

JUDICIAL CONDUCT COMMISSIONER

Report for the year to 31 July 2019

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 2019

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

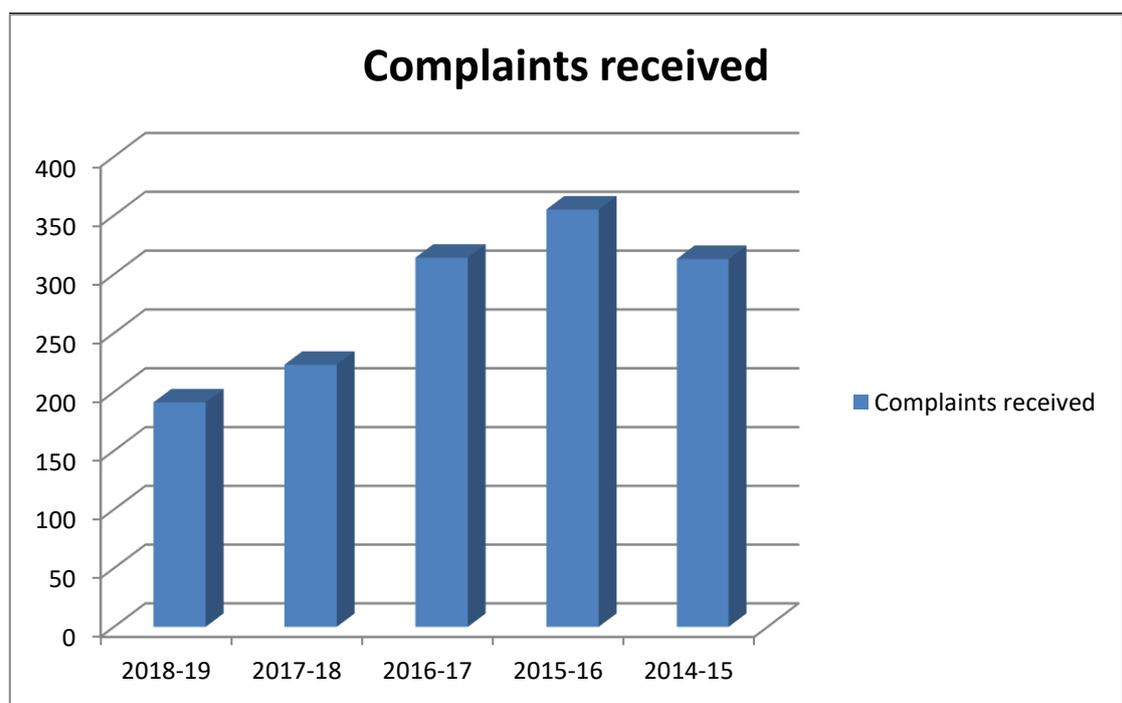
	Year to 31 July 2019	Year to 31 July 2018
Number of complaints	158	154
Number of Judges	191	223
Examination not completed	33	81
Examination completed	239	190
Referred to a Head of Bench	9	8
Recommendation for appointment of a Judicial Conduct Panel	0	0

Complaints table

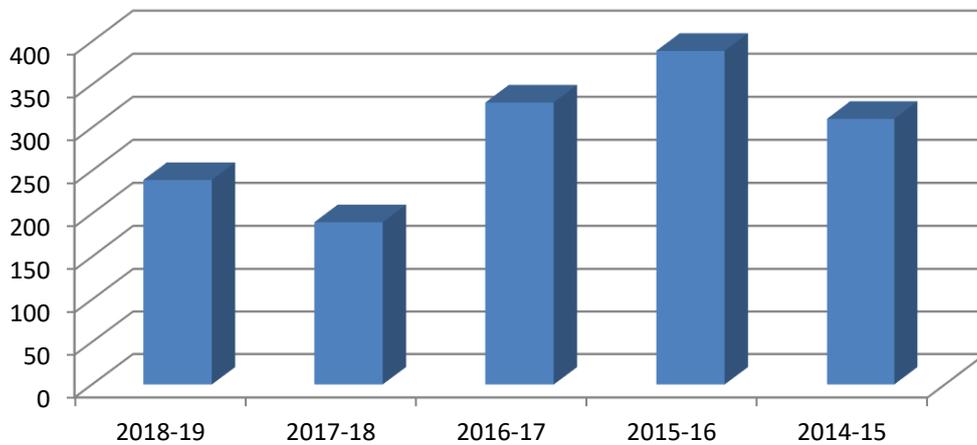
Five-year comparison of complaints: receipt, examination and outcome

	2018-19	2017-18	2016-17	2015-16	2014-15
Received	191	223	314	355	313
Number of unfinalised complaints from previous year	81	48	64	98	95
Total	272	271	378	453	408
Examination and outcome					
No further action taken (s15A)	44	29	56	42	33
Dismissed (s16)	186	147	269	336	267
Referred to Head of Bench (s17)	8	7	2	6	2
Referred to Head of Bench (s8B)	1	1	0	0	4
Recommendation for Judicial Conduct Panel (s18)	0	0	0	0	0
Withdrawn	0	6	3	5	4
Total complaints finalised	239	190	330	389	310
Complaints not finalised	33	81	48	64	98
Total	272	271	378	453	408

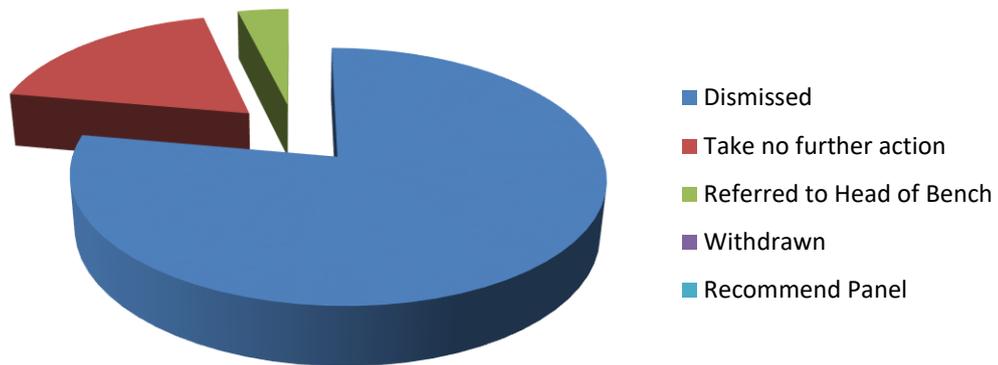
Complaints illustrations



Complaints examined



Complaints decisions



Complaints received by Court

	2018-19	2017-18	2016-17	2015-16	2014-15
Supreme Court	15	54	158	221	177
Court of Appeal	8	10	18	5	16
High Court	32	45	35	32	45
District Court	86	76	57	49	52
Family Court	43	31	40	43	16
Youth Court	1	1	0	0	0
Environment Court	1	0	0	1	0
Employment Court	2	1	0	1	0
Māori Land Court	0	3	1	0	2
Court Martial	0	0	0	0	0
Coroners	3	2	5	3	5
Total	191	223	314	355	313

Commentary

Statistics

1. It is again important to note that 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. In other words, it depends on the number of Judges involved in the proceedings from which the complaints arise.
3. Of the total of 191 complaints about individual Judges, the number of actual complaints was 158.

Types of complaints

4. Section 11 requires me to receive and deal with complaints about the conduct of Judges regardless of whether the subject matter arises in the exercise of the Judge's judicial duties or otherwise. There have been no complaints during the year to 31 July 2019 arising from circumstances unconnected with judicial duties though one or two have alleged conduct outside Court precincts relating to perceptions of partiality.
5. The consistent experience since the commencement of the Act has been the significant numbers of complaints which invite a challenge to or a calling into question of the legality or correctness of decisions made by Judges. Section 8(2) is clear that the Commissioner does not have that function and s16(1)(a) requires a complaint to be dismissed if I am of the opinion that it is beyond my jurisdiction. In particular there is no power in my hands to alter any judicial decision and, of course, s16(1)(f) requires complaints to be dismissed if they are about a judicial decision that is or was subject to a right of appeal or a right to apply for judicial review.
6. Some complainants struggle to understand why the Commissioner's powers are not more far-reaching and can react with severe criticism of the complaints process and the judicial system when disappointed by the outcome. Others can see that the constraints on jurisdiction are eminently justified when viewed against the principle of judicial independence. The constraints are emphasised on the Commissioner's website and in correspondence with complainants.
7. Some complainants, while acknowledging the constraints at the outset, seek nevertheless to establish that their complaints are not challenging decisions but pointing to inappropriate judicial behaviour warranting my intervention. That can be a legitimate exercise. In the course of any proceeding issues of judicial conduct can emerge with my intervention warranted even where an initial impression may point to the application of sections 8(2), 16(1)(a) and 16(1)(f). Allegations of prejudice, bias or unprofessional behaviour are common examples.

8. Most complainants write fairly and responsibly about their matters of concern. Some are particularly open and say they know of the constraints but just want to check if anything further might be available to them.
9. On a few occasions complainants who know of the constraints will see fit to allege wrong-doing by a Judge without any reasonable cause. They are apt to assert palpable loss of temper and repeated shouting which is simply not substantiated by audio recordings of hearings.
10. Sometimes, however, unprofessional behaviour is substantiated and, as noted later in this report, there have been referrals to Heads of Bench of behaviour which appears overbearing, harassing, bullying or otherwise inconsistent with the Guidelines for Judicial Conduct. That is a pertinent point given relatively recent media highlighting of concern about that sort of conduct. It is to be hoped that the instances which have come to my attention and which have been referred to Heads of Bench will serve to ensure a reduction in, or preferably the disappearance of, similar justified allegations.
11. Complaints about people who are not Judges (such as lawyers, police or staff of Government Departments) are relatively common. The Act, rightly, provides no jurisdiction to me. Usually, however, such complaints are linked to judicial conduct.
12. When I form the opinion that complaints are trivial, frivolous, vexatious or not made in good faith, I must dismiss them. Such complaints do occur but perhaps not in the same numbers as in earlier years.
13. A few complaints are received about former Judges. I have no jurisdiction over them. Some complainants express frustration about that but the scheme of the Act in that regard seems sound.

Recommendations to the Attorney-General to appoint a Judicial Conduct Panel

14. Under s15(1) I am required to conduct a preliminary examination of each complaint and form an opinion on whether the subject matter, if substantiated, could warrant consideration of the removal of the Judge from office by way of a recommendation under s18.
15. There has been no such recommendation made during the year to 31 July 2019.

Referrals to Heads of Bench

16. I am required to refer a complaint to the Head of Bench unless I:
 - exercise my power under s15A to take no further action;
 - dismiss the complaint; or
 - make a recommendation to the Attorney-General that a Judicial Conduct Panel be appointed.

17. There has been one referral under s8B(3) by the Deputy Judicial Conduct Commissioner (Ms Kathryn Snook) in circumstances where both she and I had determined we had a conflict of interest. The examination of that complaint will have been completed by the Chief High Court Judge.
18. There have been eight formal referrals under s17. One of those was made to the Chief High Court Judge, five to the Chief District Court Judge and two to the Chief Coroner.
19. The referral to the Chief High Court Judge related to an insensitive and overbearing reaction to counsel introducing herself in an appropriate way in te reo Māori.
20. The referrals to the Chief District Court Judge related to:
 - an instance of apparent failure to dispose of work promptly as expected including by the Guidelines for Judicial Conduct;
 - an instance of overbearing behaviour inconsistent with expected standards of courtesy, patience and tolerance;
 - a question of whether a Judge should have taken steps to disclose a possible conflict of interest;
 - a question over the adequacy of guidance and training relating to mental health issues; and
 - a matter treated as a complaint in accordance with s12(3) relating to an instance of overbearing behaviour undermining the rights of a defendant in a criminal trial and the role of counsel.
21. The referrals to the Chief Coroner related to issues of delay and communication in the handling of a single inquest which attracted two complaints.
22. In addition there were five referrals to the Chief District Court Judge which I choose to describe as informal. They are intended not as any form of sanction but rather to draw attention to issues which might warrant some consideration in the general context of training offered to Judges. The particular issues were:
 - two instances relating to attention to the rights of victims;
 - an instance of behaviour which was marginal in terms of the Guidelines for Judicial Conduct and it was simply left to the Chief District Court Judge to decide whether to initiate any discussion with the Judge; and
 - two instances arising out of a single set of proceedings. The complaints were dismissed because they invited me to act contrary to s8(2) by challenging or calling into question the legality or correctness of a judicial decision but the informal referrals related to the legal basis for issuing a judgment naming the subject of a suppression order

without preserving the effect of the order by further direction of the Court.

Contact with the judiciary

23. There has been continuing contact for the various purposes authorised by the Act including notifying Judges of complaints made about them, seeking their responses to complaints and advising them of the outcome of the examination of complaints. All of the contact has been in writing except one telephone discussion with a Head of Bench.
24. I had a meeting with the Director of the Institute of Judicial Studies about a programme for Judges on courtroom conduct initiated, on my understanding, by the Chief Justice and certain other Judges in connection with the issue of bullying and harassment.
25. Contact with the judiciary, whether with the Judges complained about or with Heads of Bench, has been appropriate and professional without exception.

Administration

26. I must acknowledge the contribution made by Kathryn Snook as Deputy Commissioner not only for the timely and thoroughly competent way in which she examines complaints requiring her attention but also for all the other support she offers.
27. Kathryn Snook and I are indebted to staff of the Ministry of Justice. The experience and wisdom of the Manager of Appointments and Specialist Functions (Gavin Duffy) is inimitable and profoundly valuable to both of us. Likewise we are grateful to Chris Flaus in the Office of Legal Counsel for his even-tempered and capable assistance. Not least, we admire the deft oversight provided by Chief Legal Counsel, Jeff Orr.



Alan Ritchie
Judicial Conduct Commissioner
5 August 2019