The Immigration and Protection Tribunal: Its First Ten Years

By Judge Peter Spiller*

On 29 November 2020, the New Zealand Immigration and Protection Tribunal (the Tribunal) celebrated its 10th anniversary.[1] The Tribunal is a specialist appellate body that hears appeals and applications from decisions of Immigration New Zealand and the Refugee Status Unit (agencies within the Ministry of Business, Innovation and Employment (MBIE)).[2] The appeals relate, variously, to people whose applications for residence have been declined, who have become liable for deportation, or whose claims to refugee and protected person status have been declined. The overall purpose of the Tribunal's governing legislation is to manage immigration in a way that balances the national interest, as determined by the Crown, and the rights of individuals.[3]

This article reflects on the genesis of the Tribunal and its work during the 10 years of its existence.

I. Background to the Establishment of the Tribunal

The Tribunal was preceded by four separate tribunals. The oldest of these was the Deportation Review Tribunal (DRT), established in 1978.[4] The Minister of Immigration had the discretion to deport persons who were not New Zealand citizens, and who were convicted of a certain criminal offence within a certain period of time.[5] The DRT was set up to hear and decide appeals from such persons who were ordered to leave.[6] There was seen to be the need for a forum for those whose residence status was in jeopardy, to "argue the balance of public interest as against their personal and private need".[7]

In 1991, two further tribunals were established by statute, reflecting the widely accepted view that government powers in immigration matters should not be exercised arbitrarily or unfairly.[8] The

* Chair, Immigration and Protection Tribunal; District Court Judge; Honorary Professor of Law, University of Waikato.

1 The Tribunal came into existence on 29 November 2010 (see Immigration Act 2009 Commencement Order 2010 (SR 2010/185)).

2 Prior to June 2019, the Refugee Status Unit (RSU) was known as the Refugee Status Branch (RSB).

3 Immigration Act 2009, s 3(1).

4 Immigration Amendment Act 1978, s 22B.

5 Immigration Act 1964, s 10.

6 Immigration Amendment Act 1978, ss 21(1) and 22C. The enabling Bill was introduced by the Hon Frank Gill ((4 July 1978) 418 NZPD 1408).

7 (4 July 1978) 418 NZPD 1411, per David Lange. The introduction of appeal to the DRT was seen to be "a further act of common sense and humanitarism [sic] by the Government, which has been solving very many thorny immigration problems" ((5 July 1978) 418 NZPD 1571, per Anthony Malcolm). The jurisdiction of the DRT was later extended to include humanitarian appeals against the revocation of permits (Immigration Act 1987, section 22(1)).

8 (3 July 1991) 516 NZPD 610, per Hon William Birch.

Residence Appeal Authority ((RAA), renamed, in 2003, the Residence Review Board (RRB)) was established to decide appeals from persons whose applications for New Zealand residence visas or permits had been declined.[9] There was now a greater emphasis on residence permits being based on detailed immigration policy requirements rather than on preferences for people from specific countries.[10] It was noted that appeals against the refusal of residence were currently occupying an excessive amount of ministerial time, and that the new Authority would conduct an independent review of residence appeals without input from the immigration service.[11] The Removal Review Authority (RRA) was created to decide appeals from persons (sometimes called "overstayers") on whom removal orders had been served for being unlawfully in New Zealand.[12] There had hitherto been an appeal by such persons to the Minister of Immigration on humanitarian grounds, and this jurisdiction was now transferred to the RRA.[13] The RRA was intended to be part of a new streamlined process designed to obviate the substantial delays occurring in the existing process.[14]

From the 1970s, refugee claims had been investigated by an interdepartmental committee of the Ministries of Foreign Affairs and Immigration, and its recommendations had then been decided upon by the two Ministers concerned.[15] The 1980s saw a significant increase in refugee claims, and the evident limitations in the existing system pointed to the need for an impartial and independent tribunal.[16] In 1991, the Refugee Status Appeal Authority (RSAA) was established, not by statute, but under terms of reference issued by the New Zealand Government.[17] Subsequently, the Court of Appeal twice expressed reservations as to the appropriateness of refugee procedures being extra-statutory.[18] In 1999, the RSAA was given a statutory basis, to ensure that New Zealand

9 Immigration Amendment Act 1991, s 9; and Immigration Amendment Act (No 2) 2003, s 12. The replacement of the RAA with the RRB came with new procedures for residence decisions and the removal of rights of appeal or review where a person was not invited to apply for residence ((28 August 2003) 611 NZPD 8200).

10 D Tennent *Immigration and Refugee Law* (2nd ed, Lexis Nexis, Wellington, 2014) at 12.

11 (3 July 1991) 516 NZPD 610, per Hon William Birch.

12 Immigration Amendment Act 1991, s 31. See *Kumar v Minister of Immigration* HC Auckland M1324/93, 7 September 1993.

13 Immigration Act 1987, s 63.

14 (3 July 1991) 516 NZPD 610-611, per Hon William Birch (current "legal avenues can permit a person who is unlawfully here to remain in this country for extended periods with concomitant costs to the country in servicing those persons").

15 R Haines *An Overview of Refugee Law in New Zealand: Background and Current Issues* (International Association of Refugee Law Judges, 10 March 2000); and B Burson "Give Way to the Right: The Evolving Use of Human Rights in New Zealand Refugee Status Determination" in B Burson and D Cantor *Human Rights and the Refugee Definition* (2016) 26.

16 See the judgment of the High Court in *Minister of Foreign Affairs v Benipal* HC Auckland A878/83, 29 November 1985 per Chilwell J.

17 The initial terms of reference, to deal with applications for refugee status, were approved on 17 December 1990 (Haines, above n 15).

18 *Butler v Attorney-General* [1999] NZAR 205 (CA) at 218–220 ("if there is good reason for the other immigration tribunals to be established by legislation there is at least equal reason in the case of the Authority"); and *S v Refugee Status Appeals Authority* [1998] 2 NZLR 291 at 294 ("again draw attention to the desirability of legislative attention to this matter – its importance should not be overlooked").

properly met its obligations under the 1951 Refugee Convention.[19] The RSAA determined appeals from persons whose claims to refugee status had been declined, or whose refugee status had been cancelled because it had been obtained by fraud or the like.[20]

In late 2004, there commenced a review of the Immigration Act 1987.[21] The review was concluded five years later with broad parliamentary support. The resulting Immigration Act 2009 replaced the four preceding tribunals with the single Tribunal, administered by the Ministry of Justice.[22] This new jurisdiction was meant to streamline and simplify New Zealand's immigration and refugee processes,[23] and to prevent people with no right to remain in New Zealand from delaying their departure through multiple, sequential appeals to different appellate bodies.[24] Whereas three of the preceding tribunals had been administered by the Department of Labour, the Ministry of Justice was made responsible for the administration of the new Tribunal. This arrangement was designed to eliminate any perception of a conflict of interest, which had been a concern in the previous structural arrangement.[25]

II. Composition of the Tribunal

A. The Chair of the Tribunal

The Tribunal is headed by a chair, being a District Court Judge.[26] A key reason for the requirement that the chair be a District Court Judge was so that proceedings before the Tribunal that involve classified information would be heard by one or more District Court Judges.[27] There has not, as yet, been any matter before the Tribunal involving classified information.

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19 Immigration Amendment Act 1999, s 40. See (29 September 1998) 572 NZPD 740–741, per Hon Tuariki Delamere ("the provision of a statutory basis for refugee status determination and appeal bodies will also clarify the interface between the Immigration Act, the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees to which New Zealand is a signatory. In particular, the obligation not to remove or deport a refugee will be clearly spelt out"); and (18 March 1999) 575 NZPD 845, per Hon Max Bradford ("The substantial thrust of this legislation was really to try to regularise the situation in respect of refugee claimants, and to manage the risk in this area much more successfully, but without removing the inherent humanitarian rights of genuine refugees who have every right to claim refugee status in New Zealand under our commitments to the United Nations High Commissioner for Refugees").

20 Immigration Amendment Act 1999, s 40.

21 (29 October 2009) 658 NZPD 7638, per Hon Nathan Guy.

22 Immigration Act 2009, s 218(1), and sch 2, cl 5. The third reading of the Act passed by 108 votes (National, Labour, Act, Progressive and United Future parties) to 12 (Green and Maori parties).

23 "Administrative efficiencies are made by joining the various appellate bodies into one" ((22 September 2009) 657 NZPD 6747, per Hon David Cunliffe).

24 (16 August 2007) 641 NZPD 11231, and (29 October 2009) 658 NZPD 7638.

25 The RRA, RRB and RSAA had been administered by the Department of Labour, and the DRT had been administered by the Department for Courts (later, the Ministry of Justice). See the Immigration Act 1987, sch 3 cls 1–2; sch 3A cl 3; sch 3B cl 3; and sch 3C cl 5.

26 Immigration Act 2009, s 219(1)(a). The chair is appointed by the Governor-General on the advice of the Attorney-General, after consultation with the Minister of Justice and the Minister of Immigration (s 219(2)).

27 Section 240(1). Classified information includes, for example, information which, if disclosed, would be likely to endanger the safety of any person (section 7).

The chair has a responsibility to decide appeals.[28] In this way, the chair can remain in touch with the core functions of the Tribunal, and help address the fluctuating inflow of appeals into the Tribunal. The chair also has a supervisory and pastoral role in relation to members,[29] and administrative functions in relation to the practice and procedure of the Tribunal.[30] The chair aims to set high work standards for the members of the Tribunal, create a supportive work environment, and promote good relations with the Ministry staff who service the Tribunal. The chair conducts bi-annual performance review meetings with members, chairs monthly meetings, participates in annual training of members, and helps to ensure adequate reference materials and other resources for members.[31]

The inaugural chair of the Tribunal was Judge Bill Hastings, who served from July 2010 to February 2013. Appropriately, he was himself an immigrant, having come to New Zealand in 1985 from Canada. He lectured in law at Victoria University and served on tribunals, notably as Chief Censor for nearly 11 years, before being appointed as District Court Judge and the Tribunal's first chair.

Judge Hastings was succeeded as chair by Judge Carrie Wainwright, who served from April 2013 to May 2014. She came to the Tribunal having practised at the bar, been appointed to the Maori Land Court bench in 2000, served on the Waitangi Tribunal for 10 years (including six years as the deputy chair), and sat on the District Court bench from 2010.

Since August 2014, the chair of the Tribunal has been Judge Peter Spiller. He, like Judge Hastings, was an immigrant, having come from South Africa in 1988. Before his appointment as Chair, he taught at Law Schools at the Universities of Natal, Canterbury and Waikato, served as Principal Disputes Referee (2005–2010), and then worked as a District Court Judge in the criminal and civil jurisdictions (from 2009).

B. Deputy Chairs of the Tribunal

There is provision for the Minister of Justice to designate one or more members of the Tribunal as deputy chairs.[32] If the chair of the Tribunal is unable to act as chair by reason of illness, absence from New Zealand, or other sufficient cause, a deputy chair may act as chair.[33]

There were initially four deputy chairs of the Tribunal, as a transitional measure reflecting the four streams of work inherited by the Tribunal. The deputy chairs were Martin Treadwell, David Plunkett (until June 2011), Allan Mackey (until September 2011) and Melissa Poole (until

28 Section 220(1).

29 This role includes making practicable arrangements to ensure that the Tribunal members discharge their functions in an orderly and expeditious manner and in a way that meets the purposes of the Act; directing the education, training, and professional development of members of the Tribunal; and dealing with complaints made about members of the Tribunal (s 220(1)).

30 The chair has authority to issue practice notes for the purposes of regulating the practice and procedure of the Tribunal; develop a code of conduct for members of the Tribunal; and require particular members of the Tribunal to determine particular appeals (s 220(2)).

31 Tribunal members have access to Practice Notes, Procedures Manuals, a Code of Conduct, the website of Tribunal decisions and other resources.

32 Immigration Act 2009, sch 2 cl 3.

33 This role is subject to, in the case of proceedings involving classified information, the deputy chair being a District Court Judge.

September 2014).[34] Deputy chairs have not been appointed to replace those who have left the Tribunal, and therefore, since September 2014, Martin Treadwell has functioned as the sole Deputy Chair.[35] The presence of a single Deputy Chair has worked well, given the size of the Tribunal, and the increasing tendency for members to work across several streams of work.

C. Tribunal Members

The Tribunal also comprises members who are lawyers who have held a practising certificate for at least five years or have other equivalent or appropriate experience.[36] Members hold office either full-time or part-time, for a period up to five years, and may be reappointed.[37]

At the establishment of the Tribunal in 2010, 17 members (including the four Deputy Chairs) were appointed to serve with the Chair.[38] Of those members, 13 had served in one or more of the predecessor immigration and refugee tribunals. As the workload of the Tribunal increased, or sitting members reduced their time commitment to the Tribunal, new members were appointed.[39] There are currently nine full-time members and 13 part-time members of the Tribunal. A notable feature of the composition of the Tribunal has been its stability. Of the original 17 appointees, 12 still continue to serve in the Tribunal, with departures being the exception and reappointments being the norm.

A notable feature of the Tribunal's membership has been that the work of members has come to be respected in New Zealand and, particularly in the refugee sphere, overseas. Members of the Tribunal have been asked to serve on and contribute to international refugee bodies and to assist in the development of protection systems in other countries.[40] Members have been invited as delegates to a number of UNHCR Expert Roundtables on various protection issues, and have been responsible for organising and/or speaking at significant international conferences and workshops,

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34 David Plunkett resigned to take up appointment as Chair of the Legal Aid Tribunal; Allan Mackey retired from full-time work; and Melissa Poole resigned to take up appointment as Principal Tenancy Adjudicator.

35 Martin Treadwell had, prior to his appointment as deputy-chair, been a member of all four of the predecessor bodies.

36 Immigration Act 2009, s 219(1)(b). The members are appointed by the Governor-General on the recommendation of the Minister of Justice made in consultation with the Minister of Immigration (s 219(3)).

37 Schedule 2 cl 1(1)–(2). A person cannot be appointed as a member if he or she is (or has been in the previous five years) an immigration officer or a refugee and protection officer (s 219(4)). There is also provision for a representative of the United Nations High Commissioner for Refugees (UNHCR) to serve as an ex officio member in relation to matters relating to refugees, and for a District Court Judge seconded to the Tribunal to exercise the jurisdiction of the Tribunal in relation to proceedings involving classified information (s 219(1)(c)–(d)). However, these provisions have not as yet been used.

38 The new members were: Sharelle Aitchison, Bruce Burson, Annabel Clayton, Bridget Dingle, Jeanne Donald, Peter Fuiava, Denese Henare, Allan Mackey, Andrew Molloy, Louise Moor, Sharon Pearson, David Plunkett, Melissa Poole, Virginia Shaw, Graham Taylor, Martin Treadwell and Veronique Vervoort.

39 In 2011, Matthew Martin was appointed to replace David Plunkett; in 2012, Zoe Pearson was appointed to replace Alan Mackey and Larissa Wakim was appointed to a new position; in 2013, Moana Avia was appointed to replace Graham Taylor; in 2015, Debra Smallholme was appointed to replace Melissa Poole and Aaron Davidson was appointed to cover the reduction in time of another member; in 2016, Martha Roche was appointed to a new position; and, in 2018, Stewart Benson and Tracy Cook were appointed to new positions, and Mark Benvie was appointed to cover the reduction in time of another member.

40 The current Deputy Chair, Martin Treadwell, is secretary of the International Association of Refugee and Migration Judges (IARMJ) and President of the Asia Pacific Chapter of the IARMJ. He and Bridget Dingle have led training in numerous jurisdictions, including Korea, Japan, the Philippines, Taiwan, Vanuatu, Australia and Hong Kong.

both in New Zealand and abroad.[41] Decisions of the Tribunal (particularly in the refugee sphere) have come to be cited by overseas courts and tribunals as authority.[42] The Tribunal's refugee jurisprudence has been instrumental in shaping refugee protection in the work of the UNHCR, for example, in relation to Palestinian refugees and in the context of disasters and climate change.[43]

D. Tribunal Administration

The Tribunal's headquarters are in the Tribunals' office of the Ministry of Justice in Auckland, and there is also a branch in the Tribunals' office in Wellington.

The administration of the Ministry of Justice has undergone restructuring, but the essential features of administration have remained intact, and expertise has developed as the Tribunal has evolved.[44] The Tribunal is currently administered by a Manager Justice Services (Tribunals), a Service Manager, and 20 other personnel including Support Officers, Case Managers, and Legal Research Advisors.[45] The administration team provides active case management of all appeals, prepares all appeal files, corresponds with interested parties, and attends to legal research, proof reading, dispatch and publication of decisions.

The Tribunal interacts with MBIE primarily through the Immigration and Protection Tribunal Liaison Team (IPTLT). This team was established within MBIE to ensure a separation of function and role between the original decision-maker at MBIE (both Immigration New Zealand and the Refugee Status Branch) and the Tribunal. The IPTLT transfers information to the Tribunal, including case files for all appellants, and contact with the IPTLT is made exclusively via the Tribunal administration team.

The Tribunal has developed a website which provides information about the Tribunal and its processes, and includes a searchable database of published Tribunal decisions.[46] The database provides important assistance and guidance to appellants, counsel, representatives and other users of the Tribunal.[47] However, refugee and protection decisions must (for confidentiality reasons) be edited so as to remove the name and any particulars likely to lead to the identification of the appellant or those affected; and the Tribunal exercises its discretion to depersonalise all residence decisions, as well as those deportation decisions necessitating this process (for example, to protect

41 These include the 2016 IARMJ Asia Pacific conference in Seoul, the 2018 IARMJ Asia Pacific conference in Parliament Buildings, Wellington, and the 2019 IARMJ Regional Workshop on credibility in Melbourne.

42 On 24 October 2019, the United Nations Human Rights Committee upheld Bruce Burson's decisions in *AF (Kiribati)* [2013] NZIPT 800413 and *AC (Tuvalu)* [2014] NZIPT 800517-520, accepting that disaster and climate can in principle raise protection issues.

43 UNHCR *Guidelines on International Protection No. 13: Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees* HCR/GIP/17/13, December 2017; and UNHCR *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters* 1 October 2020.

44 The administrative requirements for the Tribunal were determined during its implementation phase and were based on the extensive experience of the legacy bodies and the forecasting that the then Department of Labour was able to provide. The overall number of people supporting the Tribunal remains the same as was determined initially, although some roles and titles now differ.

45 The current Manager Justice Services (Tribunals) is Jessie Henderson, and the current Service Manager is Minja Pesic, both of whom are long-serving staff members.

46 <www.justice.govt.nz/tribunals/immigration/immigration-and-protection>.

47 While the Tribunal's decisions have important persuasive force, the Tribunal may, if required, depart from previous decisions (see *JO (Skilled Migrant)* [2016] NZIPT 202934).

victims of offending).[48] The Tribunal also has the discretion to prohibit the publication of any evidence received by it, or any report or description of the proceedings or of any part of the proceedings.[49] The Tribunal exercises this discretion where publication is likely to identify the appellant or person concerned (in relation to a sensitive or highly personal issue) or endanger the safety of the appellant or others.[50]

III. Jurisdiction of the Tribunal

In line with the jurisdictions of the tribunals which were replaced, the Tribunal hears appeals in four streams of work.[51] In two of the Tribunal's streams, namely, residence and deportation non-resident, jurisdiction is exercised on the papers.[52] In the other two streams, namely, deportation-resident and refugee and protection, the Tribunal's exercise of jurisdiction involves hearings.[53]

A. Residence Appeals

The Tribunal has jurisdiction to determine appeals against decisions of Immigration New Zealand to decline to grant residence class visas.[54] Residence appeals have comprised 50.8 per cent of the total workload of the Tribunal to date. Appeals have included those under the Skilled Migrant, Family, Business and other categories of residence instructions. During most of the Tribunal's history, residence appeals have constituted the largest work stream for the Tribunal. However, in the last two years, changes in immigration instructions and Immigration New Zealand's work priorities have resulted in a significant reduction in residence appeals.

The Tribunal has allowed nearly 34 per cent of residence appeals. Where the Tribunal has done so, the most common decision has been to cancel Immigration New Zealand's decision as being incorrect, and refer the matter back, with directions, to Immigration New Zealand for a correct assessment.[55] Less commonly, the Tribunal has noted the correctness of Immigration New Zealand's decision at the time it was made, but has, in light of additional information, cancelled the decision and referred the matter back to Immigration New Zealand.[56] On very rare occasions, the Tribunal has itself reversed the decision of Immigration New Zealand as being incorrect or because of additional information properly provided to the Tribunal.[57]

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48 Immigration Act 2009, sch 2 cl 19(2)–(4). See *BR (Samoa)* [2020] NZIPT 600644.

49 Schedule 2, clause 18(4).

50 Section 151(1). See *HI (Fiji)* [2020] NZIPT 801758.

51 The figures reflected below are for the period from 1 December 2010 to 30 June 2020 (the end of the 2019/20 court year).

52 Immigration Act 2009, s 234(2). There is a discretion for the Tribunal to offer a hearing in deportation non-resident appeals (s 233(2)), but this discretion is very rarely exercised (see *AE (Japan)* [2013] NZIPT 501382).

53 Sections 233(1) and 233(3). There are exceptional circumstances where a refugee hearing does not have to be held, as for, example, where the Tribunal considers that the appeal is *prima facie* manifestly unfounded or clearly abusive (s 233(3)).

54 Sections 217(2)(a)(i) and 187(1)(a)(i).

55 Section 188(1)(e). This occurs where the Tribunal is not satisfied that the appellant would, but for the incorrect assessment, have been entitled in terms of residence instructions to the visa or entry permission. See *MJ (Skilled Migrant)* [2020] NZIPT 205733.

56 Section 188((1)(d). See *FJ (Partnership)* [2020] NZIPT 205725.

57 Section 188(1)(b). See *BM (Partnership)* [2019] NZIPT205419.

In 53 per cent of residence appeals, the Tribunal has confirmed, without qualification, the decisions of Immigration New Zealand as correct.[58] In a further 13 per cent of appeals, the Tribunal has confirmed Immigration New Zealand's decision as having been correct, but recommended that the special circumstances of the appellant were such as to warrant consideration by the Minister of Immigration as an exception to residence instructions.[59] Recommendations have generally been considered by the Associate Minister of Immigration. In over 91 per cent of the recommendations considered to date, residence has been granted as an exception to instructions.

Residence appeals involve the careful scrutiny of applicable immigration instructions governing the grant of residence.[60] A range of issues arise in residence appeals regarding correctness: these include character, health, English language ability, identity, adoption and other children's issues, the genuineness and stability of partnerships, the use of DNA testing, whether employment is skilled, and whether a person's business was different from his business proposal.[61] The Tribunal tries to ensure that principles of natural justice have been adhered to, and that Immigration New Zealand's decisions have been made in accordance with residence instructions.[62] Through its interpretation of instructions, the Tribunal provides guidance to Immigration New Zealand, counsel and representatives, and the broader public.[63]

Where appeals involve potential referral to the (Associate) Minister for the grant of residence as an exception to instructions, the Tribunal assesses whether the personal circumstances of the appellant and his or her family are uncommon or out of the ordinary.[64] For example, a matter was successfully referred to the (Associate) Minister where the appellant was permanently disqualified from obtaining residence on the basis of her relationship with her New Zealand-resident partner, and where she would remain the only member of her nuclear family without residence status (including her autistic son who required her ongoing care and support).[65]

B. Deportation Non-resident Appeals

The Tribunal has jurisdiction to determine appeals against liability for deportation.[66] Deportation non-resident appeals have comprised 29.9 per cent of the total workload of the Tribunal. Such appeals have been brought by persons who: were unlawfully in New Zealand; were temporary visa holders and Immigration New Zealand determined that there was sufficient reason to serve them with a deportation liability notice; or had claimed refugee or protected person status.[67]

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58 Section 188(1)(a). See *IO (Dependent Child)* [2020] NZIPT 205760.

59 Section 188(1)(f). See *FT (Partnership)* [2020] NZIPT 205770. The (Associate) Minister need not give reasons for the decision and is not bound to look beyond the Tribunal's decision which made the recommendation.

60 The immigration instructions can be found in the Immigration New Zealand (INZ) Operational Manual (see www.immigration.govt.nz/opsmanual).

61 See, for example, *HD (Skilled Migrant)* [2015] NZIPT 202764; *IL (Dependent Child)* [2020] NZIPT 205529; and *EX Entrepreneur Residence Visa)* [2020] NZIPT 205768.

62 See, for example, *KW (Parent)* [2016] NZIPT 203089.

63 See, for example, *AG (Migrant Investor)* 2014] NZIPT201938; *LF (Skilled Migrant)* [2014] NZIPT202205; and *FY (Dependent Child)* [2017] NZIPT203960-961.

64 *Rajan v Minister of Immigration* [2004] NZAR 615 (CA) at [24].

65 *ZH (Partnership)* [2019] NZIPT 205268.

66 Immigration Act 2009, s 217(2)(a)(v).

67 Sections 154(1), 157(1) and 194(5).

The sole statutory grounds of appeal in deportation non-resident cases are that there are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the appellant to be deported from New Zealand; and it would not in all the circumstances be contrary to the public interest to allow the appellant to remain in New Zealand.[68] The Tribunal may not properly consider the merits of Immigration New Zealand's decision.[69]

The Tribunal has, in view of the high threshold, allowed only 31 per cent of appeals in deportation non-resident cases. Having done so, the Tribunal is able to order the grant of either a resident visa or a temporary visa for a period not exceeding 12 months.[70] The former visa has been granted where the appellant's exceptional circumstances have been seen to be compelling and permanent, and the latter visa where the exceptional circumstances have been seen to be of a contingent or more short-term nature.[71]

Where the Tribunal has declined a deportation non-resident appeal, the Tribunal may reduce or remove the period of prohibited entry to New Zealand.[72] This order has commonly been made where the appellant has had close family in New Zealand and it was considered appropriate to allow him or her the opportunity to apply for a visa to return in the near future.[73] The Tribunal may also, if it considers it necessary to enable the appellant to remain in New Zealand for the purposes of getting his or her affairs in order, order that the deportation of the appellant be delayed for up to a year; or order that a temporary visa, valid for a period up to a year, be granted to the appellant.[74] The Tribunal has delayed deportation or ordered a temporary visa where, for example, the appellant has been in New Zealand for an extended time and invested in a property or business, or the appellant or his or her children have been near the completion of an educational term or qualification.[75]

Deportation non-resident appeals involve people who have had no entitlement to or legitimate expectation of long-term immigration status. Appeals have commonly been declined where they were brought on the basis of the disputed merits of Immigration New Zealand's decision, or a preference for New Zealand's higher standard of living.[76] The High Court has affirmed that the stringent statutory test of exceptional circumstances of a humanitarian nature cannot simply be equated with compassionate factors.[77] However, appeals have been allowed where, for example, appellants have lived in New Zealand for an extended time and it was in the best interests of their New Zealand-citizen children that the appellants remain in New Zealand.[78]

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68 Section 207(1).

69 *Li v Chief Executive of the Ministry of Business, Innovation and Employment* [2017] NZHC 2977 at [13] and [19].

70 Immigration Act 2009, s 210(1).

71 Compare *Le v Minister of Immigration* [2020] NZIPT 504950 with *Tevesi v Minister of Immigration* [2018] NZIPT 503970.

72 Immigration Act 2009, s 215(1).

73 See *HF (Fiji)* [2020] NZIPT 600657.

74 Immigration Act 2009, s 216(1).

75 See *Thapar v Minister of Immigration* [2020] NZIPT 504903.

76 See *Kartseva v Minister of Immigration* [2015] NZIPT 502502, confirmed by the High Court in *Kartseva v Chief Executive of the Ministry of Business, Innovation and Employment* [2017] NZHC 97.

77 *Minister of Immigration v Jooste* [2014] NZHC 2882 at [45].

78 *Sio v Minister of Immigration* [2020] NZIPT 504864.

C. Deportation Resident Appeals

Deportation appeals may also be brought by those with residence status.[79] These appeals have comprised only 4.7 per cent of the total workload of the Tribunal. The paucity of appeals reflects the fact that deportation resident appellants are drawn from a comparatively small number of people who have obtained residence but not citizenship in New Zealand. Also, there are (as is seen below) restrictions on the jurisdiction to render residents liable for deportation, and, even where this is possible, the Minister of Immigration (or delegated authority) has a discretion whether to issue deportation liability notices.[80] Since 2014, there has been increasing use (particularly in cases of lower level offending) of the ministerial discretion to issue a deportation liability notice but to suspend this on condition that there be no further offending within a set period.[81]

The most common reason why residents have become liable for deportation has been that they have been convicted a criminal offence of sufficient seriousness within a period after they first held a resident visa.[82] Such residents may appeal on humanitarian grounds, which are the same as for deportation non-resident appeals.[83]

The second (less common) reason for residents' deportation liability has been that Immigration New Zealand has determined that the resident visa was obtained through fraudulent, forged, false or misleading information or the concealment of relevant information.[84] Such residents have an appeal on the facts (the merits of the ministerial decision), as well as on humanitarian grounds.[85]

On rare occasions, the Tribunal has had to hear appeals where an appellant has breached the conditions of deportation liability which has been suspended by the Tribunal in a previous hearing.[86] In these cases, the Tribunal has a broad discretion whether to reactivate liability for deportation, bearing in mind the overall purpose of the Act.[87]

The Tribunal has allowed the appeal in 35.6 per cent of deportation resident cases. Where appropriate (as noted above), the Tribunal may suspend liability for deportation for up to five years, subject to conditions.[88] Where the Tribunal declines the appeal, it may make the same orders as are available on declining a deportation non-resident appeal.[89]

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79 Immigration Act 2009, s 217(2)(a)(v).

80 The Minister of Immigration may, at any time, cancel a person's liability for deportation (s 172(1)).

81 Section 172(2). Until a statutory amendment of 24 October 2019, persons issued with a suspended deportation liability notice were still required to lodge a humanitarian appeal within 28 days of the notice, with the result that the Tribunal accumulated over 100 deportation-resident appeals that would have little likelihood of being heard (in view of the low incidence of breach of suspension conditions). Since the change, such persons have been allowed to defer the lodging of an appeal until served with a reactivation notice (s 173A), and most have taken up this option, resulting in fewer deportation-resident appeals.

82 Section 161(1). The offending ranges from an offence with the maximum sentence of three months or more committed with two years after the holding of a resident visa, to an offence with the maximum sentence of five years or more committed with 10 years after the holding of a resident visa.

83 Sections 206(1)(c) and 207(1).

84 Section 158(1).

85 Section 158(1)(b). Such appellants have an appeal on the facts unless they have been convicted of the immigration fraud in question (s 158(1)(a)).

86 Section 212(2).

87 Section 212(3) and *Minister of Immigration v Vili* [2020] NZIPT 600661 at [77].

88 Section 212(1).

89 Sections 215(1) and 216(1).

Deportation resident hearings, more so than refugee hearings, are run on mixed inquisitorial and adversarial lines. The decision-maker often plays an active role in testing evidence. However, the Ministry is always represented because of the Crown and public interest, particularly in terms of any offending or fraud. The Tribunal has been assisted by the fact that, in appeals on humanitarian grounds, the essential facts giving rising to deportation liability (for example, regarding the appellant's previous convictions) have not been open to question; and that the appellant has often been in New Zealand for some time and so familiar with the English language and local norms.[90]

Deportation resident appeals commonly involve difficult judgement calls. Frequently, competing demands of law and justice are keenly felt.[91] A common scenario has been where an appellant has been convicted of serious criminal offending, but where he and his family have, as residents, established roots in New Zealand. The Tribunal has then had to apply the strict statutory test, involving the integrity of the immigration system and the broader public interest, in the realisation that deportation would mean the end of a family unit to the detriment of an innocent spouse and children.[92] However, the remedies available to the Tribunal have been of some assistance. Thus, where the appellant's exceptional circumstances have only marginally outweighed the public interest (particularly as to risk of reoffending), the latter has been acknowledged by allowing an appeal and suspending deportation liability on condition that the appellant not reoffend within a prescribed period.[93] On the other hand, where the appellant has not met the statutory test, but there have been significant family or other personal circumstances, these have been acknowledged by removing the statutory bar on re-entry or by delaying deportation to get affairs in order, or both.[94]

D. Refugee and Protection Appeals

The Tribunal has jurisdiction to determine appeals against decisions in relation to recognition or otherwise as a refugee or a protected person.[95] Refugee and protection appeals have comprised 14.6 per cent of the total workload of the Tribunal.

A refugee is a person recognised as such within the meaning of the 1951 *Refugee Convention*.[96] This Convention provides that a refugee is a person who has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.[97] A protected person is a person recognised as such under the 1984 *Convention Against Torture*, or under the 1966 *International Covenant on Civil and Political Rights*, as being

90 See *Minister of Immigration v Hai* [2020] NZIPT 600640.

91 Deportation resident cases have an important public interest dimension, and for this reason the hearings of these cases are open to the public (Immigration Act 2009, sch 2 cl 18(1). However, the Tribunal may receive any particular evidence in private, or deliberate in private as to its decision on the appeal or as to any question arising in the course of the proceedings (sch 2 cl 18(2)).

92 See *Minister of Immigration v Kumar* [2018] NZIPT 600436, confirmed by the High Court (*Kumar v Immigration and Protection Tribunal* [2018] NZHC 2928).

93 See *Minister of Immigration v Sharma* [2020] NZIPT 600645.

94 See *Minister of Immigration v Grant* [2020] NZIPT 600638, and *Minister of Immigration v Singh* [2020] NZIPT 600639.

95 Immigration Act 2009, s 217(2)(a)(ii)-(iv).

96 Section 129(1) and sch 1.

97 Article 1A(2).

in danger of being subjected to torture, arbitrary deprivation of life, or cruel, inhuman or degrading treatment or punishment.[98]

Refugee and protection appeals arise out of the decline of claims to refugee and protected person status by the Refugee Status Unit (formerly Branch) of Immigration New Zealand. The Tribunal may allow or dismiss the appeal, but (other than in strictly limited circumstances) may not refer the claim back to a refugee and protection officer for reconsideration.[99]

The Tribunal has allowed appeals in 41.3 per cent of refugee and protected person cases. The higher rate of successful appeals reflects the lower statutory threshold required of refugee appellants than, for example, deportation appellants. It is also an accepted principle that the benefit of the doubt can be given to a refugee appellant when all available evidence has been obtained and checked and when the decision-maker is satisfied as to the appellant's general credibility.[100]

Refugee and protection appeal hearings have distinctive features. In view of the potential vulnerabilities of refugee appellants, refugee hearings are confidential and have to be conducted in private.[101] They are conducted *de novo*, so that the appellant's claim is heard afresh, as if in a new hearing, though regard is had to the evidence gathered at first instance.[102] Hearings are run on inquisitorial lines, as the decision-maker almost always conducts hearings without the presence of Ministry counsel. The decision-maker is required to establish essential facts while grappling with different cultural norms and being normally dependent on the services of an interpreter.

Refugee and protection hearings require an assessment of the credibility of the person's claim, a task made more difficult due to the complexities of the jurisdiction. Appellants may provide contradictory, questionable or illogical evidence, or fail to provide key witnesses who can be expected to be available.[103] Appellants are often traumatised or experience psychological issues which may affect their ability to deliver evidence or accurately recall events.[104] Further, where appellants flee their home countries, collecting necessary documentary evidence before, or after, they flee can present unique challenges.[105] Decisions as to questions such as the genuineness of commitment to another religion, or a person's sexuality, concern inherently internal characteristics, involving limited tangible evidence.[106]

Where the person's claim is found to be credible, there is then an assessment of whether his or her claim has reached the objective standard of well-founded fear of persecution or being in danger of one of the protected person forms of other qualifying harm. It is a common experience for the Tribunal to be satisfied that a credible appellant has a sincerely-held fear of serious harm.[107] However, this subjective fear is not always backed by objective evidence of a real chance of serious

98 Immigration Act 2009, s 130(1) and 131(1).

99 Section 198(3). The exceptions are contained in ss 196 and 197.

100 The appellant's statements must be coherent and plausible, and must not run counter to generally known facts: *Jiao v Refugee Status Appeals Authority* [2003] NZAR 647 (CA).

101 Immigration Act 2009, s 151 and sch 2 cl 18(3).

102 Sections 196–198.

103 See *CF (Bangladesh)* [2018] NZIPT 801343, and *FR (Sri Lanka)* [2019] NZIPT 801462.

104 See *AL (Nigeria)* [2017] NZIPT 801085.

105 See *Jiao v Refugee Status Appeals Authority* [2003] NZAR 647 (CA).

106 See *XX (Iran)* [2020] NZIPT 801734.

107 See *JK (India)* [2020] NZIPT 801699.

harm, arising from the sustained or systemic violation of internationally recognised human rights, demonstrative of a failure of state protection.[108] The Tribunal's assessment involves examination of available country information, which can be contradictory and changing.[109] The hearing is often a journey of discovery for the decision-maker, as to countries and situations hitherto unknown, but also a scene of sadness and relived trauma for the appellant.[110] Discernment, care and sensitivity by the decision-maker are prerequisites for work of this kind.

An appellant may establish that he or she has a well-founded fear of being persecuted, but may not be able to show that the persecution in question is for a reason recognised by the Refugee Convention.[111] In the small minority of appeals where this situation has occurred, the Tribunal has on occasions then found (for reasons commonly connected to crime) that the person has protected person status.[112] Thus, for example, the Tribunal found that harm suffered by the appellant in pre-trial detention, in the course of efforts to extract a confession from him, would not be for any Convention reason, but would be because the Chinese authorities routinely engaged in the practice of extracting confessions from suspects by torture or other serious mistreatment.[113]

On occasions, the Tribunal has to consider whether a person who has reached the threshold for protected person status should be excluded from protection.[114] This question has arisen where there have been serious reasons for considering that the person has committed serious crimes, such as crimes against humanity, war crimes or serious non-political crimes.[115]

From the complex range of issues which refugee and protection appeals have presented, the Tribunal has, over the years, fashioned some key principles which have shaped the Tribunal's jurisprudence. These principles have covered, for example, procedural fairness,[116] the definition of being persecuted,[117] credibility assessments,[118] and self-imposed restrictions on behaviour being in breach of the right to freedom of belief, thought and conscience.[119]

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108 See *CN (Tonga)* [2019] NZIPT 801731.

109 See *AP (Ethiopia)* [2019] NZIPT 801482; and *BS (Afghanistan)* [2019] NZIPT 801562.

110 See *CL (Pakistan)* [2017] NZIPT 801042; *BM (Bangladesh)* [2017] NZIPT 801057; *EF (Sri Lanka)* [2017] NZIPT 801092; and *EI (Iran)* [2018] NZIPT 801344-345.

111 The recognised grounds are race, religion, nationality, membership of a particular social group, or political opinion (Article 1A(2) of the Refugee Convention).

112 See *AK (South Africa)* [2012] NZIPT 800174-176 and *AN (Malaysia)* [2016] NZIPT 800888.

113 See *ES (China)* [2019] NZIPT 801466.

114 Article 1F of the Refugee Convention and s 198(1)(c) of the Immigration Act 2009.

115 See *CK (China)* [2017] NZIPT 800775–776. Where the issue of exclusion has arisen, the Crown has usually appeared and played an active role because of the public interest.

116 *AN (Bangladesh)* [2014] NZIPT 800542.

117 *DS (Iran)* [2016] NZIPT 800788.

118 *DJ (India)* [2017] NZIPT 801064.

119 *DS (Iran)* [2016] NZIPT 800788. See also *AC (Syria)* 2011] NZIPT 800035; *AB (Germany)* [2012] NZIPT 800107-111; *AH (Egypt)* [2013] NZIPT 800268–272; *AD (Ethiopia)* 2013] NZIPT 800438; *AC (Tuvalu)* [2014] NZIPT 800517-520; and *AL (Myanmar)* [2018] NZIPT 801255.

IV. PRACTICE AND PROCEDURE

A. Despatch of Tribunal Business

In the tribunals that preceded the Tribunal, there had been instances of appellants delaying their departure from New Zealand by appealing from one tribunal to the next,[120] and cases involving elongated processes and delayed decisions.[121] There was also the costly deployment of resources in multi-member panels for all deportation-resident appeals.[122] The 2009 Act thus emphasised the need for the expeditious despatch of Tribunal business.[123]

The Tribunal is required to determine appeals with all reasonable speed.[124] The chair of the Tribunal must make such directions as are necessary to ensure that appeals are heard in an orderly and expeditious manner.[125] A refugee and protection appellant who wishes also to lodge a humanitarian appeal is required to lodge this appeal at the same time as lodging the refugee and protection appeal.[126] The chair may direct that more than one appeal be determined together by the same member, and the Tribunal may issue a single decision in respect of the appeals.[127] The Tribunal consists of only one member, except where the chair directs that, because of the exceptional circumstances of a case, it is to be heard and determined by more than one member.[128] On any appeal, the Tribunal may rely on any finding of credibility or fact by the Tribunal in any previous appeal determined by the Tribunal that involved the appellant, or by any appeals body in any previous appeal or matter determined by the appeals body that involved the appellant.[129]

These provisions rightly recognise the need for Tribunal proceedings and decisions to be concluded promptly. In recent years, the Tribunal has made considerable progress towards the goal of expeditious despatch of Tribunal business. By the end of June 2013, the average time from receipt of an appeal to the release of the decision was over 13 months. By the end of June 2017, this period had reduced to less than six months, a period which has been maintained to the present.

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120 "Whereas there were four appeal authorities before, which created—and a number of us who were Ministers at the time had to deal with this—the ability for those who were inappropriately in New Zealand to, bluntly, drag the chain through appellate body after appellate body after appellate body, and then make request of Ministers. … the House has accepted a single appellate tribunal to deal with all those rights in an efficient but fair way" ((29 October 2009) 658 NZPD 7638, per Hon Clayton Cosgrove). See also (16 August 2007) 641 NZPD 11231. Reference was also made to individuals who had launched multiple appeals and publicised their cases to the point where, ultimately, the final appellate body ruled that they could not go home because they had raised the awareness of their cases to the point where they feared reprisals from the authorities in their own country ((22 September 2009) 657 NZPD 6747).

121 See, for example, *Refugee Appeal Nos 74796/7* (19 April 2006), where the first hearing had been conducted in December 2003; and *Refugee Appeal No 75574* (29 April 2009), where the first hearing had been conducted in June 2007.

122 The Immigration Act 1987 required the DRT to consist of three members (s 103(2)). While this Act required that in the RSAA was normally to consist of one member (s 129N(6)), multi-member panels were not uncommon in the RSAA.

123 "It is clearly understood that an important task for this tribunal will be to deal with all appeals as quickly as possible" ((16 August 2007) 641 NZPD 11231, per Christopher Finlayson).

124 Immigration Act 2009, s 222(1).

125 Section 223(1).

126 Section 194(6): this provision was a key safeguard against multiple, sequential appeals.

127 Sections 223(2)–(3) and 235.

128 Section 221(1)–(2).

129 Section 231(1).

The improvement in timeliness has not been at the expense of maintaining the quality of decisions. The Tribunal has continued to ensure that every decision is peer reviewed by another member, and then proof-read by a legal research advisor.

B. Nature of Proceedings and Evidence

The proceedings of the Tribunal may be of an inquisitorial or adversarial nature or both, as the Tribunal thinks fit.[130] The Tribunal may receive as evidence any statement, document, information, or matter that in its opinion may assist it to deal effectively with the subject of the proceedings before it, whether or not it would be admissible in a court of law.[131] These provisions have given the Tribunal flexibility to respond to the needs of each appeal as appropriate, particularly in hearings.[132]

It is the responsibility of an appellant to establish his or her case or claim, and an appellant must ensure that all information, evidence and submissions that he or she wishes to have considered in support of the appeal are provided to the Tribunal before it makes its decision.[133] When considering an appeal, the Tribunal may seek information from any source and it has powers of investigation and to summon witnesses.[134] However, the Tribunal is not obliged to seek any information, evidence or submissions further to those provided by the appellant, and may determine the appeal only on the basis of the information, evidence and submissions provided by the appellant.[135]

These provisions reflect the combined adversarial and inquisitorial aspects of the Tribunal's process. The Act makes clear that it is not appropriate for the Tribunal to establish or create the appellant's case, and the responsibility for doing this rests squarely with the appellant.[136] The Tribunal decision-maker is not an investigative journalist, and lengthy seeking out of further information is contrary to the Act's clear goal of expeditious despatch of business.[137] Nevertheless, there are situations where it is appropriate for the Tribunal to exercise its inquisitorial function and seek further information. These situations occur particularly where the appellant is unrepresented, where there have been obvious gaps in the evidence presented (such as, for example, that relating to the best interests of children concerned), or in complex refugee and protection claims requiring further country information and analysis of new issues.[138]

130 Section 218(2).

131 Schedule 2 cl 8(1).

132 See *Pham v Minister of Immigration* [2020] NZIPT 600409 at [56]; and *CD (South Africa)* [2018] NZIPT 600419–423 at [62].

133 Immigration Act 2009, s 226(1).

134 Section 228(1) and sch 2 cls 10–11.

135 Section 228(2).

136 See *CM (India) v Minister of Immigration* [2016] NZIPT 600061 at [114].

137 See *Minister of Immigration v Wu* [2019] NZCA 237 at [53].

138 See *Hai v Minister of Immigration* [2019] NZCA 55 at [50]. Refugee and protection hearings are largely inquisitorial by nature of the unique characteristics of refugee law and the challenges faced by refugee or protected person appellants in obtaining all relevant evidence themselves. See *AM (Myanmar) v Minister of Immigration* [2019] NZIPT 801382.

C. Representation of Parties

Parties may appear personally, or be represented by a licenced immigration adviser or a lawyer.[139] Most appellants in the Tribunal have been represented. Appellants have a significant incentive to be represented, in wanting either to enter or to stay in New Zealand. Appellants who have not had a formal representative (a licenced immigration adviser or lawyer) have sometimes had a family member or friend to assist in a less formal manner.[140] There is however no right or necessity for appellants to be represented.[141]

Deportation resident and refugee and protection appellants are more likely to be represented, particularly by lawyers, than other appellants, as legal aid is more likely to be awarded. Residence and deportation non-resident appellants do not generally qualify for legal aid.

Lawyers are normally members of the New Zealand Law Society, and some are members of the Auckland District Law Society.[142] Advisers are required to be licensed by the Immigration Advisers Authority and are subject to a code of conduct, competency standards, and a complaints and disciplinary regime.[143] Lawyers and advisers are also members of associations that provide collegial and professional support, notably, the New Zealand Association for Migration and Investment (NZAMI) and the New Zealand Association of Immigration Professionals (NZAIP).[144]

D. Further Appeal and Judicial Review

Decisions of the Tribunal are final, once notified to the appellant or affected person.[145] However, on application by a party, or on the Tribunal's own motion, the Tribunal may correct a decision it gives to the extent necessary to rectify clerical mistakes or omissions.[146] The provision for correction of decisions has been used only rarely, acknowledging that the Tribunal (unlike certain other tribunals) does not have the power to order rehearings of its proceedings.[147]

There are restricted rights of appeal and judicial review from the Tribunal to higher courts. A party to a Tribunal decision who is dissatisfied with a determination of the Tribunal as being erroneous in point of law, may, with the leave of the High Court (or, if the High Court refuses leave, with the leave of the Court of Appeal), appeal to the High Court on that question of law.[148] In determining whether to grant leave to appeal, the court to which the application for leave is made must have regard to whether the question of law involved in the appeal is one that by reason of its general or public importance or for any other reason ought to be submitted to the High Court for its

139 Immigration Act 2009, sch 2, cl 13.

140 See *Nukulasi v Minister of Immigration* [2020] NZIPT 504960.

141 See *Singh v Immigration and Protection Tribunal* [2018] NZHC 2409.

142 The New Zealand Law Society handles regulatory and disciplinary matters on behalf of the legal profession (in terms of the Lawyers and Conveyancers Act 2006, Part 5). The Auckland District Law Society is incorporated under the Incorporated Societies Act 1908 and carries out collegial and representative responsibilities for its members.

143 Immigration Advisers Licensing Act 2007, s 6 and–34-55.

144 See <www.nzami.org.nz> and <www.nzaip.org.nz>.

145 Immigration Act 2009, sch 2 cl 17(6).

146 Schedule 2 cl 20.

147 See, for example, the Disputes Tribunals Act 1988, s 49(1), and the Residential Tenancies Act 1986, s 105(1).

148 Immigration Act 2009, s 245(1).

decision.[149] There are similar provisions in respect of applications for judicial review proceedings in respect of appeals determined by the Tribunal.[150]

Only 2.8 per cent of Tribunal decisions have been subject to appeal or judicial review proceedings. Of the appeals and applications for review determined by the higher courts since the Tribunal's inception, 58.5 per cent have been dismissed, 10.8 per cent have been allowed, and the rest have been withdrawn, struck out or discontinued. The overall result is that 99.75 per cent of Tribunal outcomes have been left intact, a pointer to the ongoing quality of the Tribunal's decisions. Although there have been comparatively few superior court proceedings on appeal from the Tribunal, some landmark decisions of the higher courts have formed important precedents for the Tribunal.[151]

V. Conclusion

The first 10 years have seen the Tribunal establish itself as a respected legal institution both internationally and within New Zealand. Reference has been made above to the Tribunal becoming one of the leading global centres of learning and practice in refugee status determination. Within the New Zealand context, the personnel and work of four distinct tribunals have blended into a coherent single entity which has played an important role in the administration of justice in New Zealand, in the following respects.

First, the Tribunal's work has provided a means of redress for a considerable number of people. From the commencement of its work in December 2010 to the end of June 2020, the Tribunal disposed of over 12,700 appeals.[152] This number represents only appellants themselves, and does not include the considerable number of people (including relatives and others connected with appellants) who have been affected by the Tribunal's decisions.

Second, the decisions of the Tribunal have had a significant and often profound effect on the lives of the people who have come before it. The Tribunal has been required to decide whether people who wished to settle in New Zealand qualified for ongoing immigration status here as residents. It has determined whether people who have come here should be deported back to the country from which they came. It has also decided whether people who have sought haven in New Zealand should be accorded refugee or protected person status. In making these decisions, the Tribunal has been required to balance the aspirations of people wishing to settle in New Zealand with the broader public interest as expressed in law.

Third, in addressing the affairs of the appellants who have come to the Tribunal, it has played a key role in the development of immigration and refugee law. The Tribunal has guided Immigration New Zealand's practice and interpretation of instructions, defined the parameters of the statutory tests in deportation cases, and formulated principles governing refugee law practice. The Tribunal's contribution in this regard has extended well beyond the individual cases before the Tribunal, and assisted government officials, counsel and representatives, and the broader public in approaching

149 Section 245(3).

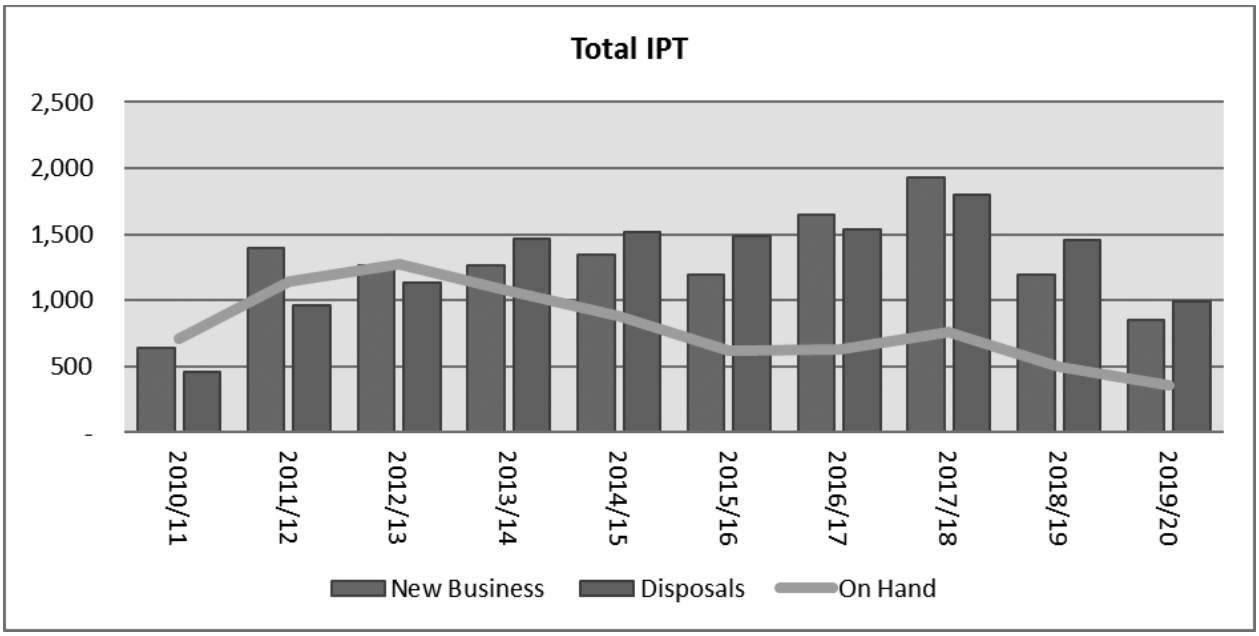
150 Section 249.

151 For example, *Rajan v Minister of Immigration* [2004] NZAR 615 (CA) (special circumstances in residence appeals); *Ye v Minister of Immigration* [2010] 1 NZLR 104 (SC) (grounds of appeal in deportation appeals); and *Jiao v Refugee Status Appeals Authority* [2003] NZAR 647 (CA) (onus of establishing refugee claims and benefit of the doubt).

152 These include over 10,300 decided appeals and over 2400 appeals that were administratively processed.

like cases. The miniscule percentage of successful appeals from the Tribunal to higher courts indicates that, in the vast majority of cases, the development of case-law principles has vested in the Tribunal itself.

Finally, the Tribunal has made progress towards the aspirational (and time-honoured) goal of its creators, namely, the expeditious and efficient despatch of business.[153] The Tribunal has faced, and will continue to face, uncertainties as to the volume and nature of incoming appeals, human variables, and other factors (such as the COVOD-19 epidemic) beyond its control. However, as the workflow graph below indicates, the Tribunal has, by its 10th anniversary, reached the position where it provides reasonably swift resolutions to the important issues presented by the people who come before it.



153 "*Expedit reipublicae ut sit finis litium*. It is for the public good that there be an end of litigation".