



Annual Report of the

LEGAL COMPLAINTS REVIEW OFFICER

For the 12 months ended 30 June 2016

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

OVERVIEW OF YEAR 2015/16

This is the Annual Report of the Legal Complaints Review Officer for the year 1 July 2015 to 30 June 2016.

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 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, 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 which continues to be problematic for the Office is the volume of cases on hand.

The ability of the Office to meet its statutory obligation to deal with the cases that come before it in an expeditious fashion continues to be of concern.

Previous annual reports have identified the lack of sufficient judicial resource as the single biggest factor which has contributed to the backlog of cases steadily increasing over a number of years.

The Office is staffed by three full-time Review Officers.

Any realistic opportunity to make significant inroads into the backlog of cases will only be achieved with the appointment of additional Review Officers.

Previous reports have also highlighted that reforms to the Act are required to significantly improve the review process, and assist in ensuring that files are able to be dealt with more expeditiously than they can be at present.

In particular, changes to the Act are needed which:

- (a) Allow opportunity for a Review Officer to summarily dismiss applications that present as frivolous and vexatious.
- (b) Allow for a Review Officer to direct in appropriate cases that the matter be heard on the papers without requirement for a formal hearing.
- (c) Require parties filing complaints to have a direct connection with the subject matter of the complaint.

The Office continues to be supported by a team of committed case managers, who provide invaluable support to the Review Officers.

The Office has also been well supported by members of the Tribunals legal research team who continue to provide research and administrative support to the Office

I must also acknowledge the valuable contribution made by the Deputy Review Officers, Owen Vaughan and Dorothy Thresher.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'RM', with a long, sweeping horizontal stroke extending to the right.

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 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 were 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 **290** applications for review during the reporting period of 1 July 2015 to 30 June 2016. This is an increase compared to the previous reporting year, in which 278 applications were received.

The 290 applications can be broken down into the following types:

- **274** related to a Standards Committee decision on a complaint made, pursuant to s 194 of the Act.
- **8** related to review of determinations from Standards Committees following own motion inquiries pursuant to s 195 of the Act.
- **3** related to the power of the Standards Committee to intervene in a practice pursuant to s 196 of the Act.

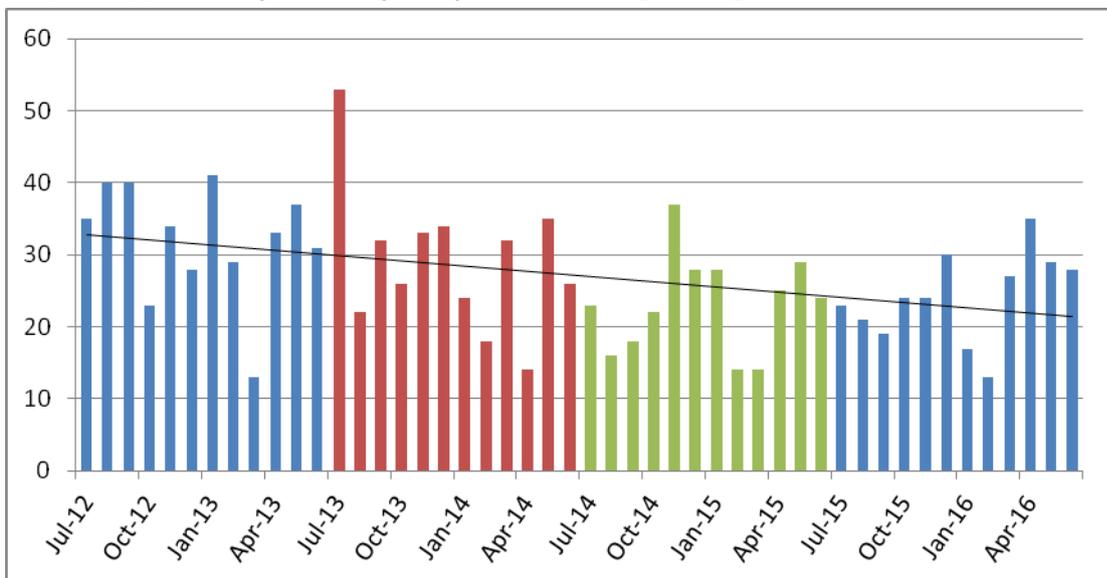
- 5 related to decisions of Standards Committees to refer a matter to the Lawyers and Conveyancers Disciplinary Tribunal.

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 that the number of review applications filed in this reporting year is consistent with the previous reporting period. The average number of applications filed per month is 24.

Graph 1: Applications for review filed by month 2012/13 to 2015/16



Rate of review applications

Information received from the NZLS indicates that Standards Committees disposed of 1,595 complaints in the reporting period. During the same period the LCRO received 290 review applications, meaning 18 per cent of Standards Committee decisions proceeded to a review.¹

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 **271** reviews.² This compares with 325 and 225 reviews completed in the previous two reporting years. Of the 271 completed reviews, 238 related to reviews filed in previous reporting periods.

Timeliness of completed reviews

Of the 271 reviews completed:

- 46 (17 per cent) were completed within six months;
- 31 (11.5 per cent) were completed within six to twelve months; and
- 194 (71.5 per cent) were completed in over twelve months.

Outcomes of reviews

The outcomes of the 271 reviews completed by the LCRO in the reporting year are shown below. Under s 211 of 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:

- **176** decisions of Standards Committees were confirmed by the LCRO.
- **8** decisions were confirmed but modified, where the modifications were minor in nature and included changes to reasons given.
- **8** further decisions were confirmed and modified, modifications included:
 - 2 instances where a fine was reduced or imposed.
 - 1 decision where the costs to be paid to the complainant were reduced by \$2,000.
 - 2 instances where the amount of the refund in fees was varied by the LCRO.
 - 1 instance where a further finding of unsatisfactory conduct was reached.
 - 1 instance where the publication order was suspended.
 - 1 instance where one finding of unsatisfactory conduct was reversed but the remaining findings confirmed.
- **26** decisions were reversed or partially reversed:
 - 15 findings of unsatisfactory conduct were reversed (including any associated fine or compensation imposed or censure/ publication orders made).
 - 8 decisions resulted in the LCRO making a finding of unsatisfactory conduct and reversing the Standards Committee decision to take no further action on all or some aspects of the complaint. The LCRO then went on to make orders that included a censure order, imposing a \$5,000 fine and ordering a written apology.
 - 3 instances where a Standards Committee order to award compensation was reversed, including one order of \$50,000.

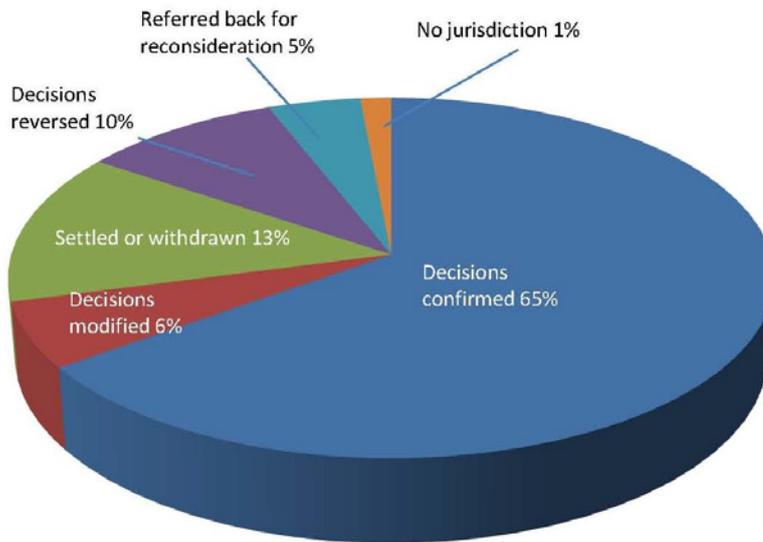
² This refers to actual numbers of completed reviews without taking into account when the review applications were filed.

- **12** decisions were referred back to the Standards Committee for reconsideration:
 - 9 were referred back for further consideration of the complaint following a decision to take no further action by the Standards Committee.
 - 1 was referred back to reconsider the fee complaint and the finding of unsatisfactory conduct was reversed.
 - 1 was referred back for the issue of jurisdiction only to be considered.
 - 1 decision by the Standards Committee to refer a Practitioner to the Lawyers and Conveyancers Disciplinary Tribunal was referred back to reconsider the whole complaint.
- **4** reviews were declined for lack of jurisdiction to review.
- **37** reviews were withdrawn or settled by way of agreement between the parties.

Pursuant to s 212 of the Act, the LCRO may frame an appropriate charge and lay it before the Lawyers and Conveyancers Disciplinary Tribunal. The LCRO did not commence any prosecutions during this reporting period but one existing prosecution was heard and determined by the Tribunal.

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

Graph 2: Outcomes of reviews



- **71%** of Standards Committee decisions were either confirmed or confirmed subject to modifications. This compares with 70% in the previous reporting period.
- **15%** of Standards Committee decisions were reversed or referred back to the Committee for reconsideration. This compares with 13% in the previous reporting period.

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 in respect of how that power will be exercised. The Guideline is available on the LCRO's website.³

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 \$24,400 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.

No further orders for compensation were imposed by the LCRO.

Applications for review still outstanding

As at 30 June 2016, 600 applications for review remained active. This is up from 579 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 ss 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 21 such complaints forwarded to the LCRO from 7 individuals. 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.

³ <https://www.justice.govt.nz/tribunals/lawyers-and-conveyancers/lcro/>

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 levy through levies on their own members. The LCRO levy on the Societies for the 2015/16 year was \$133.09 (incl GST). All levies were received from both societies.

Revenue Received

- LCRO filing fees \$12,435 (excl GST)
- LCRO levies: \$1,441,824 (excl GST)

2016-2017 Levies

The levy for 2016/17 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 practising certificates issued by each society.

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.⁴

⁴ 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