

OFFICE OF THE
JUDICIAL CONDUCT COMMISSIONER

Annual Report for 2010/2011

Contents

This Report..... 3
The Commissioner..... 3
The Deputy Commissioner..... 3
The Complaint Process..... 3
Advice to the Public..... 4
Complaints received..... 5
Decisions taken..... 6
Responses of the Judiciary..... 7
General Observations..... 7
Overview of Process for Judicial Conduct Commissioner
and Judicial Conduct Panel..... 9

Annual Report of the Judicial Conduct Commissioner for the year ended 31 July 2011

This Report

1. This is the sixth Annual Report since the first Commissioner took office on 1 August 2005, being the date on which the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 came into effect.

The Commissioner

2. The first Commissioner appointed under the Act was Mr Ian Haynes. His term of office commenced on 1 August 2005 and concluded on 12 July 2009.
3. The second, and current, Commissioner is Sir David Gascoigne. He took office on 3 August 2009.

The Deputy Commissioner

4. An office called the Deputy Judicial Conduct Commissioner has been established by an amendment to the Act. The amendment came into force on 23 March 2010.
5. The role of the Deputy Judicial Conduct Commissioner is to deal with complaints where the Commissioner has a conflict of interest, or where the Commissioner is absent or incapacitated, or where there is a vacancy in the office of Commissioner.
6. Mr Alan Ritchie has now been appointed to this position. He took office on 30 June 2011.

The Complaint Process

7. The Commissioner's role under the Act is to receive, assess and categorise complaints about the conduct of Judges.
8. The procedure generally adopted by the Commissioner, following the receipt of a complaint about the conduct of a Judge, is to notify the Judge of the complaint, and to seek any comment which the Judge may wish to make. The Commissioner can obtain any Court documents, including transcripts of hearings, and can listen to any sound recordings. The Commissioner may also make such other inquiries as the Commissioner considers appropriate.

9. In carrying out his or her functions, the Commissioner must act independently, and must also act in accordance with the principles of natural justice.
10. Once the Commissioner has completed a preliminary examination of a complaint, the Commissioner must select and apply one of the four courses of action, set down in the Act:
 - (a) the Commissioner may exercise the power to take no further action in respect of the complaint (under section 15A, a new power, conferred by the amendment to the Act referred to in paragraph 4 above); or
 - (b) the Commissioner may (under section 16) dismiss the complaint on one of the nine grounds specified in that section; or
 - (c) the Commissioner may (under section 17) refer the complaint to the Head of Bench, that is, to the Head of the particular Court on which the Judge who is the subject of the complaint sits; or
 - (d) the Commissioner may (under section 18) recommend that the Attorney-General appoint a Judicial Conduct Panel to inquire further into any matters concerning the conduct of a Judge.
11. An illustration of the process is shown in the **attached** diagram.
12. The process, as briefly described above, but more particularly set out in the Act, is intended to serve the purpose of the Act.

The purpose of the Act, as set out in section 4, is to enhance public confidence in, and to protect the impartiality and integrity of, the judicial system by:

- (a) providing a robust investigation process to enable informed decisions to be made about the removal of Judges from office;
- (b) establishing an office for the receipt and assessment of complaints about the conduct of Judges;
- (c) providing a fair process that recognises and protects the requirements of judicial independence and natural justice.

Advice to the Public

13. The Commissioner provides advice to the public about the complaint process through:
 - A website which describes the complaint process and provides downloadable forms and guidance sheets.
 - A brochure entitled “Complaints about Judicial Conduct”.
 - Responding to telephone, emailed or postal inquiries.

Complaints Received

14. The following table shows the statistics for complaints received by the Commissioner for the five years from 1 August 2006 to 31 July 2011:

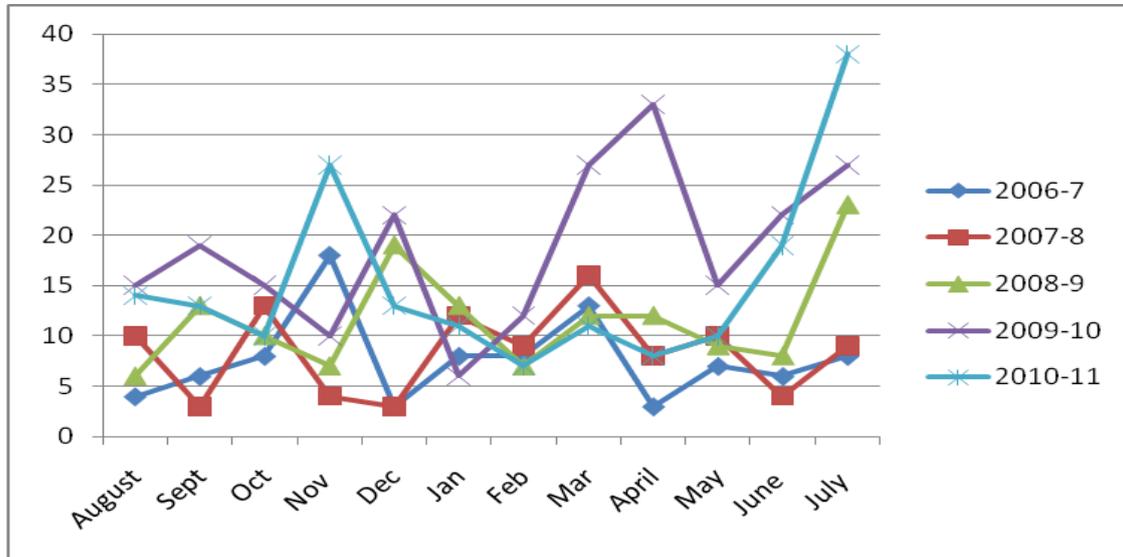
Complaint particulars	2010-11	2009-10	2008-09	2007-08	2006-07
Number of complaints received	181	223	139	101	92
Number of unfinalised complaints from previous year	138	63	50	31	11
Total	319	286	189	132	103
Outcomes					
Decision to take no further action under Section 15A	20	2	0	0	0
Complaints dismissed under section 16	140	125	113	80	72
Complaints referred to Head of Bench under Section 17	4	3	4	2	0
Complaints referred to Head of Bench at outset with consent of complainant because of conflict of interests	0	1	0	0	0
Recommendation that a Judicial Conduct Panel be appointed under Section 18	0	3	0	0	0
Complaints withdrawn	9	14	9	0	0
Total complaints dealt with	173	148	126	82	72
Number of complaints unfinalised at 31 July	146	138	63	50	31
Total	319	286	189	132	103

15. The following table shows the number of complaints received, on a Court by Court basis:

Courts	2010-11	2009-10	2008-09	2007-08	2006-07
Supreme Court	16	25	4	10	0
Court of Appeal	28	23	12	9	3
High Court	63	72	44	19	23
District Court	49	62	48	50	48
Family Court	19	29	27	13	15
Youth Court	0	0	0	0	0
Environment Court	1	5	3	0	2
Employment Court	2	2	0	0	1
Maori Land Court	2	2	1	0	0
Courts Martial Appeal Court	0	0	0	0	0
Coroners Court	1	3	0	0	0
Total	181	223	139	101	92

16. During the year from 1 August 2010 to 31 July 2011, 161 complainants complained, in all, about 181 Judges. (In other words, some complainants made complaints about more than one Judge.)

17. The following table shows a monthly comparison of new complaints received by the Commissioner.



Comparison on a Monthly Basis of Complaints Received over Five Years

Decisions Taken

18. During the year from 1 August 2010 to 31 July 2011, the Commissioner has taken the following decisions:
- No further action:* The Commissioner decided to take no further action in respect of 20 complaints. This was done using the power conferred by a recent amendment to the Act: Section 15A.
 - Dismissal:* The Commissioner dismissed 140 complaints during the year upon one or more of the grounds set out in section 16(1) of the Act.

The most common ground for the dismissal of complaints occurred where, essentially, the complainant called into question the validity of a decision made by a Judge. Section 8(2) of the Act provides that it is not a function of the Commissioner to challenge or call into question the legality or correctness of any judgment or other decision made by a Judge in relation to any legal proceedings. The proper avenue for that is by way of appeal or application for judicial review. The Commissioner's jurisdiction extends to issues of judicial conduct and not to judicial decisions as such.

Other grounds for the dismissal of complaints were varied and included these: that they were frivolous, vexatious or not in good faith; that the complaint had no bearing on judicial functions; that the subject matter of the complaint was trivial; that the person who was the subject of the complaint was no longer a Judge.

- (c) *Reference to Head of Bench:* 4 complaints were referred by the Commissioner to the relevant Heads of Bench, pursuant to section 17(1) of the Act. It is then for the Head of Bench to determine how best to deal with matters, so far as the Judge complained of is concerned.
 - (d) *Recommendation as to a Judicial Conduct Panel:* No recommendation was made in the past year, pursuant to section 18(1) of the Act, that a Judicial Conduct Panel be appointed to inquire into matters concerning the alleged conduct of a Judge.
 - (e) *Withdrawal:* 9 complaints were withdrawn by the respective complainants, following consideration of material provided by the Commissioner during the course of the preliminary examination.
19. Complaints have been based on a variety of grounds. By far the most common was that a decision, ruling or order of a Judge was wrong. As indicated in paragraph 18(b) above, a complaint on that basis falls outside the Commissioner's jurisdiction. Other grounds specified in complaints included rudeness, unfairness, inappropriate remarks, failure to listen, prejudice, bias, predetermination, and conflict of interests. (Not all of those will fall within the Commissioner's jurisdiction.)
20. Of the 146 unfinalised complaints in 2010/2011, 5 remain deferred pending the conclusion of relevant Court proceedings. The Act authorises the Commissioner, following consultation with the Head of Bench, to defer dealing with a complaint pending the outcome of the relevant proceedings or the conclusion of an appeal.

Responses of the Judiciary

21. The Commissioner is pleased to report that, with only isolated exceptions, Judges against whom complaints have been made have responded in a constructive and helpful manner. This materially assists the Commissioner in the examination of complaints and is appreciated by the Commissioner.

General Observations

22. The workload of the Commissioner continues to grow. The Table in paragraph 14 shows a steady increase in the total number of complaints – comprising new complaints received during the past year (181) plus unfinalised complaints carried forward from prior years (138). As at 31 July 2011, the total thus stood at 319.
23. The number of new complaints in the past year was, as just noted, 181. This is lower than the number in the preceding year (to 31 July 2010) when it was 223.
24. It is difficult to attribute causes to an increase or reduction. But that spike in the previous year may in part be due to the widespread publicity about

the existence and functions of this Office that occurred during the publicity surrounding the complaints and litigation involving Justice Wilson.

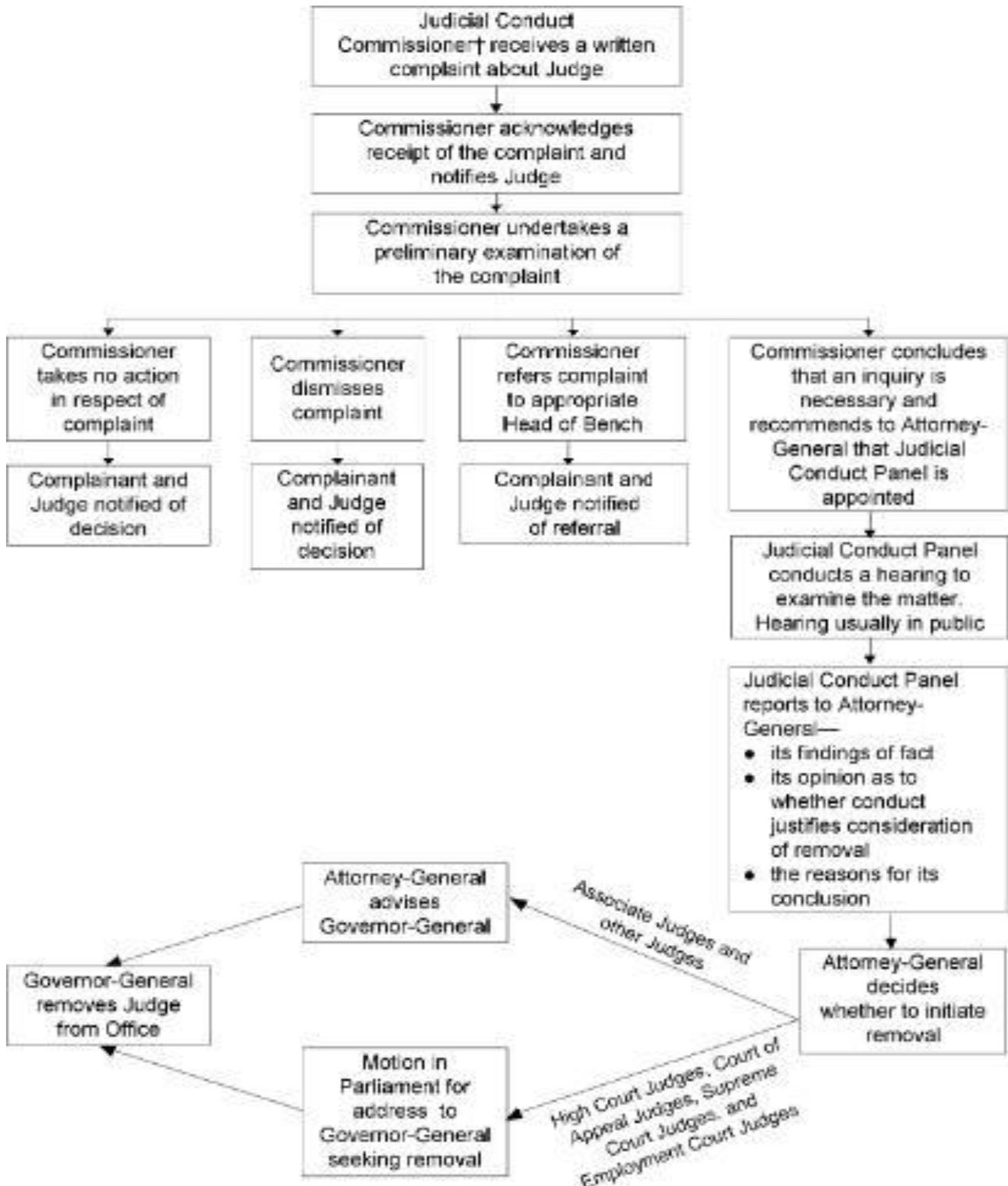
25. As can be seen in the Table set out in paragraph 17, there was also a distinct upward surge in the number of new complaints in the final months of the year just past. There is no obvious reason for this. And it is not possible to predict whether the increase is permanent or will fall away.
26. The Table set out in paragraph 14 shows that the number of complaints dealt with and determined during the past year, 173, is higher than in any previous year. But that consideration is outweighed in significance by the increased number of complaints, 146, which had not been finalised by 31 July this year. On any basis, that latter figure is much too high.
27. The overall number of complaints facing this Office thus continues to increase. There is also a significant increase in the complexity of many complaints, and thus in the time required to deal with them. Some complaints are comparatively easy to analyse and respond to. But an increasing number require the Commissioner to spend a large amount of time in investigating, considering, and evolving a decision. And while those more complex cases are being dealt with, other complaints keep building up.
28. The position is due to, and is exacerbated by, a continuing paucity of resources. The present level of resources – especially people, but also premises and equipment – is increasingly inadequate for the task in hand. This is a serious issue, detrimentally affecting the effectiveness of the Office.
29. I referred to this issue in last year's Annual Report, and said that it needed to be addressed and resolved during the course of the reporting year that has now ended.
30. In fact, the issue has not been resolved. But productive discussions are being held with the administering authority, the Ministry of Justice. I am hopeful that these will result, soon, in the provision of suitably qualified people to assist, along with related facilities such as further office space. And if that hope is realised, then it should result in an effective reduction in the troublesome accumulation of complaints.

15 September 2011



Sir David Gascoigne, KNZM
Judicial Conduct Commissioner

Overview of Process for Judicial Conduct Commissioner and Judicial Conduct Panel



†Judicial Conduct Commissioner or Commissioner includes a Deputy Judicial Conduct Commissioner carrying out the Commissioner's functions when the Commissioner has a conflict of interest, is absent from office, or is incapacitated, and during a vacancy in the office of Commissioner.