



Annual Report of the

LEGAL COMPLAINTS REVIEW OFFICER

For the 12 months ended 30 June 2013

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

OVERVIEW OF YEAR 2012/13

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 last annual report before retiring from the role of LCRO, having declined to seek reappointment. It is therefore appropriate to take this opportunity to reflect on the first five years of the life of the Tribunal, its achievements and future challenges.

The office of the LCRO had its birth in the perceived shortcomings of the previous system of self-regulation by the law profession. Under the former Law Practitioners Act 1982 complaints against lawyers were dealt with by regional Complaints Committees; their decisions were subject to review by Lay Observers whose powers were limited to the making of recommendations. The 2006 Act introduced a new system for regulating the professional conduct of lawyers. It created a hybrid model which retained first tier self-regulation, and where the second tier investigation was undertaken by the LCRO as an independent reviewer, empowered to confirm, overturn or modify the decisions made by the Standards Committees. The LCRO was also given an oversight role in providing guidance to the profession on matters of professional conduct.

As a conceptual model, this revised approach preserves the advantages of self-regulation that allows regulators to readily identify areas of concern in professional conduct and to respond to the legal profession through its educational programmes. The independence of the LCRO enhances public confidence in the investigations of Standards Committees; the oversight role of the LCRO contributes to achieving uniformity in professional standards. The Act defines that relationship between the LCRO and the NZLS which is, in practice, characterised by active, cooperative and productive communication. The effectiveness of this model may be measured both by the numbers of review applications filed by members of the public, and by the outcomes of reviews. The significant volume of review applications demonstrate the great public desire to have an independent review of the decisions made by the Standards Committees on complaints against lawyers. The statistics of this year again show that by a significant margin Standards Committees are performing their functions effectively.

As the numbers of review applications received by the LCRO trend upward, the major challenge for this office has been, and continues to be, inadequate resources to enable the LCRO to carry out its functions in an expeditious manner as is required by the Act. Despite the high productivity of this office, the increasing backlog of work continues to be the major concern, and there is an urgent need to address these current difficulties. This year alone has seen an increase of 28% in the number of applications filed. Other factors contributing to the workload of the LCRO include the increasing complexity of issues to be addressed, the ever larger volumes of material accompanying applications, and increasingly litigious approach being taken. In addition, the result of judicial reviews has seen the High Court define the scope of the LCRO review more expansively than may have been originally envisaged by an Act that requires reviews to be conducted expeditiously. All of these factors contribute to the pressures on this office.

The main contributing factor is lack of sufficient judicial resource. The Act provided for the appointment of one LCRO and one Deputy LCRO. This may have been deemed adequate when the legislation was drafted, but at that time no useful information was available which could have predicted the extent of review applications that would be made to the LCRO. The inadequacy of judicial resource appears to be the direct result of original assumptions about numbers falling significantly short of what has in fact occurred.

The factors causing or contributing to delays in progressing review applications have been noted in my previous Annual Reports, which have particularly emphasised the need for additional judicial resource. There has been a regrettable delay in progressing the necessary statutory amendment for a further appointment. This is now completed and I am able to report that a further Deputy LCRO commenced work on 1 July 2013. However, this is now wholly inadequate to deal with the backlog that has meanwhile accumulated. The most urgent attention needs to be given to further judicial appointments, which would ideally include some flexibility to allow for appointments to be made as and when necessary, which might include part-time or short-term appointments.

A second major factor contributing to delay is the procedural design of the Act which has, over time, shown itself to contribute to unnecessary congestion. During my tenure as the LCRO it has become apparent that review applications fall into several categories. Not all of these categories require the extensive statutory procedures that are presently provided for. For example, the statistics indicate that there is a case to be made for introducing summary procedures where appropriate, which could be achieved in ways that do not compromise the purposes of the Act. Improvements might also be achieved by a review of the procedures in circumstances where a complainant has no personal interest in the subject matter of the complaint. Clearer legislative direction would provide for such complaints to be progressed by way of an 'own-motion' investigation by a Standards Committee where appropriate. Advice and suggestions have been made in respect of these, and other possible amendments which would very likely have the affect of alleviating the significant pressures on this office, and without compromising the important public protection function of the Act.

There are other aspects of the Act which would benefit from review and very likely enhance the expeditiousness in conducting reviews. One example is the lack of discrimination between different types of conduct that fall within a single available finding of 'unsatisfactory conduct'. This 'one size fits all' approach covers a range of conduct complaints, from minor professional lapses at one end of the scale to serious breaches of professional duty at the other. It makes no distinction between consumer related issues on the one hand, and conduct issues that raise disciplinary concerns to be sanctioned on the other hand. A related matter is that a disciplinary finding must be made if a complainant is to have any kind of remedy. This is so because a remedial order can be made only following a disciplinary finding against the lawyer. A statutory review might consider the availability of a remedy to a complainant, without the necessity of a disciplinary outcome for the lawyer involved. This would almost certainly strengthen the resolution and conciliation aims of the Act where consumer issues are involved, and would not prevent professional conduct issues being dealt with in a disciplinary context.

In summary, despite the continuing increase in applications the LCRO has made significant achievements during the first five years of regulation under the Lawyers and Conveyancers Act. However, urgent attention is needed to ensure that the LCRO is adequately resourced to carry out its role in maintaining the confidence of the public in the provision of legal and conveyancing services.

In leaving this office, I wish to acknowledge the excellence and dedication of those involved in the regulatory work of the NZLS. To the extent that the decisions and guidance of the LCRO have contributed to the shape of professional standards, the NZLS has engaged willingly and co-operatively. The relationship has been productive and has served to strengthen the activities of both.

I also wish to acknowledge and thank the dedicated case managers who have supported my office. Their professional approach to those interfacing with the LCRO has been exemplary, and they have given their unstinting support oftentimes in difficult circumstances. Finally, but not least, I acknowledge and wish to particularly thank Deputy LCRO Owen Vaughan for his support, and his contribution to the work of this office.

Yours sincerely



Hanneke Bouchier
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 Ms Hanneke Bouchier. In the reporting year, Ms Bouchier was supported by a Deputy LCRO, Owen Vaughan.

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 **384** applications for review during the reporting period of 1 July 2012 to 30 June 2013. This is a significant increase compared to the previous reporting year, in which 300 applications were received.

The 384 applications can be broken down into the following types:

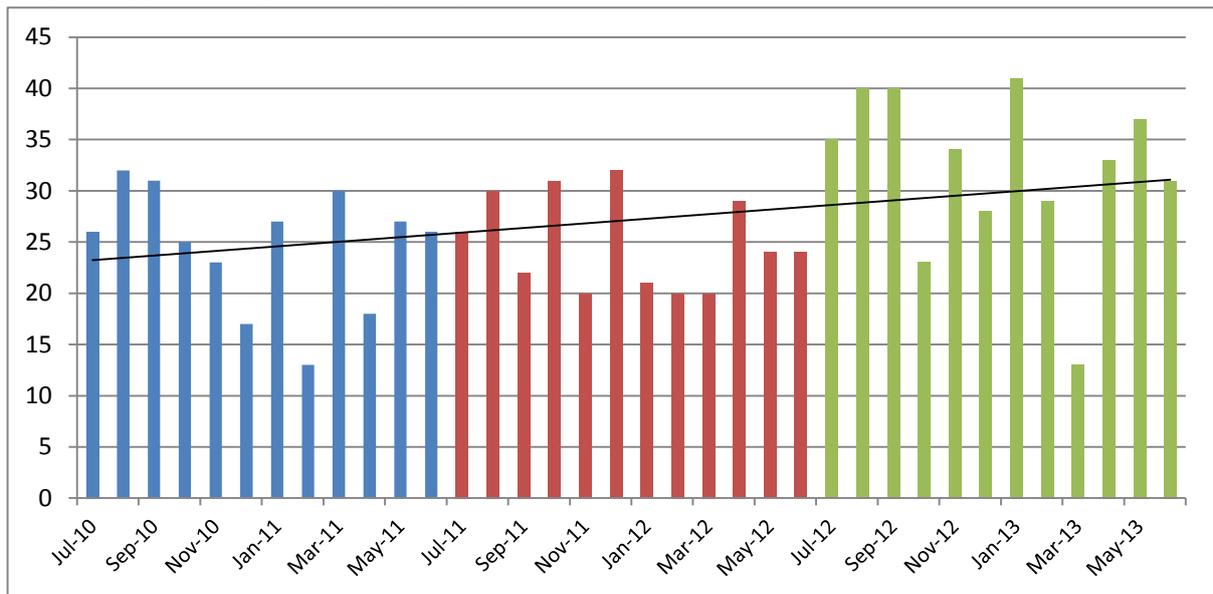
- **364** related to a Standards Committee decision on a complaint made, pursuant to section 194 of the Act.
- **1** related to a Lay Observer review pursuant to section 355 of the Act.
- **7** related to review of determinations from Standards Committees following own motion inquiries pursuant to section 195 of the Act.
- **1** related to intervening with the power of the Standards Committee to investigate a complaint.
- **11** 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 highlights the steady increase in review applications filed. The average number of applications filed per month has risen from 25 per month in 2010/11 to 33 per month in the reporting period.

Graph 1: Applications for review filed by month 2010/11 to 2012/13



Rate of review applications

Information received from the NZLS indicated that Standards Committees disposed of 1,947 complaints in the reporting period. During the same period the LCRO received 384 review applications, meaning 19.7 percent of Standards Committee decisions proceeded to a review.¹ This is similar to the previous reporting period (19.5 percent).

Completion of reviews

During the reporting period the LCRO completed **206** reviews². This compares with 200 reviews completed in the previous reporting year. Of the 206 completed reviews, 170 related to reviews filed in the previous reporting period.

Timeliness of completed reviews

Of the 206 reviews completed:

- 24 (12 percent) were completed within six months;
- 66 (32 percent) were completed within six to twelve months; and
- 116 (56 percent) were completed in over twelve months.

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.

Outcomes of reviews

The outcomes of the 206 reviews completed by the LCRO in the reporting year are detailed 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:

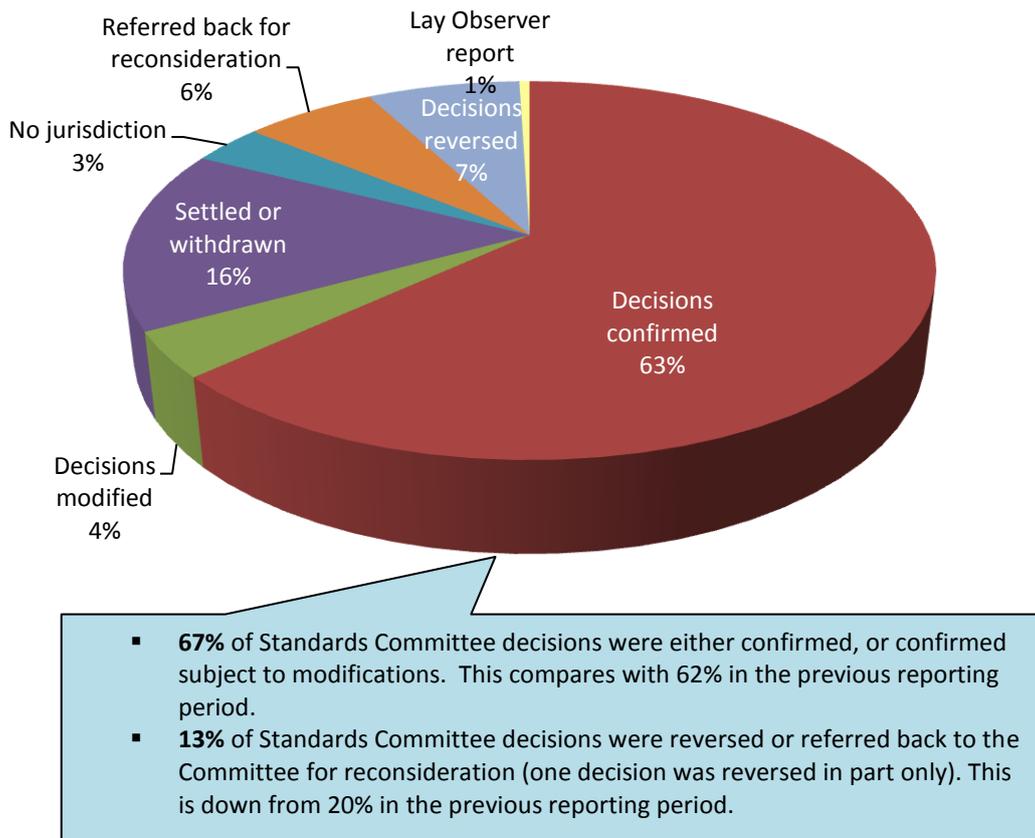
- **130** decisions of Standards Committees were confirmed by the LCRO.
- **8** decisions were modified by the LCRO. Modifications included a finding of unsatisfactory conduct in one instance, a censure imposed by the Standards Committee was removed in one instance and in a third case the LCRO considered aspects of conduct that had not been addressed by the Standards Committee. The remaining modifications were minor in nature and included changes to fines, orders and/or reasons given.
- **14** decisions were reversed. Nine of these resulted in the LCRO making a finding of unsatisfactory conduct and reversing the Standards Committee decision to take no action. Orders imposed included censure (2), reprimand (2) compensation to be paid (2), reimbursement or reduction of fees (3), and fines (1).
- **1** decision was reversed in part with the remaining aspects of the determination confirmed.
- **13** decisions were referred back to the Standards Committee for reconsideration.
 - 1 was referred back due to procedural irregularities in the manner in which the complaint was investigated.
 - 2 were referred back for a costs assessor report and included a direction for further enquiry to be made relating to the complaint.
 - The remaining 10 were referred back as the LCRO found that the Standards Committee had not fully investigated all aspects of the complaint or that reconsideration was required following findings by the LCRO on points of law. Of these 10, two were referred back for reconsideration of the whole complaint and also for the standards committee to consider commencing an own motion inquiry into the aspects raised by the LCRO.
- **7** reviews were declined for lack of jurisdiction to review.
- **32** reviews were withdrawn or settled by way of agreement between the parties.
- **1** decision related to a Lay Observer report.³

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 overleaf.

³ Further analysis of the Lay Observer report function is detailed later in this report.

Graph 2: Outcomes of reviews



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 \$24,400 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 \$21,950 during the reporting period, the largest being a fine of \$16,500. 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 \$10,500, with a further \$36,313 in fees ordered to be refunded.

Applications for review still outstanding

As at 30 June 2013, **501** applications for review remained active. This is up from 325 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:

- 1 Lay Observer application was received.
- 1 Lay Observer review was completed, which resulted in a report with an outcome of "no recommendation".

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 2012/13 year was \$59 (incl. GST). All levies were received from both societies.

Revenue Received

- LCRO filing fees: \$9,628
- LCRO levies: \$583,683 (incl. GST)

2013-2014 Levies

The levy for 2013/14 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 practising 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.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/publications