



---

Annual Report of the

# LEGAL COMPLAINTS REVIEW OFFICER

For the 12 months ended 30 June 2014

---

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

## OVERVIEW OF YEAR 2013/14

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 Lawyers and Conveyancers 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.

This is my first annual report since assuming the role of LCRO. At the outset I must firstly pay tribute to the outstanding service that my predecessor Hanneke Bouchier gave to the office during her two terms as LCRO. Her commitment to the role was exceptional, and the standard she set in the quality of decisions delivered has contributed immensely to the developing jurisprudence of the office.

The critical issue confronting the office is the increasing backlog of cases, and the resulting difficulty in the office being able to achieve its statutory obligation to complete reviews with as much expedition as possible. Whilst there has been a slight reduction in the applications for review filed for the reporting period 1 July 2013 to 30 June 2014 compared to the previous year, the backlog of cases is now at such a level that it is difficult for the office to make significant inroads into clearing the backlog.

My predecessor has, in a number of her annual reports, signalled concerns regarding the increasing delay in completing reviews and has identified as the main contributing factor the lack of sufficient judicial resource. The current judicial resource is insufficient to deal with the backlog of cases that has accumulated.

It would be opportune for consideration to be given to modifying the current process by which appointments can be made to the office to enable a greater degree of flexibility with appointments. The constricts of the current legislation, which prescribes the number of LCROs able to be appointed to the office, fetters the ability to provide prompt response to identified needs for additional resource.

My predecessor has also identified in previous reports possible legislative changes which could assist with alleviating the pressures on the office. These include:

- introducing a summary procedure for managing complaints where appropriate; and
- reviewing the procedures by which complainants, who have no degree of personal interest in the complaint, may progress a review application.

Whilst the office is continually examining its processes to identify any administrative or process changes which could assist with facilitating the more expeditious resolution of cases, there is limited scope to achieving better outcomes through administrative improvements. A large backlog of cases is waiting to be heard.

In the brief time I have been the LCRO I have been encouraged by the support and assistance I have received from the case managers who support the office. Their hard work and dedication is unstinting. I also wish to thank the Tribunals Unit's legal research team who have provided huge assistance to the office. Finally, I wish to acknowledge the valuable guidance, assistance and support I have received from the Deputy LCROs, Owen Vaughan and Dorothy Thresher.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'R. Maidment', with a stylized flourish at the end.

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 commenced the role in March 2014, replacing Hanneke Bouchier. In the reporting year, Ms Bouchier and Mr Maidment were 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 **349** applications for review during the reporting period of 1 July 2013 to 30 June 2014. This is a slight reduction compared to the previous reporting year, in which 384 applications were received.

The **349** applications can be broken down into the following types:

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

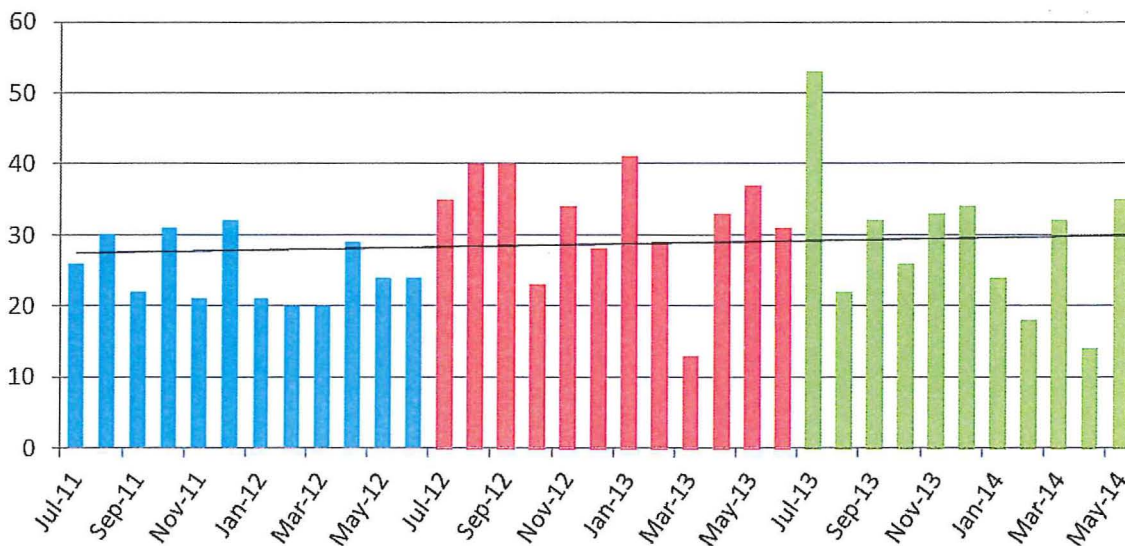
- 4 related to intervening with the power of the Standards Committee to investigate a complaint.
- 9 related to decisions of Standards Committees to refer a matter to the Lawyers and Conveyancers Disciplinary Tribunal.

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 gradual increase in review applications filed. The average number of applications filed per month has risen from 25 per month in 2011/12 to 29 per month in the reporting period. It is important to note, however, that the large number of applications filed in July 2013 was due to one applicant filing 22 applications, which has inflated the average across the reporting period. Excluding these 22 cases, the average reduces to 27 cases filed per month.

*Graph 1: Applications for review filed by month 2011/12 to 2013/14*



*Rate of review applications*

Information received from the NZLS indicates that Standards Committees disposed of 1,747 complaints in the reporting period. During the same period the LCRO received 349 review applications, meaning 20 percent of Standards Committee decisions proceeded to a review.<sup>1</sup> This is similar to the two previous reporting periods (19.7 and 19.5 percent).

<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 **225** reviews<sup>2</sup>. This compares with 206 reviews completed in the previous reporting year. Of the 225 completed reviews, 188 related to reviews filed in the previous reporting period.

## Timeliness of completed reviews

Of the 225 reviews completed:

- 36 (16 percent) were completed within six months;
- 46 (20.4 percent) were completed within six to twelve months; and
- 143 (63.6 percent) were completed in over twelve months.

## Outcomes of reviews

The outcomes of the 225 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:

- **101** decisions of Standards Committees were confirmed by the LCRO.
- **36** decisions were modified by the LCRO. Modifications included:
  - 9 findings of unsatisfactory conduct.
  - 5 instances where compensation orders were made.
  - 1 instance where an apology was ordered.
  - 6 instances where an order for censure or publication imposed by the Standards Committee was removed.
  - 5 instances where the LCRO modified the value of fees reductions that had been ordered by the Standards Committee or reversed costs orders.
  - 10 remaining instances where modifications were minor in nature and included changes to reasons given.
- **21** decisions were reversed.
  - 12 findings of unsatisfactory conduct were reversed (including any associated fines imposed or censure/publication orders made).
  - 5 decisions resulted in the LCRO making a finding of unsatisfactory conduct and reversing the Standards Committee decision to take no action. In 1 instance the LCRO reversed a decision of the Standards Committee to take no further action and went on to order a reduction in fees of \$93,000.
  - In 1 matter a Standards Committee order to censure the practitioner and award compensation and a fine was reversed.

---

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

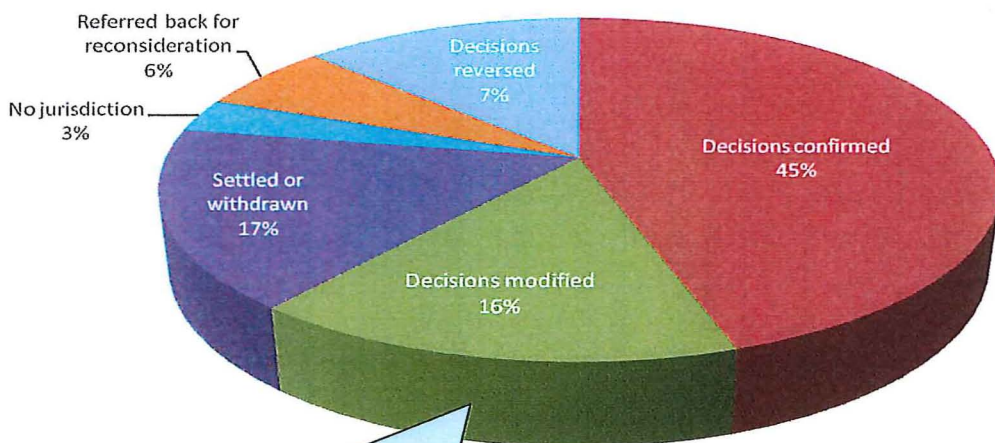


- 2 decisions referring matters to the Disciplinary Tribunal were reversed.
- In one further matter a publication order was reversed.
- **22** decisions were referred back to the Standards Committee for reconsideration.
  - 1 was referred back and the finding of unsatisfactory conduct was reversed.
  - 2 were referred back with a direction that the Standards Committee look at the disciplinary issues that had arisen.
  - 3 were referred back for the fees complaint to be considered.
  - 2 were referred back for reconsideration and the referral to the Disciplinary Tribunal was reversed.
  - 1 was referred back with a direction that a Standards Committee in a separate geographical area should consider the matter.
  - The remaining 13 were referred back for further consideration of the complaint.
- **7** reviews were declined for lack of jurisdiction to review.
- **38** 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



- **61%** of Standards Committee decisions were either confirmed or confirmed subject to modifications. This compares with 67% 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 \$38,200 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 \$14,250 during the reporting period, the largest being a fine of \$7,000. 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 \$11,900, with a further \$106,000 in fees ordered to be refunded (one order totalled \$93,000).

### **Applications for review still outstanding**

As at 30 June 2014, 626 applications for review remained active. This is up from 502 reviews outstanding at the end of the previous reporting period.

### **Lay Observer**

The LCRO is obliged to provide a report to the Minister of Justice in relation to the discharge of the function of Lay Observer, previously set out in section 97(7) of the Law Practitioners Act 1982. This obligation arises by virtue of Section 355 of the Lawyers and Conveyancers Act which confers on the LCRO all of the duties and powers of a Lay Observer under the Law Practitioners Act as if that Act had not been repealed. This includes providing an annual report to the Minister.

The LCRO's role as Lay Observer is to undertake reviews of decisions made by Complaints Committees under the 1982 Act. The LCRO can review the manner in which a Complaints Committee had dealt with a complaint, but cannot review a Committee's decision on the merits of the complaint. This does not, however, prevent an examination of whether the evidence before the Committee reasonably supported the final decision made.

In the reporting period no Lay Observer matters were received, and it is unlikely that any further matters will be filed given that it is now six years since the Law Practitioners Act was repealed. Future annual reports will only report on the Lay Observer function if a matter is received.



## 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 **10** such complaints forwarded to the LCRO. In one instance at the request of the Complaints Service the LCRO provided guidance on the jurisdiction to accept or refuse a complaint. 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 2013/14 year was \$106 (incl GST). All levies were received from both societies.

### Revenue Received

- LCRO filing fees: \$14,730
- LCRO levies: \$1,056,949 (incl GST)

### 2014-2015 Levies

The levy for 2014/15 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.<sup>3</sup>

---

<sup>3</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/publications](http://www.justice.govt.nz/publications)