

JUDICIAL CONDUCT COMMISSIONER

Report for the year to 31 July 2020

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 2020

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

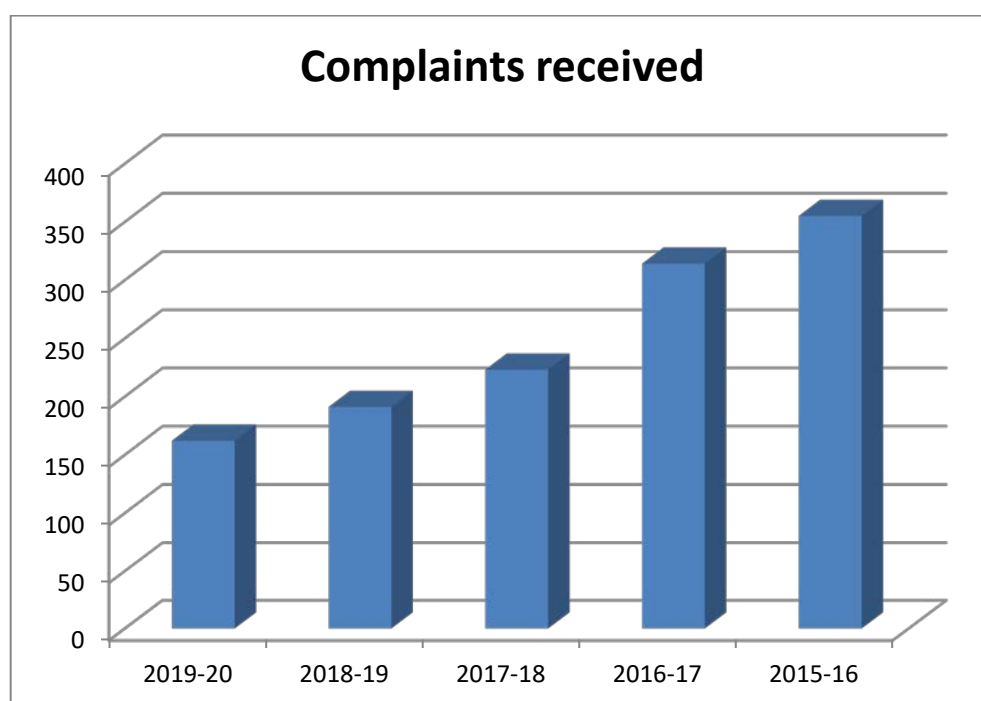
	Year to 31 July 2020	Year to 31 July 2019
Number of complaints	136	158
Number of Judges	162	191
Examination not completed	18	33
Examination completed	177	239
Referred to a Head of Bench	8	9
Recommendation for appointment of a Judicial Conduct Panel	1	0

Complaints table

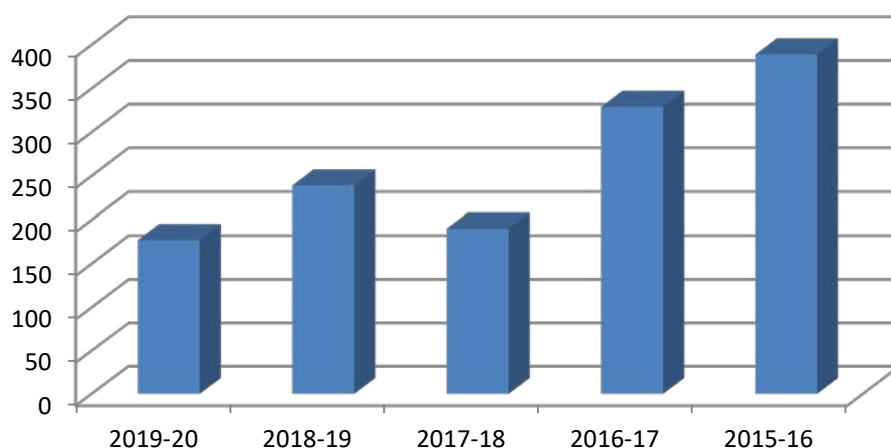
Five-year comparison of complaints: receipt, examination and outcome

	2019-20	2018-19	2017-18	2016-17	2015-16
Received	162	191	223	314	355
Number of unfinalised complaints from previous year	33	81	48	64	98
Total	195	272	271	378	453
Examination and outcome					
No further action taken (s15A)	42	44	29	56	42
Dismissed (s16)	122	186	147	269	336
Referred to Head of Bench (s17)	8	8	7	2	6
Referred to Head of Bench (s8B)	0	1	1	0	0
Recommendation for Judicial Conduct Panel (s18)	1	0	0	0	0
Withdrawn	4	0	6	3	5
Total complaints finalised	177	239	190	330	389
Complaints not finalised	18	33	81	48	64
Total	195	272	271	378	453

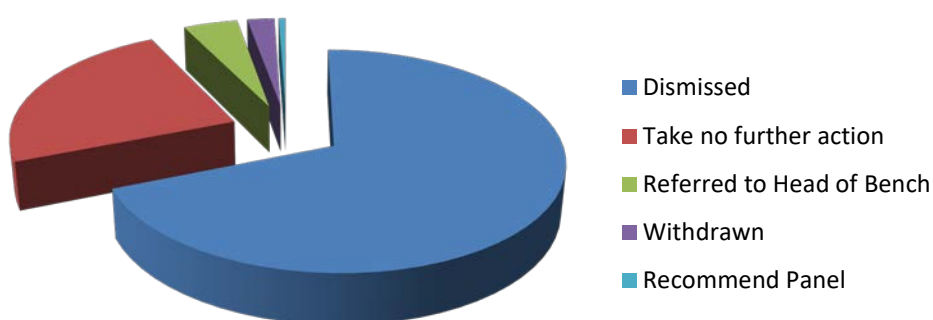
Complaints illustrations



Complaints examined



Complaints decisions



Complaints received by Court

	2019-20	2018-19	2017-18	2016-17	2015-16
Supreme Court	7	15	54	158	221
Court of Appeal	11	8	10	18	5
High Court	39	32	45	35	32
District Court	58	86	76	57	49
Family Court	35	43	31	40	43
Youth Court	0	1	1	0	0
Environment Court	1	1	0	0	1
Employment Court	5	2	1	0	1
Māori Land Court	4	0	3	1	0
Court Martial	0	0	0	0	0
Coroners	2	3	2	5	3
Total	162	191	223	314	355

Commentary

Statistics

1. The complaints statistics provided with this report must be read with care. That is because s11(1) 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 162 complaints about individual Judges, the number of actual complaints was 136.

Types of complaints

4. As can be seen from the illustrated material in the earlier pages of this report there is a distinct trend towards fewer complaints being submitted. To a large extent that is attributable to a significant reduction in complaints about Supreme Court Judges. Section 8(2) is plain in stating that it is not my function to call into question the legality or correctness of any instruction, direction, order, judgment or other decision made by a Judge. Rather, such functions are for the Courts through rights of appeal or rights to apply for judicial review. There seems to be a growing understanding that while the Supreme Court may be the end of the judicial road, the Judicial Conduct Commissioner does not then take over.
5. Nevertheless, it remains fair to say that most complaints arise from disagreement with the outcome of proceedings and it is appropriate to observe, once again, that the constraints on my 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.
6. Complaints continue to be received about people who are not Judges including lawyers, police, Court staff and others. The Act (correctly in my view) provides no jurisdiction to me. In some instances complainants have difficulty in accepting the distinction.
7. Last year, I reported my impression of a decline in complaints which I am required to dismiss because they are trivial, frivolous, vexatious or not made in good faith. That trend appears to be continuing. Some persistent complainants have taken some persuading on the point but the message appears to be getting through.
8. Last year's report referred to concern over unprofessional behaviour including behaviour which is overbearing, harassing, bullying or otherwise inconsistent with the guidelines for judicial conduct. Complaints of that nature continue to be made and need special attention especially by listening to audio recordings of hearings. However, aside from two

borderline cases referred to the Chief District Court Judge, there has been no justification for upholding other such complaints. On occasions it has been notable just how far an allegation departs from the reality even allowing for the tension and anxiety people justifiably feel when appearing in Court.

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

9. My examination of one complaint led to my forming the opinion, in terms of s18(1), that an inquiry into the conduct outlined by the complainant was necessary or justified and, if established, that the conduct may have warranted consideration of the removal of the Judge. The essence of the concern revolved around usual expectations of judicial impartiality.
10. I therefore recommended to the Attorney-General that a Judicial Conduct Panel be appointed to inquire into the circumstances. That step brought my involvement in the matter to an end.

Referrals to Heads of Bench

11. I am required to refer a complaint to the Head of Bench unless I:
 - exercise my power under s15A to take no further action; or
 - dismiss the complaint; or
 - make a recommendation to the Attorney-General that a Judicial Conduct Panel be appointed.
12. On at least one occasion in recent years, the Deputy Judicial Conduct Commissioner and I have determined that we both had a conflict of interest. In those circumstances there is a referral of the complaint to the relevant Head of Bench for determination. There was no instance of that in the year to 31 July 2020.
13. There have been eight formal referrals under s17. None of those were made to:
 - the Chief Justice;
 - the President of the Court of Appeal;
 - the Chief Judge of the High Court;
 - the Chief Judge of the Employment Court;
 - the Judge Advocate -General;
 - the Chief Environment Court Judge; or
 - the Chief Judge of the Māori Land Court.

14. Five formal referrals were made to the Chief District Court Judge. They related to:
 - the possibility of a Judge being linked to inappropriate behaviour (not relating to any Court proceedings) by another person claiming to be a Judge;
 - adherence to, and the adequacy of, guidelines relating to recusal;
 - adherence to, and the adequacy of, guidelines relating to delay in the issuing of a reserved judgment; and
 - two borderline cases of behaviour inconsistent with expected standards of courtesy, patience and tolerance.
15. Three formal referrals were made to the Chief Coroner. One of those related to concern over the adequacy of the handling of a coronial inquiry and whether lessons learned could be incorporated into guidance given to Coroners.
16. The other two arose from a Coroner's handling of an inquest into the death of an individual on leave from a hospital where he was a patient subject to the Mental Health (Compulsory Assessment and Treatment) Act 1992. My apprehension related to the need for the Chief Coroner to be reassured that issues of public confidence in the judicial system were appropriately in hand.
17. There have also been three informal referrals. These are not intended as any form of sanction but rather as a way of drawing attention to issues which might warrant some consideration in the general context of training offered to Judges. The informal referrals were:
 - to the Chief High Court Judge relating (generally) to the timely delivery of reserved judgments;
 - to the Chief District Court Judge about the filing of submissions in criminal proceedings; and
 - to the Chief District Court Judge about guidelines for judicial conduct relating to trusteeships under trusts or wills.

Contact with the judiciary

18. The Deputy Judicial Conduct Commissioner (Kathryn Snook) and I are grateful for the continuing courtesy and professionalism in our contact with Judges whether those about whom complaints have been made or the Heads of Bench. The contact has largely been in writing though there was one complaint where I was able to have a helpful face-to-face meeting with the Chief District Court Judge. There have been no problems created by recent changes in the Heads of Bench ranks.

Administration and support

19. Kathryn Snook has continued to provide outstanding assistance as Deputy Commissioner. The respect her work commands is richly justified.
20. Chris Flaus in the Office of Legal Counsel has carried a heavy workload in his consistent, courteous and gentlemanly way. We know there are many others at the Ministry who offer support to us and we are grateful to all involved.
21. It is appropriate to reserve the final paragraph of this report for a very special purpose. It is to pay tribute to Gavin Duffy who has provided extraordinary support in his role as the Manager of Appointments and Specialist Functions within the Ministry of Justice. Ms Snook and I are aware that his distinguished public service career is drawing to a close. He has given so generously not only to us but in so many other ways to the Ministry and to the community generally.



Alan Ritchie
Judicial Conduct Commissioner
10 August 2020