

OFFICE OF THE Judicial Conduct Commissioner

Annual Report for 2005/2006

Presented to the House of Representatives pursuant to Clause 9(2), Schedule 2 of the
Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004

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Annual Report of the Judicial Conduct Commissioner for the year ended 31 July 2006

This is the first Annual Report of the Commissioner who took office on 1 August 2005, being the date on which the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 (“Act”) came into effect.

The Commissioner’s Complaint Process

The Act established the office called the Judicial Conduct Commissioner to receive and deal with complaints about Judges and to conduct preliminary examinations of complaints.

The procedure followed by the Commissioner following the receipt of a written complaint about the conduct of a Judge is to notify the Judge of the complaint and 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 other enquiries as the Commissioner deems appropriate. In carrying out his or her functions, the Commissioner must act independently and must also act in accordance with the principles of natural justice.

Once the Commissioner has completed the preliminary examination, the Commissioner may dismiss the complaint on one or more of nine specified grounds. If the Commissioner does not dismiss a complaint, the Commissioner must either refer the complaint to the Head of Bench or recommend that a Judicial Conduct Panel be appointed. The process is illustrated by the **attached** diagram.

The complaint process provides a level of judicial accountability in addition to traditional forms such as proceedings being conducted in public, the requirement to give reasons for judicial decisions, and decisions being subject to appellate review.

Advice to the Public

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.

- Provision of a brochure entitled “Complaints about Judicial Conduct”.
- Responding to telephone and emailed enquiries.
- Giving talks to interested groups.

Complaints Received

The following table shows the statistics for complaints received by the Commissioner for the year from 1 August 2005 to 31 July 2006.

Table 1 Complaint particulars	
Number of complaints against Judges	106
Outcomes	
Complaints dismissed	89
Complaints referred to Head of Bench under s17 of the Act	4
Complaints referred to Head of Bench at outset with consent of complainant because of conflict of interests	2
Number of complaints outstanding at 31.7.06	11
Total	106
Courts	
District Court	45
Family Court	34
High Court	7
Court of Appeal	17*
Supreme Court	0
Environment Court	1
Employment Court	1
Maori Land Court	1
Total	106

* 16 from 1 Complainant

Types of Complaints

Individual complaints have covered various matters. These have included allegations of: bias, sexism, gender bias, delays, incompetence, lack of independence, rudeness, incorrect decisions, relevant material ignored, reasons not given, unfairness, inappropriate remarks, failure to listen, and predetermination.

Complaints examined and dismissed.

During the period 1 August 2005 to 31 July 2006, 75 complainants complained about 106 Judges. Some of the complainants made complaints about more than one Judge.

The Commissioner dismissed 89 complaints during the year upon the grounds set out in section 16(1) of the Act. Sometimes complaints were dismissed for more than one reason.

The most common ground for the dismissal of complaints occurred where essentially the complaint called into question the correctness 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.

Other common grounds for dismissal were: that the complaint was about a decision that was subject to a right of appeal or to apply for judicial review: section 16(1)(f), the matter had already been considered by the Head of Bench: section 16(1)(h), the matter was frivolous, vexatious or not in good faith: section 16(1)(d).

Reference of complaints to the Head of Bench

Six complaints have been referred to Heads of Bench. Four of these were referred under section 17 of the Act following the conclusion of the preliminary examination, and two were referred with the approval of the complainants due to a conflict of interest.

Judicial Conduct Panel

No recommendation has been made to the Attorney-General to appoint a Judicial Conduct Panel in respect of any complaint.

Amendments to the Act

Following a year of operation under the Act, the Commissioner considers that the following amendments to the Act would be beneficial.

- 1 Appointment of a substitute where the Commissioner has a conflict of interest or is not available through ill health or otherwise. Currently, the Commissioner has a real difficulty if he or she has a conflict of interest in relation to a complaint. The Act provides that the Commissioner must act independently. On the other hand, the Act does not permit the Commissioner to delegate the conduct of a preliminary examination or the power to make a decision as to the outcome of a complaint. This dilemma could be resolved by the Act authorising the appointment of a substitute to deal with complaints where the Commissioner has a conflict of interest or is unavailable to deal with a complaint.

2 At the present time, at the conclusion of a preliminary examination, the Commissioner has power to make one of only three possible decisions, namely:

- Dismiss the complaint.
- Refer the complaint to the Head of Bench.
- Recommend the appointment of a Judicial Conduct Panel.

The Commissioner considers that he or she should have a fourth option, namely to decide to take no further action. An instance where this option would be useful is where a complainant has expressed himself or herself as satisfied following an explanation or apology by the Judge. In circumstances of this kind, it is not desirable that the complaint be dismissed on the grounds that it is frivolous or vexatious, but at the same time it is not appropriate to refer it to the Head of Bench. In the Commissioner's view, it is very desirable that in appropriate cases he or she should have the power to decide to take no further action.

3 The Commissioner should be entitled to dismiss a complaint where the complainant unjustifiably declines or fails to provide further information requested by the Commissioner. This situation has arisen in practice and the Commissioner needs to be able to dispose of a complaint in these circumstances.

Overview of Process for Judicial Conduct Commissioner and Judicial Conduct Panel

