

JUDICIAL CONDUCT COMMISSIONER

Report for the year to 31 July 2018

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 2018

Introduction

References in this report to the Act, Schedules, sections or clauses relate to the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004.

The purpose of the Act is set out in s3. It is to enhance public confidence in, and to protect the impartiality and integrity of, the judicial system.

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.

The functions are set out in s8. 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 summary

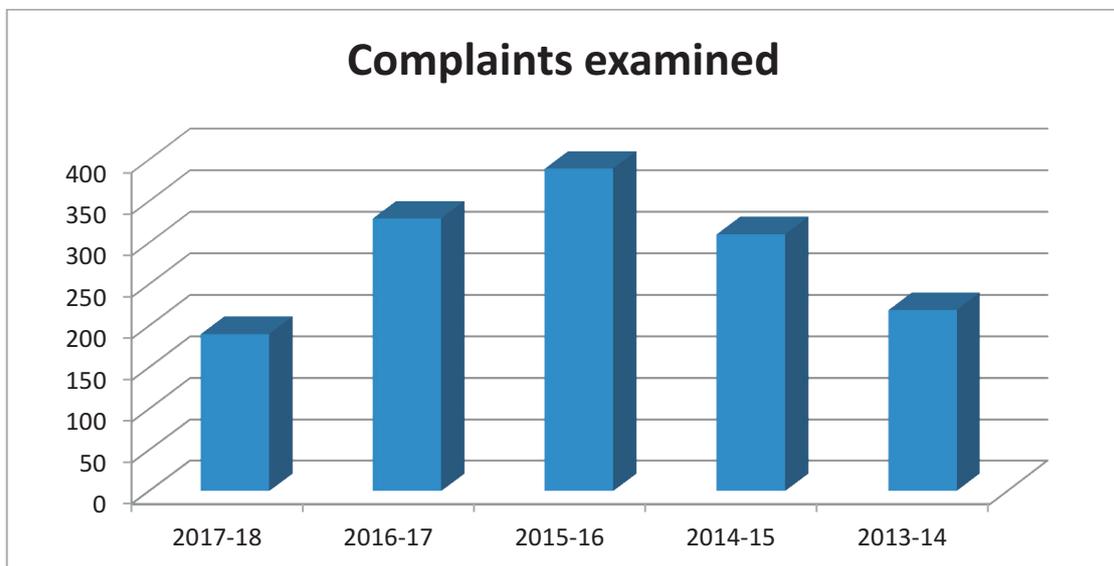
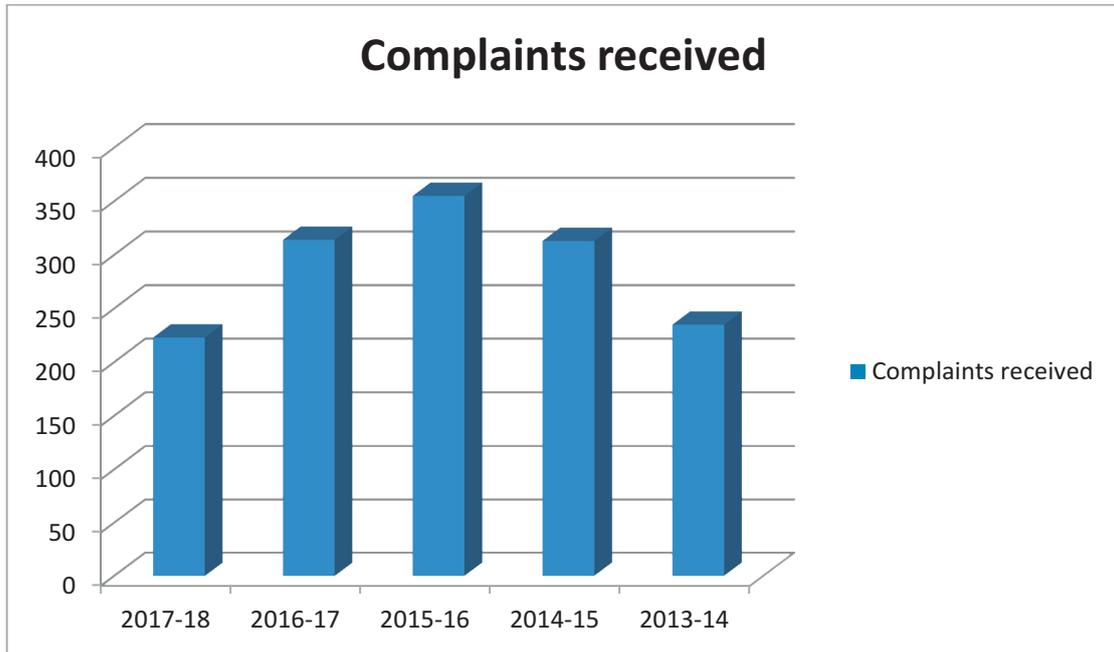
	Year to 31 July 2018	Year to 31 July 2017
Number of complaints	154	177
Number of Judges	223	314
Examination not completed	81	48
Examination completed	190	330
Referred to a Head of Bench	8	2
Recommendation for appointment of a Judicial Conduct Panel	0	0

Complaints table

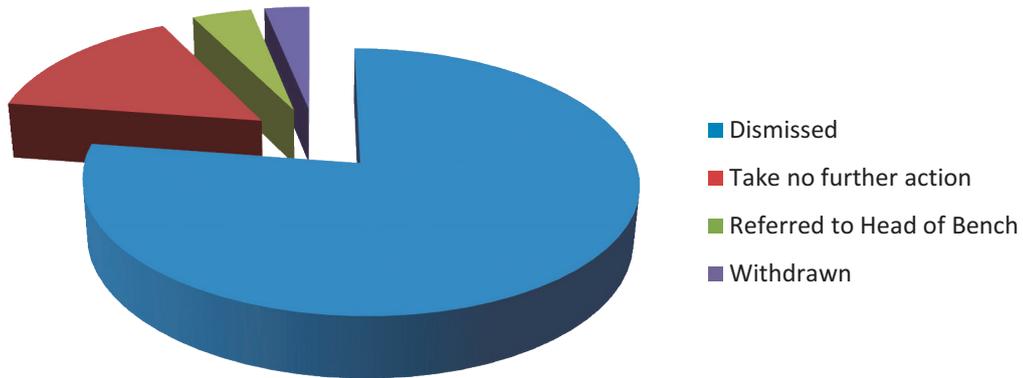
Five-year comparison of complaints: receipt, examination and outcome

	2017-18	2016-17	2015-16	2014-15	2013-14
Received	223	314	355	313	235
Number of unfinalised complaints from previous year	48	64	98	95	79
Total	271	378	453	408	314
Examination and outcome					
No further action taken (s15A)	29	56	42	33	25
Dismissed (s16)	147	269	336	267	184
Referred to Head of Bench (s17)	7	2	6	2	4
Referred to Head of Bench (s8B)	1	0	0	4	0
Recommendation for Judicial Conduct Panel (s18)	0	0	0	0	0
Withdrawn	6	3	5	4	6
Total complaints finalised	190	330	389	310	219
Complaints not finalised	81	48	64	98	95
Total	271	378	453	408	314

Complaints illustrations



Outcomes



Complaints received by Court

	2017-18	2016-17	2015-16	2014-15	2013-14
Supreme Court	54	158	221	177	67
Court of Appeal	10	18	5	16	21
High Court	45	35	32	45	62
District Court	76	57	49	52	53
Family Court	31	40	43	16	24
Youth Court	1	0	0	0	0
Environment Court	0	0	1	0	5
Employment Court	1	0	1	0	1
Māori Land Court	3	1	0	2	0
Court Martial	0	0	0	0	0
Coroners	2	5	3	5	2
Total	223	314	355	313	235

Commentary

Statistics

1. The complaints statistics provided with this report must be read with care. That is because s11(1) of the Act requires the Commissioner to "... deal with every complaint made under this section about the conduct of a Judge".
2. By way of simple illustration, a complaint arising solely from proceedings in a District Court will (usually) count as just one complaint in the statistics. However, a complaint arising from Supreme Court or Court of Appeal proceedings will (usually) be counted as five or three as the case may be.
3. Of the total of 223 complaints about individual Judges, the number of actual complaints was 154. The 54 complaints shown as having been made about Supreme Court Judges came from just nine individuals. The 10 complaints about Court of Appeal Judges came from three individuals. It also remains apparent that some complaints about Supreme Court Judges are driven by that being the final appellate court.

The nature of complaints

4. Delay, discourtesy, incapacity, incompetence and bias (with a related failure to consider recusal) have all continued to feature along with allegations of criminal behaviour including corruption and conspiracy.
5. It is probably unsurprising that significant numbers of complainants invite the Commissioner to challenge or call into question the legality or correctness of decisions made by Judges. That, as s8(2) makes plain, is not a function of the Commissioner. Nor may the Commissioner alter a judicial decision. Indeed, the Commissioner must (s16(1)(f)) dismiss complaints which are about a judicial decision or other judicial function that is or was subject to a right of appeal or a right to apply for judicial review.
6. Likewise, the Commissioner's jurisdiction is confined to Judges (as defined in the Act). Complaints about others (including lawyers and court staff) are regularly received but cannot be considered by the Commissioner in ways sought by complainants.
7. In the course of examination of complaints, a careful check is made for any aspect of judicial conduct which might justify action by the Commissioner. However, the Act's appropriate jurisdictional limits and the principle of judicial independence mean that a relatively high threshold must be cleared. It must always depend on the circumstances but if the Commissioner is not persuaded by what a complainant says, s15A(1) will be applied. That section provides that the Commissioner may decide to take no further action where, in all the circumstances, the Commissioner is satisfied that it would not be justified. In some cases further action has been justified resulting in referrals to a Head of Bench.
8. In the report for the year to 31 July 2017, reference was made to the need to deal firmly with a large number of complaints made by a small number of individuals falling squarely within the categories covered by s16(1)(d) and (e) as being trivial, frivolous, vexatious or not made in good faith. The indicated reduction in such complaints has continued.
9. The Commissioner has been aware of a spotlight on what is described as bullying behaviour by Judges towards lawyers. Complaints of this nature received by the Commissioner are few and far between but by no means unheard of. On occasions (though not in the current year) there has been sufficient concern to justify referrals to Heads of Bench. In doing so the expectation has been expressed that the particular Judge, or Judges generally, be reminded of their obligations in terms of public confidence in the judicial system. Guidelines for Judicial Conduct should leave little room for doubt about what is, or is not, appropriate behaviour. As former lawyers themselves, all Judges should have etched in their minds, as though second nature, their obligation to treat lawyers with respect and courtesy.
10. In response to an inquiry from the New Zealand Law Society, the Commissioner said (in April 2018):

“On occasions, admittedly rare, I have sensed an unwillingness on the part of lawyers to make what may well have been eminently justifiable complaints to me. Concern for career and livelihood would seem to be the likely cause. My advice has been to inquire whether there might not be a very senior practitioner in the area prepared to make a complaint on behalf of court users generally. There would need to be specific examples of conduct which could be checked off against audio recordings. It can be difficult to absorb the tenor of hearings from written transcripts, but the recordings are usually very helpful. I have yet to receive any complaint in consequence of that suggestion.”

11. It is understood moves are now afoot for the development of a protocol designed to assist with this apparent problem.

Referrals to Heads of Bench

12. There have been 8 formal referrals with seven made under s17 and one under s8B(3).
13. There were no referrals about Judges of the Supreme Court or the Court of Appeal.
14. There were two referrals to the Chief Judge of the High Court, four to the Chief District Court Judge, one to the Chief Judge of Māori Land Court and one to the Chief Coroner.
15. One of the referrals to the Chief High Court Judge did not arise from any finding of wrong-doing. Rather, it was designed to ensure the adequacy of various guidelines or protocols relating to disclosure by Judges of matters which might lead to apprehension of bias and the need for consideration of recusal.
16. The other referral to the Chief High Court Judge related to an issue of delay.
17. Three of the complaints referred to the Chief District Court Judge related to just one Judge. They arose from what the Judge accepted was an error of judgement in not articulating sufficiently the views he would usually express concerning violence of any sort, particularly domestic violence.
18. The remaining referral to the Chief District Court Judge was made under s8B(3) after the Commissioner and Deputy Commissioner decided they had a conflict of interest in relation to the complaint.
19. The referral to the Chief Judge of the Māori Land Court related to the need for meticulous attention to matters which might justify disclosure.
20. The referral to the Chief Coroner was designed to ensure a full and clear understanding between the Coroner and the Chief Coroner to avoid any possible concern over public confidence in the judicial system.
21. In addition to the formal referrals, Heads of Bench receive copies of all decisions relating to their particular courts. In some instances, the Heads

of Bench are invited to consider the circumstances leading to the complaint and to bear them in mind in the guidance offered to Judges.

Contact with the judiciary

22. 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.
23. With one exception (a brief meeting with the Chief Justice on judicial bullying in July of 2018) the contact has been in writing. The responses of Judges, whether those complained about or Heads of Bench, have been consistently helpful and constructive in keeping with the experience of earlier years.

Administration

24. There have been some changes. Typing and formatting of decisions is now undertaken extremely efficiently through remote digital transcription services. The support of various Ministry of Justice personnel including the Manager of Appointments and Specialist Functions (Gavin Duffy) and Chief Legal Counsel (Jeff Orr) during that transition and, indeed, throughout the year has been thoroughly appreciated.
25. The Commissioner continues to have the upmost admiration and gratitude for the excellent work and steadfast support offered by the Deputy Commissioner, Ms Kathryn Snook.



Alan Ritchie
Judicial Conduct Commissioner
1 August 2018