

## 8 Years to Judgment is Too Long

May 2008

**It's an understatement to say that eight years from start to finish (longer if there are appeals) for a High Court case is unacceptable. Is enough being done?**

It's an understatement to say that eight years from start to finish (longer if there are appeals) for the 0867 case is unacceptable. As TUANZ Executive Director, Ernie Newman, says:

"If there is a learning from this, it should be that a law and a process that allows such things to drag on for obviously excessive periods of time are demonstrably flawed".

Competition cases are complex beasts and will always take time. But we must find a way to speed up cases so they conclude well within 8 years. 0867 is not exceptional: the Commission has another similarly aged case going to trial this year.

The Commission and other claimants are less likely to bring claims if they drag on for so long, cost more money as a result, and so on. Delays ultimately impact the economy more widely than just the markets in which participants are sued. The Commission pursues cases to "keep 'em honest" in all market sectors: a case in one sector has ramifications for providers in others.

In fairness, the court system, part way through the 8 years, introduced key case management

requirements which took more control away from the parties and lawyers. The Courts have much more control. Parties are required to take steps to expedite cases and encourage settlements.

In February 2008, the NZ Bar Association and the Legal Research held a conference, *Civil Litigation in Crisis- What Crisis?* Striking was the diversity of views ranging from those who thought the new case management rules were largely enough, to others who thought they made things worse. Some said these changes just tinkered at the edge of a fundamentally flawed court system, and radical change is needed.

The debate is marked by a relative lack of detailed statistics and other analysis, for a system that has obvious failings. Apparently Government did not want to fund proper review of such an important system. In the meantime, most citizens and companies are disenfranchised from the courts (they can't afford it). Even those who can afford it, face cost and delay.

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