

JUDICIAL CONDUCT COMMISSIONER

Report for the year to 31 July 2023

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 2023

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 332 new complaints received from 285 individual complainants in the year to 31 July 2023.

Complaints summary

	Year to 31 July 2023	Year to 31 July 2022
Number of complaints	285	249
Number of Judges	332	323
Examination not completed	55	30
Examination completed	307	381
Referred to a Head of Bench	23	35
Recommendation for appointment of a Judicial Conduct Panel	0	0

Types of complaints

7. In the year to 31 July 2021 there was a doubling in the number (from 35 to 74) of complaints flowing from proceedings in the Family Court. In the year to 31 July 2022 the number was 83 and it is the same number for the year to 31 July 2023.
8. Many of those complaints came from people who have not had the benefit of legal representation and, certainly, they reflect tension arising from disputes over children and property.
9. Otherwise, and consistent with earlier years, most complaints arise from disagreement with the outcome of proceedings or with particular decisions made by Judges. The problem for the Commissioner in those instances arises from 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.”
10. Many such complaints must be dismissed in accordance with section 16(1)(a) as being outside the Commissioner’s jurisdiction. Others must be dismissed in accordance with section 16(1)(f) because they are about matters that are or were subject to rights of appeal or rights to apply for judicial review.
11. However, as has been noted previously, it is necessary for each complaint to be carefully examined to see whether there might be any exception to the strict application of those sections.
12. Complaints about harassment, bullying and overbearing behaviour continue. Appropriate consideration of such complaints is dependent on the availability of good quality audio recordings of hearings. Those are usually available and no complaint of that type has been upheld in the year under review. However, there was one referral to a Head of Bench when a recording was not available.
13. One area where there does seem to have been an increase in complaint numbers is sentencing of young offenders where the result has been discharge or community detention rather than imprisonment. Sentencing law and principles are not necessarily easy to follow and general community concern is understandable. However, no judicial misconduct was able to be identified and no such complaint was upheld.

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 necessary or 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 2023.

Referrals to Heads of Bench

15. 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.
16. There have been 15 complaints referred to Heads of Bench pursuant to section 17.
17. Of those, 11 were to the Chief District Court Judge. They related to:
- a delay in the issuing of a judgment;
 - the need for a Head of Bench to be fully aware of matters involving the judiciary which drew significant media attention;
 - 4 complaints relating to an individual being placed in custody under the Contempt of Court Act 2019;
 - whether audio recordings might appropriately be made in hearings such as judicial settlement conferences to enable effective checking of allegations of judicial misconduct;
 - the nature of the content of a response by a Judge to a request under section 15(2) for comment on a complaint;
 - the accuracy of names recorded in court documents and issues over the availability of certain documents;
 - the conduct of a Judge in relation to certain criminal proceedings and the use of judicial email for private communication;
 - the need for audio recording of telephone conferences.
18. There was 1 referral under section 17 to the Chief High Court Judge. It related to the non availability of audio recordings in certain circumstances.
19. There were 3 other section 17 referrals as follows:
- to the Chief Environment Court Judge relating to a Judge's handling of certain proceedings;
 - to the Chief Maori Land Court Judge relating to allegations of a conflict of interest on the part of a Judge;
 - to the Chief Coroner relating to delays on the part of a Coroner and related matters.

Referrals under section 8(1C)(b)

20. There were 2 referrals to the Chief High Court Judge under this section. They arose from circumstances in which the Commissioner decided there was a conflict of interest at a time when no Deputy Commissioner was in office.

Referrals under section 8B(3)(b)

21. Two referrals (involving 6 Judges) were made under this section to the President of the Court of Appeal by the Deputy Commissioner in circumstances where both she and the Commissioner determined there was a conflict of interest.

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 2023, 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. For the year under review the matters subject to this type of informal referral have been related to:
 - best practice and procedure in the discharge of the business of the District Court;
 - the difficulty in assessing some allegations of discourtesy when video recordings are not available;
 - management of certain people present at a hearing;
 - delay in the issuing of reserved judgments;
 - incorrect spelling of names of parties to proceedings.

Complaints withdrawn

25. There was one complaint deemed by the Commissioner to be withdrawn when the complainant was not able to provide sufficient information. Nine other complaints were accepted as withdrawn following indications from complainants.

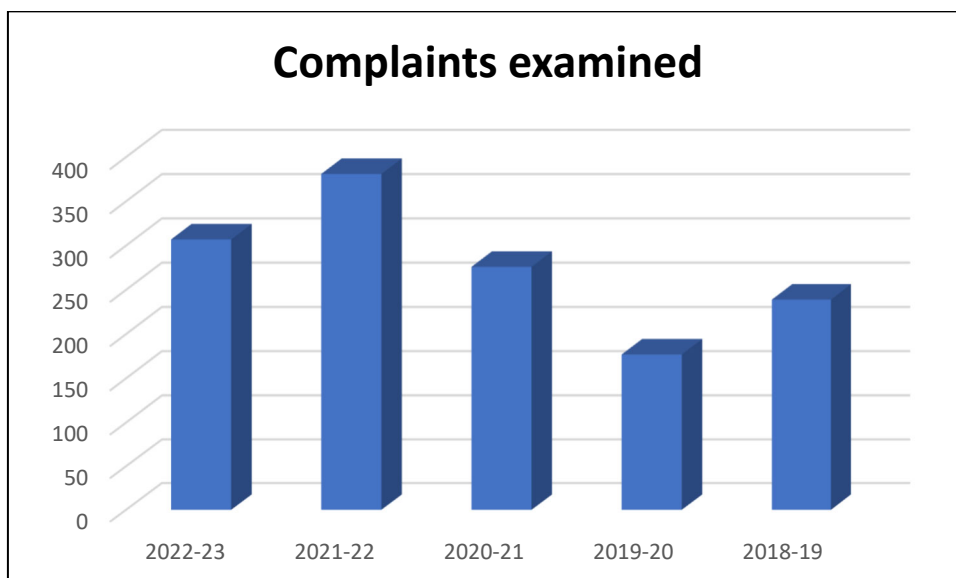
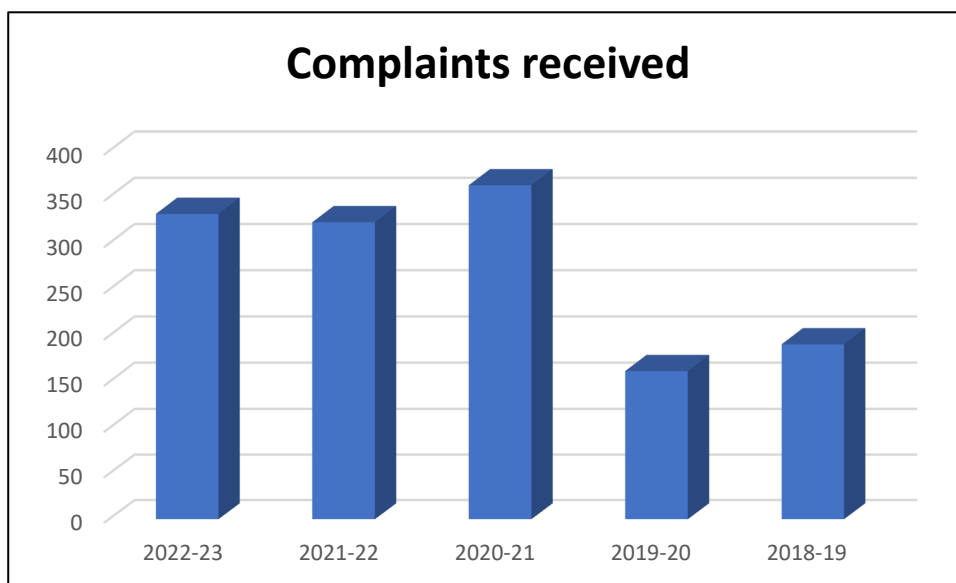
Contact with the judiciary

26. 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. The Judge about whom the complaint has been made and the relevant Head of Bench both received a copy of the decision in every instance. All contact with Judges (whether those complained about or Heads of Bench) has been in writing.

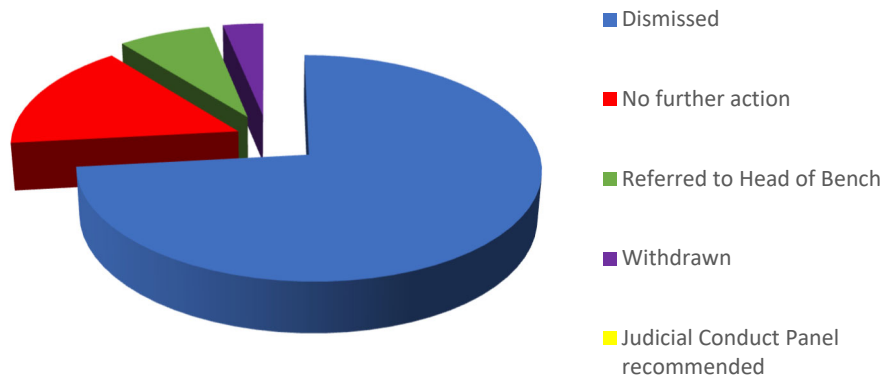
Personnel

27. As noted in the report for the year to 31 July 2022, the previous Deputy Commissioner, Kathryn Snook, stood down from that position in August 2021. The replacement process took time but Mary Ollivier was appointed to the position on 11 May 2023. She is a lawyer with a significant background in regulation of professional standards and in dispute resolution.
28. It has been another challenging year for Ministry of Justice support staff but the work of Wayne Newall (Manager, Appointments and Specialist Functions), Chris Flaus (Adviser) and Chloe Le (Administrative Support) has been outstanding and greatly appreciated.

Statistical illustrations



Complaints decisions



Five Year Summary

	2022-23	2021-22	2020-21	2019-20	2018-19
Received	332	323	363	162	191
Number of unfinalised complaints from previous year	30	88	18	33	81
Total	362	411	381	195	272
Examination and outcome					
No further action (s15A)	49	58	43	42	44
Dismissed (s16)	225	285	229	122	186
Referred to Head of Bench (s17)	15	34	15	8	8
Referred to Head of Bench (s8(1C))	2	0	0	0	0
Referred to Head of Bench (s8B)	6	1	2	0	1
Recommendation for Judicial Conduct Panel (s18)	0	0	1	1	0
Withdrawn	10	3	3	4	0
Total complaints finalised	307	381	293	177	239
Complaints not finalised	55	30	88	18	33
Total	362	411	381	195	272

Complaints received by Court

	2022-23	2021-22	2020-21	2019-20	2018-19
Supreme Court	8	36	75	7	15
Court of Appeal	16	37	26	11	8
High Court	66	46	61	39	32
District Court	129	97	111	58	86
Family Court	83	83	74	35	43
Youth Court	6	2	2	0	1
Environment Court	1	0	0	1	1
Employment Court	1	1	2	5	2
Māori Land Court	3	3	2	4	0
Court Martial	0	0	0	0	0
Coroners	3	1	2	2	3
Other (not about a Judge)	16	17	8	0	0
Total	332	323	363	162	191



Alan Ritchie
Judicial Conduct Commissioner
9 August 2023