

JUDICIAL CONDUCT COMMISSIONER

Report for the year to 31 July 2016

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

Report of the Judicial Conduct Commissioner for the year to 31 July 2016

Introduction

1. References in this report to the Act, Schedule, sections or clauses relate to the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004.
2. Clause 9(1) of Schedule 2 requires the Commissioner in each year to provide to the Attorney-General a report on the exercise of the functions under the Act.
3. The functions are set out in section 8. They are:
 - to receive complaints about Judges and to deal with the complaints in the manner required by the Act
 - to conduct preliminary examinations of complaints
 - in appropriate cases, to recommend that a Judicial Conduct Panel be appointed to inquire into any matter or matters concerning the conduct of a Judge.

Complaints statistics

(a) Received

355 being 42 more (14%) than for the year to 31 July 2015

(b) Examined

389 being 79 more (25%) than for the year to 31 July 2015

(c) Unfinalised

64 being 34 fewer (53%) than for the year to 31 July 2015

(d) Referrals to Heads of Bench

6 being 4 more (66%) than for the year to 31 July 2015

(e) Recommendations for appointment of a Judicial Conduct Panel

No recommendations have been made. Since the commencement of the Act on 1 August 2005 there has been only one recommendation. That was in the year ended 31 July 2010.

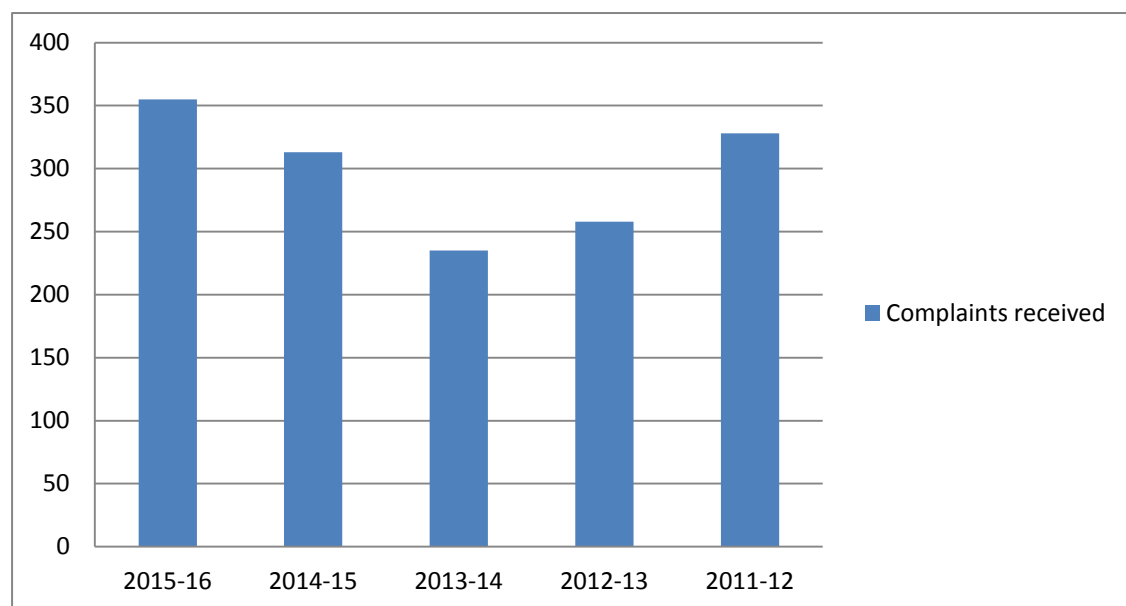
Complaints table

Five-year comparison of complaints receipt, examination and outcome

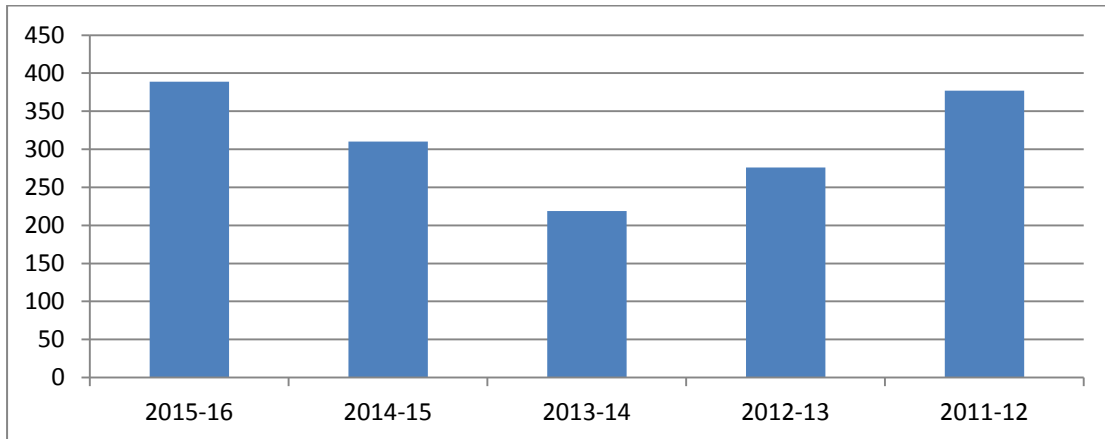
	2015-16	2014-15	2013-14	2012-13	2011-12
Received	355	313	235	258	328
Number of unfinalised complaints from previous year	98	95	79	97	146
Total	453	408	314	355	474
Examination and outcome					
No further action taken (section 15A)	42	33	25	62	95
Dismissed (section 16)	336	267	184	196	269
Referred to Head of Bench (section 17)	6	2	4	7	6
Referred to Head of Bench (section 8B)	0	4	0	1	2
Recommendation for Judicial Conduct Panel (section 18)	0	0	0	0	0
Withdrawn	5	4	6	10	5
Total complaints finalised	389	310	219	276	377
Complaints not finalised	64	98	95	79	97
Total	453	408	314	355	474

Complaints illustrations

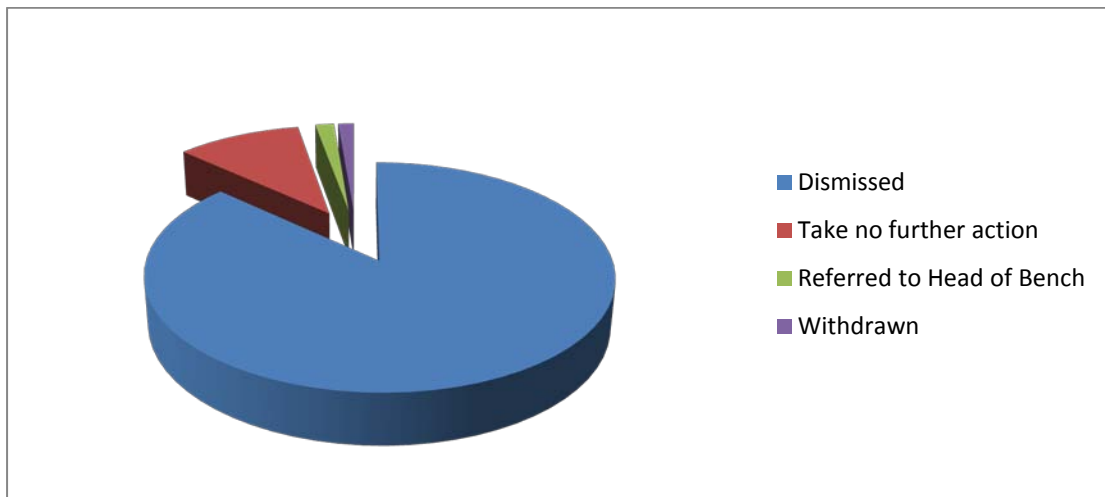
(a) Complaints received



(b) Complaints examined



(c) Outcome



Complaints received – Court by Court

	2015-16	2014-15	2013-14	2012-13	2011-12
Supreme Court	221	177	67	34	62
Court of Appeal	5	16	21	46	49
High Court	32	45	62	65	86
District Courts	49	52	53	67	71
Family Courts	43	16	24	30	52
Youth Courts	0	0	0	0	0
Environment Court	1	0	5	4	2
Employment Court	1	0	1	4	0
Maori Land Court	0	2	0	5	1
Court Martial	0	0	0	0	0
Coroners	3	5	2	3	5
Total	355	313	235	258	328

4. Care needs to be taken in the interpretation of the figures set out in this table. That is because section 11(1) of the Act requires the Commissioner to “... deal with every complaint made under this section about the conduct of a Judge ...”

5. That creates no difficulty when a person makes a complaint about a single Judge sitting, for example, in a District Court. The position is different when a person complains about several Judges comprising a panel of Judges at an appellate level as in the case of the Supreme Court.
6. Of the total of 355 complaints about individual Judges, the number of actual complaints was 187. However, the 221 complaints shown as having been made about Supreme Court Judges came from only 13 individuals of whom some have been declared vexatious litigants. It may also be reasonable to conclude that many of the complaints about Supreme Court Judges are driven by it being the final appellate Court.

The nature of complaints

7. As has been the pattern over the years, the conduct asserted by complainants covers a wide range including corruption, prejudice, bias, discourtesy, incapacity and incompetence.
8. Most commonly, however, no substance is provided in support of such allegations and what often becomes clear on examination is a complainant's simple disagreement with a Judge's decision. Sometimes complainants are quite open about choosing to make a complaint to the Commissioner rather than pursuing an appeal or an application for judicial review. It is unsurprising, therefore, that large numbers of complaints are dismissed because they seek to have the Commissioner act contrary to section 8(2) by challenging or calling into question the legality or correctness of a judicial decision.
9. It is not inevitably the case, however, that a complainant's disagreement with a decision or the existence of rights of appeal or review will preclude the Commissioner from finding issues of conduct warranting intervention as the six referrals to Heads of Bench will attest.

Referrals to Heads of Bench

10. As mentioned, there have been six referrals. Of those, five were to the Chief District Court Judge and one to the Principal Family Court Judge. It follows that there were no referrals to the Chief Justice, the President of the Court of Appeal or any other Head of Bench.
11. Reasons for the six referrals can be summarised as follows:
 - i. A failure by a District Court Judge to adhere to appropriate standards of courtesy, patience and tolerance and a failure to treat a person appearing in the Court in a way which respected that person's dignity.
 - ii. Behaviour inconsistent with the status of judicial office or which diminished the public's confidence in the Judge's integrity, impartiality or independence.
 - iii. A question mark over certain circumstances affecting a Judge leading to a suggestion that the Head of Bench should remind the particular Judge and Judges generally of the

special duties they all have in the maintenance of public confidence in the judiciary.

- iv. Apparent overbearing and intimidating conduct toward a litigant.
- v. Unfairness in comments to a jury in a District Court trial.
- vi. Behaviour falling short of the expectation of courtesy, respect and moderation.

Contact with the judiciary

- 12. The Commissioner and Deputy Commissioner are required or authorised by the Act to have contact with Judges for various purposes. These include notifying Judges of complaints, seeking responses and advising them of decisions. There is also contact with Heads of Bench as necessary.
- 13. The contact has been in writing. There has been no need for any face-to-face or telephone communication about any complaint. The response of Judges, whether those complained about or Heads of Bench, has been consistently helpful and constructive.

Commissioners and Deputy Commissioners

- 14. Until 31 August 2015, the Commissioner's functions were exercised by Sir David Gascoigne with Alan Ritchie as his Deputy. Tribute must be made to Sir David not only in regard to his exemplary service over the period of six years he spent in the role but for the support unstintingly offered at all times to the Deputy Commissioner and during the hand-over of duties.
- 15. Since 31 August 2015, the functions have been exercised by Alan Ritchie and by his Deputy, Kathryn Snook. Ms Snook has willingly and ably attended to several complaints referred to her in accordance with section 8B.

Administrative support

- 16. At times in earlier years, concern has been expressed over discharging a heavy workload with limited resources. There are regular meetings with the Secretary for Justice whose understanding of the situation has been appreciated. The position has been eased and the workflow is handled without undue backlog aided significantly by the administrative management and personnel provided by the Ministry of Justice.



Alan Ritchie
Judicial Conduct Commissioner
16 August 2016