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Annual Report of the

# LEGAL COMPLAINTS REVIEW OFFICER

For the 12 months ended 30 June 2021

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

## OVERVIEW OF YEAR 2020/21

This is the Annual Report of the Legal Complaints Review Officer for the year 1 July 2020 to 30 June 2021.

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.

The work of the LCRO in the current reporting year has inevitably been affected by the workplace restrictions imposed as a consequence of the COVID-19 pandemic. Fortunately, disruptions to the workplace have not significantly compromised the LCRO's ability to meet its statutory obligation to ensure that review hearings are managed as expeditiously as possible.

Work completed by the Ministry of Justice over a period of time to ensure that Courts and Tribunals have access to stable technological platforms to enable hearings to be effectively managed remotely, has considerably assisted the LCRO in its efforts to seamlessly manage a number of scheduled hearings remotely. Parties have for the most part been extremely receptive to having their hearings conducted remotely, and there has been an observable increase in the number of parties expressing preference to have their reviews conducted "on the papers".

Files have continued to be efficiently case managed, with all case managers equipped with the necessary technology to enable them to work from home, if and when required to do so.

As part of case managing remote hearings, Review Officers have been attentive to the need to ensure the confidentiality of the review process.

The LCRO continues to receive valuable support from the New Zealand Law Society Complaints Service, with the Service continuing to provide prompt assistance to the LCRO in supplying files and clarifying enquiries from case managers.

The LCRO continues to be supported by a team of capable and committed case managers. Registry staff have adapted quickly to the challenges of working remotely and have continued to provide efficient assistance to practitioners and members of the public.

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

I thank the Deputy Review Officers Owen Vaughan, Robert Hesketh, Bruce Galloway, and delegate to the LCRO, Roderick Joyce QC, for their collegial support and dedicated contributions. I especially wish to acknowledge the work of Deputy Review Officer Dorothy Thresher, who left the Office at the end of the annual reporting period. During her 8-year tenure, Dorothy made a significant contribution to advancing jurisprudence in the disciplinary review arena.



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 **189** applications for review during the reporting period of 1 July 2020 to 30 June 2021. This is a reduction compared to the two previous reporting years, in which 208 and 248 applications were received.

The 189 applications can be broken down into the following types:

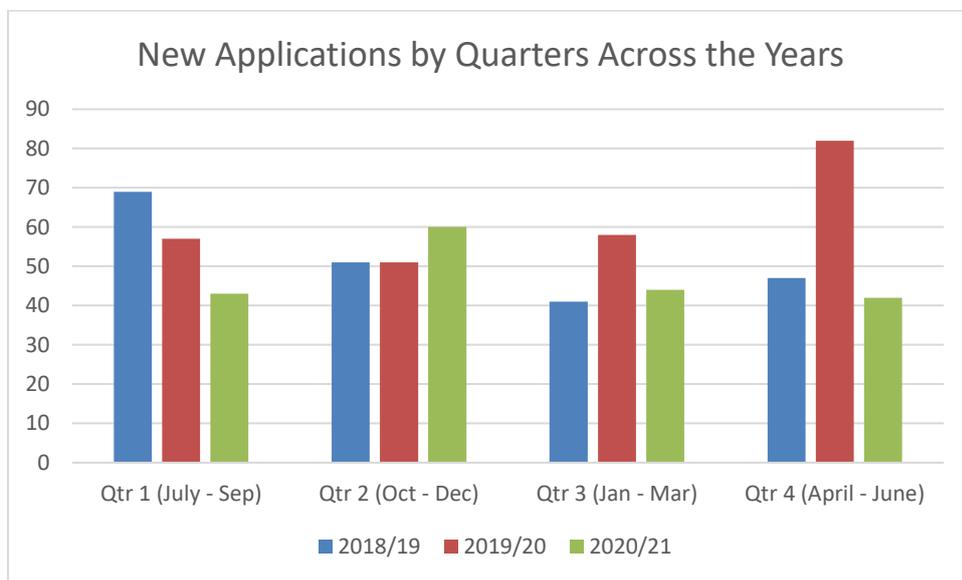
- **171** related to a Standards Committee determination on a complaint made, pursuant to s 194 of the Act
- **4** related to a Standards Committee determination following own motion inquiries pursuant to s 195 of the Act

- **1** related to a Standards Committee direction
- **10** related to a Standards Committee decision to refer a matter to the Lawyers and Conveyancers Disciplinary Tribunal
- **3** related to proceedings remitted back for reconsideration from the High Court following judicial review.

*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 2018/19 to 2020/21*



*Rate of review applications*

Information received from the NZLS indicates that Standards Committees disposed of 1,283 complaints in the reporting period. During the same period, the LCRO received 189 review applications, meaning 14.7 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 **264** reviews.<sup>2</sup> This compares with 314 and 265 reviews completed in the previous two reporting years. Of the 264 completed reviews, 185 related to reviews filed in previous reporting periods.

## Timeliness of reviews completed

Of the 264 reviews completed:

- 110 (42 per cent) were completed within six months
- 51 (19 per cent) were completed within six to twelve months
- 103 (39 per cent) were completed in over twelve months

## Outcomes of reviews

The outcomes of the 264 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:

- **171** decisions of Standards Committees were confirmed by the LCRO
- **9** decisions of Standards Committees were confirmed but modified. Examples of modifications by the LCRO included:
  - reaching a further finding of unsatisfactory conduct
  - reversal of an order that a practitioner reduce their fees
  - reversing a censure order
  - reducing a fine / imposing a fine
  - ordering compensation
  - ordering a practitioner to reimburse fees
  - publishing a practitioner's name.
- **32** decisions of Standards Committees were reversed or partially reversed. Examples include:
  - reversing unsatisfactory conduct findings, with associated orders falling away
    - orders include censure, reprimand, undergo practical training, apology, fines (\$67,500), fee reduction (\$32,642), compensation (\$23,000) and costs (\$23,00).
  - making findings of unsatisfactory conduct, reversing the Standards Committee decision to take no further action on all or some aspects of the complaint
    - subsequent orders made by the LCRO included compensation, censure, fines (\$5,500) and costs (\$4,500)

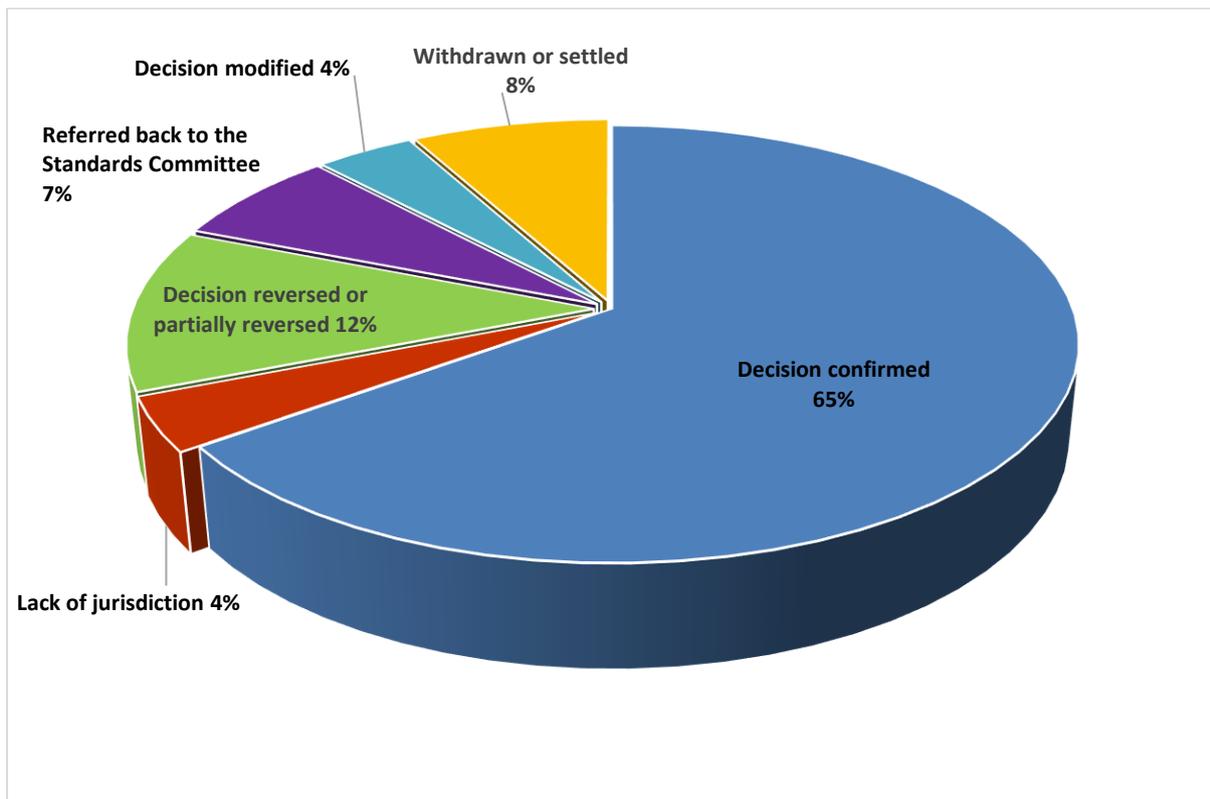
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<sup>2</sup> This refers to actual numbers of completed reviews without taking into account when the review applications were filed.

- **20** decisions were referred back to a Standards Committee for reconsideration. Examples include a direction that the Complaints Service:
  - appoint a new committee to investigate the complaint and address specific issues
  - include the practitioners who were properly the subject of the complaint
  - reconsider whether fees were fair and reasonable
  - appoint a costs assessor
  - provide opportunity for the practitioner to respond to the complaint
  - consider the issue of publication.
- **10** reviews were declined for lack of jurisdiction to review.
- **22** 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



- **68%** of Standards Committee decisions were either confirmed or confirmed subject to modifications. This compares with 74% in the previous reporting period
- **19%** of Standards Committee decisions were reversed or referred back to the Committee for reconsideration. This compares with 14% 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.<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 \$40,300 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 \$19,000 (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 \$5,500 were imposed by the LCRO and orders made to reduce fees totalling \$46,000 (this includes orders modified by the LCRO).

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

As at 30 June 2021, 153 applications for review were active, compared to 227 at the end of the previous reporting period.

Of the reviews pending:

- 110 were lodged in the last 12 months
- 41 are from July 2019 to June 2020
- 2 were lodged prior to July 2019

## **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 7 such complaints forwarded to the LCRO. No further attention has been required by the LCRO.

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

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 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 2020/21 reporting year was \$ 149.50 (incl. GST).

### Revenue Received

- LCRO filing fees: \$8,174 (excl. GST)
- LCRO levies: \$ 1,839,275 (excl. GST)

### 2021-2022 Levies

The Ministry of Justice, NZLS and NZSC 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 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).