



Annual Report of the

LEGAL COMPLAINTS REVIEW OFFICER

For the 12 months ended 30 June 2017

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

OVERVIEW OF YEAR 2016/17

This is the Annual Report of the Legal Complaints Review Officer for the year 1 July 2016 to 30 June 2017.

The Legal Complaints Review Officer (LCRO) operates under the Lawyers and Conveyancers Act 2006 (the Act). 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, 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.

Previous annual reports have identified the single most important issue of concern to the Office as being the escalation, since 2011, of a significant backlog of cases.

The Office is currently staffed by three full time Review Officers. These resources have been bolstered by the appointment to the Office of three delegates, two of whom are working with the Office in a full-time capacity.

Subject to the approval of the Minister of Justice, the LCRO may delegate any of the functions or powers of the Review Officer. The functions and powers that may be accorded a delegate are wide ranging, but do not include:

- (a) the power to make a final determination in respect of any complaint or matter
- (b) the power to appoint an investigator
- (c) the power to lay a charge before the Lawyers and Conveyancers Disciplinary Tribunal (the Tribunal).

The appointment of the delegates has significantly increased the Office's resources, and has assisted in enabling the Office to make some inroads into the large accumulation of cases that has built up over a number of years.

In February 2017, Mr Owen Vaughan's statutory term as a Review Officer came to an end. Mr Bruce Galloway was appointed as Mr Vaughan's replacement. Mr Galloway has had considerable experience in the legal disciplinary area, having served on a Standards Committee for several years. Fortunately, Mr Vaughan's experience has not been lost to the Office as he was appointed a delegate to the Office shortly after completing his term as a Review Officer.

The task of managing a formidable backlog of cases nevertheless continues to present as the biggest challenge facing the Office.

Previous reports have identified that some relatively minor changes to the existing legislation could significantly improve the review process, in particular changes which would:

- (a) Remove the statutory limit on the number of Review Officers that can be appointed. This is currently restricted to three Officers.
- (b) Require parties filing complaints to have a direct connection with the subject matter of the complaint.
- (c) Allow for a Review Officer to direct in appropriate cases that the matter be heard on the papers without requirement for a formal hearing.
- (d) Allow opportunity for a Review Officer to summarily dismiss applications that present as frivolous or vexatious.

The Tribunals Powers and Procedures Legislation Bill which is currently before Parliament has the stated objective of promoting a modern, efficient and effective courts and tribunals system. Included in the changes proposed, are a number of amendments to the Lawyers and Conveyancers Act 2006 which will directly address the concerns that have been identified in a number of the Office's annual reports.

The Bill, in its current form, proposes that the Review Office be accorded a power to strike out an application for review if it is satisfied that the application discloses no reasonable cause of action, is likely to cause prejudice or delay, is frivolous or vexatious or otherwise an abuse of process. Further, the Bill proposes that a Review Officer shall have the power to direct that a review be determined on the papers in the absence of consent from the parties if the Officer considers that appropriate.

The Bill also addresses recruitment issues by proposing that there be a greater degree of flexibility in the process for the appointment of Review Officers. Currently Review Officers are appointed for a term of three years, with a maximum of two terms. During the course of their appointments, Review Officers develop a considerable experience and understanding of the disciplinary environment. On occasions, that institutional knowledge is lost to the Office when experienced Officers who would have been prepared to continue in their role are required to relinquish their positions as a result of the mandatory requirement to vacate their position.

The six-year limit also gives rise to problems with recruitment. The statutory requirements for appointment require candidates with relevant experience and relative seniority who have a knowledge of, and preferably experience in, both the decision-making process and dealing with professional conduct issues. Potential applicants with the requisite background and experience may be disinclined to apply for a role of limited duration for obvious reasons.

It is hoped that the Bill will be accorded a degree of priority as many of the changes proposed would unquestionably have a significant and positive impact on the ability of the Office to reduce its backlog of cases and assist it in achieving its statutory obligation to ensure that reviews are determined expeditiously.

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 Dorothy Thresher and Bruce Galloway, the Deputy Review Officers, and by the appointed delegates.



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 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 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
- the number of applications for review still outstanding.

The number and types of applications for review filed

The LCRO received **252** applications for review during the reporting period of 1 July 2016 to 30 June 2017. This is a decrease compared to the previous reporting year, in which 290 applications were received.

The 252 applications can be broken down into the following types:

- **229** 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

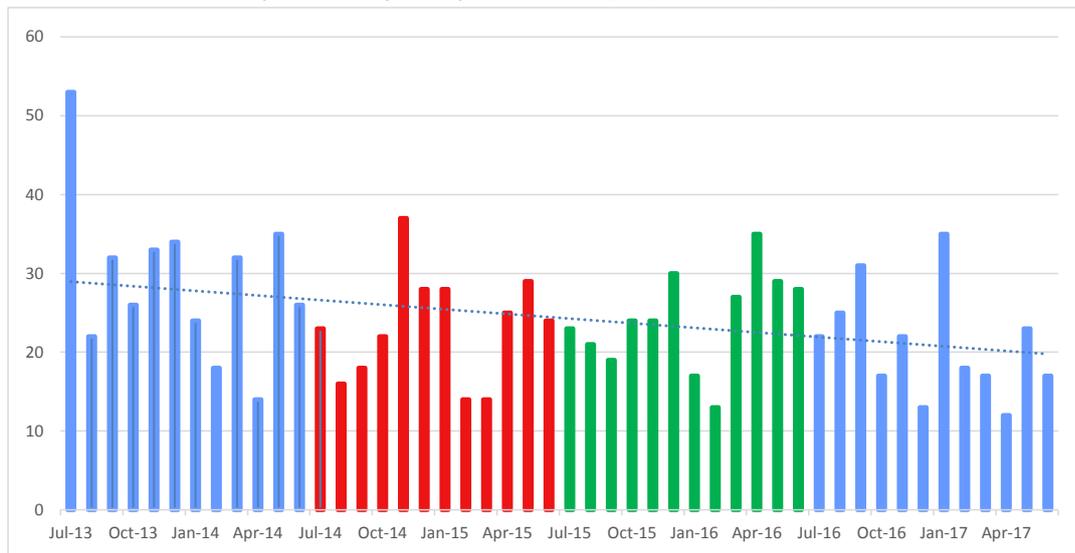
- **1** related to the power of the Standards Committee to intervene in a practice pursuant to s 196 of the Act
- **14** related to decisions of Standards Committees to refer a matter to the Lawyers and Conveyancers Disciplinary Tribunal.

One application received related to decisions made by Standards Committees of the NZSC and the remaining 251 related to decisions made by Standards Committees of the NZLS.

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 2013/14 to 2016/17



Rate of review applications

Information received from the NZLS indicates that Standards Committees disposed of 1467 complaints in the reporting period. During the same period the LCRO received 252 review applications, meaning 17 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 **320** reviews.² This compares with 271 and 325 reviews completed in the previous two reporting years. Of the 320 completed reviews, 278 related to reviews filed in previous reporting periods.

Timeliness of reviews completed

Of the 320 reviews completed:

- 51 (16 per cent) were completed within six months
- 33 (10 per cent) were completed within six to twelve months
- 236 (74 per cent) were completed in over twelve months.

Outcomes of reviews

The outcomes of the 320 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:

- **189** decisions of Standards Committees were confirmed by the LCRO
- **20** decisions were confirmed but modified, examples of a modification included:
 - the imposition of a fine
 - censuring the person to whom the complaint related
 - varying the amount of costs to be paid to a complainant
 - reaching a further finding of unsatisfactory conduct
 - reversing findings of unsatisfactory conduct with the remaining findings confirmed.
- **26** decisions were reversed or partially reversed. Examples included:
 - findings of unsatisfactory conduct reversed (with any associated fine/cost or censure orders falling away)
 - 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 imposition of a fine, a written apology, compensation and a censure of the Practitioner
 - replacing a decision to refer a Practitioner to the Lawyers and Conveyancers Disciplinary Tribunal with a finding of unsatisfactory conduct, fine and censure order
 - reversing an order for the publication of the Practitioner's name

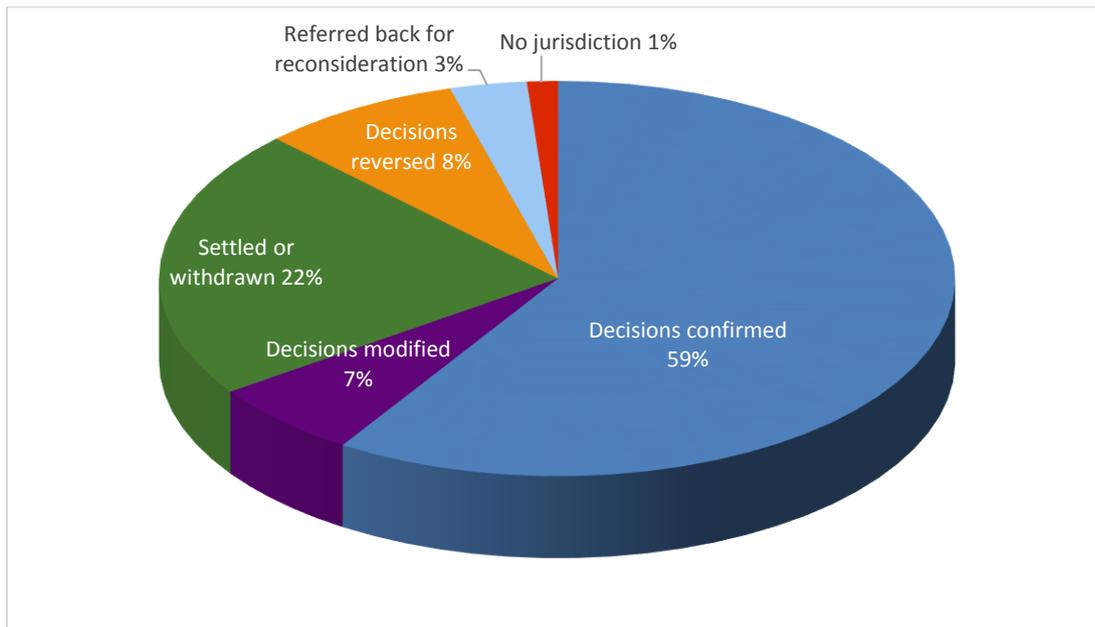
² This refers to actual numbers of completed reviews without taking into account when the review applications were filed.

- refund of fees, compensation and fines being reduced/reversed.
- **10** decisions were referred back to the Standards Committee for reconsideration. Examples included:
 - further consideration of the complaint following a decision to take no further action by the Standards Committee
 - reconsideration as to penalty
 - Standards Committee to arrange a costs assessment.
- **4** reviews were declined for lack of jurisdiction to review
- **71** 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



- **66%** of Standards Committee decisions were either confirmed or confirmed subject to modifications. This compares with 71% in the previous reporting period
- **11%** of Standards Committee decisions were reversed or referred back to the Committee for reconsideration. This compares with 15% 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 \$37,300 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 \$9,000 during the reporting period, the largest being a fine of \$4,000. These amounts were payable to the NZLS and are taken into account when annual levies are set.

Compensation orders totalling \$6430 were imposed by the LCRO.

Applications for review to be completed

As at 30 June 2017, 532 applications for review were active, compared to 600 at the end of the previous reporting period.

Of the reviews pending:

- 210 were lodged in the last 12 months
- 172 from July 2015-June 2016
- 82 from July 2014-June 2015
- 68 prior to July 2014.

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 15 such complaints forwarded to the LCRO. No further attention has been required by this Office.

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

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 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 2016/17 year was \$132.16 (incl. GST). All levies were received from both societies.

Revenue Received

- LCRO filing fees \$11,043 (excl. GST)
- LCRO levies: \$1,326,991 (excl. GST)

2017-2018 Levies

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
- 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 2017/18 has been set at \$156.08 (GST inclusive).

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