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Annual Report of the

# LEGAL COMPLAINTS REVIEW OFFICER

For the 12 months ended 30 June 2019

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*Presented to the House of Representatives pursuant to  
s 223 of the Lawyers and Conveyancers Act 2006*

## OVERVIEW OF YEAR 2018/19

This is the Annual Report of the Legal Complaints Review Officer for the year 1 July 2018 to 30 June 2019.

The Legal Complaints Review Officer (LCRO) operates under the Lawyers and Conveyancers Act 2006. The primary purposes of the Act are to maintain public confidence in the provision of legal and conveyancing services, and to protect consumers of such services.

The specific role of the LCRO is to independently review decisions made by the New Zealand Law Society (NZLS) and the New Zealand Society of Conveyancers (NZSC) Standards Committees on complaints against lawyers and conveyancers. Part 7 of the Act, which governs the regulatory scheme of the Act, provides for the LCRO to undertake a second-tier investigation into complaints where a party is dissatisfied with the first-tier investigation by the Standards Committee.

It is pleasing to report that in the 1 July 2018 to 30 June 2019 reporting year, the LCRO and Deputies, with the support and assistance of delegates appointed to assist the Officers, have continued to make substantial inroads into the backlog of cases that had been increasing over a number of years.

The backlog has been steadily reducing and whilst there is still considerable work to be done to ensure that cases can be heard within a reasonable time of the applications being filed, Review Officers are able to look forward with confidence to achieving the objective of fulfilling their statutory obligation to ensure that all review applications are dealt with expeditiously.

It was anticipated that the passage of the Tribunals Powers and Procedures Legislation Act 2018 would provide the LCRO with a greater degree of flexibility in determining how applications would be managed. That has proven to be the case.

Any uncertainty as to a Review Officer's ability to strike out an application for review without need for a hearing in circumstances where the Officer is satisfied that the application discloses no reasonable cause of action, is frivolous or vexatious, constitutes an abuse of process or is likely to cause prejudice or delay, has been clarified. Whilst Review Officers have been cautious in exercising their strike out power, there has been a willingness to do so in those circumstances where the Officers have felt confident that an application's shortcomings are so significant as to merit a robust approach.

The ability to progress applications more expeditiously has also been enhanced by the power now accorded to the LCRO to direct, in circumstances where the LCRO considers it appropriate, that a review be conducted on the papers.

The LCRO continues to post a number of decisions on the LCRO website. Whilst there is no right of appeal from a decision of the LCRO, decisions are open to being judicially reviewed by the High Court. In the reporting period, three decisions were judicially reviewed. As a percentage of decisions

released by the LCRO each year, this is less than 1%. Although accepting that judicial review in the High Court is not for the faint hearted, this figure nevertheless is an indication of the careful attention given to each application for review that is lodged, and the robustness of Review Officers' decisions. Also in this period, the LCRO concluded its second prosecution of a practitioner to the Lawyers and Conveyancers Disciplinary Tribunal, this prosecution resulting in a misconduct finding being entered against the practitioner.

The LCRO has continued to enjoy a productive and continuing dialogue with the New Zealand Law Society on issues relevant to the procedures and processes for managing conduct complaints. The LCRO has for a number of years attended the annual training day for Standards Committee members. Attendance at these training days continues to provide the LCRO with useful insights into the operation of both the Complaints Service and Standards Committees, and an opportunity for informal discussion about the regulatory process. An overwhelming impression left by each training day is the goodwill, diligence and hard and often thankless work of both the Complaints Service and Standards Committees.

The regulatory regime introduced under the Lawyers and Conveyancers Act 2006 has now been in operation for over 10 years. It may be an opportune time to consider a comprehensive review of the regulatory process to identify areas for possible improvement.

Particularly relevant for consideration, is the question as to whether the unsatisfactory conduct disciplinary finding currently able to be imposed by Standards Committees and the LCRO, adequately serves the needs of a regulatory regime that is intended to be flexible and responsive. The range of conduct complaints which currently fall under the umbrella of unsatisfactory conduct range from minor lapses at one end of the spectrum to more serious breaches of professional duty at the other.

Further, a regulatory review might consider whether it is appropriate to provide opportunity to Standards Committees and the LCRO to access a remedy without the current first step requirement for an adverse disciplinary finding to be made.

On occasions, the LCRO has considered that a fair and equitable outcome for both parties could potentially be achieved by the making of orders which provide appropriate redress for the complainant, but without need to record an adverse disciplinary finding against the practitioner.

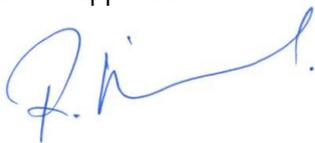
Subject to some exceptions, most notably the public interest, s 201 of the Act provides that a Review Officer may direct parties to explore the possibility of resolving their issues through negotiation, conciliation or mediation. Attempts to achieve a resolution driven by the parties can be hampered on occasions by the inability of the LCRO to provide robust direction to the parties with indication of appropriate orders when that assistance is both sought and required, without the requirement to have potential orders accompanied by an unsatisfactory conduct finding. This can be restrictive, particularly when the LCRO is considering fee complaints.

On occasions, Review Officers form a view that it would be appropriate that a direction be made for a fee to be modified, but do not consider in the circumstances of the particular case, that it is necessary or diminishing of the regulatory and public interest objectives, that the order contemplated needs to be supported by an adverse conduct finding. Provision of an opportunity to provide remedy without necessity of a disciplinary outcome may, in appropriate circumstances, enhance the resolution and conciliation objectives of the Act.

A Review Officer is required to conduct a review with as little formality and technicality as is permitted by the Act, whilst being properly attentive to the rules of natural justice. The LCRO has observed an increasing tendency particularly on the part of some practitioners, to approach the review process as if it were a process analogous to that of a formal court hearing. This approach has been reflected in both the length and complexity of the submissions being received. Whilst it is imperative that parties have the opportunity to comprehensively set out their positions, it can be reasonably expected that practitioners and complainants have had abundant opportunity to advance their argument and provide all relevant evidence in support of the argument to the Standards Committee. An overly expansive and unnecessarily technical approach to advancing or responding to a review inevitably results in greater time having to be spent on conducting the review. This compromises both the capacity for the review to be expeditiously progressed, and the need for the review process to be accessible for the consumers of legal services. Review Officers are adopting a more proactive approach to case managing review applications by limiting the length of submissions and imposing timetables for lodging them. On occasions, a preliminary conference will take place at which issues are identified, and the scope of the application for review made clear.

The LCRO continues to be ably supported by a team of dedicated case managers who provide both administrative support to the LCRO and assistance to practitioners and members of the public. The LCRO has also been well supported by members of the Tribunals legal research team who continue to provide research and administrative support to the Office.

Finally, I must acknowledge the work of the delegates Roderick Joyce QC, Robert Hesketh and Owen Vaughan, and the Deputy Review Officers Dorothy Thresher and Bruce Galloway. Their dedication and commitment has been instrumental in achieving the significant improvement in the disposal of review applications.



Rex Maidment  
Legal Complaints Review Officer

## NATURE OF OFFICE

The Legal Complaints Review Officer (LCRO) was established in 2008 under the Lawyers and Conveyancers Act 2006 to provide independent oversight and review of decisions made by Standards Committees of the New Zealand Law Society (NZLS) and the New Zealand Society of Conveyancers (NZSC).

The LCRO is appointed by the Minister of Justice after consultation with the NZLS and the NZSC. Under the Act, the LCRO cannot be a practising lawyer or a conveyancing practitioner.

The primary function of the LCRO is to review determinations of Standards Committees. Additionally, the LCRO is to provide advice to the Minister of Justice, the NZLS and the NZSC in respect of any issue which relates to the manner in which complaints are received and handled.

## MEMBERSHIP

The membership comprises the LCRO Rex Maidment and two Deputy LCROs, who are assisted by three delegates.

## STATISTICS

Section 224 of the Lawyers and Conveyancers Act 2006 requires the following information to be provided in the Annual Report of the LCRO:

- the number and type of applications for review made in the year
- whether the reviews in respect of which the applications were made have been completed
- the timeliness with which reviews have been completed
- the outcomes of the reviews
- the number of applications for review still outstanding.

### The number and type of applications for review filed

The LCRO received **208** applications for review during the reporting period of 1 July 2018 to 30 June 2019. This is a slight decrease compared to the previous reporting year, in which 239 applications were received.

The 208 applications can be broken down into the following types:

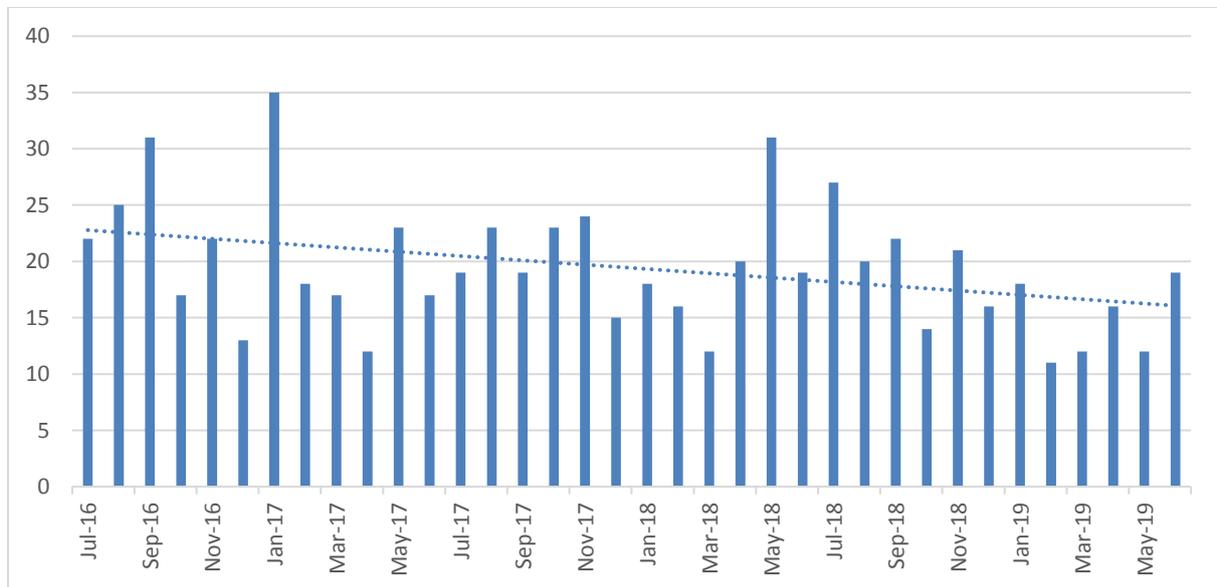
- **197** related to a Standards Committee decision on a complaint made, pursuant to s 194 of the Act
- **6** related to a Standards Committee decision following own motion inquiries pursuant to s 195 of the Act

- 3 related to the power of a Standards Committee to request information pursuant to s 147 of the Act
- 2 related to a Standards Committee decision to refer a matter to the Lawyers and Conveyancers Disciplinary Tribunal.

*Trends*

Graph 1 shows the number of applications for review received each month over the past three reporting periods. The trend line shows that the number of review applications filed in this reporting year is down slightly on the previous period. The average number of applications filed per month in this reporting period is 17.

*Graph 1: Applications for review filed by month 2016/17 to 2018/19*



*Rate of review applications*

Information received from the NZLS indicates that Standards Committees disposed of 1272 complaints in the reporting period. During the same period, the LCRO received 208 review applications, meaning 16 per cent of Standards Committee decisions proceeded to a review.<sup>1</sup>

<sup>1</sup> Given that there is a 30 working day time frame for filing a review application, no exact match can be made between Standards Committee determinations and review applications for any given period of time.

## Completion of reviews

During the reporting period the LCRO completed **314** reviews.<sup>2</sup> This compares with 421 and 320 reviews completed in the previous two reporting years. Of the 314 completed reviews, 252 related to reviews filed in previous reporting periods.

## Timeliness of reviews completed

Of the 314 reviews completed:

- 72 (23 per cent) were completed within six months
- 41 (13 per cent) were completed within six to twelve months
- 201 (64 per cent) were completed in over twelve months

## Outcomes of reviews

The outcomes of the 314 reviews completed by the LCRO in the reporting year are shown below. Under s 211 of the Lawyers and Conveyancers Act 2006 (the Act), the LCRO can confirm, modify or reverse any decision of a Standards Committee. The LCRO also has the power, under s 209, to direct a Standards Committee to reconsider a decision.

In the reporting year:

- **195** decisions of Standards Committees were confirmed by the LCRO
- **35** decisions of Standards Committees were confirmed but modified. Examples of a modification by the LCRO included:
  - reaching a further finding of unsatisfactory conduct
  - ordering an apology
  - censuring the person to whom the complaint related or reversal of a censure order
  - the reduction of a fine
  - reversal of a reprimand
  - reversal of an order for mentoring
  - reversal of an order to take advice in relation to practice management
  - varying the amount of compensation to be paid to a complainant
  - reversing findings of unsatisfactory conduct with the remaining findings confirmed
  - reversing an order to pay fees.
- **37** decisions of Standards Committees were reversed or partially reversed. Examples included:
  - findings of unsatisfactory conduct reversed (with any associated fine, costs, cancellation of fees falling away). Examples of orders that fell away include reprimand and censure orders, supervision order, order to provide an apology, and

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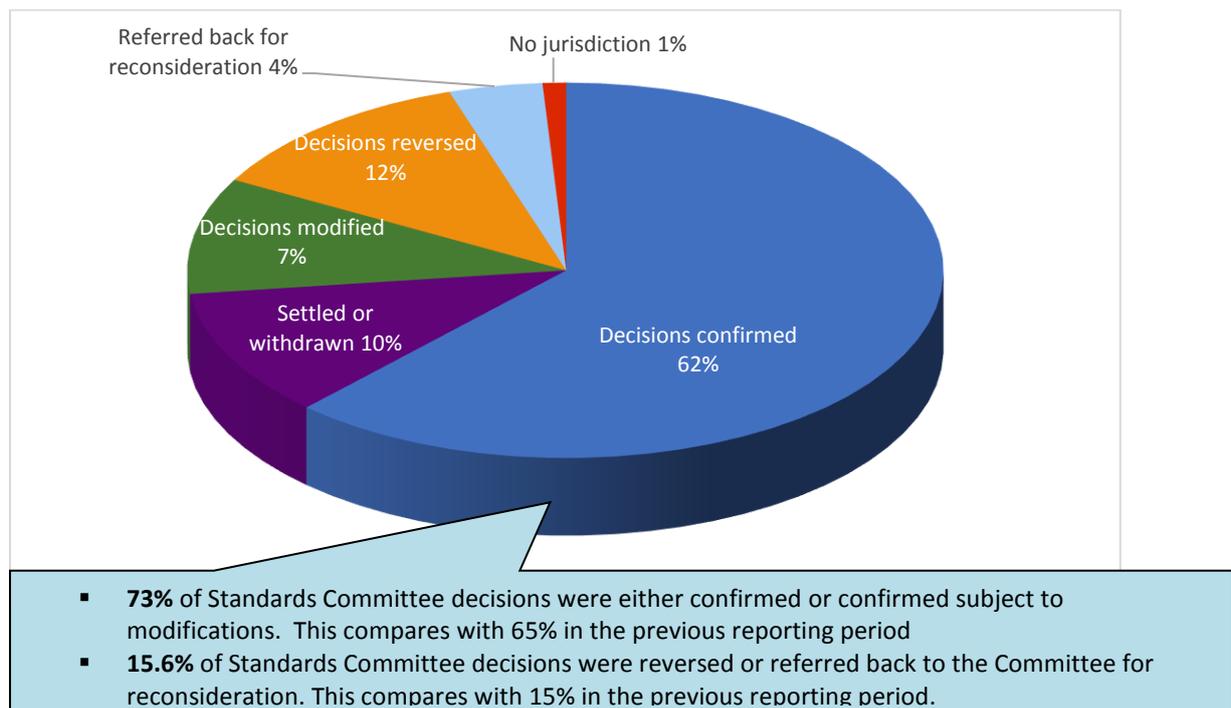
<sup>2</sup> This refers to actual numbers of completed reviews without taking into account when the review applications were filed.

cancellation of fees of \$19,000, fines of up to \$12,500 and compensation of \$12,407.

- the LCRO reaching a finding of unsatisfactory conduct, reversing the Standards Committee decision to take no further action on all or some aspects of the complaint. Orders that followed included the refund of fees, imposition of a fine, costs and compensation.
- **12** decisions were referred back to the Standards Committee for reconsideration. Examples included directing Standards Committees to:
  - further consider the complaint following a decision to take no further action
  - reconsider whether fees were fair and reasonable
  - appoint a costs assessor.
- **4** reviews were declined for lack of jurisdiction to review.
- **31** reviews were withdrawn or settled by way of agreement between the parties.

The outcomes of reviews are presented by percentage in Graph 2 below:

*Graph 2: Outcomes of reviews*



*Costs, fines and compensation orders*

The LCRO has the power to impose costs pursuant to s 210 of the Act and has issued a guideline as to how that power will be exercised. The guideline is available on the LCRO’s website.<sup>3</sup>

<sup>3</sup> Legal Complaints Review Officer “Guidelines for Parties to Review” <https://www.justice.govt.nz/assets/Documents/Publications/LCRO-Guidelines-for-parties-to-review.pdf>.

Where a finding is made against a lawyer or conveyancing practitioner, they will be expected to pay a contribution towards the costs of conducting the review. Costs orders totalling \$59,000 were made against practitioners in the reporting period. Costs were payable to the NZLS.

In addition to the costs for the review, during the reporting period practitioners were fined a total of \$33,000 (this includes fines imposed by the Standards Committees but modified by the LCRO). These amounts were payable to the NZLS and are taken into account when annual levies are set.

Compensation orders totalling \$11,489.19 were imposed by the LCRO.

### **Applications for review to be completed**

As at 30 June 2019, 244 applications for review were active, compared to 350 at the end of the previous reporting period.

Of the reviews pending:

- 146 were lodged in the last 12 months
- 70 from July 2017 to June 2018
- 24 from July 2016 to June 2017
- 4 prior to July 2016

## **NEW ZEALAND LAW SOCIETY**

The LCRO primarily interfaces with the NZLS in two ways. One way arises by virtue of ss 124(g) and 125(g) of the Act, which require the NZLS and the NZSC to provide the LCRO with copies of any complaints that are made about the operations of the Complaints Service of the respective bodies. Such complaints are considered by the LCRO. If the LCRO considers that a complaint raised identifies any significant operational shortcomings that require attention, the issue will be raised with the relevant Society. These complaints do not result in a formal investigation by the LCRO although the LCRO may, where necessary, seek further information from the NZLS or the NZSC.

In the reporting period, there have been 17 such complaints forwarded to the LCRO. No further attention has been required by the LCRO.

The second interface between the LCRO and the NZLS arises through regular (usually quarterly) meetings which provide a forum for discussion of a variety of issues arising in the work of the Complaints Service and the LCRO. Opportunities for improvements are identified and discussed, and these meetings provide an opportunity for the LCRO to provide feedback to the NZLS on observations that are made by Review Officers in the course of reviewing Standards Committee decisions.

## FINANCIAL MATTERS

The LCRO is administered by the Ministry of Justice and funded through a levy imposed on the NZLS and the NZSC pursuant to s 217 of the Act. The societies recoup their costs through the imposition of a levy on their members. The LCRO levy on the societies' members for the 2018/19 year was \$139.99 (incl. GST).

### Revenue Received

- LCRO filing fees \$9,087 (excl. GST)
- LCRO levies: \$1,624,357 (excl. GST)

### 2019-2020 Levies

The Ministry of Justice, NZLS and NZSC consult together near the end of each financial year to determine whether the levies in place are accurately reflecting the cost involved in operating the Review Office. The estimated annual amount is adjusted in accordance with a recalculation based on a range of income and expenditure criteria that include:

- actual income
- actual costs of function
- budgeted amounts
- filing fees received
- interest received from the Trust Account
- costs awarded.

As a result of the above process, a new levy has been set by dividing the amount of estimated costs by the number of practising certificates issued by each society. The levy for 2019/20 has been set at \$145.33 (incl. GST).

Under s 222 of the Act, the Ministry of Justice is required to report in its own Annual Report in respect of funds received and expended in meeting the cost to the Crown of the performance of the functions of the LCRO.<sup>4</sup>

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<sup>4</sup> The Ministry's Annual Report also outlines the Trust Account information along with the actual costs of the LCRO office. A copy of the Ministry's Annual Report can be accessed from [www.justice.govt.nz/about/about-us/corporate-publications](http://www.justice.govt.nz/about/about-us/corporate-publications).