

# Jersey Employment Tribunal

1<sup>st</sup> Floor, Trinity House,  
Bath Street,  
St Helier,  
JE2 4ST

## Annual Report 2010

This fifth annual report covers the period from 1 July 2009 to 30 June 2010.

### **Applications to the Jersey Employment Tribunal**

The Jersey Employment Tribunal received 169 applications during the period; this is a decrease of 18 compared to the previous year. The spread of applications continues to reflect the diversity of Jersey's employment sector, rather than being confined to one particular industry.

### **Outcomes of Tribunal Applications**

Unless a party indicates that s/he does not want conciliation, all applications and responses are forwarded to the Jersey Advisory and Conciliation Service (JACS). The Employment Tribunal actively encourages both parties to meet an Officer of JACS. Cases only come to the Tribunal if no conciliated settlement has been reached.

The 169 applications were dealt with in the following manner;-

Rejected		5
Dismissed		2
Continuing		95
Settled		47
Withdrawn		5
Struck Out		1
Found in favour	Applicant	11
	Respondent	3
	<b>Total</b>	<b>169</b>

**The status of outstanding cases from previous years is as follows:**

**2005** - One case remains outstanding pending the outcome of a Royal Court Hearing.

**2006** - None

**2007** - None

**2008** - 2 cases remain outstanding. 3 cases have been stayed

**Year 2009** (to 30 June 2009) - 8 cases remain outstanding and are at various stages of the Tribunal process. This does not include outstanding cases from previous years as shown above.

**Breakdown of Issues contained in Applications**

Most of the cases coming before the Tribunal continue to relate to unfair dismissal and payment of wages. The figures below however do not include additional issues identified during the course of the hearing. In some cases more than one issue applied at the time of registration.

<b>Issues identified in Applications</b>	<b>Number</b>
Unfair Dismissal	139
Payment of wages	80
Holiday Pay / Rest Periods	47
Termination of Employment	73
No Contract	23
Breach of Contract	3
Minimum Wage	2
No Wage slips	8
Total number of issues	<b>375</b>

**Number of Cases Heard**

The Tribunal sat on 87 occasions and held 61 hearings and 26 Interim hearings during the period. In relation to the hearings, the Tribunal found in favour of the parties as follows: The Applicant was successful in 18 cases and the Respondent was also successful in 18 cases. The balance of the cases were resolved by way of settlement or withdrawal, or were struck out during the hearing.

The Tribunal endeavours to bring matters to a full hearing within 26 weeks of the claim being accepted. In the majority of cases this is achieved. It is only in exceptional circumstances, or by mutual consent that hearings are delayed, i.e.

where issues are the subject of proceedings in Court, unavailability of witnesses, etc.

Preliminary Hearings are used increasingly to determine matters such as whether the Tribunal has jurisdiction, whether the claimant is an employee of the alleged employer, identifying the issues for determination, disclosure issues and many other areas where preliminary determinations may lead to a fair and efficient hearing. These are conducted at the request of either of the parties or at the direction of the Chairman or Deputy Chairman.

### **Discrimination Law**

In preparation for discrimination legislation, Tribunal members have already undertaken training. However, implementation of the law has been delayed again this year due to budget constraints.

It is understood that there has been no change to earlier proposals that when the law does come into force, the Employment Tribunal would hear discrimination claims relating to employment, and might also hear claims relating to any aspect of discrimination.

Although it is impossible to gauge with any accuracy the additional workload that the discrimination legislation would bring to the Tribunal, my deputy and I believe that the Tribunal would have the capacity, in terms of time, manpower and premises, to deal with any aspect of discrimination. It is generally recognised that discrimination claims should be heard in the same relatively informal manner as employment claims and therefore the Tribunal might reasonably be regarded as the most suitable forum for all discrimination matters. This should save costs, for it would use an existing and experienced tribunal.

Should the Home Affairs Minister, and ultimately the States, wish the Tribunal to hear all discrimination claims, rather than only claims relating to discrimination in employment, we believe that this would be feasible.

### **Unfair Dismissal Awards**

Until October 2009, the Employment Law provided a set formula (based on a scale relating to length of service and weekly pay) for the calculation of unfair dismissal awards and the Tribunal could not reduce an award due to an employee's actions or conduct leading up to the dismissal.

The Law has been amended and the Tribunal now has the power to reduce the compensation that an employer is ordered to pay where the employee has contributed to his or her own dismissal. The amendment, which is not

retrospective, will also give the Tribunal the power to order the re-employment of an unfairly dismissed employee, instead of a financial award.

Only one case has so far been the subject of such reduction on the successful application of the Respondent. The Tribunal concluded that the Applicant's behaviour contributed directly to her dismissal and the Tribunal decided that in this case it was just and equitable to reduce the amount of the Applicant's compensation for unfair dismissal by 65%.

### **Training**

All the members of the Tribunal undertake additional training from time to time. With the introduction of new employment legislation, it is imperative that the members stay abreast of developments in employment relations and discrimination in the workplace, all of which will impact on the scope of the issues coming before the Tribunal in the future. The members will receive further training on redundancy legislation later this year, before the new statutory right to a redundancy payment comes into force.

### **Tribunal Members**

I am grateful for the commitment of the Tribunal members. The time spent in hearings probably is about half the time the members actually spend on each case. The documents are studied before each hearing and when the hearing is finished the panel discusses and examines in detail the evidence before making its decision. Thereafter, the chairman or deputy chairman provides a draft judgment for the panel members to correct and amend before publication. All too often, the Tribunal convenes to hear a case only to find that one of the parties does not appear, and of course by that stage it is too late to arrange for another case to be heard by that panel. This is hard on panel members who may have taken holiday time or time off work to attend and who have spent their own time reading the papers.

There are currently four vacancies on the Tribunal for two employer representatives and two employee representatives. Recruitment will be undertaken later in 2010 to fill these positions.

### **Tribunal secretary**

John Mallet has retired as secretary to the Tribunal. He was there at the beginning, and it was largely due to his organization and patience that we now have a tribunal which runs smoothly. John co-ordinated and provided first drafts for many of the Tribunal documents and devised the system which operates from

the time a complaint is received to delivery of the judgment to the parties. Above all, John's firm yet kind management of the parties to employment disputes has set the hallmark on the Tribunal's approach: we try throughout the process to match fairness with compassion. We are sad to see John go, and wish him well.

A replacement has been found, Louise Cave. Louise currently works in the Viscount's department, so she has useful experience. We look forward to working with her.

### **Responsibility for the Tribunal**

Hitherto, the responsibility for the Tribunal, including budgetary responsibility, has been with the Minister for Social Security. We have had much help and support from Kate Morel at the Department of Social Security. As of 1 August 2010, the responsibility for our administration will come under the aegis of the Judicial Greffier. This is a logical change, for those who are responsible of administering the courts have the experience to administer the Tribunal, which is simply another branch of the justice system in Jersey.

**Employment Tribunal Chairman  
September 2010**

## **Appendix 1 – Employment Tribunal Side Members**

### Employer Representatives

Mrs Susan Armes  
Mrs Mary Curtis  
Mrs Kelly Flageul  
Mr Stewart Maurant  
Mrs Carol Harvey  
Mr Peter Woodward  
Mr Mark Therin  
*(1 position vacant<sup>1</sup>)*

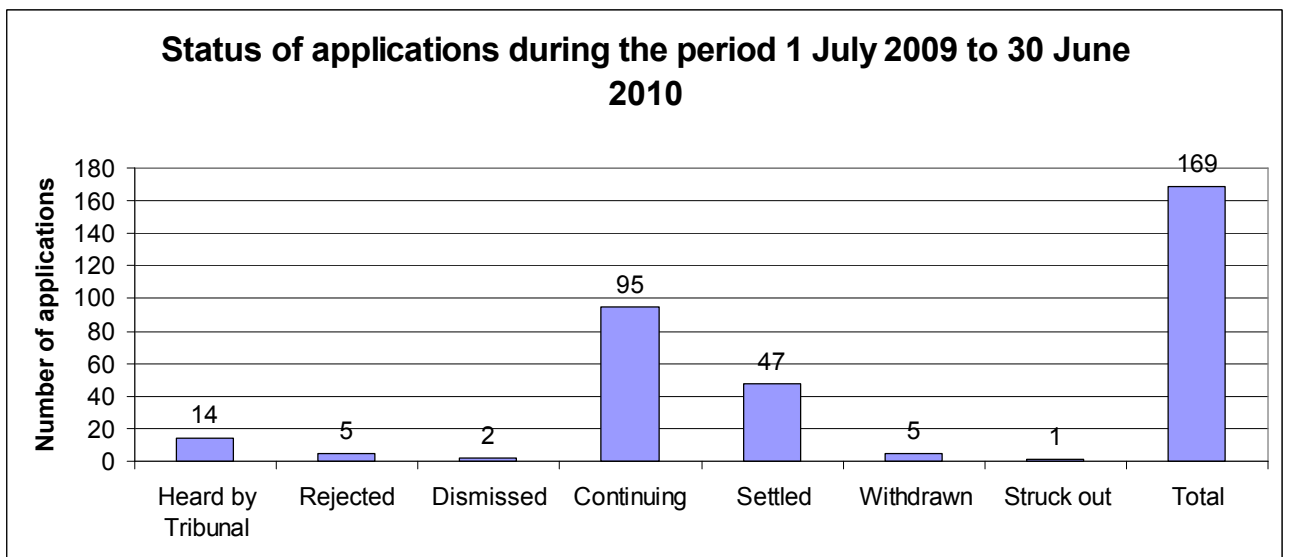
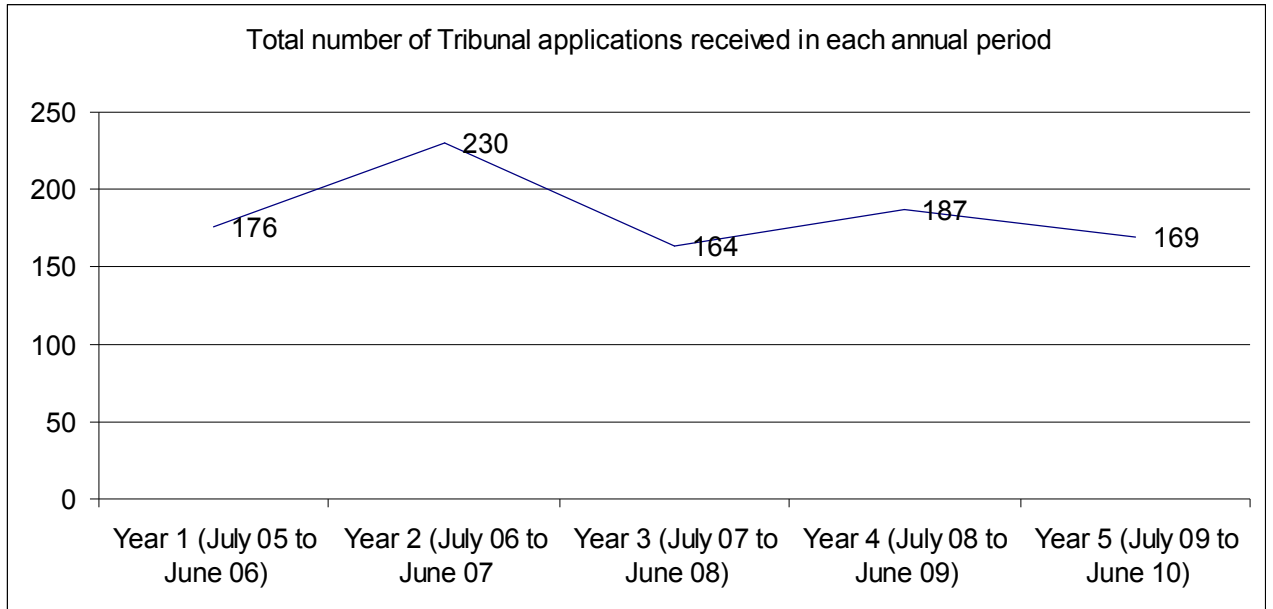
### Employee Representatives

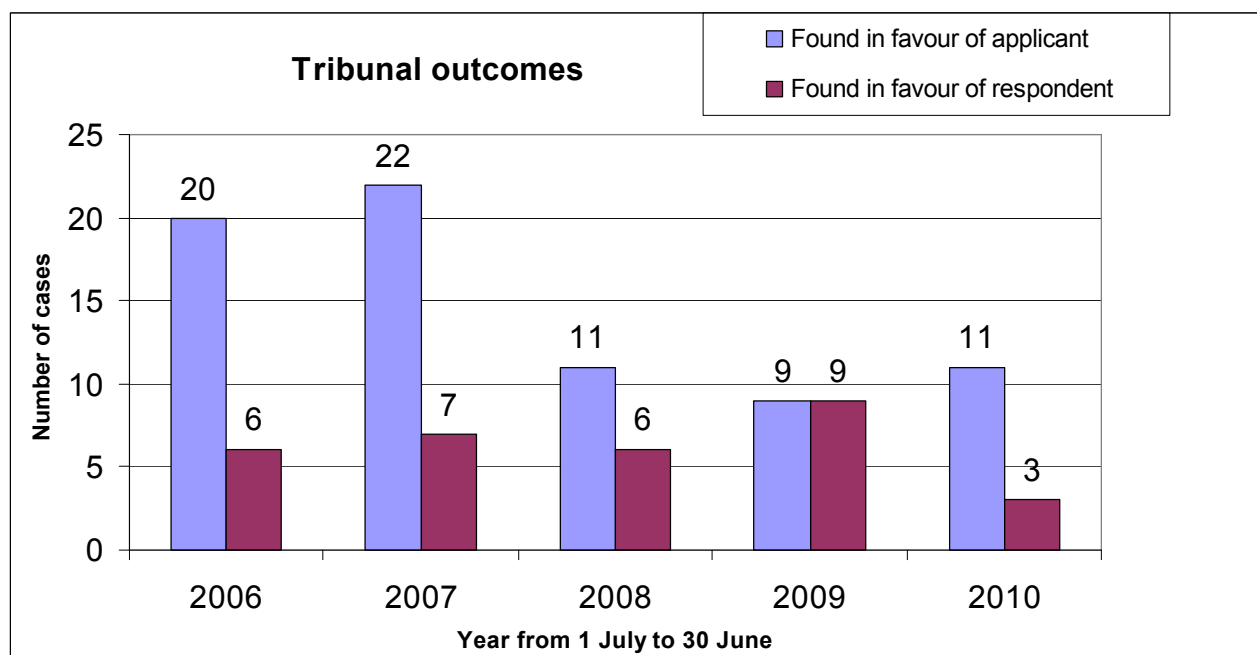
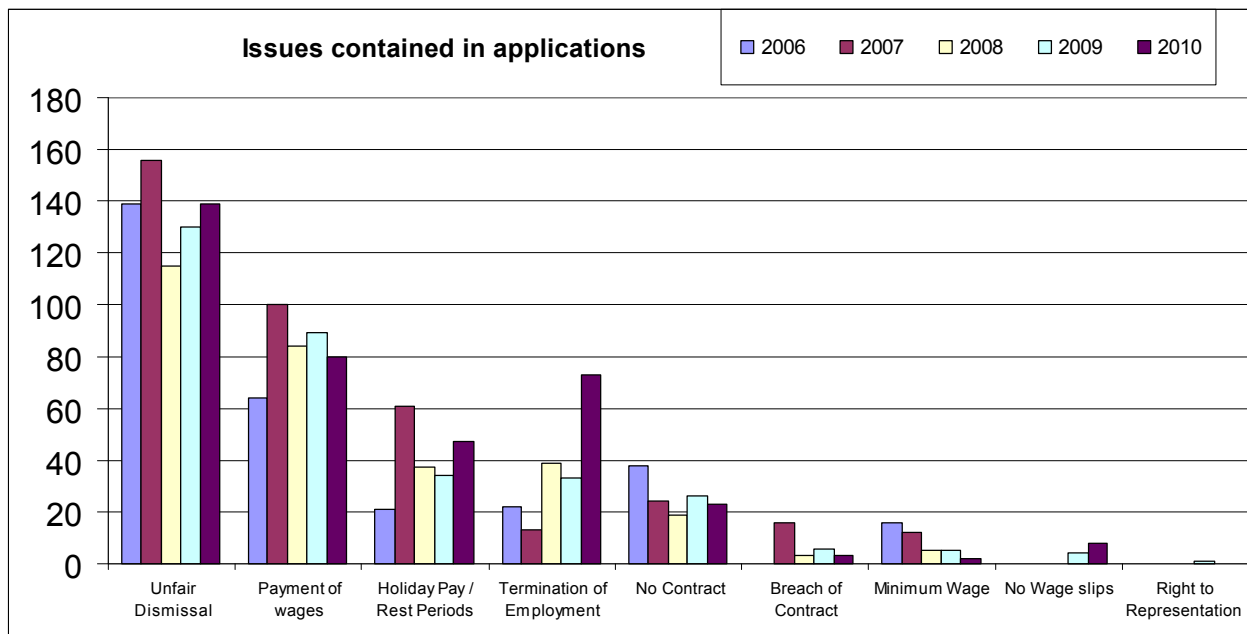
Mr Patrick Kirwan  
Mr Samuel Le Breton  
Mr James McCartan  
Mr Alan Hall  
Mr Timothy Langlois  
Mr Michael Baudains  
*(2 positions vacant)*

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<sup>1</sup> As of 1 July 2010, one additional employer representative position is vacant.

## Appendix 2 –Employment Tribunal Activity – 1 July 2008 2009 to 30 June 2009 2010





Note: Of the 169 applications received during the period 1 July 2009 to 30 June 2010, 11 cases were found in favour of applicants and 3 in favour of respondents. Of all cases heard by the Tribunal during the same period (which includes cases that have carried forward from previous years) 18 cases were found in favour of the Applicant and 18 were found in favour of the Respondent.