



Annual Report of the

LEGAL COMPLAINTS REVIEW OFFICER

For the 12 months ended 30 June 2023

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

OVERVIEW OF YEAR 2022/23

This is the Annual Report of the Legal Complaints Review Officer for the year 1 July 2022 to 30 June 2023.

The Legal Complaints Review Officer (LCRO or Review Officer) 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 role of the LCRO is to independently review decisions on complaints against lawyers and conveyancers, made by Standards Committees of the New Zealand Law Society and the New Zealand Society of Conveyancers. Part 7 of the Act (which regulates the complaints and disciplinary 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.

Whilst significant progress has been made in reducing the substantial backlog of cases that had built up over a number of years, progress still needs to be made in ensuring that resources are sufficient to expedite the turnaround of cases.

The Review Officers have observed in the current reporting period, that a discernible trend (identified in previous annual reports) for an ever-expanding volume of material to be filed on review has continued. The increasing comprehensiveness of the materials filed continues to pose a challenge to the expeditious resolution of review hearings.

Delay in resolving reviews is further compounded by the influx of a not insignificant number of applications which exhibit minimal prospect of success. The volume of such applications places an additional burden on the review process and inevitably, on occasions, diverts resources and attention from more substantive reviews.

It is anticipated that the Law Society's efforts to promote amendments to the Lawyers and Conveyancers Act which would enable the Complaints Service to dismiss, where appropriate, complaints which on their face present as having minimal prospect of success will, if successful, reduce the future caseload and provide more opportunity for focused case management to assist in enabling resources to be more effectively prioritised.

A factor that has assisted in achieving a more expeditious resolution for a number of reviews is the noticeable rise in the willingness of parties to have their cases heard remotely, this signalling a shift

in the traditional preference for in person hearings. There is a growing recognition of the practical advantages offered by remote proceedings.

Whilst Review Officers have been receptive to hearings proceeding remotely, they remain conscious that in many instances, the particular intricacies of the case or the expressed preferences of the involved parties may still dictate an in person hearing as the preferred process for review.

Throughout the reporting year, the review applications received have covered a diverse spectrum of conduct complaints. However there has been a noticeable increase in review applications where the nature of the complaint engages a complex interaction of personal and professional elements. These complaints reinforce the importance for lawyers of recognising the extent to which conduct that is perceived to embrace the personal rather than the professional, may intersect when examined through a disciplinary lens.

Fee related complaints continue to form a substantial component of the Review Officers' workload. A noticeable feature underlying a number of fee related complaints, is concern that lawyers have neglected to communicate the precise basis of fee arrangements to their clients at the commencement of the retainer. A failure to ensure certainty around fees to be charged, not uncommonly triggers further complaints that stem from the inherent uncertainty surrounding financial expectations.

When reviewing complaints concerning fees charged, Review Officers frequently find themselves constrained by the requirement to link any adjustment or modification in a fee charged to an unsatisfactory conduct finding. The statutory framework which demands that a finding of unsatisfactory conduct be made before any adjustment can be made to a fee, on occasions hinders the flexibility of the Review Officer to pragmatically deal with those nuanced situations where conclusion has been reached that a fee charged is excessive, but there is little evidence to support argument that the lawyer's conduct in setting the fee requires a disciplinary response. A more pragmatic approach to fee adjustments, decoupled from requirement to make an unsatisfactory conduct finding, could enhance the effectiveness of the review process by providing for greater flexibility when reviewing fees.

The New Zealand Law Society Complaints Service continues to provide valuable support to the LCRO, particularly in assisting case managers in providing files and clarifying administrative queries relating to the progressing of complaints through the initial investigation stage.

Review Officers continue to be ably supported by members of the tribunals legal research team. The assistance provided by the research team extends beyond the researching of specific areas of law. The team play an important role in reviewing, proofreading and editing decisions.

The Review Officers also continue to receive invaluable assistance from the Office's case managers. They play a pivotal role in coordinating and streamlining the various aspects of case administration, including liaising with parties, case management and scheduling matters to hearing.

I have been ably supported by the Deputy Review Officers Owen Vaughan and Robert Hesketh. I particularly record my thanks to Bruce Galloway, who left the Office in January 2023.

Fraser Goldsmith was appointed a Deputy Review Officer in May 2023. Fraser brings a wealth of legal expertise and experience to the office, including 39 years in legal practice and ten years as a member of the Otago Standards Committee.



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 (NZSoC).

The LCRO is appointed by the Minister of Justice after consultation with the NZLS and the NZSoC. 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 NZSoC 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 three Deputy Review Officers.

STATISTICS

Section 224 of the Act 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 **205** applications for review during the reporting period of 1 July 2022 to 30 June 2023. This is a reduction compared to the previous reporting year, in which 223 applications were received.

The 205 applications can be broken down into the following types:

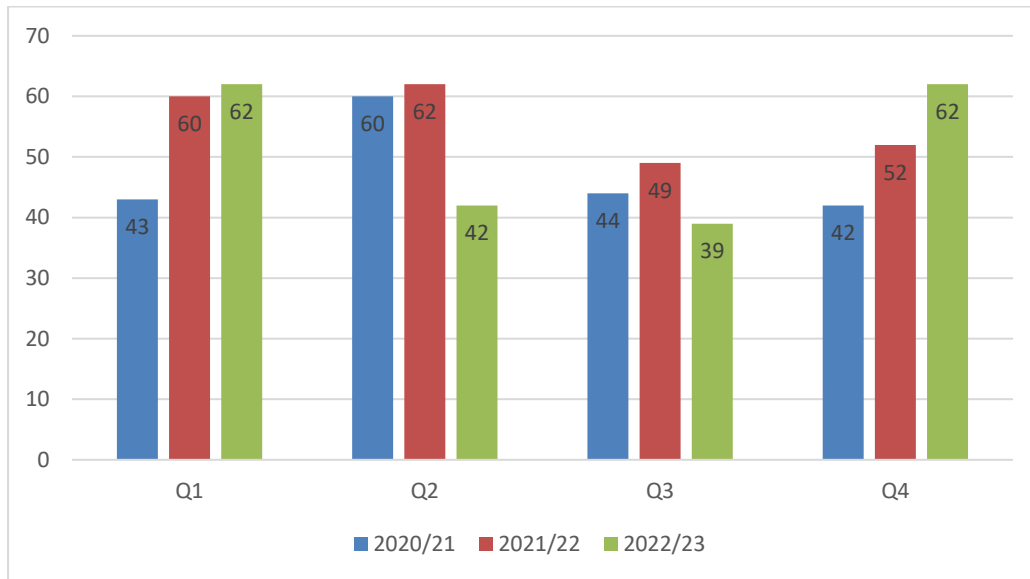
- **178** related to a Standards Committee determination on a complaint made, pursuant to s 194 of the Act
- **10** related to a Standards Committee determination following own motion inquiries pursuant to s 195 of the Act
- **15** related to a Standards Committee decision to refer a matter to the Lawyers and Conveyancers Disciplinary Tribunal

- 2 related to a Standards Committee direction

Trends

Graph 1 shows that other than the occasional spike in applications received, the number received throughout the year was relatively consistent.

Graph 1: Applications for review filed by quarters from 2020/21 to 2022/23



Rate of review applications

Information received from the NZLS indicates that Standards Committees disposed of 1057 complaints in the reporting period. During the same period, the LCRO received 205 review applications, meaning 19.5% of Standards Committee decisions proceeded to a review.¹

Completion of reviews

During the reporting period, the LCRO completed 169 reviews.² This compares with 194 and 264 reviews completed in the previous two reporting years. Of the 169 completed reviews, 106 related to reviews filed in previous reporting periods.

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.

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

Timeliness of reviews completed

Of the 169 reviews completed:

- 89 (53 per cent) were completed within six months
- 47 (28 per cent) were completed within seven to twelve months
- 33 (19 per cent) were completed in over twelve months

Outcomes of reviews

The outcomes of the 169 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.

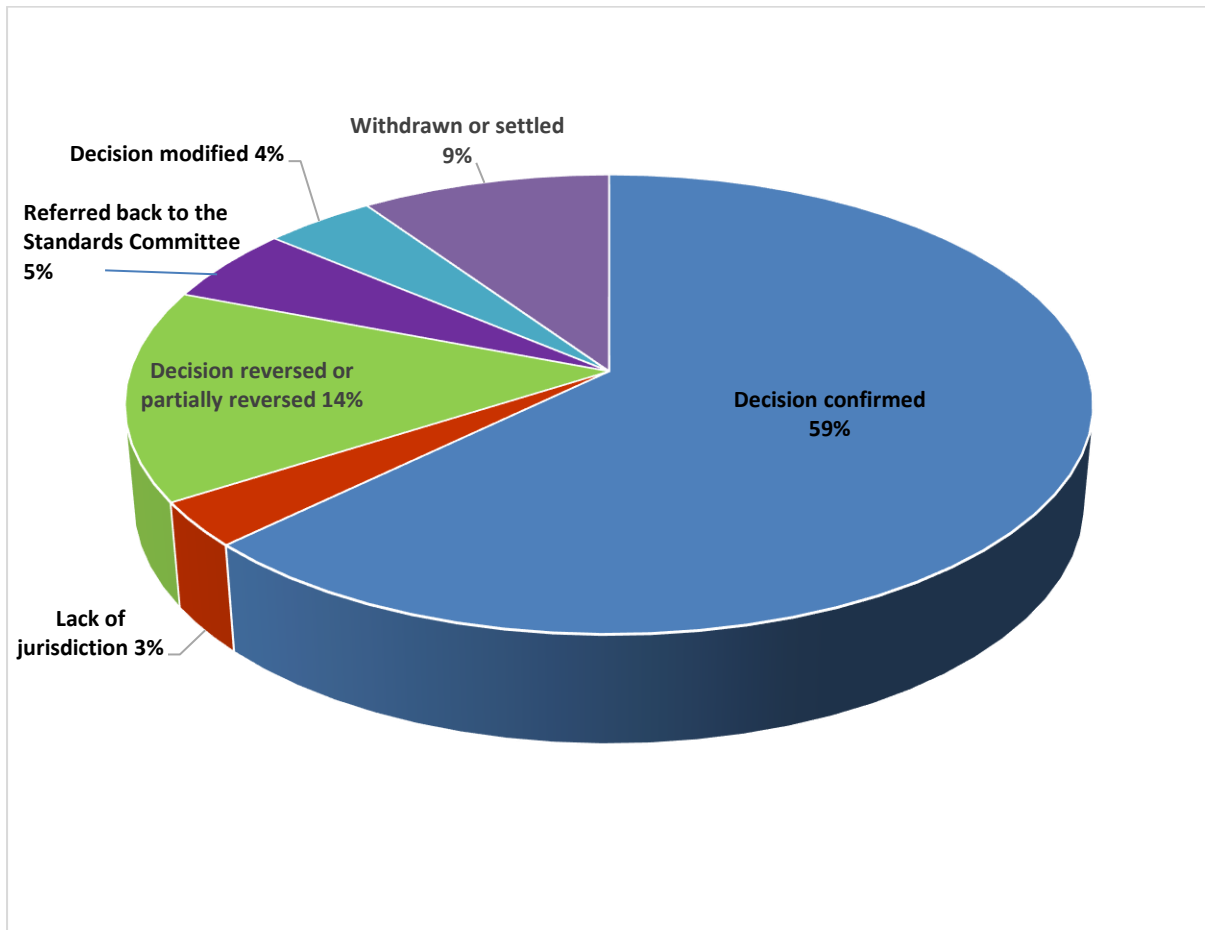
In the reporting year:

- **99** decisions of Standards Committees were confirmed by the LCRO
- **5** decisions of Standards Committees were confirmed but modified. Examples of modifications by the LCRO included:
 - reversing one of multiple findings of unsatisfactory conduct
 - reversing a stated intention to consider publication
 - imposing a censure
 - imposing or reducing a fine
- **24** decisions of Standards Committees were reversed or partially reversed. Examples include:
 - reversing unsatisfactory conduct findings with associated orders either falling away or modified by the LCRO. Examples of orders falling away include:
 - fines (\$40,500) costs (\$8000), order to apologise, censure order, publication order, order to undergo training, refund of fees
 - reducing a compensation order by \$10,000
 - reversing a referral to the Lawyers and Conveyancers Disciplinary Tribunal and then reaching a finding of unsatisfactory conduct
 - reversing a decision to conduct an own motion investigation into aspects of a legal practice and to appoint an investigator to assist
 - reversing the Standards Committee decision to take no further action on all or some aspects of the complaint, reaching findings of unsatisfactory conduct. Subsequent orders made by the LCRO included the refund of fees and the imposition of a fine and costs
- **8** decisions were referred back to a Standards Committee for reconsideration. Examples included a direction that the Complaints Service:
 - consider whether the fees charged were fair and reasonable
 - appoint a new committee to consider all aspects of the complaint
 - reconsider specific issues around administration of a trust

- 7 reviews were declined for lack of jurisdiction to review.
- 10 reviews were struck out pursuant to s205 of the Lawyers and Conveyancers Act 2006
- 16 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



- 61.5% of Standards Committee decisions were either confirmed or confirmed subject to modifications. This compares with 60% in the previous reporting period
- 19% of Standards Committee decisions were reversed or referred back to the Committee for reconsideration. This compares with 16% 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 as to how that power will be exercised. The guideline is available on the Ministry of Justice website.³

³ Legal Complaints Review Officer “Guidelines for Parties to Review”
<https://www.justice.govt.nz/assets/Documents/Publications/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 \$32,700 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 \$27,500. These amounts are payable to the NZLS and are taken into account when annual levies are set.

A further order was made to refund fees totalling \$4,596.80.

Applications for review to be completed

As at 30 June 2023, 221 applications for review were active, compared to 181 at the end of the previous reporting period.

Of the reviews pending:

- 142 were lodged in the last 12 months
- 79 were lodged prior to July 2022.

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 NZSoC 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 NZSoC.

In the reporting period, there have been **9** 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 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 NZSoC 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 2022/23 reporting year was \$138 (incl. GST).

Revenue Received

- LCRO filing fees: \$8,870 (excl. GST)
- LCRO levies: \$ 1,956,417 (excl. GST)

2021-2022 Levies

The Ministry of Justice, NZLS and NZSoC consult together near the end of each financial year to determine whether the levies in place accurately reflect 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 2023/24 has been set at \$115 (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.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.