

OFFICE OF THE
Judicial Conduct Commissioner

Annual Report for 2008/2009

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Annual Report of the Judicial Conduct Commissioner for the year ended 31 July 2009

This Report

This is the fourth 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 (“Act”) came into effect.

The Commissioner

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.

The second, and current, Commissioner is Sir David Gascoigne. He took office on 3 August 2009.

The Complaint Process

The Commissioner’s role under the Act is to receive and assess complaints about the conduct of Judges.

The procedure 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 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. In carrying out his or her functions, the Commissioner must act independently and must also act in accordance with the principles of natural justice.

Once the Commissioner has completed the preliminary examination, the Commissioner may dismiss the complaint on one or more of nine specified grounds. If the Commissioner does not dismiss a complaint, the Commissioner must either 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 a complaint sits) or recommend that a Judicial Conduct Panel (a special Panel, constituted under the Act) be appointed. The process is illustrated by the **attached** diagram.

The complaint process provides a level of judicial accountability in addition to other factors such as, hearings being conducted in public, the requirement to give reasons for decisions, and decisions being subject to appellate review.

Advice to the Public

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

The following table shows the statistics for complaints received by the Commissioner for the year from 1 August 2008 to 31 July 2009.

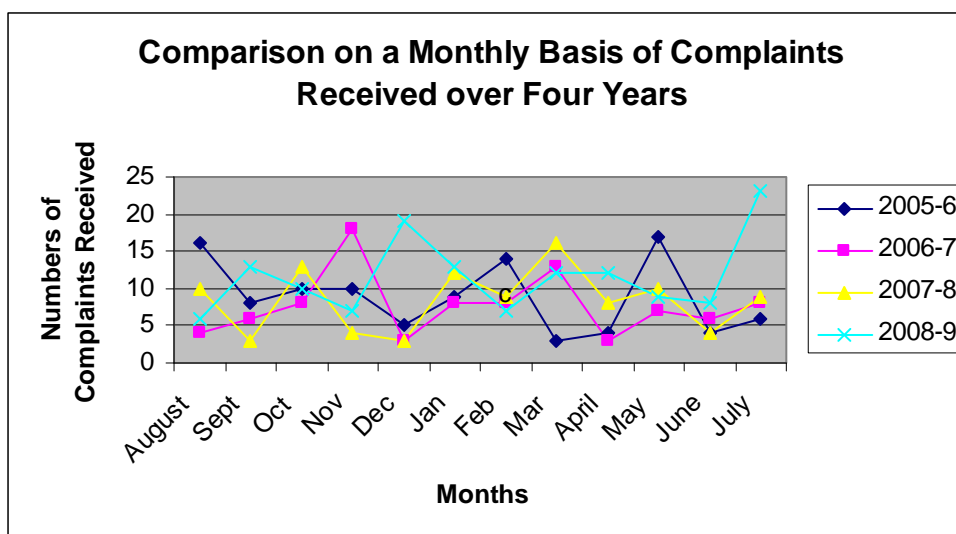
| Complaint particulars | 2008-09 | 2007-08 | 2006-07 | 2005-06 |
|---|----------------|----------------|----------------|----------------|
| Number of complaints received | 139 | 101 | 92 | 106 |
| Number of unfinalised complaints from previous year | 50 | 31 | 11 | |
| Total | 189 | 132 | 103 | 106 |
| Outcomes | | | | |
| Complaints dismissed | 113 | 80 | 72 | 89 |
| Complaints referred to Head of Bench under s17 of the Act | 4 | 2 | 0 | 4 |
| Complaints referred to Head of Bench at outset with consent of complainant because of conflict of interests | 0 | 0 | 0 | 2 |
| Complaints withdrawn | 9 | 0 | 0 | 0 |
| Number of complaints unfinalised at 31 July | 63 | 50 | 31 | 11 |
| Total | 189 | 132 | 103 | 106 |

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

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

During the period 1 August 2008 to 31 July 2009, 95 complainants complained, in all, about 139 Judges

The following table shows a monthly comparison of new complaints received by the Commissioner.



The Commissioner dismissed 113 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 complaint called into question the correctness 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 dismissal were varied and included some on the basis that they were frivolous, vexatious or not in good faith.

Four complaints were referred to Heads of Bench.

No recommendation was made to the Attorney-General to appoint a Judicial Conduct Panel in respect of any complaint. In the view of the Commissioner, none of the complaints that were dealt with raised issues of such gravity to justify such a recommendation.

Complaints have been based on various grounds. By far the most common was that a decision, ruling or order of a Judge was wrong. However, other grounds included rudeness, unfairness, inappropriate remarks, failure to listen, bias, and predetermination.

Of the six unfinalised complaints in 2007-08, one remains 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.

Coroners Act 2006

Since 1 July 2007, complaints concerning the conduct of Coroners are to be made to the Judicial Conduct Commissioner. As at 1 August 2009, no complaints concerning Coroners had been made to the Commissioner.

Responses of the Judiciary

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.

Amendments to the Act

Part 1 of the Judicial Matters Bill would amend the Act in various respects. From the Commissioner's perspective, the most important of these are as follows:

- a. The appointment of a Deputy Commissioner who can deal with a complaint when the Commissioner has a conflict of interest, is absent, incapacitated, or where there is a vacancy in the office of Commissioner;
- b. Empowering the Commissioner in appropriate cases to decide to take no further action in respect of a complaint, rather than dismissing it. Grounds for taking no further action include the following:
 - i. The complaint has been resolved to the complainant's satisfaction following an explanation from the Judge;
 - ii. The complaint is based on a misunderstanding.

The Commissioner welcomes these amendments and expresses the hope that the Bill is enacted promptly.

Overview of Process for Judicial Conduct Commissioner and Judicial Conduct Panel

