

OFFICE OF THE
JUDICIAL CONDUCT COMMISSIONER

Annual Report for 2012/2013

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

Contents

This Report.....	3
The Commissioner and Deputy Commissioner.....	3
The Complaint process.....	3
Advice to the public.....	4
Complaints received.....	4
Decisions made.....	6
Responses of the Judiciary.....	8
Comparative statistics.....	8
Complexity and frequency.....	9
Litigation.....	9
Administrative support.....	9
Legislative change.....	9
Final comments.....	10
Overview of Process for Judicial Conduct Commissioner and Judicial Conduct Panel.....	11

Annual Report of the Judicial Conduct Commissioner for the year ended 31 July 2013

This Report

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

The Commissioner and Deputy Commissioner

2. The current Commissioner is Sir David Gascoigne. He took office on 3 August 2009.
3. The current Deputy Commissioner is Alan Ritchie. He took office on 30 June 2011. The Deputy’s role is to deal with complaints where the Commissioner has a conflict of interest, or where the Commissioner is absent or incapacitated, or where there is a vacancy in the office of Commissioner.

The Complaint Process

4. The Commissioner’s role under the Act is to receive, assess and categorise complaints about the conduct of Judges.
5. The procedure generally 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 to 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.
6. In carrying out his or her functions, the Commissioner must act independently, and must also act in accordance with the principles of natural justice.
7. Once the Commissioner has completed a preliminary examination of a complaint, the Commissioner must select and apply one of the four courses of action, as set down in the Act:
 - (a) the Commissioner may exercise the power to take no further action in respect of the complaint (under section 15A); or
 - (b) the Commissioner may (under section 16) dismiss the complaint on one of the nine grounds specified in that section; or

- (c) the Commissioner may (under section 17) 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 the complaint sits; or
 - (d) the Commissioner may (under section 18) recommend that the Attorney-General appoint a Judicial Conduct Panel to inquire further into any matters concerning the conduct of a Judge, if the Commissioner is of the opinion that:
 - (i) such an inquiry is necessary or justified; and
 - (ii) if established, the conduct may warrant consideration of the removal of the Judge.
8. An illustration of the process is shown in the **attached** diagram (see page 11).
9. The process, as briefly described above, but more particularly set out in the Act, is intended to serve the purpose of the Act.

The purpose of the Act, as set out in section 4, is to enhance public confidence in, and to protect the impartiality and integrity of, the judicial system by:

- (a) providing a robust investigation process to enable informed decisions to be made about the removal of Judges from office;
- (b) establishing an office for the receipt and assessment of complaints about the conduct of Judges;
- (c) providing a fair process that recognises and protects the requirements of judicial independence and natural justice.

Advice to the Public

10. 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, emailed or postal inquiries.

Complaints Received

11. The following **Table A** shows the statistics for complaints received by the Commissioner for the five years from 1 August 2008 to 31 July 2013:

Complaint particulars	2012-13	2011-12	2010-11	2009-10	2008-09
Number of complaints received	258	328	181	223	139
Number of unfinalised complaints from previous year	97	146	138	63	50
Total	355	474	319	286	189
Outcomes					
Decision to take no further action under Section 15A	62	95	20	2	0
Complaints dismissed under section 16	196	269	140	125	113
Complaints referred to Head of Bench under Section 17	7	6	4	3	4
Complaints referred to Head of Bench at outset with consent of complainant because of conflict of interests or under Section 8B	1	2	0	1	0
Recommendation that a Judicial Conduct Panel be appointed under Section 18	0	0	0	3	0
Complaints withdrawn	10	5	9	14	9
Total complaints dealt with	276	377	173	148	126
Number of complaints unfinalised at 31 July	79	97	146	138	63
Total	355	474	319	286	189

12. The following **Table B** shows the number of complaints received, on a Court by Court basis:

Courts	2012-13	2011-12	2010-11	2009-10	2008-09
Supreme Court	34	62	16	25	4
Court of Appeal	46	49	28	23	12
High Court	65	86	63	72	44
District Court	67	71	49	62	48
Family Court	30	52	19	29	27
Youth Court	0	0	0	0	0
Environment Court	4	2	1	5	3
Employment Court	4	0	2	2	0
Maori Land Court	5	1	2	2	1
Court Martial	0	0	0	0	0
Coroners Court	3	5	1	3	0
Total	258	328	181	223	139

13. During the year from 1 August 2012 to 31 July 2013, 188 complainants complained, in all, about 258 Judges. In other words, some complainants made complaints about more than one Judge. For example, some complainants complained about:
- (a) a Judge who presided over a hearing at first instance, as well as Judges who then presided over one or more subsequent appeals;
 - (b) several Judges who comprise a panel of Judges at an appellate level.

14. The following **Table C** shows a summarised year-on-year comparison between the past year (to 31 July 2013) and the previous year (to 31 July 2012). It also shows the increase or decrease in numbers, year-on-year.

Complaint particulars	Full year to 31 July 2013	Prior year to 31 July 2012	Full year comparison for 2011-12 and 2012-13 increase/(decrease)	
			No.	%
Complaints received during year	258	328	(70)	(21%)
Unfinalised complaints from previous year	97	146	(49)	(34%)
Total	355	474	(119)	(25%)
Total dealt with and completed during year	276	377	(101)	(27%)
Total unfinished at year's end	79	97	(18)	(19%)
Total	355	474	(119)	(25%)

Decisions Made

15. During the year from 1 August 2012 to 31 July 2013, the Commissioner and, in some instances, the Deputy Commissioner have made the following decisions:

- (a) *No further action*: They decided to take no further action in respect of 62 complaints. This was done using the power conferred by Section 15A of the Act.
- (b) *Dismissal*: They dismissed 196 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 complainant called into question the validity 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. The Commissioner's jurisdiction extends to issues of judicial conduct and not to judicial decisions as such.

Generally, the statutory grounds for the dismissal of complaints were varied and included these:

- (i) that the complaint fell outside the Commissioner's jurisdiction (most notably where section 8(2) of the Act had effect);
- (ii) that the complaint had no bearing on judicial functions;

- (iii) that the complaint was frivolous, vexatious or not in good faith;
 - (iv) the complaint was about a judicial decision that is or was subject to a right of appeal or right to apply for judicial review;
 - (v) that the person who was the subject of the complaint was no longer a Judge;
 - (vi) that the Commissioner had previously considered the subject matter of the complaint and it had not warranted any particular action.
- (c) *Reference to Head of Bench:* They referred 8 complaints to the relevant Heads of Bench, pursuant to section 17(1) or section 8B of the Act. It is then for the Head of Bench to determine how best to deal with matters, administratively, so far as the Judge complained of is concerned.
- (d) *Recommendation as to a Judicial Conduct Panel:* No recommendation was made in the past year, pursuant to section 18(1) of the Act, that a Judicial Conduct Panel be appointed to inquire into matters concerning the alleged conduct of a Judge.
- (e) *Withdrawal:* 10 complaints were withdrawn by the respective complainants, following consideration of material provided by the Commissioner during the course of the preliminary examination.
16. Complaints have been based on a variety of grounds. By far the most common was that the person who was aggrieved considered that a decision, ruling or order of a Judge was wrong. As indicated in paragraph 15(b) above, a complaint on that basis falls outside the Commissioner's jurisdiction – and must be dismissed for that reason. Other grounds specified in complaints included: perceptions of rudeness, unfairness, inappropriate remarks, failure to listen, failure to take note of relevant material, prejudice, bias, predetermination, conflicts of interest and corruption. (Depending upon the circumstances, not all of those will fall within the Commissioner's jurisdiction.)
17. The mention of corruption, in particular, again merits some explanation. In a few instances, a complainant has alleged that a Judge has been corrupt. The Commissioner and Deputy Commissioner take such an allegation especially seriously. But their investigations have revealed nothing that even hints at corruption. Some complainants do, however, conclude that the fact that a Judge disagrees with their contentions must, in itself, be clear evidence that there has been corruption. But in no instance, so far, has any supporting information been proffered - or revealed upon examination - to support the assertion.
18. Of the 79 unfinalised complaints in 2012/2013, two remain 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.

Responses of the Judiciary

19. The Commissioner is pleased to report that, overall, Judges about whom complaints have been made have, as previously, responded in a constructive and helpful manner. This materially assists the Commissioner in the examination of complaints and is appreciated by the Commissioner.
20. There were, again as previously, just a few instances in which a Judge might have been expected to be more forthcoming in providing some information about the context from which a complaint has arisen. It does help to have a reasonably explicit balance of views to consider.

Comparative statistics

21. Table C (paragraph 14 above) provides a brief comparison about the number of complaints and the extent to which they were dealt with, as between:
 - (a) this reporting year (to 31 July 2013); and
 - (b) the previous reporting year (to 31 July 2012).
22. These points emerge:
 - (a) there were 70 fewer new complaints received this year than there were last year (making a total of 258 for this year). That is a decrease of 21%;
 - (b) there were 101 fewer complaints finalised this year than last year (making a total of 276 for this year). That is a decrease of 27%;
 - (c) the number of unfinalised complaints this year was 79, a reduction of 18 below last year's figure of 97. That is a reduction of 19%.
23. Thus, the number of new complaints received during the past year was fewer than for the previous year. But, perhaps more significantly, the number of unfinalised complaints as at 31 July this year has fallen and, as just mentioned, stood at 79.
24. That figure of 79 is still somewhat higher than is desirable. But for unfinalised complaints progress is being made. It is hard to say what an optimum figure should be. There will always be complaints in the course of examination. Time must be allowed for processing them, for Judges to respond, for (sometimes) Judges' decisions and the transcripts or recordings to be obtained and studied, for (sometimes) the views of others to be sought, and for decisions to be written and then dispatched.

Complexity and frequency

25. It is also the case that many complaints are becoming increasingly complex and detailed. A greater number now require more time to be spent in investigating them, considering them, and evolving a decision.
26. A significant proportion of all complaints come from a comparatively small number of dissatisfied litigants who make repeated complaints when they receive judicial decisions which they do not accept. The complaints are generally expressed as raising issues of conduct on the part of the judge or judges concerned. Closer examination, however, often reveals that they are, essentially, about the correctness of judicial decisions – and thus beyond my jurisdiction. Nonetheless, it is important to examine each case received on the premise that it may prove to be well founded.

Litigation

27. As a separate but often related issue, there has also been a growing number of instances in which some complainants who are dissatisfied with the decision made by the Commissioner in respect of their complaint then initiate legal proceedings against the Commissioner, by way of judicial review, in an attempt to have the decision overturned or remitted for reconsideration.
28. That is, of course, their right – though in some of these cases I do seek to have these proceedings regarded by the Court as being vexatious or as an abuse of the Court's processes.
29. The point, for the purpose of this report, however, is to note that attending to these litigious efforts is requiring an increasing amount of time and attention, as well as incurring attendant legal fees.

Administrative support

30. In last year's annual report, I mentioned that the administering authority, the Ministry of Justice, had provided additional resources – personnel, premises and equipment – to assist with the burden of work. These administrative arrangements are working satisfactorily, though I, as Commissioner, and on occasions Mr Ritchie, as Deputy Commissioner, still remain under significant pressure.

Legislative changes

31. In the previous annual report, I also mentioned the need for some legislative change. I understand that one of the specific changes I had proposed (a broader basis for delegation to the Deputy Commissioner) may be included in the Statutes Amendment Bill shortly to be introduced in Parliament. If enacted, such a change would be beneficial.
32. There are other aspects of the Act which recent experience has shown to be unsatisfactory. I propose to advance proposals for change in that regard, as well.

Final comments

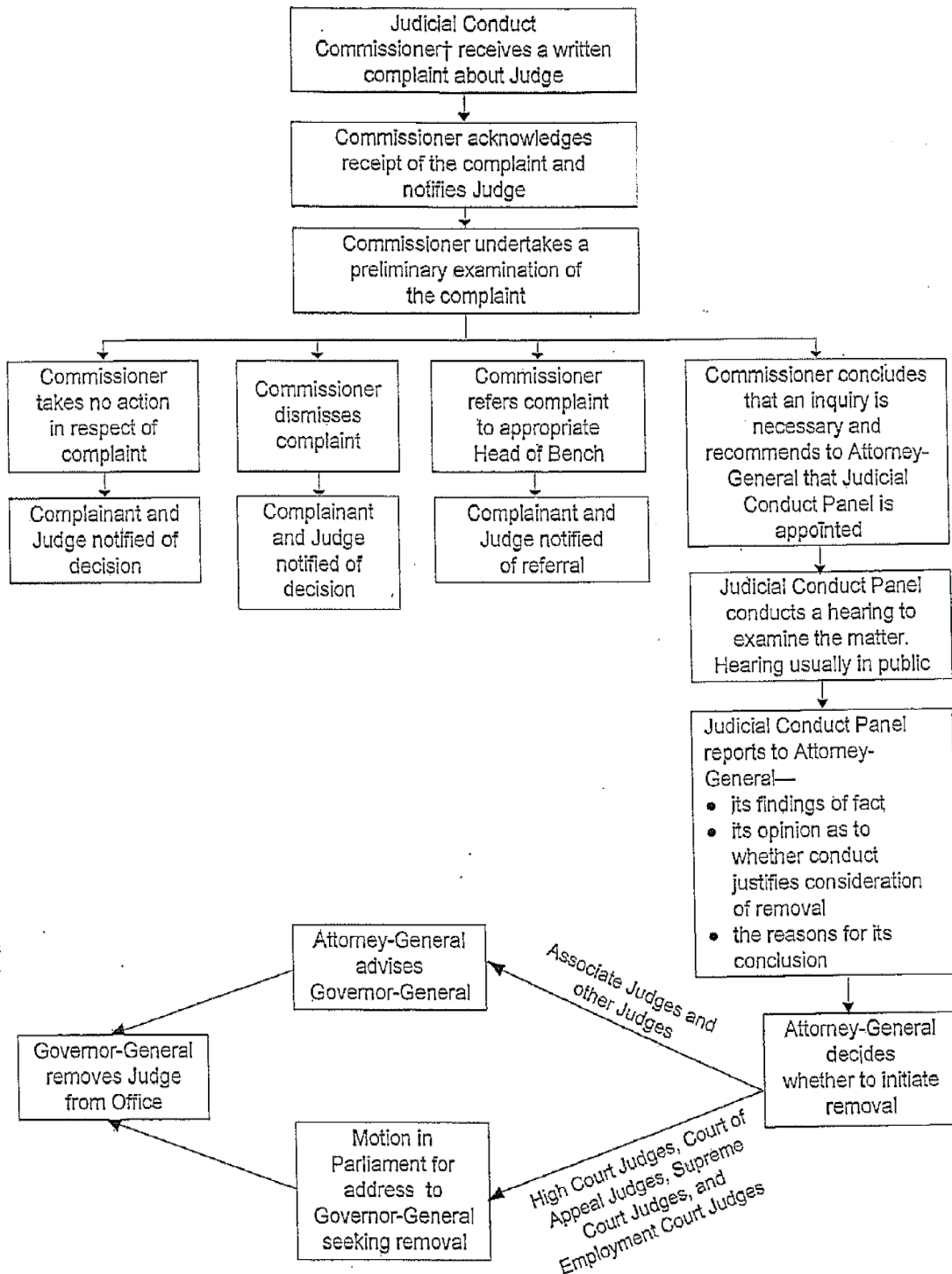
33. I am hopeful that in next year's annual report it will be possible to record a further reduction (towards the indefinable optimum) in the number of unfinalised complaints. Such a reduction is not an end in itself. Its purpose is to improve the efficiency of operations, in order to reduce the time between complaints being lodged and decisions being completed. And that helps serve the objectives of the Act.
34. I wish to express my gratitude to the Deputy Commissioner, to the personnel provided by the Ministry to work with me - and to all those who have assisted me, in many ways, throughout the past year.

30 September 2013



Sir David Gascoigne, KNZM, CBE
Judicial Conduct Commissioner

Overview of Process for Judicial Conduct Commissioner and Judicial Conduct Panel



†Judicial Conduct Commissioner or Commissioner includes a Deputy Judicial Conduct Commissioner carrying out the Commissioner's functions when the Commissioner has a conflict of interest, is absent from office, or is incapacitated, and during a vacancy in the office of Commissioner.