

JUDICIAL CONDUCT COMMISSIONER

Report for the year to 31 July 2024

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 2024

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 about a Judge. Under section 5, the word Judge is interpreted to mean a Judge of the Supreme Court, Court of Appeal, High Court, Employment Court, Court Martial, District Court, Environment Court and Maori Land Court as well as a Coroner and a Family Court Associate.
6. How the numbers of complaints are counted in the statistics presented in this report depends on the particular circumstances. A complaint arising solely from District Court proceedings will (usually) appear as just one complaint whereas a complaint arising from the Supreme Court will (usually) be counted as 5 or from the Court of Appeal as (usually) 3. In other words, it depends on the number of Judges involved in the proceedings from which the complaint arises. In the year to 31 July 2024 there were:
 - 306 complaints about 413 individual Judges;
 - 378 complaints for which preliminary examination was completed (including for complaints held over from the year to 31 July 2023);
 - 16 referrals of complaints to a Head of Bench (section 17);
 - 0 recommendations to the Attorney-General for the appointment of a Judicial Conduct Panel (section 18);
 - 90 complaints for which preliminary examination was not completed.

Types of complaints

7. It remains the case that most complaints flow from disagreement with decisions made by Judges. Complainants ask for decisions to be reviewed and changed. That overlooks the provisions of 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. When that section applies a complaint will be beyond the Commissioner's jurisdiction and must be dismissed in accordance with section 16(1)(a). Complaints must also be dismissed if they are about matters that are or were subject to rights of appeal or rights to apply for judicial review. That is the effect of section 16(1)(f).
9. There can be exceptions to the strict application of sections 8(2), 16(1)(a) and 16(1)(f) and it is necessary for each complaint to be examined carefully to see whether there may have been conduct by the Judge justifying the Commissioner's intervention whether by way of a recommendation to the Attorney-General that the removal of a Judge be considered by a Panel (section 18) or by way of a referral to the relevant Head of Bench (section 17).
10. Complaints about harassment, bullying and overbearing behaviour continue but in numbers significantly reduced from 2-3 years ago.
11. There is evident concern over delays in the resolution of Court proceedings. The problems which emerged with the onset of the COVID pandemic seem to have continued with notable pressure not only on Judges but on Court staff also.
12. A few complainants express concern about a Judge's facial expressions during hearings. No video recordings are available so there is obvious difficulty in assessing that aspect of a complaint although, on occasions, an audio recording does indicate agitation by a Judge.
13. Some complaints are vexatious. They are usually made by regular complainants who are well known in the Courts. A complaint is able to be dismissed if it is vexatious but the Commissioner has no power to declare a complainant vexatious.

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 2024.

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 16 complaints referred to Heads of Bench pursuant to section 17.
17. There have been 2 referrals under section 17 to the Chief High Court Judge. They related to:
- delays in the issuing of judgments and whether Guidelines for Judicial Conduct relating to reserved judgments had been appropriately followed;
 - the need for a check to be made with Court staff over the issuing of an Order made by a Judge.
18. There were 13 referrals under section 17 to the Chief District Court Judge. They related to:
- 3 separate complaints about behaviour of a District Court Judge described by a High Court Judge on appeal as rendering a hearing unfair;
 - 2 separate complaints about the possibility of a breach of the District Court Recusal Guidelines;
 - a single complaint about 2 District Court Judges relating to the circumstances of a victim of offending;
 - witness facilities at a District Court;
 - the nature and tenor of comments made by a Judge to a lawyer in the proceedings;
 - a delay in the commencement of a hearing;
 - concern over a direction that children were not to be brought into the courtroom;
 - the use of course language;
 - the orderly and efficient conduct of Court business.
19. There was one referral to the Chief Coroner pursuant to section 17. It related to the workload of Coroners.

Referrals under section 8(1C)(b)

20. Section 8(1C)(b) provides that a complaint must be referred to a Head of Bench when the Commissioner has a conflict of interest. There has been no such referral in the year to 31 July 2024.

Referrals under section 8B(3)(b)

21. Section 8B(3)(b) provides for the circumstances in which the Deputy Commissioner must refer a complaint to a Head of Bench. There has been no such referral in the year to 31 July 2024.

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 2024, as in earlier years, there have been instances where issues have been 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:
- the challenges of increasingly busy Court days;
 - the workload of Coroners.

Complaints withdrawn

25. For the year to 31 July 2024, 4 complaints were accepted as withdrawn following indications from the complainant.
26. Five other complaints were treated as withdrawn because of a failure by the complainants to respond to requests that they meet the requirements for a complaint set out in section 13.
- 27.

FIVE YEAR SUMMARIES

Courts in which Judges complained about were sitting

	2023-24	2022-23	2021-22	2020-21	2019-20
Supreme Court	19	8	36	75	7
Court of Appeal	25	16	37	26	11
High Court	84	66	46	61	39
District Court	185	129	97	111	58
Family Court	79	83	83	74	35
Youth Court	0	6	2	2	0
Environment Court	1	1	0	0	1
Employment Court	2	1	1	2	5
Māori Land Court	0	3	3	2	4
Court Martial	0	0	0	0	0
Coroners	6	3	1	2	2
Other (not about a Judge)	12	16	17	8	0
Total	413	332	323	363	162

Complaints received and outcome of examination

	2023-24	2022-23	2021-22	2020-21	2019-20
Received	413	332	323	363	162
Number of unfinalised complaints from previous year	55	30	88	18	33
Total	468	362	411	381	195
Examination and outcome					
No further action (s15A)	69	49	58	43	42
Dismissed (s16)	278	225	285	229	122
Referred to Head of Bench (s17)	16	15	34	15	8
Referred to Head of Bench (s8(1C))	0	2	0	0	0
Referred to Head of Bench (s8B)	0	6	1	2	0
Recommendation for Judicial Conduct Panel (s18)	0	0	0	1	1
Withdrawn	15	10	3	3	4
Total complaints finalised	378	307	381	293	177
Complaints not finalised	90	55	30	88	18
Total	468	362	411	381	195

Contact with the judiciary

28. 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). Judges have generally responded promptly and helpfully to such requests. The Judge about whom the complaint has been made and the relevant Head of Bench each receives 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

29. As noted in the report for the year to 31 July 2023, Mary Ollivier was appointed to the position of Deputy Commissioner on 11 May 2023. She approaches the work thoughtfully and carefully and her contribution has been much appreciated.
30. Wayne Newall (Manager, Appointments and Specialist Functions), Chris Flaus (Adviser) and Chloe Le (Adviser) have provided yet another year of outstanding service. They each cheerfully go beyond the call of duty and special gratitude is due to them.



Alan Ritchie
Judicial Conduct Commissioner
9 August 2024