DISCIPLINE WITHIN THE LEGAL PROFESSION

REPORT OF PUBLIC AND ADMINISTRATIVE LAW
REFORM COMMITTEE

PRESENTED TO THE MINISTER OF JUSTICE
MAY 1977

WELLINGTON
NEW ZEALAND

PUBLIC AND ADMINISTRATIVE LAW REFORM COMMITTEE

REPORT ON THE DISCIPLINARY AND COMPLAINTS PROCEDURE OF THE LEGAL PROFESSION

1. Two years ago the Committee, which had begun a general review of disciplinary procedures, was requested by the Minister of Justice to study the complaints and disciplinary provisions governing the legal profession. We sought from the New Zealand Law Society and all District Law Societies information relevant to our study. We also consulted reports and other publications concerning discipline within the legal profession in Australia, Canada, the United Kingdom and the United States. We corresponded with the Lay Observer appointed in the United Kingdom in 1975. This was described in our Ninth Report made to the Minister earlier this year.

2. In that Report, we set out a summary of the tentative views we had incorporated in a Working Paper submitted to the New Zealand Law Society in August 1976. We have now received the report from the Law Society and are pleased to find that there is so much common ground between us. There was substantial agreement on each of the following proposals contained in our Working Paper:

(a) the desirability of reorganising the Law Society's existing complaints and disciplinary procedures;

(b) the appointment of a Lay Observer or Lay Observers to review the Law Society's treatment of complaints;

(c) the separation of the investigative and adjudicative aspects of disciplinary proceedings;

(d) the inclusion of a lay member or members in disciplinary bodies;

(e) the creation of a new Law Practitioners Disciplinary Tribunal to assume the functions of the Disciplinary Committee of the New Zealand Law Society;

(f) the need to stress the responsibility of all practitioners to report suspected instances of misconduct, incompetence or incapacity to the Society;

(g) the amendment of the Law Practitioners Act to enable new categories of disciplinary charges to be created;

(h) a substantial increase in the penalties that may be imposed for disciplinary offences;

(i) that District Councils be authorised to recover all or part of their administration costs in investigating and handling complaints from the practitioner responsible for the expenses incurred;

(j) the enlargement of the investigative and other powers of District Councils;

(k) the publication of relevant information relating to disciplinary proceedings;

(l) the establishment of a panel of solicitors who would be available to conduct proceedings against other practitioners for negligence.

3. In our Working Paper we referred to the three groups which have an interest in the efficacy and fairness of disciplinary proceedings of self-governing bodies defined in the Report of the Ontario Law Reform Commission Inquiry into Civil Rights (McRuer Report). These were stated to be:

> "(1) The public, whose benefit and protection are the primary objectives of the whole process;
>
> (2) Members of the self-governing body, who are or may be subjected to discipline; and
>
> (3) The profession or occupation itself, which has a general interest in ensuring the maintenance of high standards of professional or occupational conduct." (p.1183).

The Law Society did not accept the priorities of the McRuer Report and stated that the three groups having an interest would be better stated as:

> "(1) The profession or occupation itself, which has a general interest in ensuring the maintenance of high standards of professional or occupational conduct in the interests of the public and the profession itself;
>
> (2) The benefit and protection of the public;
>
> (3) Members of the self-governing body, who are or may be subject to discipline."

For our part we do not believe that it would be productive to argue which group should have priority over the other. The important point is that the Society and our Committee agree that disciplinary proceedings should promote the interests of all groups, including the public interest.

4. We understand that the Law Society is proceeding with a draft Bill consolidating the legislation governing the profession and that its proposals will be submitted to the Minister shortly. For that reason, we are making a report incorporating our recommendations so that our views will be available when the Society's proposals are being examined.

Outline of recommendations

5. The Committee's recommendations in respect of complaints and discipline may be summarised thus:

(a) a Lay Observer or Observers should be appointed to review the action taken by District Law Societies on complaints made to them by members of the public;

(b) District Law Societies should cease to exercise disciplinary powers. A Committee of the District Council should be appointed to investigate complaints and lay charges. All charges would be heard by a District Disciplinary Tribunal to which District Councils would appoint five of the six members. The other member should be a lay member appointed by the Governor-General;

(c) from decisions of District Disciplinary Tribunals appeals would be taken to the Law Practitioners Disciplinary Tribunal which would also exercise original jurisdiction if the District Disciplinary Tribunal declined jurisdiction. The Law Practitioners Disciplinary Tribunal would consist of five members, three or four approved by the New Zealand Law Society and one or two lay members by the Governor-General;

(d) there should be a right of appeal from decisions of the Law Practitioners Disciplinary Tribunal to the Administrative Division of the Supreme Court;

(e) practitioners liable to be charged with disciplinary offences should include those who are professionally negligent or incompetent;

(f) the penalties that may be imposed for disciplinary offences should be significantly increased. A practitioner may be ordered to pay costs or a contribution to the expenses of making an investigation;

(g) the powers of District Law Societies should be increased to assist them to reduce disciplinary offences.

Lay Observer and Complaints

6. Though a complaint may result in disciplinary action being taken against a practitioner, most complaints, after investigation by a District Law Society, do not require that the disciplinary procedures be invoked. The arrangements for investigation of complaints vary. In the District Societies with a large membership, officers employed by the Society are responsible for the preliminary work. In the smaller Societies members of the Councils themselves are involved. Those who made the complaint are informed of the action taken by the Society. Some are not satisfied with the reply and it would be natural for them to wish to be assured that their complaint has been fully considered. We believe that if a Lay Observer were appointed with power to review the Society's treatment of complaints, public confidence would be increased.

7. The proposal that a "Lawyer's Ombudsman" be appointed was advocated by the then Minister of Justice, Hon. J.R. Hanan in his address, "Law Reform", delivered to the New Zealand Law Society's Conference in 1969. The address is reported in [1969] NZLJ 365. In the United Kingdom, an amendment made to the Solicitors Act in 1974 provided for the appointment by the Lord Chancellor of one or more persons to be known as Lay Observers. He is empowered to examine any written allegation by or on behalf of a member of the public concerning the Law Society's treatment of a complaint about a

solicitor or an employee of a solicitor. He acts under the authority of the Act and in accordance with general directions given by the Lord Chancellor. The Lay Observer and his staff are paid from public funds. An annual report is required to be made to the Lord Chancellor.

8. The English Law Society is obliged to furnish a Lay Observer with such information as he may reasonably require and to consider any report or recommendation which it receives from him. It must notify him of any action which is taken in consequence of his report.

9. The directions which have been issued by the Lord Chancellor are brief. A Lay Observer is to seek from the Society whatever information he considers necessary for the purpose of examining an allegation. He is not to re-examine an allegation, or examine a fresh allegation relating to the same complaint, unless he is satisfied that he has received relevant information which could not reasonably have been provided in relation to the allegation when it was originally examined. When a Lay Observer has examined an allegation he is to send a written report of the results of his examination to the complainant, to the Society and to the person about whom the complaint was made. In the annual reports the Lay Observer is prohibited from identifying any individual or firm. Apart from this, a Lay Observer is authorised to follow such procedure in examining allegations as he thinks fit.

10. The Committee believes that the English model of Lay Observers should be adapted for use in New Zealand. One or more Lay Observers could be appointed, as required, by the Governor-General and remunerated from moneys appropriated for that purpose by Parliament. We believe that both the substance and the appearance of the independence of Lay Observer(s) would be lost if the New Zealand Law Society made the appointment(s).

11. The Committee envisages that the Lay Observer's functions should be much the same as those of his counterpart in England. Upon receipt of a written request from the complainant he would review the District Law Society's handling of the matter. His jurisdiction would extend to the handling of complaints relating to employees of practitioners. If he was satisfied that the Society had handled the complaint fairly and diligently he would advise the complainant of that fact. If, however, he was dissatisfied with the Society's treatment of the matter, either because the investigation had been inadequate, the Council's decision apparently questionable or insufficient or the inquiry had been dilatory, he would report to the Society with or without a recommendation as to what he thought should be done.

12. The complainant and the offending practitioner would be advised of the action taken by the Lay Observer. It would then be for the Society to deal with the matter. Because it is a responsible profession the Committee does not consider that a Lay Observer's report or recommendation would go unheeded and for that reason it believes that no further direct sanction would be necessary. Failure to act as recommended might, of course, be seen as something which the Lay Observer might draw to the attention of Parliament in his annual report or he may see it as appropriate to make a report to the New Zealand Law Society.

13. The Lay Observer's powers should extend to the decisions taken by Investigating Committees discussed in paragraph 18. If this is done, the Lay Observer can ensure that the complaint has been properly investigated and the appropriate action is taken. There will then be no need to give the complainant standing in any disciplinary proceedings which are taken.

14. In addition to reviewing complaints and reporting to the District Council a Lay Observer should be able to request the Law Society or a District Council to initiate an investigation into any area of practice which he believes warrants scrutiny. Such a power would reinforce the Lay Observer's ability to safeguard the public interest. It would also accord with the Committee's view that the Law Society and District Councils should be prepared, without receiving specific complaints, to initiate inquiries and investigate known or suspected areas of systematic misconduct.

15. The Law Society has indicated its agreement with the proposal that a Lay Observer should be appointed. It has said that it would also be appropriate for the Minister of Justice to give him general directions about the scope and discharge of his duties. Any directions given should be published in the annual report made by the Lay Observer. The Committee contemplated that more than one Observer might be appointed so as to reduce the likelihood of delay in investigating complaints, but the Society believes that one Observer will be sufficient in the meantime. In England there is one Lay Observer, but there is only one Law Society in that country. In New Zealand there are many District Law Societies and a single Observer would be required to travel extensively. If more than one Lay Observer is appointed, the annual report could be compiled by a senior Lay Observer who would also be responsible for the overall administration of Lay Observers throughout New Zealand.

16. The assumption of the duties of the Lay Observer by an Ombudsman is not supported by either the Committee or the Law Society. The Ombudsman is concerned with "matters of administration" in scheduled Departments or organisations which are supported by government or local government moneys. We see the function of the Lay Observer as essentially different. The public should be encouraged to distinguish those responsible for scrutinising public bodies and those given narrower functions in respect of professional groups.

Disciplinary Procedures

17. Disciplinary proceedings commence at the District level. Because the membership of some of the District Societies is small and the District Council is obliged to assume the functions of police, prosecutor and judge, we had suggested in our Working Paper that Regional Disciplinary Boards be established to discharge the adjudicative functions now exercised by District Councils. Our objective was to separate the investigative and adjudicative functions.

18. The Society has told us that it favours the reconstitution of District Councils. We are not sure whether this involves the abolition of numerically small District Societies and their amalgamation with another Society. Be that as it may, we consider that the existing small Societies will find it difficult, if not impossible, to satisfactorily discharge the related but separate obligations of investigation and adjudication, a principle now agreed to by the Society. It was for that reason that we included a proposal for Regional Boards in our Working Paper. However, the Society has rejected this concept. It has told us that it contemplates each District Society appointing an Investigating Committee on which members of District Councils would serve. The Committee would have power to co-opt auditors, accountants and investigating staff and would investigate all complaints. The Society suggests that if it is decided by the Investigating Committee that disciplinary action should be taken, a charge will be laid by that Committee. We agree that the establishment of Investigating Committees could be highly desirable and recommend that provision be made for them. Obviously, those members who serve on the Investigating Committees would be disqualified from sitting in a disciplinary capacity.

19. For the reasons already stated in relation to the Lay Observer it is important that disciplinary bodies of

professions having powers of self-discipline should enjoy public confidence. The presence of a lay member would be likely to increase that confidence. The Law Society did not favour the inclusion of a lay member at this level because it saw the disciplinary function being dealt with by the District Councils as such. We remain of the view, however, that the adjudicative function of Councils should cease. It seems to foster the view that lawyers are called upon to judge one of their own. Rather than vest the responsibility in an elected body of practitioners it would seem preferable for the adjudicative function to be performed by a separate disciplinary tribunal charged with that specific function. The size of the larger District Societies may also inhibit the effective hearing and determination of disciplinary charges while it appears that in the smaller Districts the problem is that members of the local legal community are in effect required to discipline each other. The recommendation we have made for a separate Disciplinary Tribunal goes some way towards meeting these difficulties. It would also meet the Society's resistance to lay members sitting with the Councils in that they could be appointed to the separate District Disciplinary Tribunals.

20. We therefore consider that District Disciplinary Tribunals having a membership of six with a quorum of three, one of whom would be a lay member, should assume the Council's present disciplinary powers. Practitioner members would be appointed by a District Council either from their own number or the Society at large. The term of office of practitioner members would not exceed six years. Membership of Disciplinary Tribunals would clearly be kept separate from any Investigating Committee appointed by the Councils so that there would be no overlapping membership. We recognise that in some instances smaller Districts may wish or be required to combine in order to establish an effective Disciplinary Tribunal. The lay member would be appointed by the Governor-General. His term of office would be three years with eligibility for a further term. He would be remunerated from public funds but, because of the modest amount of work he would be called upon to do, would only need to be engaged on a part-time basis.

21. This recommendation meets at least in part the Society's objections while at the same time achieving our objectives for the handling of disciplinary charges at the District level. Council members would be able to participate in the disciplinary process either on an Investigating Committee or as a member of a District Disciplinary Tribunal. Councils would retain responsibility for the appointment and operation of the Investigating Committees and for the appointment of the professional members of the Tribunal. From our point of view the procedure has the advantage of enabling a lay member to be appointed to the District Disciplinary Tribunal, a requirement we regard as both logical and necessary. The same reasons which dictate that a lay member should participate in the affairs of the Disciplinary Tribunal at national level also hold good for the appointment of lay members at the District level where an even greater number of charges may be dealt with. For the reasons which we have indicated we consider that this structure would be deserving of, and enjoy, public confidence.

22. From decisions of District Disciplinary Tribunals appeals would be taken by the practitioner or the District Council to the Law Practitioners Disciplinary Tribunal which would assume the functions of the Disciplinary Committee of the New Zealand Law Society. The new statutory Tribunal would exercise not only appellate but also original jurisdiction where the District Disciplinary Tribunal regarded the matter as sufficiently serious to warrant consideration and decision by the Law Practitioners Disciplinary Tribunal. The New Zealand Law Society sees no objection to the change in title, but it saw no reason for disqualifying members of District Councils and the Council of the New Zealand Law Society from membership of the Tribunal. So long as the investigative and adjudicative functions are kept distinct, which will result in the disqualification of any member of the Law Practitioners Disciplinary Tribunal who had taken part in the earlier investigative process or in any

hearing by the District Disciplinary Tribunal from which an appeal is taken, the Committee sees no objection to members of Councils serving on the Law Practitioners Disciplinary Tribunal.

23. The Law Practitioners Disciplinary Tribunal would consist of five members of whom not less than one and not more than two would be lay members. Practitioner members would be appointed by the Council of the New Zealand Law Society and the lay member(s) by the Governor-General. In our Working Paper we suggested that members should serve for a single term of six years. This would result in adequate rotation while staggered terms would secure continuity. Infrequent rotation could result in rigidity and perpetuation of outmoded practices. The addition of new members encourages continuous re-evaluation. The Society saw no need to impose any restriction and noted that over the past 25 years 26 members had served as members of the Disciplinary Committee. We have agreed, in order to meet the Society half way, to the term of office being a maximum of six years with members eligible for one further term. However, any amendment to the Law Practitioners Act should be so worded as to enable the Society to restrict the term of office of members of the Disciplinary Tribunal to six years should it choose to do so as a matter of policy at any future date. The terms of office of members should be staggered to ensure continuity. The New Zealand Law Society has observed that two or three lay members from different parts of New Zealand could be appointed so that membership by a lay member from the area where the practitioner practised could be avoided. Lay members could be appointed to a panel from which members of District Disciplinary Tribunals and the Law Practitioners Disciplinary Tribunal could be selected. The expenses of the practitioner members of Tribunals should be met by the Society but those of lay members should be paid from public funds.

24. From decisions of the Law Practitioners Disciplinary Tribunal an appeal could be taken by the practitioner charged or by the District Society to the Administrative Division of the Supreme Court which can sit as a full court in important cases. The New Zealand Law Society sees no good reason for changing the present right of appeal to the Supreme Court with three judges sitting together. We prefer that this function be assumed by the Administrative Division whose appellate jurisdiction is considerable and is likely to be expanded to include appeals from the disciplinary tribunals of other professional groups. We cannot justify an appeal to three Judges of the Supreme Court in respect of disciplinary offences committed by a legal practitioner when this right of appeal is not available in respect of disciplinary decisions for other professions. The pattern likely to be established is a final right of appeal to the Administrative Division.

Grounds for Disciplinary Action

25. The Committee suggested in its Working Paper that these general grounds justified disciplinary action being taken:

(a) Professional misconduct;

(b) Conduct unbecoming a practitioner;

(c) Conviction of a practitioner for any offence punishable by a sentence of imprisonment which reflects on his fitness to practise law or tends to bring the profession into disrepute;

(d) Professional negligence or incompetence which reflects on the fitness of the practitioner to practise law or tends to bring the profession into disrepute.

The New Zealand Law Society accepted the first three as appropriate but resisted the extension to professional negligence. "Gross negligence" was seen by the Society as likely to amount to professional misconduct. Negligence per se as a ground for disciplinary action is resisted. The Society observed that District Societies should make sure that solicitors are available, on a panel or roster basis, to conduct proceedings against other practitioners for negligence. It also observed that there are degrees of incompetence and degrees of negligence. This was acknowledged by the Committee in its Working Paper which stated in paragraph 9.11:

> The Committee would also suggest that the Society should consider including negligence on the part of a practitioner within the scope of its disciplinary process. "Gross negligence" is already referred to as a ground for disciplinary action in the statutes governing a number of professions. The Committee appreciates that a practitioner can be the subject of civil proceedings at the suit of the wronged client who may or may not obtain satisfactory redress. However, the disciplinary body can always take such civil proceedings, or the possibility of the proceedings, into account. Moreover, the Committee does not consider that all cases of negligence would or should attract the Law Society's disciplinary jurisdiction. Whether or not this is the case must depend on all the relevant circumstances. (See A guide to the Professional Conduct of Solicitors, issued by the Council of the Law Society in the United Kingdom in 1974 at pp. 28-29. Emphasis has been added.)

The Committee went on to declare in the Working Paper:

> What the Committee does not accept is that it is permissible to disregard the interest which the general public has in being protected from negligent or incompetent practitioners. Representing a client competently should be accepted as part of a practitioner's professional duty and not just an aspect of the law of tort or contracts. Furthermore, practitioners are almost invariably insured against claims based on allegations of

> professional negligence. Where the negligence is clearcut the claim will generally be settled out of court by the insurance company indemnifying the practitioner. It is only where the issue is arguable that the claim is likely to proceed to court with the consequent possibility of publicity for the practitioner or firm involved. It is ironic that if a practitioner is going to be negligent it is in his interest to be clearly negligent for he then escapes any adverse consequences other than the loss of the client and the humility and inconvenience of dealing with his indemnifier. Such cases of negligence go unchecked. For these reasons, the Committee regards it as important that the Law Society accept responsibility to discipline the lawyer who has been guilty of negligent conduct.

We adhere to the view that professional negligence or incompetence should be a ground for disciplinary action - at least where it reflects on the practitioner's fitness to practice, or tends to bring the profession into disrepute. Whether disciplinary action is taken in any case, and whether penalties are imposed will depend upon the circumstances as they appear to the Investigating Committee or the Tribunal if charges are laid.

Code of Ethics

26. The Committee is concerned that the practitioner liable to be charged with misconduct should be made aware in advance of the standards he is expected to meet and for breach of which he may be disciplined. In its Working Paper the Committee stated:

> 9.7 Although concerned with the generality of such grounds as professional misconduct and conduct unbecoming a practitioner, the Committee has accepted that the use of indefinite phrases is inescapable. It is impossible to stipulate in advance all the "varieties and shades" of activity which will be regarded as professional misconduct or conduct unbecoming a practitioner. Indeed, as already indicated, a measure of flexibility may be desirable. However, although accepting

> that the use of general phrases will always be necessary, the Committee considers that it should be possible to formulate a comprehensive code of ethics which will indicate the activity which constitutes misconduct either expressly, by necessary implication, or by way of illustration or analogy.
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> 9.8 Irrespective of the practical difficulties involved, therefore, the Committee believes that standards of professional behaviour should be defined with as much precision as possible. A practitioner should be able to ascertain and know in advance the prohibited activity for which he may be disciplined and punished. (See the McRuer Report, page 1190). Consequently, the Committee has concluded that even though it may not be exhaustive, a detailed code of ethics should be drafted by the New Zealand Law Society to indicate the content and nature of broad terms such as professional misconduct and conduct unbecoming a practitioner.
>
> 9.9 As an additional measure, the McRuer Commission recommended that self-governing professional bodies should draw up an itemised list of activities which had been classified as professional misconduct. It suggested that as new activities were classified by the disciplinary body's exercise of power under the professional misconduct clause, whether by rulings or decisions in actual cases, they should be added to the list and circulated to the profession. The Committee would make the same recommendation in respect of the legal profession.

27. The Law Society prefers a code of ethics along the lines of its present publication and doubts that it would be possible to draft a code suggested in paragraph 9.7 of the Working Paper. The Society has informed the Committee that it has embarked upon the exercise of expanding the advice given to practitioners so that they are more aware of the conduct likely to result in disciplinary action being taken. We believe that the Law Society has in large measure accepted the objective described by the Committee. This matter should be kept under review.

Penalties

28. Both the Committee and the Law Society accept that the monetary penalties that may be imposed at the District and New Zealand levels should be substantially increased. We believe that District Disciplinary Tribunals should be empowered to impose a maximum penalty of $2,000 and the Law Practitioners Disciplinary Tribunal a maximum penalty of $5,000. Each should also be empowered to order payment of a suitable sum in respect of the costs of the investigation and prosecution.

29. But quite apart from those cases where disciplinary action is taken (where an order may be made for a contribution to the expenses incurred), a District Society may incur heavy administrative costs in investigating complaints where disciplinary action is not taken. The Committee recommends and the Law Society supports an amendment to the Law Practitioners Act which would enable the Investigating Committee (on behalf of the Council) to order the offending practitioner to pay part or all of the administrative and other costs and expenses incidental to the investigation and handling of a complaint against him. A practitioner dissatisfied with the Committee's decision could appeal to the District Disciplinary Tribunal.

General

30. The Committee has recommended and the Society has accepted that the Law Practitioners Act should be amended to enable a District Council to investigate and pursue inquiries where it has reasonable cause to believe or suspect that there has been misconduct or a lack of competence on the part of a practitioner.

31. The Committee has recommended and we understand that the Society accepts that the Rules incorporated in the Society's Code of Ethics should emphasise the duty of

practitioners to report to his Council circumstances which give him good reason to believe that another practitioner has been guilty of conduct falling short of the standard expected.

32. The Committee recommends and the Society accepts that the powers of District Councils should include the power to adopt rules, recommended by the New Zealand Law Society, which would specify particular offences for which practitioners can be held accountable. On the basis of its inquiries the Committee would suggest that the specific offences could include the following matters -

- undue delay in handling or completing a legal matter,

- charging a client excessive costs,

- unreasonably failing or refusing to reply, or to reply satisfactorily, to a proper inquiry from a client or another solicitor or unreasonably failing or refusing to provide a client with information to which he is entitled and which he has duly requested,

- handling a legal matter incompetently, and

- being held responsible by the Council of the District Law Society, or the appropriate committee of the Council, for a specified number of legitimate or avoidable complaints over a given period of time.

33. The Committee and the Society are in general agreement concerning publication of decisions of Disciplinary Tribunals. In cases taken to the Law Practitioners Disciplinary Tribunal where striking off or suspension is ordered, both the public and the profession should be

informed and the grounds should be stated. In other serious cases, that Tribunal should have a discretion about informing the public, but the profession should be given all necessary information.

If the decision is taken by the District Disciplinary Tribunal, members of the District Society should be informed and the Tribunal should have a discretion as to publication to the public.

Each Tribunal will, however, be expected to prepare an annual report which will contain statistics concerning the various charges made, the number proved, and the penalties imposed. These reports should be released to the press.

Summary of Recommendations

34. The recommendations made in this Report are contained in the following paragraphs:

(i) We recommend the appointment of a Lay Observer or Observers to review the action taken by a District Law Society on a complaint (paragraphs 10, 11, 12 and 13).

(ii) We recommend that the Lay Observer(s) be empowered to request a District Law Society to initiate an investigation (paragraph 14).

(iii) We recommend that the Lay Observer(s) be required to make an annual report to Parliament (paragraph 15).

(iv) We recommend the establishment of Investigating Committees to investigate all complaints and lay charges (paragraph 18).

(v) We recommend the establishment of District Disciplinary Tribunals with lay membership and that District Councils should cease to exercise disciplinary powers (paragraphs 19 and 20).

(vi) We recommend the establishment of a Law Practitioners Disciplinary Tribunal with lay membership which would assume the present functions of the Disciplinary Committee of the New Zealand Law Society. Those who have taken part in the earlier investigation or adjudication of a complaint should be disqualified from sitting as a member of the Tribunal (paragraphs 22 and 23).

(vii) We recommend the retention of the right of appeal to the Supreme Court from a decision of the Law Practitioners Disciplinary Tribunal, but we prefer that appeals be taken to the Administrative Division (paragraph 24).

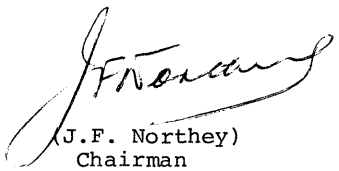
(viii) We recommend that one of the grounds for disciplinary action should be professional negligence or incompetence, but the penalty (if any) should be in the discretion of the disciplinary tribunal (paragraph 25).

(ix) We recommend that the penalties that may be imposed be significantly increased and that costs may be awarded against a practitioner (paragraph 28).

(x) We recommend that the cost of investigations which do not lead to disciplinary charges may be recovered from the practitioners responsible (paragraph 29).

(xi) We recommend that the powers of District Law Societies should be enlarged to include investigations (paragraph 30) and the adoption of rules stating offences which will attract disciplinary action (paragraph 32).

(xii) We recommend that publicity be given to the decisions of disciplinary tribunals (paragraph 33).



(J.F. Northey)
Chairman
for the Committee

May 1977

MEMBERS:

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Professor K.J. Keith
Professor D.L. Mathieson
Dr R.G. McElroy
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* Mr Ward was not present at the deliberations leading up to the final report of the Committee.