

OFFICE OF THE
Judicial Conduct Commissioner

Annual Report for 2006/2007

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Annual Report of the Judicial Conduct Commissioner for the year ended 31 July 2007

This is the second Annual Report of the Commissioner following his taking 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 Complaint Process

The Commissioner’s role under the Act is to receive and assess complaints about the conduct of Judges.

The procedure 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 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 considers 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 other factors 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.
- 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 2006 to 31 July 2007.

Complaint particulars	2006-07	2005-06
Number of complaints received	92	106
Number of unfinalised complaints from previous year	11	
Total	103	106
Outcomes		
Complaints dismissed	72	89
Complaints referred to Head of Bench under s17 of the Act	0	4
Complaints referred to Head of Bench at outset with consent of complainant because of conflict of interests	0	2
Number of complaints unfinalised at 31 July	31	11
Total	103	106

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

Courts	2006-07	2005-06
District Court	48	45
Family Court	15	34
Youth Court	0	0
High Court	23	7
Court of Appeal	3	17
Supreme Court	0	0
Environment Court	2	1
Employment Court	1	1
Maori Land Court	0	1
Courts Martial Appeal Court	0	0
Coroners Court	0	0
Total	92	106

During the period 1 August 2006 to 31 July 2007, 70 complainants complained about 92 Judges. Some of the complainants made complaints about more than one Judge.

The Commissioner dismissed 72 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 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).

In a number of cases where a complaint was dismissed, the complainant had expressed himself or herself as satisfied following an explanation or apology by the Judge or clarification provided by the Commissioner. Under the Act as it stands, the Commissioner has no alternative but to dismiss a complaint in these circumstances. Rather than do that, the Commissioner would prefer in a complaint of this type, to be able to decide to take no further action. This matter is included in the recommended amendments to the Act set out later in this report.

No complaints were referred to Heads of Bench.

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

Complaints have been based on various grounds. By far the most common was that a decision, ruling or order of a Judge was wrong. However, other grounds included rudeness, unfairness, inappropriate remarks, failure to listen, bias, and predetermination.

Of the 31 unfinalised complaints, 17 have been deferred pending the conclusion of relevant Court proceedings or the determination of an appeal. 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.

Coroners Act 2006

By virtue of this Act, from 1 July 2007 complaints concerning the conduct of Coroners are to be made to the Judicial Conduct Commissioner. As at 1 August 2007, no complaints concerning Coroners had been made to the Commissioner.

Amendments to the Act

Following two years in office, the Commissioner considers that amendments to the Act along the lines set out below would be desirable and 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 The Commissioner should be entitled to dismiss a complaint in circumstances where further consideration of the complaint is not justified. This would cover a number of situations, including the following:
 - A complaint which is based on an incorrect understanding of the facts, has no valid basis, or is otherwise misconceived.
 - Where there is unjustified failure by a complainant to provide information needed by the Commissioner to deal with or advance the complaint.
- 3 It would be useful for the Commissioner to have in appropriate cases, power to decide to take no further action, rather than to dismiss a complaint. An instance where this option would be desirable is where a complainant has expressed himself or herself as satisfied following an explanation or apology by the Judge concerned or clarification of the position by the Commissioner. In circumstances of this kind, dismissing the complaint tends to result in an undesirably negative outcome.

It is understood that the above matters are under active consideration. The Commissioner hopes that appropriate amendments to the Act will follow at an early date.

Overview of Process for Judicial Conduct Commissioner and Judicial Conduct Panel

