



Annual Report of the

LEGAL COMPLAINTS REVIEW OFFICER

For the 12 months ended 30 June 2015

*Presented to the House of Representatives pursuant to
s223 of the Lawyers and Conveyancers Act 2006*

OVERVIEW OF YEAR 2014/15

This is the Annual Report of the Legal Complaints Review Officer for the year 1 July 2014 to 30 June 2015.

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

The issue of critical significance for the office in this reporting period, has been managing the substantial backlog of cases which has accumulated over recent years.

Concern at the increasing delays in completing reviews has been identified in a number of annual reports filed by the LCRO as the most significant problem facing the office. Whilst the office has, in the current reporting year, been able to deliver a significant increase in the number of decisions to that for the previous reporting period, lengthy delay in completing reviews remains a continuing challenge for the office.

The backlog of cases has been accumulating over a number of years and had reached the point some time ago, where it had become increasingly difficult to make significant inroads into the backlog. Whilst there has been a decline in the number of applications filed in the current reporting period compared to the previous year, the backlog has reached such proportion that a fluctuation in the number of applications filed has relatively insignificant impact on the ability of the office to make inroads into the backlog.

It has been noted in previous reports, that the procedural design of the Act has been a factor which has contributed to unnecessary delay. Three matters warrant attention:

- (1) The current legislation promotes the commendable objective of ensuring that parties have easy access to the complaints process. However, a number of reviews are being filed where the applicant presents as having no immediate connection with the subject matter of the complaint. Consideration may need to be given as to whether the complaint process can continue to sustain applications of this nature.
- (2) The continuing ability of all applicants to receive a de novo inquiry into their complaint together with the right to be personally heard, are also matters which are deserving of consideration. In circumstances where the office is experiencing considerable difficulty in

meeting its statutory requirement to deal with cases expeditiously, the continuing ability of parties to insist on their matter proceeding by way of formal hearing may need to be addressed. Whilst it is important to preserve the right for parties to appear in person before the LCRO to present their case, in many cases the LCRO can, and does, deal effectively with the review by reference to the submissions filed without need for the applicant to appear in person. It would promote a more effective process if legislative direction was given that the LCRO could direct, in appropriate cases, that the review be conducted without need for a personal appearance from the applicant.

- (3) When concerns about delay in delivering decisions are at the forefront, it is an unproductive use of judicial resource for Review Officers to be diverted by applications which transparently lack merit. A not inconsiderable number of the applications that come before the office present, on initial examination, as having remote chance of achieving successful outcome for the applicants. Frequently these applications are reflective of applicants who are endeavouring to relitigate proceedings in which they have been unsuccessful in other forums, or give indication that the complaints process is being exercised for collateral purpose. These applications could be dealt with expeditiously if the office had appropriate procedures to deal summarily with the applications.

Continuing delays have inevitably created additional work for the LCRO staff who are required to manage the delays and parties' expectations. The responsibility of managing a significant caseload can be demanding, however the office is well served by a team of conscientious case managers who continue to provide dedicated support to the Review Officers.

The office has, in the current reporting period, been assisted by the appointment of a number of delegates. The office has also been admirably supported by members of the Tribunals legal research team who have provided research and administrative support to the office.

Considerable time has been spent in the reporting period on reviewing and case managing files, with particular emphasis on identifying and managing files that require urgent attention. Priority continues to be given to (a) applications to review a Standards Committee decision to prosecute, and (b) complaints where a lawyer's claim for recovery of fees has been halted by the complaints process.

However, whilst changes to the Act and continuing efforts to achieve administrative efficiencies present as providing opportunity for the review process to be improved, the major factor contributing to the delay remains a lack of sufficient judicial resource. Previous reports have emphasised that the judicial resources allocated for the office may have been considered adequate when the legislation was drafted, however the number of applications now being filed, the complexity of a number of the reviews, the comprehensive approach adopted by a number of review applicants to advancing their reviews, and the extent of the current backlog, demands consideration of the appointment of additional Officers.

Finally, I must acknowledge the committed and valuable contributions made to the work of the office by the Deputy LCROs, Owen Vaughan and Dorothy Thresher.

Yours sincerely

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 (the Act) 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 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 LCRO is Mr Rex Maidment, who is supported by two Deputy LCROs, Owen Vaughan and Dorothy Thresher.

STATISTICS

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

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

The number and types of applications for review filed

The LCRO received **278** applications for review during the reporting period of 1 July 2014 to 30 June 2015. This is a significant reduction compared to the previous reporting year, in which 349 applications were received.

The **278** applications can be broken down into the following types:

- **257** related to a Standards Committee decision on a complaint made, pursuant to section 194 of the Act.
- **4** related to review of determinations from Standards Committees following own motion inquiries pursuant to section 195 of the Act.

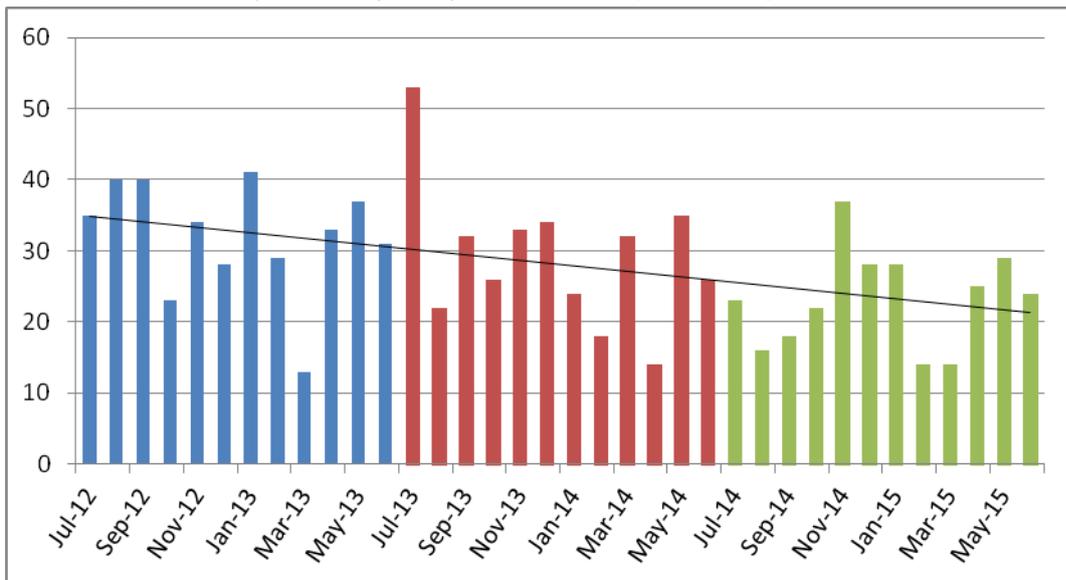
- 5 related to intervening with the power of the Standards Committee to investigate a complaint.
- 12 related to decisions of Standards Committees to refer a matter to the Lawyers and Conveyancers Disciplinary Tribunal.

All applications received related to decisions made by Standards Committees of the NZLS. The NZSC is of modest size and to date no applications for review from its Standards Committees have been received.

Trends

Graph 1 shows the number of applications for review received each month over the past three reporting periods. The trend line shows there has been a steady decrease in review applications filed. The average number of applications filed per month has dropped from 29 per month in 2012/13 to 23 per month in the reporting period.

Graph 1: Applications for review filed by month 2012/13 to 2014/15



Rate of review applications

Information received from the NZLS indicates that Standards Committees disposed of 1,529 complaints in the reporting period. During the same period the LCRO received 278 review applications, meaning 18 percent of Standards Committee decisions proceeded to a review.¹ This is similar to the two previous reporting periods (19.5 and 20 percent).

¹ 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 **325** reviews². This compares with 225 reviews completed in the previous reporting year. Of the 325 completed reviews, 274 related to reviews filed in the previous reporting period.

Timeliness of completed reviews

Of the 325 reviews completed:

- 55 (17 percent) were completed within six months;
- 36 (11 percent) were completed within six to twelve months; and
- 234 (72 percent) were completed in over twelve months.

Outcomes of reviews

The outcomes of the 325 reviews completed by the LCRO in the reporting year are shown below. Under section 211 of the Act, the LCRO can confirm, modify or reverse any decision of a Standards Committee. The LCRO also has the power, under section 209, to direct a Standards Committee to reconsider a decision.

In the reporting year:

- **191** decisions of Standards Committees were confirmed by the LCRO.
- **34** decisions were confirmed but modified, where the modifications were minor in nature and included changes to reasons given.
- **2** further decisions were confirmed and modified, modifications included:
 - 1 instance where compensation orders were made.
 - 1 instance where a sanction (censure) was imposed.
- **29** decisions were reversed:
 - 13 findings of unsatisfactory conduct were reversed (including any associated fines imposed or censure/publication orders made). 1 where the fees complaint was referred back to the the Standards Committee.
 - 9 decisions resulted in the LCRO making a finding of unsatisfactory conduct and reversing the Standards Committee decision to take no action.
 - In 4 matters a publication order was reversed. 1 where the fees complaint was referred back to the Standards Committee.
 - In 1 matter a Standards Committee order to censure the practitioner and award compensation and a fine was reversed.
 - 1 decision where the Standards Committee rejected jurisdiction over fees complaint was reversed and the LCRO found no further action was required.
 - 1 determination that special circumstances exist to justify Standards Committee dealing with a fees complaint reversed.

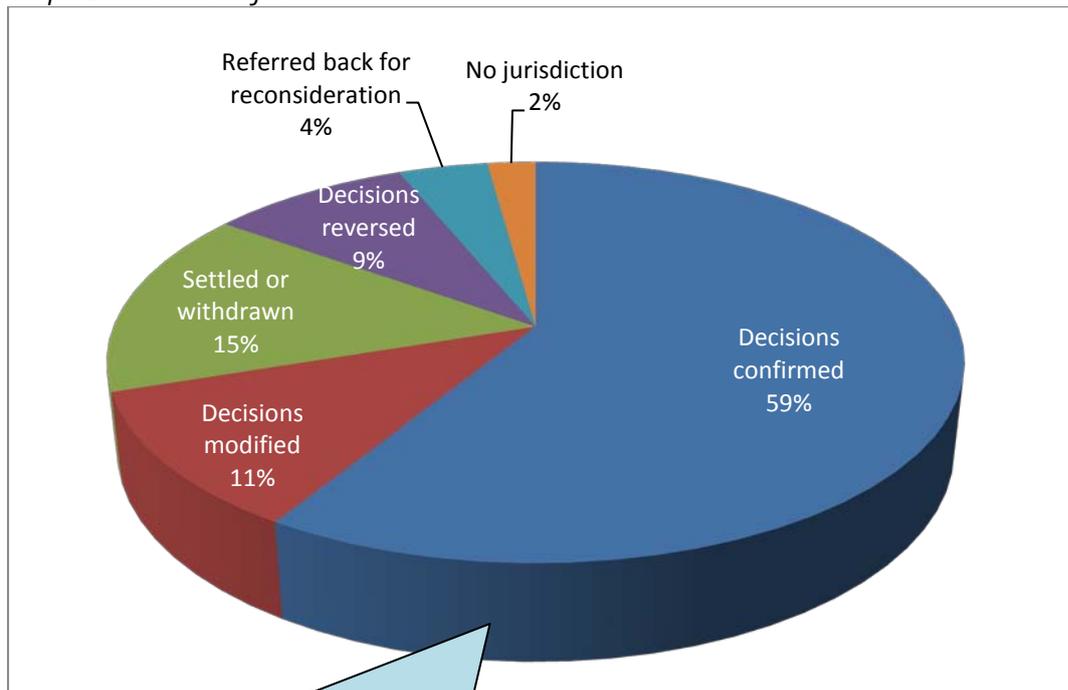
² This refers to actual numbers of completed review without taking into account when the review applications were filed.

- **13** decisions were referred back to the Standards Committee for reconsideration.
 - 2 were referred back and the finding of unsatisfactory conduct was reversed. 1 was to also reconsider the fee complaint.
 - 3 were referred back for the fees complaint to be considered.
 - 1 was referred back with a direction that a Standards Committee in a separate geographical area should consider the matter.
 - The remaining 7 were referred back for further consideration of the complaint. In 3 instances publication was reversed and the fee complaint was to be considered by a cost assessor.
- **7** reviews were declined for lack of jurisdiction to review.
- **49** reviews were withdrawn or settled by way of agreement between the parties.

Pursuant to Section 212 of the Act, the LCRO may frame an appropriate charge and lay it before the Lawyers and Conveyancers Disciplinary Tribunal. During the reporting year there was one review where the LCRO commenced a prosecution.

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

Graph 2: Outcomes of reviews



- **70%** of Standards Committee decisions were either confirmed or confirmed subject to modifications. This compares with 61% in the previous reporting period.
- **13%** of Standards Committee decisions were reversed or referred back to the Committee for reconsideration. This is the same as the previous reporting period.

Costs, fines and compensation orders

The LCRO has the power to impose costs and has issued a guideline in respect of how that power will be exercised. The Guideline is available on the LCRO's website.

Where a finding is made against a lawyer or conveyancing practitioner, that practitioner will be expected to pay a contribution towards the costs of conducting the review. Costs orders totalling \$44,700 were made against practitioners in the reporting period. Costs were payable to the NZLS.

In addition to the costs for the review, practitioners were fined a total of \$7,000 during the reporting period, the largest being a fine of \$2,500. These amounts were payable to the NZLS and are taken into account when annual levies are set.

Other monetary orders related to compensation (payable to a party who has suffered loss as a result of a lawyer's professional failure) were made where the LCRO considered it appropriate. In the reporting year these totalled \$26,441.63 with a further \$2807.24 in fees ordered to be refunded. Other orders by the LCRO included a payment of \$2,700 by a practitioner in costs to the respondent, an order to reduce the fees by \$10,000 and cancellation of fees.

Applications for review still outstanding

As at 30 June 2015, 579 applications for review remained active. This is down from 626 reviews outstanding at the end of the previous reporting period.

NEW ZEALAND LAW SOCIETY

The office of the LCRO interfaces with the NZLS primarily in two ways. One arises by virtue of sections 124(g) and 125(g) of the Act, which require the NZLS and the NZSC to provide the LCRO 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 and should they indicate any particular matter that requires attention it is 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 **19** such complaints forwarded to the LCRO. No further attention has been required by this office.

The second interface between the LCRO and the NZLS arises through regular (usually quarterly) meetings which provide the 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 it particularly provides an opportunity for the LCRO to provide feedback to the NZLS on observations that are made in the course of reviews in relation to Standards Committee decisions.

FINANCIAL MATTERS

The LCRO is administered by the Ministry of Justice and funded through a levy imposed on the NZLS and NZSC pursuant to section 217 of the Act. The Societies recoup their levy through levies on their own members. The LCRO levy on the Societies for the 2014/15 year was \$106 (incl GST). All levies were received from both societies.

Revenue Received

- LCRO filing fees: \$12,991 (excl GST)
- LCRO levies: \$1,283,690 (excl GST)

2015-2016 Levies

The levy for 2015/16 is still being finalised, but the same process as previous years has been used, namely that the Ministry, NZLS and NZSC consult together near the end of each financial year to determine whether the levies set were actual and realistic. 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; and
- costs awarded.

As a result of the above process a new levy is set by dividing the amount of estimated costs by the number of practicing certificates issued by each society.

Under section 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.³

³ 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/publications