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Annual Report of the

# LEGAL COMPLAINTS REVIEW OFFICER

For the 12 months ended 30 June 2018

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

## OVERVIEW OF YEAR 2017/18

This is the Annual Report of the Legal Complaints Review Officer for the year 1 July 2017 to 30 June 2018.

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

The Office has, during the course of the 2017-2018 reporting period, made significant progress in addressing the substantial backlog of cases that has accumulated over a number of years. Instrumental in the Office achieving an improvement in the number of cases disposed of, has been the appointment, with the approval of the Minister of Justice, of three delegates to assist the Office.

The delegates, Robert Hesketh, Owen Vaughan and Roderick Joyce QC, have brought to the Office a considerable experience and expertise in professional disciplinary matters.

The scope of the functions and powers that may be delegated are broad. They include powers to make procedural directions, conduct directions conferences with the parties and to conduct substantive hearings in person of review applications. However, final determinations on review applications must be made by a Review Officer.

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

It is anticipated that the passage of the Tribunals Powers and Procedures Legislation Bill will assist the Office in its efforts to reduce the backlog. First, the Bill gives the Office broader powers to strike out a review application in circumstances where a Review Officer considers it to be frivolous or vexatious, an abuse of process, likely to cause prejudice or delay or that the application otherwise fails to disclose a reasonable cause of action. As well as those additional powers, the Bill also removes the existing limit of three Review Officers and provides opportunity to extend the duration of an Officer's term of appointment. It is anticipated that this latter provision, in particular, will assist with recruitment and retention of experienced staff.

The Office continues to be assisted by a team of capable and committed case managers, who provide administrative support to the Office, and comprehensive advice and guidance to parties involved in review applications.

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.



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 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 Lawyers and Conveyancers Act 2006 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 **239** applications for review during the reporting period of 1 July 2017 to 30 June 2018. This is a slight decrease compared to the previous reporting year, in which 252 applications were received.

The 239 applications can be broken down into the following types:

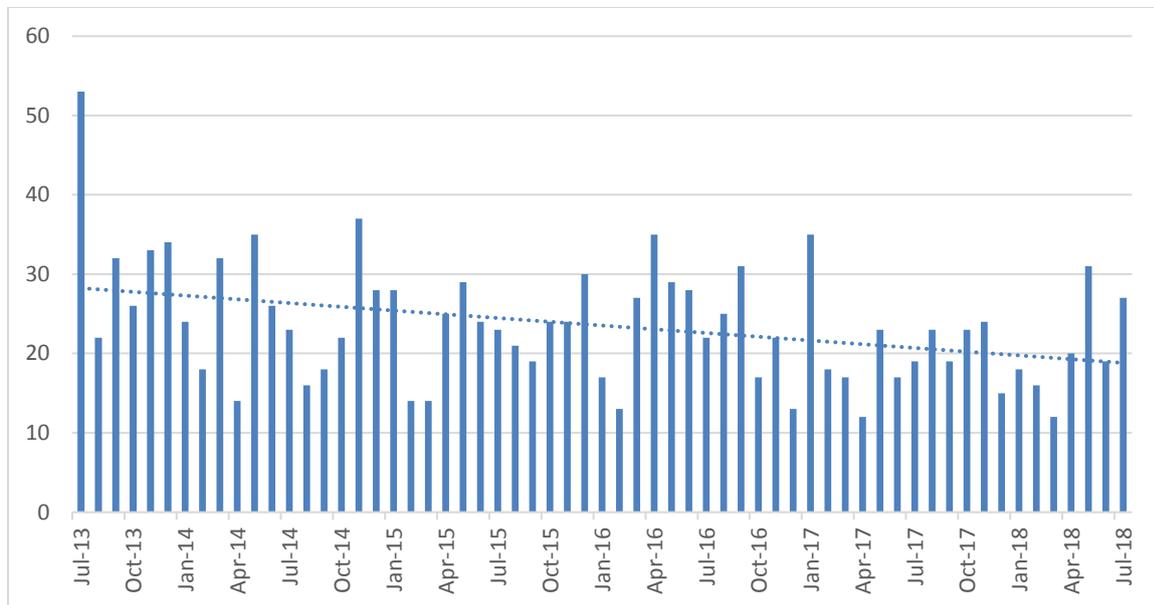
- **220** related to a Standards Committee decision on a complaint made, pursuant to s 194 of the Act
- **10** related to a Standards Committee decision following own motion inquiries pursuant to s 195 of the Act

- 3 related to the power of a Standards Committee to request information pursuant to s 147 of the Act
- 6 related to a Standards Committee decision to refer a matter to the Lawyers and Conveyancers Disciplinary Tribunal.

*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 down slightly on the previous period. The average number of applications filed per month in this reporting period is 20.

*Graph 1: Applications for review filed by month 2013/14 to 2017/18*



*Rate of review applications*

Information received from the NZLS indicates that Standards Committees disposed of 1319 complaints in the reporting period. During the same period, the LCRO received 239 review applications, meaning 18 per cent of Standards Committee decisions proceeded to a review.<sup>1</sup>

<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 **421** reviews.<sup>2</sup> This compares with 325 and 320 reviews completed in the previous two reporting years. Of the 421 completed reviews, 343 related to reviews filed in previous reporting periods.

## Timeliness of reviews completed

Of the 421 reviews completed:

- 92 (22 per cent) were completed within six months
- 35 (8 per cent) were completed within six to twelve months
- 294 (70 per cent) were completed in over twelve months.

## Outcomes of reviews

The outcomes of the 421 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:

- **250** decisions of Standards Committees were confirmed by the LCRO
- **23** decisions of Standards Committees were confirmed but modified. Examples of a modification by the LCRO included:
  - the reduction of a fine
  - censuring the person to whom the complaint related or reversing a censure order
  - varying the amount of compensation to be paid to a complainant
  - reaching a further finding of unsatisfactory conduct
  - reversing findings of unsatisfactory conduct with the remaining findings confirmed
  - reversing a publication order
  - reversing an order for a written apology.
- **56** decisions were reversed or partially reversed. Examples included:
  - findings of unsatisfactory conduct reversed (with any associated fine, costs, order for cancellation or refund of fees, censure orders falling away). Examples of orders that fell away include cancellation of fees of \$8,000, \$27,000 and \$30,000, fines of up to \$8,000 and compensation of \$25,000
  - the LCRO 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, costs and compensation

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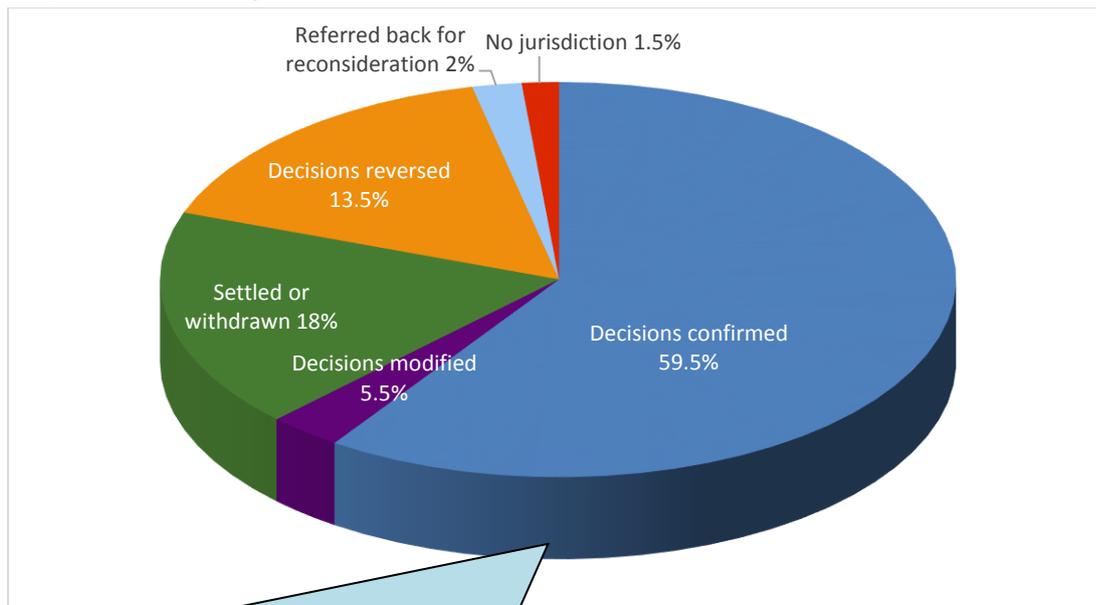
<sup>2</sup> This refers to actual numbers of completed reviews without taking into account when the review applications were filed.

- reducing or reversing fines and compensation orders
- reversing orders for the publication of a practitioner’s name.
- **2** decisions where the Standards Committee had reached findings of unsatisfactory conduct were reversed by the LCRO with a direction that the matters be considered by the Lawyers and Conveyancers Disciplinary Tribunal.
- **9** decisions were referred back to the Standards Committee for reconsideration. Examples included:
  - Standards Committee to further consider the complaint following a decision to take no further action
  - reversal of the decision to take no further action and replacing this with a finding of unsatisfactory conduct and directing the Standards Committee to consider trust accounts records and whether to direct that trust accounts be audited
  - Standards Committee to reconsider whether fees were fair and reasonable
  - Standards Committee to obtain the firm’s time records and consider whether the fees have been charged to the appropriate persons
  - Standards Committee to arrange a costs assessment.
- **6** reviews were declined for lack of jurisdiction to review.
- **75** 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 commenced one such prosecution during this reporting period.

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

*Graph 2: Outcomes of reviews*



- **65%** of Standards Committee decisions were either confirmed or confirmed subject to modifications. This compares with 66% in the previous reporting period
- **15.4%** of Standards Committee decisions were reversed or referred back to the Committee for reconsideration. This compares with 11% in the previous reporting period.

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 LCRO's website.<sup>3</sup>

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 \$59,700 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 \$11,500 during the reporting period. These amounts were payable to the NZLS and are taken into account when annual levies are set.

Compensation orders totalling \$4,920 were imposed by the LCRO.

### **Applications for review to be completed**

As at 30 June 2018, 350 applications for review were active, compared to 532 at the end of the previous reporting period.

Of the reviews pending:

- 161 were lodged in the last 12 months
- 104 from July 2016 to June 2017
- 77 from July 2015 to June 2016
- 8 prior to July 2015.

## **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. 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 NZSC.

In the reporting period, there have been 16 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 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

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<sup>3</sup> <https://www.justice.govt.nz/assets/Documents/Publications/LCRO-Guidelines-for-parties-to-review.pdf>.

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 NZSC 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 2017/18 year was \$156.08 (incl. GST).

### Revenue Received

- LCRO filing fees \$10,479 (excl. GST)
- LCRO levies: \$1,567,184(excl. GST)

### 2018-2019 Levies

The Ministry, NZLS and NZSC consult together near the end of each financial year to determine whether the levies in place are accurately reflecting 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 2018/19 has been set at \$ 139.99 (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.<sup>4</sup>

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<sup>4</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/about/about-us/corporate-publications](http://www.justice.govt.nz/about/about-us/corporate-publications).