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JUDICIAL CONDUCT COMMISSIONER

Report for the year to 31 July 2025

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 2025

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 Māori Land Court as well as an Associate Judge of the High Court, a Coroner, Associate Coroner and a Family Court Associate. It follows that complaints about others such as Tenancy Adjudicators, Disputes Tribunal Referees and Community Magistrates are beyond the Commissioner's jurisdiction and must be dismissed in accordance with section 16(1)(a).

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 2025 there were:

    - 253 complaints about 327 individual Judges;

    - 403 complaints for which preliminary examination was completed (including for complaints held over from the year to 31 July 2024);

    - 14 complaints for which preliminary examination was not completed (including 3 where examination has been deferred in accordance with section 14(7));

    - 7 referrals of complaints to a Head of Bench (section 17).

7. There was also one recommendation to the Attorney-General for the appointment of a Judicial Conduct Panel (section 18). This arose from circumstances treated by the Commissioner as a complaint in accordance with section 12(3) along with a referral of a matter by the Attorney-General in accordance with section 12(2). There were also two complaints about this Judge from individuals. Further detail on this issue appears at paragraphs 13 – 17 of this Report.

Types of complaints

8. Once again, most complaints amounted to disagreement with decisions made by Judges. Complainants ask for decisions to be reviewed and changed. That, usually, 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."*

9. 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).

10. 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).

11. Complaints about harassment, bullying and overbearing conduct continue. Mostly they arise in the course of highly stressful proceedings. Audio recordings are crucial in the assessment of such complaints. Judges are certainly heard to be firm on occasions but not often in a way that could be rated as a breach of the Guidelines for Judicial Conduct. The Guidelines note the primary obligation of a Judge as being to determine a case according to law without being deflected by a desire for popularity or fear of criticism. The Judge must be firm in maintaining proper conduct during a hearing but with intervention being moderate. There are exceptions but, generally, the audio recordings confirm compliance with the Guidelines with Judges addressing participants calmly and considerately including on matters of law.

12. Vexatious complaints have continued. They are usually made by litigious complainants who are well known in the Courts. A complaint is able to be dismissed if it is vexatious (as some have in the current year) 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

13. A recommendation may be made if the Commissioner is satisfied that an inquiry into alleged conduct is necessary or justified and, if established, the conduct may warrant consideration of the removal of the Judge from office.

14. The recommendation referred to in paragraph 7 above was made on 23 January 2025. It flowed, principally, from media reports published on 18 December 2024

which resulted in the reports being treated by the Commissioner as a complaint in accordance with section 12(3). Later on that day there was a referral of the same matter by the Attorney-General in accordance with section 12(2).

15. The recommendation was challenged by the Judge by way of an application for judicial review on the basis of a failure by the Commissioner to provide adequate reasons for the recommendation and a failure to identify precisely what conduct a Panel would be expected to consider.

16. On 29 April 2025 the High Court dismissed that application.

17. As the Commissioner's recommendation said, the question of whether a Panel should be appointed was one for the Attorney-General to make. That decision was made by the Acting Attorney-General on 13 June 2025 and a Panel has subsequently been appointed. As at the date of this Report the outcome of the Panel's consideration is awaited.

Referrals to Heads of Bench

18. 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.

19. There have been 7 complaints referred to Heads of Bench pursuant to section 17. Of those, 6 were to the Chief District Court Judge and 1 to the Chief Judge of the Māori Land Court.

20. The referrals related to:

- a District Court Judge speaking to the complainant in an inappropriate way for which an unreserved apology was offered;
- issues of delay in District Court proceedings;
- a complaint making wide-ranging allegations including bullying and overbearing conduct;
- a complaint of judicial bullying by a District Court Judge. The audio recording of the relevant hearing was thought not to fit the complainant's description of an "*aggressive, angry, demeaning and bullying outburst*". The referral was made on the basis of the possibility of the Head of Bench having a different view in which case guidance could be offered to the Judge or Judges generally on dealing with such situations;
- a complaint alleging bullying by a District Court Judge with the examination concluding that exchanges between the Judge and the complainant (a lawyer) may not have met the standards expected by the Guidelines for Judicial Conduct;

- a complaint alleging incompetence on the part of a District Court Judge. Most aspects of this complaint were dismissed. However, certain elements relating to basic care on the Judge's part were referred with the comment that the Head of Bench may care to offer the Judge some guidance in the context of the role of the Head of Bench in overseeing the training of Judges and making directions and setting standards for best practice and procedure in the Court;

- There was one referral to the Chief Judge of the Māori Land Court. It related to delay. Both the Judge and the Head of Bench responded promptly to the Commissioner's notification with apology and rectification.

Referrals under section 8(1C)(b)

21. 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 2025.

Referrals under section 8B(3)(b)

22. 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 2025.

Matters drawn to the attention of Heads of Bench

23. 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.

24. In the year to 31 July 2025, 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 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.

25. For the year under review there have been four matters subject to this type of informal referral. They have related to:

    - issues of orderly and efficient conduct of Court business including delay and case management;

    - poor quality of courtroom audio recordings;

    - an issue relating to recusal.

Complaints withdrawn

26. For the year to 31 July 2025, two complaints were accepted as withdrawn following indications from complainants.

27. Nine 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.

Contact with the judiciary

28. Usual practice has been followed. 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.

Relevant Issues

29. The jurisdictional issues set out in the Act are clear but sight is not lost of matters such as:

- in the context of judicial harassment, bullying and overbearing conduct, the establishment of the New Zealand Lawyers Protection Association has been noted and it will be important to learn from such an organisation the nature and extent of the perceived problems;

- the agreement between the Heads of Bench and the New Zealand Law Society on an informal process for dealing with matters of concern raised by lawyers about conduct in the Courts about Judges.

30. As noted earlier in this Report, delay is a continuing issue of concern to complainants and, to be fair, to Judges also. Indeed, it is usually the case that Judges respond apologetically to legitimate complaints of delay and work hard to overcome particular problems. Issues of delay are often compounded by matters largely outside of a Judge's control with one example being the reported delays in receiving Mental Health Reports.

31. It is to be hoped that the Timely Access to Justice Protocol issued by the Chief District Court Judge in 2024 may, as he said, be encouraging the wider justice sector to play their parts in the setting of standards. Another example arises from Legal Aid problems and the apparent growing number of unrepresented parties in both Civil (especially Family) and Criminal proceedings.

32. Developments in other countries need to be watched. An example of that is the possibility of a Federal Judicial Commission in Australia. There has certainly been an interesting argument in a recent article in the University of New South Wales Law Journal that judicial complaints commissions:

> "*…are not unmitigated forces for good and can too easily become forums for disaffected litigants to make irrelevant or unsubstantiated allegations against judicial officers rather than bodies to investigate substantial allegations of judicial misconduct or misbehaviour. This does not mean that judicial commissions cannot work as vital tools of judicial accountability. But it does mean that great care needs to be*

taken to ensure these bodies operate as a net positive for the judicial system."

Personnel

33. The services provided by a close-knit and talented team within the Ministry of Justice has again been outstanding with Wayne Newall (Manager, Appointments and Specialist Functions) providing his inimitable wisdom on the usual range of difficult matters with which the office has to deal. The support offered by Chris Flaus (Adviser) and Chloe Le (Adviser) has been invaluable.

34. Mary Ollivier has now had more than two years as Deputy Commissioner. She is showing excellent appreciation of the demands of the role.

35. The Commissioner's appointment warrant has now expired. In accordance with the relevant processes of the Act, he will remain in position until his successor is appointed by the Governor-General on the recommendation of the House of Representatives. Steps will be implemented by the Attorney-General for that to occur.

FIVE YEAR SUMMARIES

Courts in which Judges complained about were sitting

	2024-25	2023-24	2022-23	2021-22	2020-21
Supreme Court	14	19	8	36	75
Court of Appeal	20	25	16	37	26
High Court	75	84	66	46	61
District Court	121	185	129	97	111
Family Court	79	79	83	83	74
Youth Court	0	0	6	2	2
Environment Court	0	1	1	0	0
Employment Court	2	2	1	1	2
Māori Land Court	4	0	3	3	2
Court Martial	0	0	0	0	0
Coroners	2	6	3	1	2
Other (not about a Judge)	10	12	16	17	8
Total	**327**	**413**	**332**	**323**	**363**

Complaints received and outcome of examination

	2024-25	2023-24	2022-23	2021-22	2020-21
Received	327	413	332	323	363
Number of unfinalised complaints from previous year	90	55	30	88	18
Total	**417**	**468**	**362**	**411**	**381**
Examination and outcome					
No further action (s15A)	104	69	49	58	43
Dismissed (s16)	277	278	225	285	229
Referred to Head of Bench (s17)	7	16	15	34	15
Referred to Head of Bench (s8(1C))	0	0	2	0	0
Referred to Head of Bench (s8B)	0	0	6	1	2
Recommendation for Judicial Conduct Panel (s18)	4	0	0	0	1
Withdrawn	11	15	10	3	3
Total complaints finalised	403	378	307	381	293
Complaints not finalised	14	90	55	30	88
Total	**417**	**468**	**362**	**411**	**381**

Alan Ritchie
Judicial Conduct Commissioner
15 August 2025