	-	Law of Torts
The Honourable Justice Robertson	-	Criminal Law
The Honourable Justice Fogarty	-	Public Law
Mr J Greenwood	-	Property Law
The Honourable Justice Asher	-	Legal Ethics

The Honourable Justice Venning moderated one Torts paper where a conflict of interest had been declared.

Law Student Statistics

Each year the Council collects statistics from the Law School Universities. The Statistics relate to the following areas –

Graduates

These statistics detail the number of students graduating in the following degrees as at 31 December of each year

- PhD
- Masters
- LLB (Honours)
- LLB

Enrolments

These statistics detail the number of students enrolled in various degrees for the academic year in question.

The degrees are –

- PhD
- Masters
- LLB (Honours)
- LLB

Figures are also collated relating to numbers of students admitted to the first year and to the second year for the first time.

Summary of Results

These statistics relate to results. The statistics detail the results in the core law subjects in the academic year.

Figures reflect numbers of candidates in each subject at each University, percentages passing and failing, and grades awarded.

The results statistics give a valuable insight into the numbers of students enrolled in the Council's courses and the allocation of grades. The graduates and enrolments statistics allow the Council to monitor the number of students enrolling in law courses and those who graduate.

Statistics are compiled annually and comparisons may be made between current trends and those pertaining to past years.

Related Issues

During the year the Council in the course of fulfilling its role in this area also -

- considered and approved requests by the Universities teaching law for changes in their degree courses in law;
- advised Universities as required on a number of Council-related and educationally based issues.

Other Provision

During the year the Council (through the Institute of Professional Legal Studies) provided 13 week and 19 week part-distance taught courses, for New Zealand and overseas law graduates and practitioners (see section 18 on Professional Legal Studies), and administered the New Zealand Law and Practice Examination for overseas graduates and practitioners (see section 9 on the New Zealand Law and Practice Examination).

7. ASSESSMENT OF OVERSEAS LAW QUALIFICATIONS

Background

The overseas qualification assessment system involves examination of the credentials of overseas law graduates and practitioners through a process of analysis and written assessment, notification and liaison with candidates, assistance and advice, reviews and appeals. It also involves reporting requirements, and preparation of material for applicants.

The recommendation produced by the Council forms the basis for eligibility for admission of overseas graduates and practitioners to the legal profession in New Zealand, upon completion of the prescribed requirements.

Applications are decided on their merits, after thorough examination of all documents, and following earlier policy and precedents established by the Council.

A review process is available for applicants who present new material not considered in the earlier assessment. Reviews take place in approximately 10% to 20% of cases.

The assessment process involves a detailed analysis of—

- the applicant's tertiary academic qualifications;
- the nature and extent of the applicant's professional training;
- the nature and extent of the applicant's professional experience; and
- the nature and extent of the applicant's knowledge and experience in the use of the English language.

The examination requires an analysis of the extent to which the applicant's degree, training and experience equate with the admission requirements for New Zealand candidates.

In particular the Council seeks to establish –

- That the applicant has completed the equivalent of the New Zealand four year bachelor of laws degree (LLB) and that at least three years full-time study of law subjects has been undertaken by the applicant. If, on analysis, it is found that the applicant's degree is not in terms of length or breadth broadly the equivalent of the New Zealand law degree the applicant may be required to sit New Zealand University degree courses to broaden their degree.
- That the applicant has included in their degree, and passed, courses that broadly cover the content of the compulsory Council of Legal Education New Zealand LLB subjects. Currently these subjects are Legal System, Contract, Torts, Public, Criminal and Property Law. (The Property Law course includes a trust and equity and succession law component.) If the applicant has completed a course that is found to adequately correspond with any of the above subjects, the applicant may receive a credit in that subject, otherwise the applicant will usually be required to undertake that course at a New Zealand University.

All New Zealand law graduates who wish to be admitted to the profession must also undertake a university course in legal ethics. During the assessment process the Council also examines whether an overseas applicant has completed a course in legal ethics and professional responsibility. Any applicant who has not completed such a course may be required to do so.

An assessment is also made by the Council of the scope of any courses or practical training that an applicant may have completed, and any related experience. If the combined practical training and experience is insufficient an applicant may be required to complete a skills-based training course.

Applications are processed as expeditiously as possible. A typical application may take twelve weeks to consider, and sometimes a longer time may be required depending on the nature of the application and the number of cases under consideration.

Number of Applicants

The total number of applications dealt with during the year was 101.

Applications were received from the following countries:

Argentina, Belgium, Bangladesh, Brazil, China (including Hong Kong), Ethiopia, Fiji, France, Germany, India, Ireland, Korea, Malaysia, Pakistan, Philippines, Scotland, South Africa, Sri Lanka, Sudan, Trinidad and Tobago, United Kingdom, United States of America and Zimbabwe.

The total number of applications received since 1998 are listed in the table below:

Year	Applications
1998	67
1999	71
2000	85
2001	101
2002	124
2003	123
2004	99
2005	123
2006	109
2007	85
2008	135
2009	117
2010	101

Applicant Database

During the year the Chief Executive's Office continued to maintain a comprehensive database of all applicants, together with information on their academic qualifications, and practical training and experience, in order to preserve consistency in the assessments.

Inquiries

As noted, during the year the Chief Executive's Office handled numerous inquiries from applicants and potential applicants for assessment of their qualifications, and related general inquiries.

Completion Certificates

The Chief Executive's Office continued during the year to issue certificates of completion to overseas graduates and law practitioners who completed the Council's prescribed requirements. Sixty three certificates were issued to overseas graduates and practitioners in 2010.

8. INTERNAL CREDITS

Background

In the case of the Council's overseas credits system an overseas graduate or admitted practitioner applies to the Council to have an overseas qualification assessed, the Council examines the core law degree subjects undertaken by that person. If a person's degree subject is found to adequately cover the common law principles in the subject, the applicant is given a credit in that particular subject. However the applicant will almost certainly have to undertake the Council's New Zealand Law and Practice Examination in the equivalent Part, which tests understanding of the New Zealand law. It is rare for any exemptions to be granted from the New Zealand Law and Practice Examination.

However, if an applicant has not graduated but has partially completed an overseas law degree, and wishes to enter the profession in New Zealand, or to obtain a law degree, the applicant will proceed to a University in New Zealand, enrol in an LLB degree, and seek credit in any relevant subjects, which may include the core law subjects.

A potential difficulty arose because if the Universities granted credit in the core law subjects without any further requirements being imposed, those undergraduates who commenced their undergraduate degree overseas, but transferred, or wished to transfer to a New Zealand LLB degree, were significantly advantaged over their graduate/admitted compatriots, who would have to undertake the New Zealand Law and Practice Examination prescribed by the Council. From the Council's standpoint, those undergraduate students were also disadvantaged in that they had at no stage studied or been assessed in New Zealand law in these core law subjects.

Similar considerations applied to students seeking to undertake core law courses on an exchange programme. In those cases students might obtain passes in the equivalent core law subjects overseas, but not be required to undertake any further study in the area in New Zealand.

As a result of these potential inconsistencies, a Protocol was drafted, through the Chief Executive's Office and the Law Deans, as a joint initiative between the Council and the Faculties. The Protocol, entitled the *Protocol between the Council and the Universities on Internal Credits*, is designed to remedy any inconsistencies in processes, by establishing a standard procedure to be followed in internal credit cases.

The Protocol

The Protocol encourages the Faculties to seek a recommendation from the Council as to the credit to be given in core law subjects in respect of –

- students presenting with a course from an overseas country or jurisdiction in substitution for any core law course;
- students seeking to undertake a course at an overseas institution and to substitute that course for a core law course through an Exchange Programme.

The Council's recommendation may include requiring the applicant to complete the equivalent Part of the New Zealand Law and Practice Examination.

The Protocol came into effect on 1 April 2003. Since then the Council has provided recommendations for a number of applications from the Law Schools.

9. EXAMINATION IN NEW ZEALAND LAW AND PRACTICE

Background

The Council requires almost all overseas applicants to pass all, or a number of Parts, of an examination on the law of New Zealand – the New Zealand Law and Practice Examination.

The Examination consists of a six Part written Examination following a comprehensive self-taught prescription. It is generally held bi-annually, over a period of four days. The purpose of the Examination is to test the applicant's knowledge of the distinct features of the New Zealand law, and proceeds on the basis that the applicant will already have an understanding of the common law principles in that subject, by virtue of the applicant's overseas law degree.

The Examination covers the areas of Legal System, Contract Law, Criminal Law, Property Law, Torts, and Equity and Succession. Each Part consists of one written Examination of 90 minutes duration.

The examiners are generally Victoria University Law Faculty Professors and lecturers who specialise in the above subjects. The Examination may be sat at any of the six New Zealand University Law Schools, or at other New Zealand venues arranged by the Council. It may also be sat at overseas venues arranged by the Council.

During the reporting period, the Council –

- administered and conducted sittings of the Examination in both February and July;
- appointed an independent moderator and assessor to report on the Examination;
- operated an appeal system within the confines of the Council's regulations for the conduct of the Examination, which provided for aegrotat, compassionate and compensation passes in appropriate circumstances;
- updated the Prescription for the Examination for use in 2009.

Staff

The examiners during the year were –

Part I	Ms Catherine Iorns Magallanes, Senior Lecturer, Law Faculty, VUW
Part II	Professor AH Angelo, Law Faculty, VUW
Part III	Associate Professor E McDonald, Law Faculty, VUW
Part IV	Mr Mark Bennett, Law Faculty, VUW

Part V Professor G McLay/ Professor W Atkin, Law Faculty, VUW

Part VI Professor AH Angelo, Law Faculty, VUW

The moderator/assessor for the course was The Right Honourable Justice Andrew Tipping.

Statistical Data for the Examination in 2010

The following table shows the number of candidates and Parts sat from February 1997 until December 2010.

Month	Year	Number of Candidates	Number of Parts
February	1997	20	40
July	1997	47	140
February	1998	51	116
July	1998	49	127
February	1999	54	125
July	1999	61	124
February	2000	46	105
July	2000	46	128
February	2001	43	97
July	2001	51	116
February	2002	48	116
July	2002	47	112
February	2003	72	159
July	2003	68	174
February	2004	74	152
July	2004	81	211
February	2005	79	181
July	2005	72	140
February	2006	82	206
July	2006	101	222
February	2007	86	171
July	2007	89	192
February	2008	78	155
July	2008	80	188
February	2009	99	204
July	2009	99	205
February	2010	100	220
July	2010	87	210

The following tables detail the registration statistics for the February and July Examinations during the year.

February Sitting

Of the prospective candidates who requested information from the Examination Administrator regarding the February Examination sitting:

- 100 registered for a total of 220 Parts. 8 Candidates withdrew from 34 Parts which meant that 186 Parts were sat.

Table - Candidates by Parts

	Part I	Part II	Part III	Part IV	Part V	Part VI
Candidates	40	48	44	19	30	39

July Sitting

Of the candidates who requested information from the Examination Administrator regarding the July 2010 Examination sitting –

- 87 registered for a total of 210 Parts. 5 Candidates withdrew from 10 Parts which meant that 200 Parts were sat.

Table - Candidates by Parts:

	Part I	Part II	Part III	Part IV	Part V	Part VI
Candidates	33	36	42	30	38	31

10. EXEMPTIONS

During the year the Council, through the Chief Executive's Office, implemented systems to deal with applications for exemptions from certain Council requirements on the basis of equivalent training.

During the year exemptions related to the Professional Legal Studies Course and were either from legal executives who held law qualifications or others with equivalent skills-based training in either Australia or the United Kingdom.

11. RESEARCH AND POSTGRADUATE STUDY

The Council is empowered to encourage and as necessary provide research and post-graduate study.

Although the Council continues to recognise that the mainstream for research and postgraduate study is the responsibility of the Universities, the Council has, over the years, entered into a more proactive role in respect of research.

12. MINISTERIAL ADVICE

The Council may provide advice to the Minister of Justice (if required) on any matter relating to legal education.

13. INQUIRIES

During the year the Chief Executive's Office continued to respond to numerous inquiries related to its areas of operation. The inquiries emanated from a diverse and large group of bodies and individuals. Such bodies ranged from Government departments requesting information, to general student and applicant inquiries.

14. COMPLETION CERTIFICATE SYSTEM

Background

As from 1 August 2008, the Council became responsible for issuing completion certificates to New Zealand law graduates who have fulfilled the Council's prescribed requirements.

Certificates Issued

During the year the Council issued 839 completion certificates to New Zealand law graduates.

15. EXTERNAL LIAISON

The Council continued to liaise externally and as required with the following bodies –

The Judiciary

The Chief Justice
The Chief District Court Judge
Registries of the High Court

The Profession

NZLS Executive Director and senior staff
NZLS President

The New Zealand Law Society

NZLS Auckland Branch
NZLS Canterbury Branch
NZLS Gisborne Branch
NZLS Hawkes Bay Branch
NZLS Manawatu Branch
NZLS Marlborough Branch
NZLS Nelson Branch
NZLS Otago Branch
NZLS Southland Branch
NZLS Taranaki Branch
NZLS Waikato Bay of Plenty Branch
NZLS Wanganui Branch
NZLS Wellington Branch

NZLS Westland Branch
Auckland District Law Society Inc.

Academia

Law Staff
University Administrators
University Management
University Students
University Bodies (eg CUAP)

Government Departments and Agencies

States Services Commission
Ministry of Justice
Attorney-General's Office
Immigration
Education
Crown Law Office
Office of the Controller and Auditor General
New Zealand Qualifications Authority
Audit New Zealand

Government Ministers

Minister of Justice
Attorney-General

The Public

Public (applicants, candidates, general inquiries)
News Media

General

Accountants
Insurance personnel
Legal Advisers
IT Advisers
Verification Authority
College of Law
Australian Law Admissions Consultative Committee

16. FEES

During the year the Council –

- Maintained at \$1050.00 (exclusive of Goods and Services Tax) the fee charged to overseas law graduates for assessment of applications for credits, and maintained at \$1250.00 (exclusive of Goods and Services Tax) the fee charged to overseas practising lawyers.

- In accordance with its user-pays policy maintained the entry fee for each Part of the New Zealand Law and Practice Examination at \$350.00 (exclusive of Goods and Services Tax), and prescribed fees for the various concession (aegrotat, compassionate and compensation) passes.
- Set the fee for the Professional Legal Studies Course.

17. PROFESSIONAL LEGAL STUDIES COURSE

Provision

The Council is also responsible for providing practical legal training for New Zealand Law graduates, and overseas graduates and practitioners as required.

In 1986 a review commissioned by the Council of Legal Education and the New Zealand Law Society⁷ recommended the establishment of a full-time practical skills-based training course which would complement the experience which a law graduate gained while working in a legal environment, and would replace the fifth Professional year at University where students had previously been trained in practically oriented legal subjects.

In order to provide the course the Council established the Institute of Professional Legal Studies in 1987.

Institute of Professional Legal Studies

The Institute is the Council's provider arm for the delivery of the Professional Legal Studies Course. The Council has a statutory duty to arrange the provision of such a course, and must ensure that it has the ability to do so to ensure that the course is accessible to all students.

The Institute is managed by a National Director, who is appointed by the Chief Executive of the Council. A Delegation Document has been in place since 2003 under which the National Director operates and reports to the Chief Executive of the Council⁸.

Constitutional Changes

During 2002 and 2003 the Council, considered and implemented a number of key constitutional changes relating to the Institute. A major initiative involved clarifying and better defining accountability to the Council. This outcome was achieved partly by dissolving the Administration Committee which had been established in 1987 and its replacement with the Executive Committee of Council. The latter body consists of the Chairman and Chief Executive of the Council, and three other Council Members.

⁷ N Gold Report on the Reform of Professional Legal Training in New Zealand for the New Zealand Law Society and the Council of Legal Education (Wellington, 1987).

⁸ Statement of Accountability Relationship Between the Council of Legal Education and the Institute of Professional Legal Studies (Wellington, 2002).

Contemporaneously with this step, the Council, through the Chief Executive's Office, drafted a major constitutional document governing the accountability relationship between the Council and the Institute referred to above. The document established certain delegations from the Chief Executive to the National Director of the Institute with reserve powers in the Chief Executive.

The document, which involved consultation with Audit New Zealand and other bodies operating similar systems, defined and clarified the relationship between the Council and the Institute, and incorporated personnel delegations, financial delegations and management guidelines. The overall effect was to strengthen the lines of accountability to the Chief Executive and the Council. The document provides a sound structural base which recognises the special nature of the Institute, and against which the organisation can operate effectively.

Accreditation of Providers

In 2002 the Council drafted two sets of Regulations establishing a process of accreditation and monitoring of providers.

The first of the two sets of Regulations⁹ set out the aims of the Professional Legal Studies Course and specified the required course content. The Regulations dealt with delivery standards encompassing areas such as the duration of the course, the methods of delivery, and the weighting to be given to components within the course. The Regulations also gave a detailed analysis of the course outcome specifications, namely a description of the skill required and the abilities which a student should have obtained after completion of that particular component of the course.

The second set of Regulations¹⁰ dealt with the accreditation process establishing the system for accreditation, and requiring providers to make detailed and comprehensive applications showing how they complied with the requirements specified by the Council, and to provide evidence as to their financial viability, proposed teaching methods, staff and related matters. The regulations also provided for detailed monitoring requirements. The first monitoring exercise took place in early 2005.

The Regulations provided for the establishment of an Accreditation Committee whose brief is to provide recommendations to the full Council on provider applications.

In 2003 the Council also redrafted the regulations governing the Professional Legal Studies Course which allowed for a generic, rather than provider specific, set of regulations¹¹. A major review of these regulations was undertaken in 2004 which resulted in the promulgation of the Professional Legal Studies Course Regulations 2004 which further emphasised the generic nature of the regulations.

In 2003 the Council licensed the Institute of Professional Legal Studies to provide a 13 week face to face, full-time course, and a 19 week part face to face, part distance delivered course. The College of Law New Zealand was licensed, by the Council, to provide an 18 week part face to face, part distance delivered course. Both organisations were licensed for a period of two

⁹ Professional Legal Studies Course Assessment and Standards Regulations 2002.

¹⁰ During 2006 the Professional Legal Studies Course Accreditation Regulations 2002 were comprehensively reviewed, and the Professional Legal Studies Accreditation Regulations 2006 were promulgated.

¹¹ See now Professional Legal Studies Course Regulations 2004.

years. The licensing of a second provider added a significant new dimension to the Council's operations. Since then both providers have been relicensed twice, each time for three years.

In 2010 the Council approved changes to the IPLS full-time course. See section 18 on Institute of Professional Legal Studies.

Monitoring Exercise

In the first quarter of the year, the Council normally undertakes a monitoring exercise of both providers of the Professional Legal Studies Course in accordance with the provisions of the Professional Legal Studies Course Accreditation Regulations 2006.

The exercise involves receipt and consideration of detailed reports from both providers, and discussion and liaison with the provider organisations, and in some years a site visit. However, as 2008 was a re-accreditation year a monitoring exercise was not required in 2009.

Course Content and Delivery: Background

The Professional Legal Studies Course was reviewed in 2001. The reviewers noted that the face to face version taught by the Institute of Professional Legal Studies provided –¹²

a well-structured approach to skills development. Students are provided with sufficient opportunities to practise and improve their skills before assessment tasks are undertaken. The content of the relevant courses appears to be of a high quality and of immediate relevance to legal practice. Supporting instruction and resource materials are of good quality and well-presented.

However in order to further improve the course the reviewers suggested that the transactional base of the course, which the Review stated was relatively under-developed, should be increased.¹³

The Review noted that in many Australian institutions, while skills based training was a prevalent factor, transactionally based learning and the offering of substantive course options to trainees was also an important factor.¹⁴

The Review noted that a transactional approach would use –¹⁵

simulated cases or problems to teach skills and substance in an integrated fashion. This contrasts with a generic approach which focuses on the underlying skills common to a wide range of transactions with little reference to transactional context. Transactional approaches have become increasingly the norm in the common law world, having been adopted in all the jurisdictions of Australia, Hong Kong and the United Kingdom.

The Review noted that in respect of the Professional Legal Studies Course there were few common transactions used as a means to deliver the skills. This had the disadvantage that students were not experiencing a wide variety of common transactions, nor was there an

¹² CF Finlayson, R Hughes, J Webb *Report of the External Review Group Appointed by the Council of Legal Education to Conduct a Review of the Professional Legal Studies Course* (Wellington, 2002), paragraph 64.

¹³ Paragraph 67.

¹⁴ Paragraph 65.

¹⁵ Paragraph 67.

opportunity for the students to acquire practical knowledge of additional areas of specialisation which might be extremely valuable from an employment or interest perspective.¹⁶

The Review stressed that to develop an extensive transactional base would lengthen the course. It was noted that transactional courses run in England and Wales consisted of 34 to 36 weeks of full-time study. However some increase in the transactional base could be achieved within about 15 to 16 weeks of full-time study, or its equivalent.¹⁷

As a consequence the Review commented that the course should not involve less than the equivalent of 15 weeks of full-time study.¹⁸ However a key recommendation of the Review was that the course should involve distance learning for large sections of the course, and possibly teaching the course intensively in weekend or evening sessions. This was felt to be desirable not only because of the educational benefits of distance learning, but because it enabled a reduction in the amount of time which new graduates spent away from their places of employment.

The Report concluded that a course could be structured thus –¹⁹

- (a) Compulsory full time attendance at the IPLS for the existing skills based training could take 8-9 weeks. There is an argument to be made for extending the hours that students attend the course from the present 9.00 a.m. to 3.00 p.m. to 8.30 a.m. to 5.30 p.m (ie., a normal working day).
- (b) Thereafter the students would return to their places of employment (if they had them) but would be required to attend weekend intensive sessions or lectures in the evening on transactional subjects. Such lectures could take place over a seven or eight week period, or even longer if necessary.
- (c) Aspects of the transactional curriculum could also be covered by distance learning ...

During 2002 the Council authorised the Institute to investigate the viability of provision of a part-distance course and considerable work was undertaken by the Institute to develop a prototype for a part distance course. Several refinements were undertaken during 2002 and 2003 and the part distance course was offered from January 2004, in addition to the 13 week full time, face to face course. Since that time the distance course has been substantially developed. As noted earlier, the Council also licensed the College of Law (New Zealand) to provide a distance taught course. This course has operated in New Zealand since 1 January 2004.

18. THE WORK OF THE INSTITUTE OF PROFESSIONAL LEGAL STUDIES IN 2010

The Institute of Professional Legal Studies is a committee of the New Zealand Council of Legal Education. It has financial and reporting responsibilities as a section of the Council's activities. It is maintained as a separate cost and activity centre within the Council's operations.

¹⁶ Paragraph 68.

¹⁷ Paragraph 70.

¹⁸ Paragraph 81.

¹⁹ Paragraph 82.

National Director of the Institute

The National Director of the Institute is Ms Bernadette Wilson.

Work of the Institute

The Institute, as part of the New Zealand Council of Legal Education, offers the Professional Legal Studies Course in Auckland, Hamilton, Wellington, Christchurch and Dunedin. During 2010, the Institute provided a thirteen week full-time course, and a nineteen week part-distance taught course. The Professional Legal Studies course is taken after completion of the LLB degree and is a prerequisite for admission to practise as a barrister and solicitor.

The content of the course is designed to comply with Regulation 3(2)(b) and the Second Schedule of the Professional Examinations in Law Regulations 2008. The Second Schedule lists Professional Conduct and eleven skills. As the Schedule requires, these skills are taught in the context of specific legal transactions that are commonly undertaken by newly admitted lawyers.

To achieve a high level of class interaction classes in the fulltime course are taught in groups of 16-18 trainees. When the part distance trainees attend onsite, they are taught in groups of 8 to a maximum of 12. Electronic access to statistics and some legal databases are provided to the trainees along with access to electronic libraries.

During 2003 the Institute sought and obtained accreditation from the Council to provide the course during 2004 and 2005. This accreditation covered an improved full-time course that lasted for 13 weeks. In addition, the Institute was accredited to provide a part distance course of 19 weeks in length.

These two courses were in every other way identical. The content was exactly the same and both courses had 490.25 'individual learning hours'.

After this accreditation, the Institute obtained independent quality assurance for the two courses from the Vice Chancellors' Committee, the Committee of University Academic Programmes (CUAP). In 2010 the responsibility for quality assurance was in the process of being shifted to the New Zealand Qualifications Authority (NZQA).

During 2010 the Institute has delivered and continued to develop these two courses. In December 2010 the Institute introduced changes to its 13 week fulltime onsite course. Instead of being 13 weeks fully onsite, the course was changed to 2 fulltime blocks of 3 weeks each and 7 weeks of online work. The 3 week blocks were changed so that trainees working in these blocks worked on client files as they progressed through the various seminars. This was a change from trainees working on isolated tasks in a seminar. The hours of attendance were increased each day and additional work was added to the onsite component.

Student Enrolments and Breakdown by Gender and Ethnic Origin

Student enrolments for the last six years have been as follows:

	2004	2005	2006	2007	2008	2009	2010
Auckland							
Onsite	134	122	88	96	64	61	45
Online	44	25	43	97	90	76	65
Total	178	147	131	193	154	137	110
Hamilton							
Onsite	56	64	35	20	13	20	20
Online	0	7	16	58	39	51	33
Total	56	71	51	78	52	71	53
Wellington							
Onsite	139	135	116	93	58	48	47
Online	40	24	37	95	72	53	58
Total	179	159	153	188	130	101	105
Christchurch							
Onsite	52	41	46	53	33	35	37
Online	7	14	20	56	38	36	43
Total	59	55	66	109	71	71	80
Dunedin							
Onsite	43	34	50	20	18	15	14
Online	0	1	3	25	26	24	14
Total	43	35	53	45	44	39	28
Onsite Total	424	396	335	282	186	179	163
Online Total	91	71	119	331	265	240	213
Total	515	467	454	613	451	419	376

			2009		2010
Gender	<i>Male</i>	135	32.4%	126	33.5%
	<i>Female</i>	282	67.6%	250	66.5%
		417	100.0%	376	100%
Age					
	<i>20's</i>	327	78.4%	293	77.9%
	<i>30's</i>	57	13.7%	49	13.0%
	<i>40's</i>	20	4.8%	21	5.6%
	<i>50's</i>	11	2.6%	11	2.9%
	<i>60's +</i>	2	0.5%	2	0.5%
		417	100.0%	376	100%
Disability	<i>Disability Identified</i>	5	1.2%	3	0.79
	<i>No disability</i>	412	98.8%	373	99.2%
		417	100.0%	376	100%
Ethnicity	<i>Asian</i>	74	17.7%	59	15.7%
	<i>European</i>	260	62.4%	250	66.5%
	<i>Maori</i>	48	11.5%	31	8.2%
	<i>Middle Eastern/Latin American/African</i>	2	0.5%	-	-
	<i>Not elsewhere included</i>	5	1.2%	13	3.5%
	<i>Other Ethnicity</i>	8	1.9%	10	2.7%
	<i>Pacific Peoples</i>	20	4.8%	13	3.5%
		417	100.0%	376	100%

Quality of the Course

Over the reporting period, as in previous years, employees of the Institute have continued with their efforts to maintain and improve the overall quality of the course. The extensive student evaluations of the course, initiated in 1990 and conducted, collated and analysed annually, reflect the steady improvement over the years. The approval rating for 2010 was 82% in respect of the Legal Practice skills module for the full-time course. For the full-time Litigation module it was 84%. For the online course the approval rating for the Legal Practice course was 86% and 82% for the Litigation course. The onsite components of the online course had approval ratings of 86% for legal practice and 90 % for litigation. Those evaluations will assist in further development of the quality of the course.

Quality of Instruction

The Institute was fortunate to retain a core of experienced staff. The approval rating for 2010 staff averaged out at 90% for full-time instructors with a 95% approval rating for teaching effectiveness. On the online course, the approval rating for 2010 online staff averaged out to 92% with a 95% approval rating and teaching effectiveness.

Liaison with the Profession

Liaison is maintained by ensuring that:

- members of the profession take part in sessions on the course;
- members of the profession meet with Institute staff who have responsibilities for the development of course seminars; and
- members of the profession assist with reviewing course materials to ensure that the materials remain both correct in law and relevant for those entering the profession.

Funding and Accommodation of the Institute

On 1 January 1995, the Ministry of Education stopped providing equivalent fulltime student funding (EFTS) to the Institute. The Minister of Education of the day gave an undertaking that access to the government student loans scheme would be preserved. That access was preserved, and in 2001 the Minister recognised the Institute as an Other Training Provider, under section 321 of the Education Act 1989. As a result the Institute was funded on an EFTS basis for 2001 to 2010. The Ministry required that the Institute obtain independent quality assurance if it was to continue to receive Ministry funding and access to student loans and allowances. Accordingly in 2001 the Council obtained independent quality assurance for the course from the New Zealand Vice-Chancellors' Committee, the Committee on University Academic Programmes (CUAP). However, during 2010 the quality assurance was in the process of being shifted to the New Zealand Qualifications Authority (NZQA).

The student fee for 2010 was \$3,250 plus GST for NZ residents and was \$6000 plus GST for international students.

All accounting systems related to the Institute were centralised within the Institute in January 2005.

The Institute teaches at the following centres:

Auckland:	Level 6, 110 Symonds Street, Auckland
Hamilton:	Hillcrest Road, Hamilton (Law school at Waikato University)
Wellington	Level 6, 204-206 Thorndon Quay, Wellington
Christchurch	Level 3, 137 Hereford Street, Christchurch
Dunedin:	Level 1, Radio House, Stuart Street, Dunedin

Equal Employment Opportunities Policy

The Council has created an equal employment opportunities (“EEO”) policy and programme. (See section 19.) This programme extends to the Institute. In 2008, the Institute set up new contracts of employment that allowed more flexibility for instructors. Instructors opting for a casual contract can work at a distance and are paid on a trainee head count. This enables Instructors who wish to have more of a work life balance to work hours more suitable to their needs. This has enabled instructors who are also primary caregivers with children to work around their child care needs. As trainees working online often work in the evenings and the weekends, this has enabled those Instructors to enjoy other aspects of their life. This has enhanced their commitment to the trainees in their particular class.

Additionally the flexible contracts have given the Institute opportunity to employ instructors who are in practice on a part time basis. This has widened the pool of available instructors.

The Institute employed one new casual instructor in 2010. The Institute states in all of its advertisements that it is an equal employment opportunities employer.

There were no outstanding EEO related issues in 2010.

19. EQUAL EMPLOYMENT OPPORTUNITIES POLICY AND PROGRAMME

In 2005 the Council amended its EEO Policy to accord with current best practice. The Council used as guidance the States Services Commission ‘Public Services Commitment to EEO to 2010’ policy.

A copy of the Policy is reproduced below.

CLE Policy on Equal Employment Opportunities

1. The Council of Legal Education endorses the principles and practice of Equal Employment Opportunities (EEO) and is committed to ensuring equality of opportunity for all potential and current employees, focusing on merit.

2. In accordance with legislation and EEO principles, the Council recruits, promotes and evaluates all employees without unfair discrimination, (including but not limited to discrimination on grounds of sex, marital status, religious or ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status, sexual orientation) save where any such characteristic is relevant to the qualifications for a particular employment position and is lawful discrimination.
3. The Council is committed, through this Policy, to recognising the aims and aspirations of Maori and the need for greater involvement of Maori as employees of the Council.
4. This Policy will apply to all aspects of employee relations, policies, procedures and practices. The Council's human resource policies, practices and procedures will seek to identify and eliminate any direct, indirect, or institutional, discriminatory barriers to the ability of individual employees to be recognised, rewarded, advanced or supported on their merits.
5. This Policy is a dynamic document and all policies, procedures and practices of the Council, and this Policy itself, will be regularly reviewed to ensure continuing compliance with best EEO employment practice.
6. Consultation and participation are good employment practice and the Council will ensure that employees are consulted in the ongoing development and implementation of this Policy and the Council's EEO Programme.

The policy and EEO programme were adhered to in 2010, with no outstanding issues.

20. REPORTING REQUIREMENTS

In 2010 the Council met its on-going financial requirements and under the Crown Entities Act 2004 as if it was a Crown entity by having its financial statements, including performance measures, audited by Audit New Zealand, Wellington, on behalf of the Controller and Auditor General, and by submitting its nineteenth report to the Minister of Justice in respect of the approved reporting period of 1 January 2009 to 31 December 2009.

21. GOVERNING LEGISLATION

The Council's governing legislation is the Lawyers and Conveyancers Act 2006 (Part 8), and the Council operates under the following Council Regulations –

- the Professional Examinations in Law Regulations 2008;
- the Conduct of the New Zealand Law and Practice Examination Regulations 1996;
- the Professional Legal Studies Course Accreditation Regulations 2006;
- the Professional Legal Studies Course Assessment and Standards Regulations 2002;
- the Professional Legal Studies Course Regulations 2004;
- the Trans-Tasman Mutual Recognition Regulations 2008.

The first set of Regulations update the earlier Professional Examinations in Law Regulations 1987, to take account of the Council's expanded role under the Lawyers and Conveyancers Act 2006.

The last set of Regulations were passed to give effect to the Council's role under the 2006 Act in relation to recognition of qualifications for the purposes of the principles set out in section 15 of the Trans-Tasman Mutual Recognition Act 1996.

22. FUNDING

The Council has continued to maintain as largely self-funding activities its functions in relation to the New Zealand Law and Practice Examination, and to the assessment of applications from law graduates and practitioners for academic and practical legal training qualifications and professional experience gained overseas. Funding was also received pursuant to the statutory levy imposed on practitioners under the Lawyers and Conveyancers Act 2006.

23. COUNCIL COMMITTEES

The following Committees operated during this year –

EXECUTIVE COMMITTEE

The Chairman of the Council (Chair)
The Honourable Justice Asher
His Honour Judge Osborne
Professor M Henaghan
The Chief Executive

Key Role

To deal with Council and Institute business arising between Council meetings, or which does not require referral to the full Council.

CREDITS COMMITTEE

The Right Honourable Justice Tipping (Chair)
The Chairman of the Council
Professor Angelo (Victoria University of Wellington)
His Honour Judge Osborne
The Chief Executive

Key Role

To review recommendations relating to applications for assessment, and to advise on matters relating to foreign qualifications.

ACCREDITATION COMMITTEE

The Chairman of the Council (Chair)

His Honour Judge Osborne

The Chief Executive

Key Role

To examine and assess applications received from potential providers of the Professional Legal Studies Course, and to provide recommendations on the applications to the Council.