

OFFICE OF THE  
**JUDICIAL CONDUCT COMMISSIONER**

**Annual Report for 2009/2010**

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# **Annual Report of the Judicial Conduct Commissioner for the year ended 31 July 2010**

## **This Report**

1. This is the fifth 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 this year.
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. An appointment to the position, in accordance with the process set out in the Act, is pending.

## **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, was 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 and emailed inquiries.

- Giving talks to interested groups.

## Complaints Received

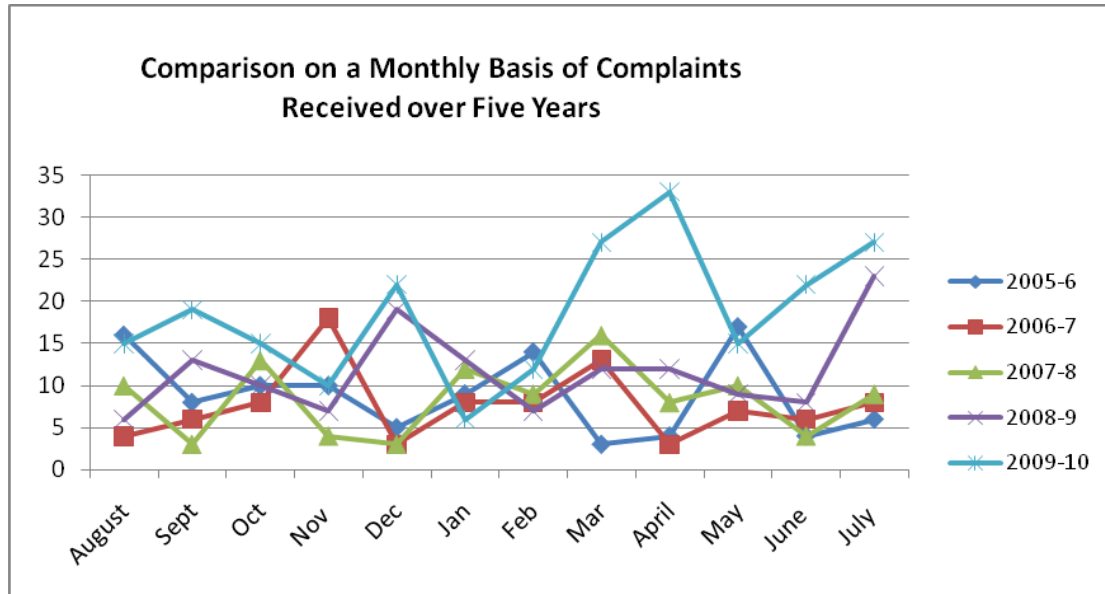
14. The following table shows the statistics for complaints received by the Commissioner for the year from 1 August 2009 to 31 July 2010:

<b>Complaint particulars</b>	<b>2009-10</b>	<b>2008-09</b>	<b>2007-08</b>	<b>2006-07</b>	<b>2005-06</b>
Number of complaints received	223	139	101	92	106
Number of unfinalised complaints from previous year	63	50	31	11	
<b>Total</b>	<b>286</b>	<b>189</b>	<b>132</b>	<b>103</b>	<b>106</b>
<b>Outcomes</b>					
Decision to take no further action under Section 15A	2	0	0	0	0
Complaints dismissed under section 16	125	113	80	72	89
Complaints referred to Head of Bench under Section 17	3	4	2	0	4
Complaints referred to Head of Bench at outset with consent of complainant because of conflict of interests	1	0	0	0	2
Recommendation that a Judicial Conduct Panel be appointed under Section 18	3	0	0	0	0
Complaints withdrawn	14	9	0	0	0
<b>Total complaints dealt with</b>	<b>148</b>	<b>126</b>	<b>82</b>	<b>72</b>	<b>95</b>
Number of complaints unfinalised at 31 July	138	63	50	31	11
<b>Total</b>	<b>286</b>	<b>189</b>	<b>132</b>	<b>103</b>	<b>106</b>

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

<b>Courts</b>	<b>2009-10</b>	<b>2008-09</b>	<b>2007-08</b>	<b>2006-07</b>	<b>2005-06</b>
Supreme Court	25	4	10	0	0
Court of Appeal	23	12	9	3	17
High Court	72	44	19	23	7
District Court	62	48	50	48	45
Family Court	29	27	13	15	34
Youth Court	0	0	0	0	0
Environment Court	5	3	0	2	1
Employment Court	2	0	0	1	1
Maori Land Court	2	1	0	0	1
Courts Martial Appeal Court	0	0	0	0	0
Coroners Court	3	0	0	0	0
<b>Total</b>	<b>223</b>	<b>139</b>	<b>101</b>	<b>92</b>	<b>106</b>

16. During the year from 1 August 2009 to 31 July 2010, 177 complainants complained, in all, about 223 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.



## Decisions Taken

18. During the year from 1 August 2009 to 31 July 2010, the Commissioner has taken the following decisions:
- (a) *No further action:* The Commissioner decided to take no further action in respect of two complaints. This was done using a power newly conferred by the amendment to the Act: Section 15A.
  - (b) *Dismissal:* The Commissioner dismissed 125 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.

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 is trivial; that the subject of the complaint is no longer a Judge.

- (c) *Reference to Head of Bench:* Four complaints were referred by the Commissioner to the relevant Heads of Bench, pursuant to section 17(1) of the Act. It is for the Head of Bench then 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:* A recommendation was made, pursuant to section 18(1) of the Act, to the Acting Attorney-General that a Judicial Conduct Panel be appointed to inquire into matters arising from three separate complaints concerning the alleged conduct of one Judge.
  - (e) *Withdrawal:* Fourteen 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 138 unfinalised complaints in 2009/2010, five 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 increase. In each of the past three years the number of new complaints has exceeded the number for the previous year. In the year just past, the number of complaints received (223) exceeded the number received in the preceding year (139) by 60%.

23. The reasons for the continuing increases – especially the increase in this past year – cannot be accurately specified. But they will include:
- (a) a growing public awareness of the existence of the office of the Judicial Conduct Commissioner and of the opportunity to make a complaint;
  - (b) (as an aspect of that) widespread media publicity about litigation in respect of a decision made by the Commissioner;
  - (c) the fact that, increasingly, some complainants are lodging a series of separate complaints about Judges, or are complaining about several Judges within the one complaint.
24. In addition, there is not just an increase in the number of complaints, there is also a marked increase in the sophistication and complexity of many of the complaints – and thus the time required to deal with them.
25. All this adds significantly to the workload confronting the Commissioner. The present resources – especially people, but also premises and equipment – are not adequate for the task in hand. This is a serious issue, of increasing concern. It needs to be addressed, effectively, in the coming year.

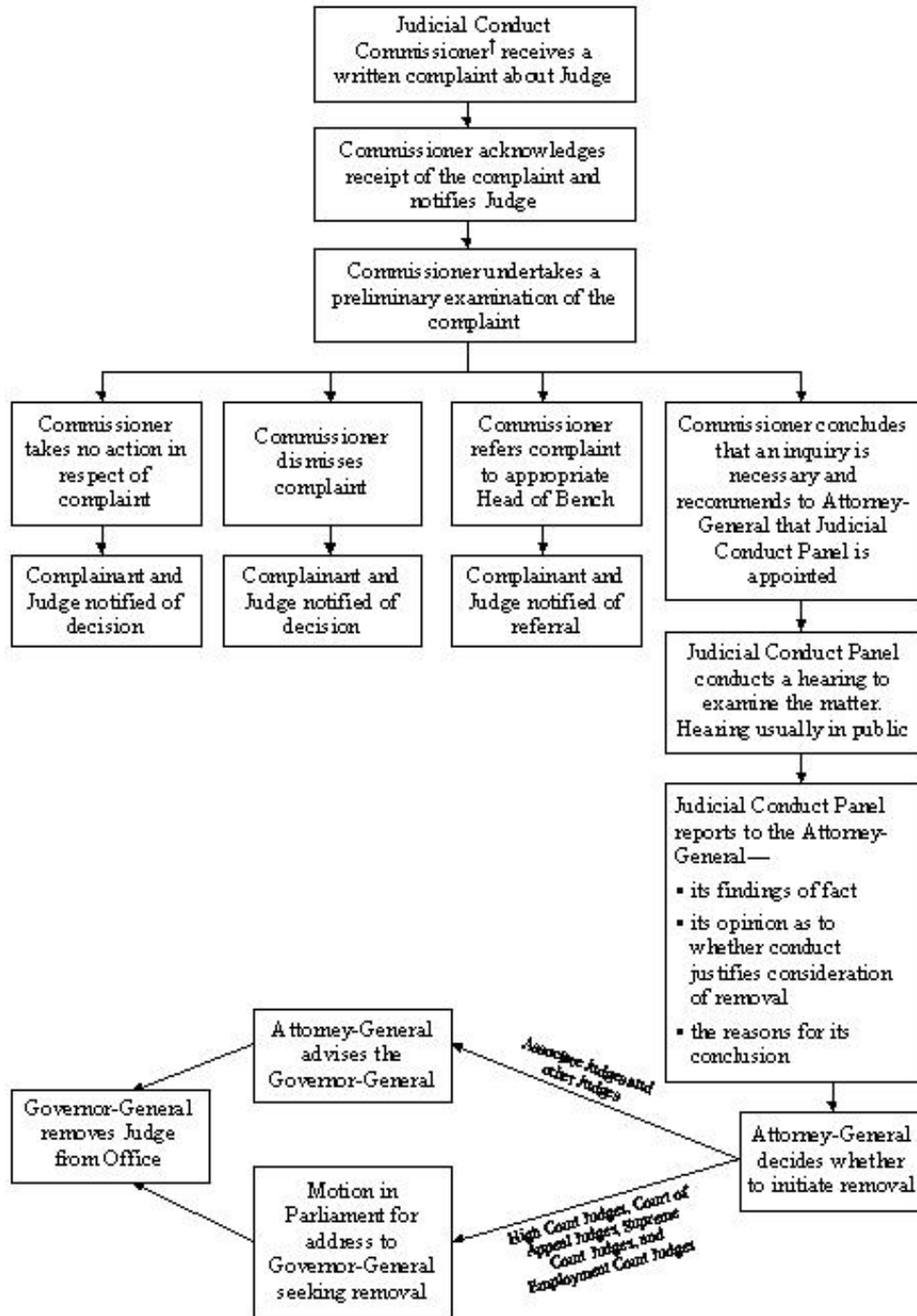
31 August 2010

A handwritten signature in black ink that reads "David Gascoigne". The signature is written in a cursive, slightly slanted style.

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.