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Annual Report of the

# LEGAL COMPLAINTS REVIEW OFFICER

For the 12 months ended 30 June 2020

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

## OVERVIEW OF YEAR 2019/20

This is the Annual Report of the Legal Complaints Review Officer for the year 1 July 2019 to 30 June 2020.

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 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.

In this reporting year, the LCRO and Deputy Review Officers, with the support and assistance of a delegate appointed to assist the Officers, have continued to make progress in reducing the backlog of cases that had accumulated over many years.

The benefit of appointing additional Review Officers to assist in managing the LCRO's workload is becoming apparent. Applications which are accorded priority on receipt (particularly complaints where fees remain unpaid and applications challenging a Committee's decision to refer a practitioner to the Lawyers and Conveyancers Disciplinary Tribunal) are, in most cases, able to be promptly allocated a hearing date.

In the current reporting period, there has been an observable increase in the number of review applications being managed by Review Officers "on the papers", rather than through the process of a formal hearing. This has been prompted in part by changes in the legislation which have enabled the Review Officers to direct, where appropriate, a review be conducted on the papers.

A feature of the current reporting period, has been an observable increase in the number of parties who have expressed a willingness to have their hearings conducted remotely. This has been facilitated by the significant improvements the Ministry of Justice has made to the technological platforms required to conduct remote hearings. These technological improvements, prompted in part by the Ministry's response to the COVID-19 pandemic, have enabled Review Officers and their support team to seamlessly work remotely when required.

An impediment to expeditious resolution of reviews, as observed by all Review Officers, continues to be a tendency for many parties advancing review applications, to attempt to use the review process as a vehicle to relitigate the complaint and introduce fresh issues on review.

The ability to ensure that reviews are managed expeditiously is also hampered on occasions by a tendency on the part of many lawyers when advancing or defending a review application, to adopt an approach to the process of review which is more analogous to that adopted in the traditional adversarial system common to criminal and civil proceedings, rather than tailoring their approach to accommodate the informal and largely inquisitorial approach adopted in review hearings.

Review Officers are increasingly bringing a more robust approach to the management of files at commencement and endeavouring at the outset to identify issues that have potential to impede the progress of the review. This approach to case management has assisted in identifying applications that disclose no reasonable cause of action or present as frivolous or vexatious. Review Officers have been prepared, when cases are identified which fall into the “hopeless” category, to exercise their power to strike out the application, avoiding the need to progress the matter to hearing.

The LCRO continues to enjoy a productive relationship with the New Zealand Law Society. The Complaints Service continues to provide valuable assistance to the LCRO, promptly responding to requests for Standards Committee files, and clarifying enquiries relating to files.

Increasingly, Standards Committee files are able to be provided to the Review Officers in digital format and work is progressing on establishing an electronic platform for Standards Committee files and review files to be integrated and accessed in a readily searchable format.

The LCRO continues to be supported by a capable and committed team of case managers. Their contribution to the efficient operation of the office in what has been a challenging year, has been considerable. The registry adapted quickly to the challenges of working remotely and have continued to provide attentive assistance to practitioners and members of the public.

The LCRO has also been ably supported by members of the tribunals legal research team who provide the LCRO with high-calibre research assistance and administrative support.

Finally, I commend the work of the Deputy Review Officers Owen Vaughan, Dorothy Thresher, Robert Hesketh, and Bruce Galloway, and the assistance of a delegate to the LCRO, Roderick Joyce QC. Their commitment and collegial approach to undertaking the work of review, continues to provide valuable support to the LCRO.



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, four Deputy Review Officers, and one delegate to the LCRO who provides assistance as required.

## 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 **248** applications for review during the reporting period of 1 July 2019 to 30 June 2020. This is a slight increase compared to the previous reporting year, in which 208 applications were received.

The 248 applications can be broken down into the following types:

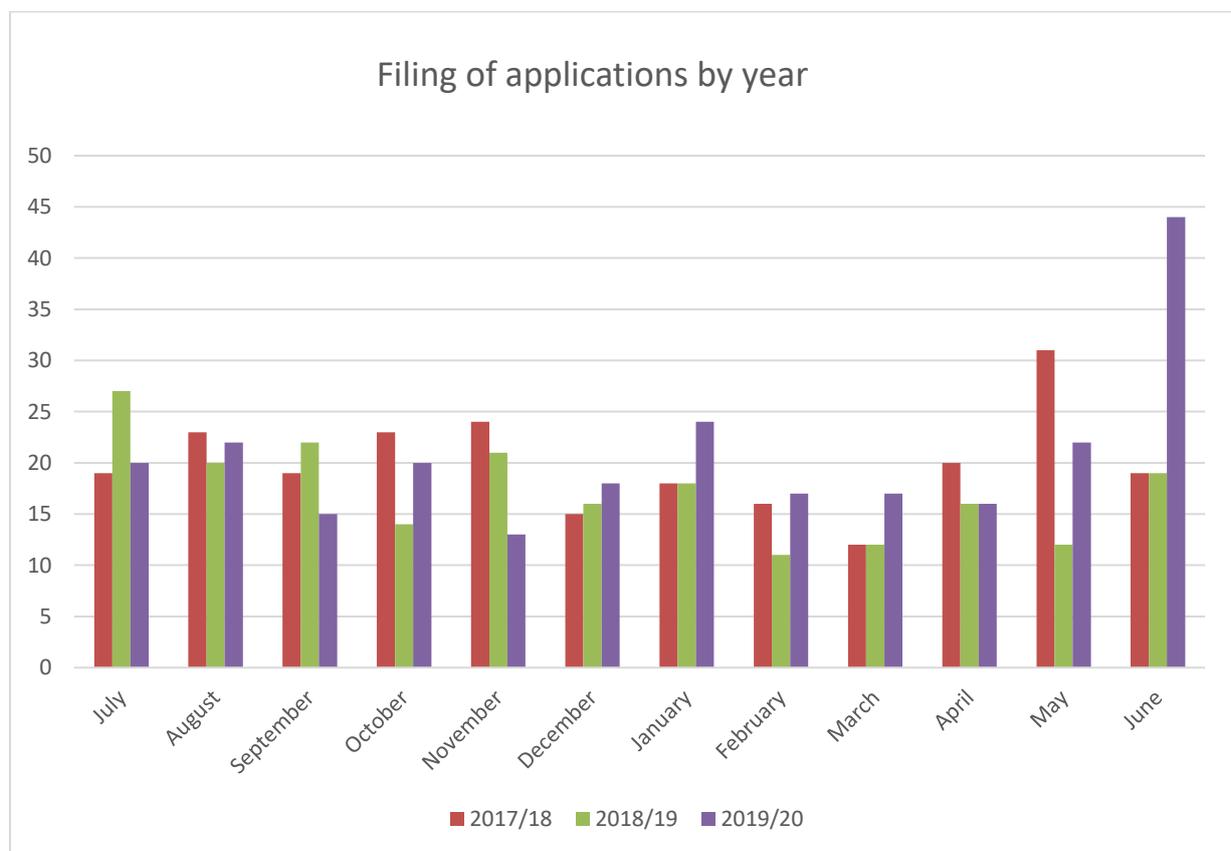
- **235** related to a Standards Committee decision on a complaint made, pursuant to s 194 of the Act
- **5** related to a Standards Committee decision following own motion inquiries pursuant to s 195 of the Act

- **8** 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 up slightly on the previous period. The average number of applications filed per month in this reporting period is 21.

*Graph 1: Applications for review filed by month 2017/18 to 2019/20*



*Rate of review applications*

Information received from the NZLS indicates that Standards Committees disposed of 1,523 complaints in the reporting period. During the same period, the LCRO received 248 review applications, meaning 16.3 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 **265** reviews.<sup>2</sup> This compares with 320 and 314 reviews completed in the previous two reporting years. Of the 265 completed reviews, 180 related to reviews filed in previous reporting periods.

## Timeliness of reviews completed

Of the 265 reviews completed:

- 83 (31 per cent) were completed within six months
- 50 (19 per cent) were completed within six to twelve months
- 132 (50 per cent) were completed in over twelve months

## Outcomes of reviews

The outcomes of the 265 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:

- **180** decisions of Standards Committees were confirmed by the LCRO
- **16** decisions of Standards Committees were confirmed but modified. Examples of a modification by the LCRO included:
  - reaching a further finding of unsatisfactory conduct
  - ordering an apology
  - censuring the person to whom the complaint related or reversal of a censure order
  - imposing or reducing a fine
  - reversal of an order to undergo practical training
  - reversing findings of unsatisfactory conduct with the remaining findings confirmed
  - publishing a Practitioners name
- **31** decisions of Standards Committees were reversed or partially reversed. Examples include:
  - reversing unsatisfactory conduct findings, with associated orders falling away
    - examples include censure orders, mentoring orders, directions to produce files, cancellation/refund of fees (\$183,000), fines (\$42,000), and compensation orders (\$39,460)
  - making findings of unsatisfactory conduct, reversing the Standards Committee decision to take no further action on all or some aspects of the complaint

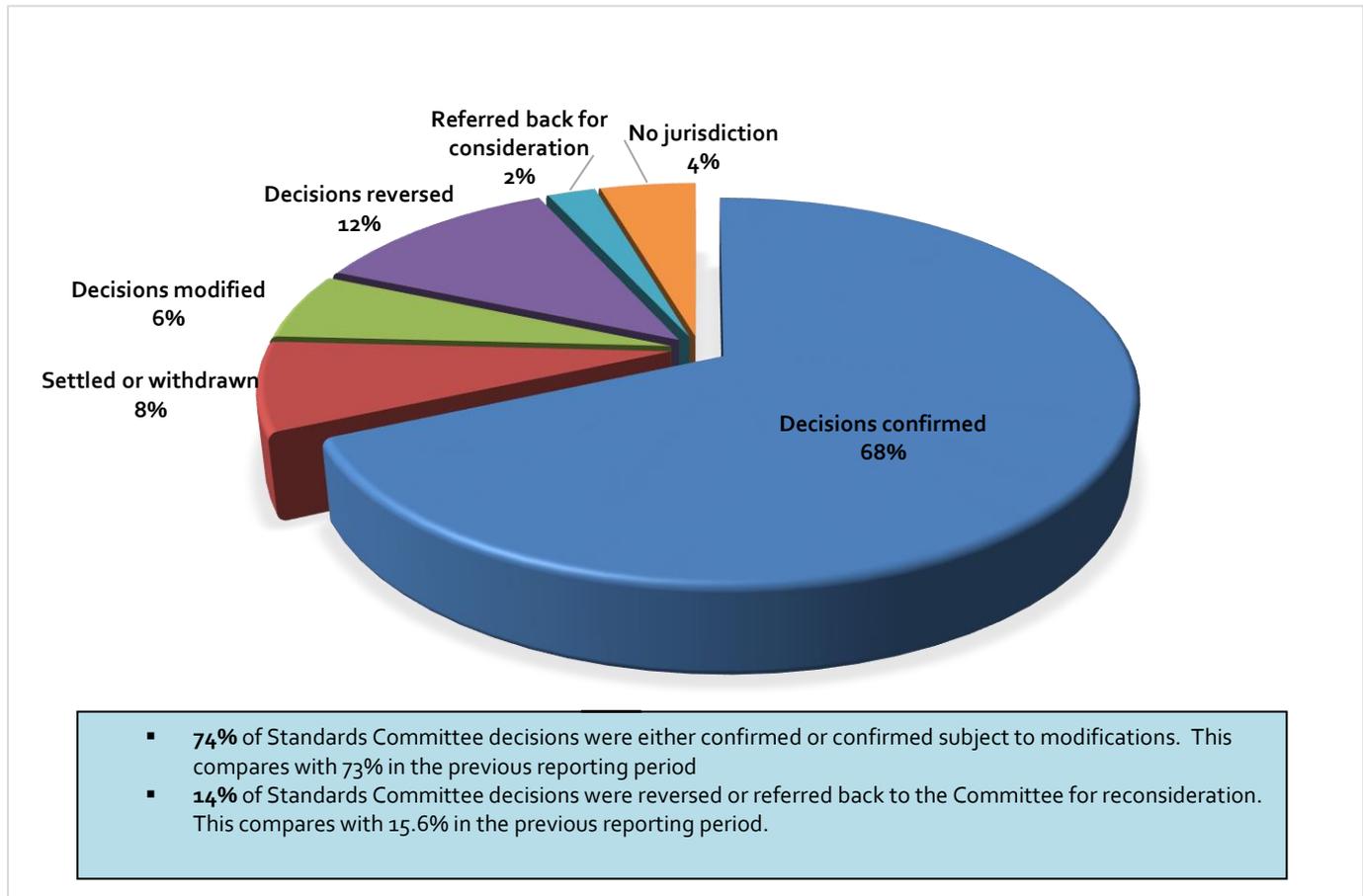
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<sup>2</sup> This refers to actual numbers of completed reviews without taking into account when the review applications were filed.

- subsequent orders made included compensation, censure, apology orders, fines and costs.
- **6** decisions referred back to the Standards Committee for reconsideration. Examples include directing Standards Committees to:
  - consider trust account records
  - reconsider whether fees were fair and reasonable
  - appoint a costs assessor.
  - amend the wording of the review information given to parties
- **12** reviews were declined for lack of jurisdiction to review.
- **20** 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*



*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.<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 \$47,600 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 \$17,000 (this includes fines imposed by the Standards Committees but modified by the LCRO). These amounts are payable to the NZLS and are taken into account when annual levies are set.

Compensation orders totalling \$3,500 were imposed by the LCRO.

**Applications for review to be completed**

As at 30 June 2020, 227 applications for review were active, compared to 244 at the end of the previous reporting period.

Of the reviews pending:

- 163 were lodged in the last 12 months
- 56 are from July 2018 to June 2019
- 8 are from July 2017 to June 2018

**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 NZSC 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 NZSC.

In the reporting period, there have been 6 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 regular (usually quarterly) meetings which provide a forum for discussion of a variety of issues arising in the work of the

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<sup>3</sup> Legal Complaints Review Officer “Guidelines for Parties to Review”  
<<https://www.justice.govt.nz/assets/Documents/Publications/LCRO-Guidelines-for-parties-to-review.pdf>>.

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 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 2019/20 reporting year was \$145.33 (incl. GST).

### Revenue Received

- LCRO filing fees \$ 10,870 (excl. GST)
- LCRO levies: \$ 1,752,114 (excl. GST)

### 2020-2021 Levies

The Ministry of Justice, 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 2020/21 has been set at \$149.50 (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).