

# **JUDICIAL CONDUCT COMMISSIONER**

## **Report for the year to 31 July 2022**

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 2022

## Introduction

1. References in this report to the Act, Schedules, sections or clauses relate, unless otherwise stated, to the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004.
2. The purpose of the Act is set out in section 4. It is to enhance public confidence in, and to protect the impartiality and integrity of, the judicial system.
3. 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.
4. The functions are set out in section 8(1). 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.
5. Section 11(1) requires the Commissioner to:

*“...receive and deal with every complaint made under this section about the conduct of a Judge...”*
6. It follows that a complaint arising solely from proceedings in a District Court will (usually) appear 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 complaint arises. There were 323 new complaints received from 249 individual complainants in the year to 31 July 2022.

## Types of complaints

7. The pattern has been relatively consistent with earlier years. In most instances there is no question about the genuineness of the complaint. Often, however, complainants have simply reached the end of the courthouse road and are pleading for help for what they see as a last resort. They often know about section 8(2) which provides:

*“It is not a function of the Commissioner to challenge or call into question the legality or correctness of any instruction, direction, order, judgment, or other decision given or made by a Judge in relation to any legal proceedings.”*

8. They also often know about sections 16(1)(a) and 16(1)(f) which require complaints to be dismissed if they are outside the Commissioner's jurisdiction or about matters that are or were subject to rights of appeal or rights to apply for judicial review.
9. In the simplest form a complainant might say:
 

*"The Judge got things completely wrong. Please help me to have the decision changed. I don't have any money for an appeal."*
10. There has to be sympathy for complainants in that situation but the (eminently justified) limits on the Commissioner's jurisdiction define the outcome though complainants are encouraged to seek advice including through avenues such as Community Law Centres.
11. A fair proportion of complaints do allege specific misconduct by Judges across a wide range including corruption, prejudice, bias, incapacity, incompetence and discourtesy.
12. Instances of bullying evident over the last 2-3 years seem to have diminished. There have been allegations of substance abuse with one complainant asserting that a Judge could not have got matters so badly wrong without being affected by alcohol or drugs. That, of course, is an easy allegation to make and no allegation of this type has been backed by any persuasive evidence apart from that mentioned in paragraph 15 below.
13. It is certainly not inevitably the case that a complainant's disagreement with a decision or the existence of rights of appeal or review will preclude the Commissioner from finding issues of conduct warranting intervention as the several referrals to Heads of Bench outlined in this report will confirm.

### **Recommendations under section 18 to the Attorney-General to appoint a Judicial Conduct Panel**

14. A recommendation may be made if the Commissioner is satisfied that an inquiry into the alleged conduct is justified and, if established, the conduct may warrant consideration of the removal of the Judge from office. No such recommendation has been made in the year to 31 July 2022.
15. It is appropriate to report, however, that a recommendation would almost certainly have been made in the case of a Judge clearly troubled by alcohol use. The Judge resigned from office during the course of the preliminary examination and my jurisdiction ended.

### **Referrals to Heads of Bench**

16. Section 17 requires the referral of a complaint to a Head of Bench unless:
  - the power under section 15A to take no further action on a complaint is exercised; or
  - the complaint is dismissed under section 16; or
  - a recommendation to the Attorney-General is made in accordance with section 18.

17. There have been 34 complaints referred to Heads of Bench pursuant to section 17.
18. There has been one referral pursuant to section 8B following my decision (pursuant to section 8(1C)) that I had a conflict of interest. Ordinarily I would have referred the matter to the Deputy Judicial Conduct Commissioner but that position was vacant. The referral was to the Chief District Court Judge.
19. There were 22 other referrals to the Chief District Court Judge. They related to:
  - delay in the issuing of judgments or other decisions;
  - a question of appropriate steps to be followed in terms of the Victims' Rights Act 2002 and the code for victims for which that Act provides;
  - the handling of cases involving offences against women;
  - inappropriate disclosure of details likely to lead to the identification of the whereabouts of a victim;
  - a question of access to Courts of guide dogs including those in training;
  - comments made by a Judge to an offender over a refusal to accept a COVID vaccination.
20. There were two referrals to the Chief High Court Judge. They related to:
  - management of Court business;
  - disclosure relating to possible conflict on the part of a Judge.
21. Referrals were made of 10 complaints to the Chief Justice including one matter which was treated as a complaint pursuant to section 12(3). All of those complaints arose out of an issue over the question of whether the Guidelines for Judicial Conduct or other guidance offered to Judges could be reviewed and improvements made to aspects of intervention by Heads of Bench when proceedings have not been completed.

### **Matters drawn to the attention of Heads of Bench**

22. In accordance with long-standing agreed practice, all decisions made on complaints (regardless of outcome) are sent to the complainant, to the Judge about whom the complaint was made and to the relevant Head of Bench.
23. In the year to 31 July 2022, as in earlier years, there have been instances where issues were drawn to the attention of a Head of Bench notwithstanding that there may have been no formal referral under section 17. The purpose is to ensure the Heads of Bench (and, in appropriate cases, the Principal Family Court Judge who is not a Head of Bench for the purposes of the Act) are aware of developing trends or issues relevant to their role in ensuring the orderly conduct of Court business, overseeing and promoting professional development, continuing education and training of Judges as well as giving directions and setting standards for best practice and procedure.

24. Included in such matters in the year under review have been:
- issues arising from a review under section 16 of the Mental Health (Compulsory Assessment and Treatment) Act 1992;
  - the possibility of guidance to Judges on a particular cultural issue;
  - disclosure pursuant to the Recusal Guidelines of the High Court.

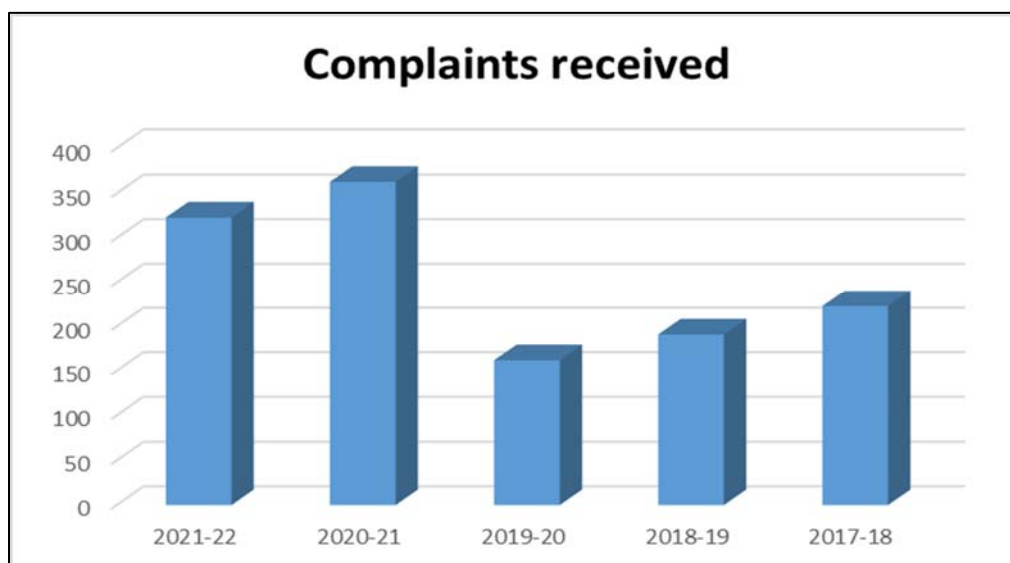
### Contact with the judiciary

25. In accordance with section 14(1), written notification of the receipt of a complaint is sent to the Judge about whom it is made. Section 14(3) entitles the Judge to request and receive a copy of the complaint. However, a copy of the complaint is always provided with the notification if the Judge's response is being sought under section 15(2). As in previous years, Judges have responded promptly and helpfully to such requests.
26. As noted in paragraph 22 above, the Judge about whom the complaint has been made and the relevant Head of Bench both receive a copy of the decision in every instance. The flow of information has been assisted by arrangements which now have most correspondence with Judges and Heads of Bench conveyed by email rather than by post. All contact with Judges (whether those complained about or Heads of Bench) has been in writing.

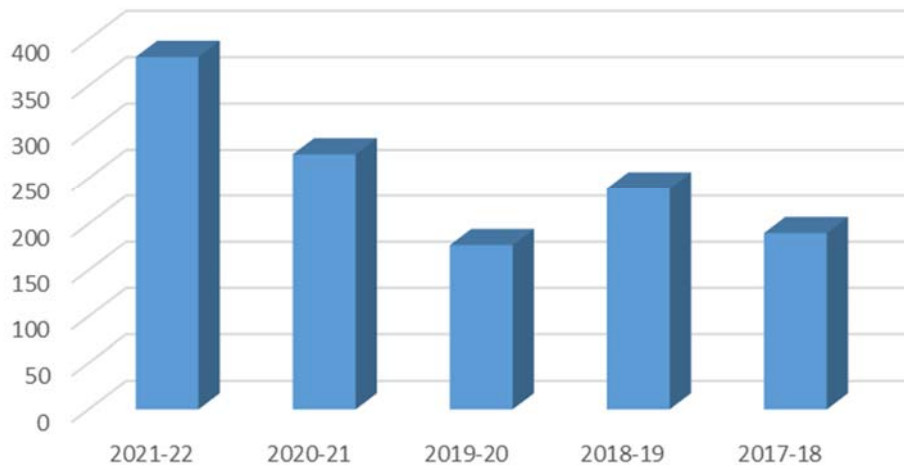
### Personnel

27. After filling the role of Deputy Commissioner with distinction since 2015, Kathryn Snook stood down from the position in August 2021. She has been greatly missed.
28. It has been a testing year for Ministry of Justice support staff. Those with whom I have worked most closely have been Wayne Newall (Manager, Appointments and Specialist Functions), Chris Flaus (Adviser) and Chloe Le (Administrative Support). They have been steadfast in their energy and commitment and I extend special gratitude to them.

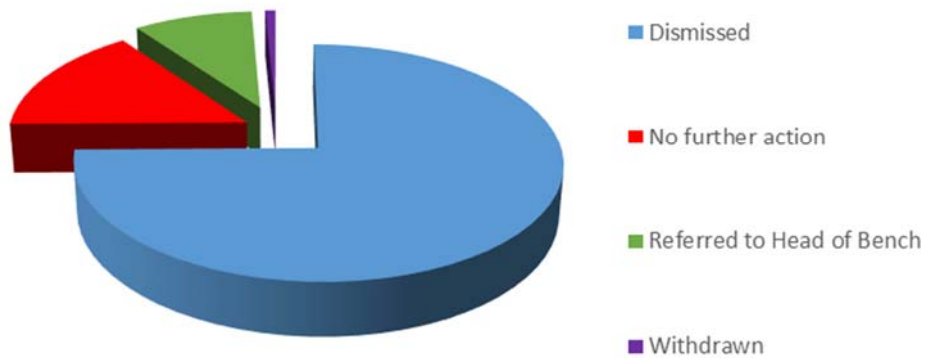
### Statistical illustrations



## Complaints examined



## Complaints decisions



<b>Five Year Summary</b>					
	<b>2021-22</b>	<b>2020-21</b>	<b>2019-20</b>	<b>2018-19</b>	<b>2017-18</b>
<b>Received</b>	323	363	162	191	223
Number of unfinalised complaints from previous year	88	18	33	81	48
<b>Total</b>	<b>411</b>	<b>381</b>	<b>195</b>	<b>272</b>	<b>271</b>
<b>Examination and outcome</b>					
No further action (s15A)	58	43	42	44	29
Dismissed (s16)	285	229	122	186	147
Referred to Head of Bench (s17)	34	15	8	8	7
Referred to Head of Bench (s8B)	1	2	0	1	1
Recommendation for Judicial Conduct Panel (s18)	0	1	1	0	0
Withdrawn	3	3	4	0	6
<b>Total complaints finalised</b>	<b>381</b>	<b>293</b>	<b>177</b>	<b>239</b>	<b>190</b>
<b>Complaints not finalised</b>	<b>30</b>	<b>88</b>	<b>18</b>	<b>33</b>	<b>81</b>
<b>Total</b>	<b>411</b>	<b>381</b>	<b>195</b>	<b>272</b>	<b>271</b>

Alan Ritchie  
**Judicial Conduct Commissioner**  
 10 August 2022