



Annual Report of the

LEGAL COMPLAINTS REVIEW OFFICER

For the 12 months ended 30 June 2022

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

OVERVIEW OF YEAR 2021/22

This is the Annual Report of the Legal Complaints Review Officer for the year 1 July 2021 to 30 June 2022.

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 again been affected by the restrictions required as a consequence of the COVID-19 pandemic.

The capacity to conduct in-person hearings was significantly compromised by the lengthy periods of time during which parties were unable to attend hearings, however the groundwork that had been done by the Ministry of Justice in improving the technology to enable hearings to proceed remotely, assisted the LCRO in seamlessly transitioning a number of hearings that had been scheduled to be heard in person, to remote hearings.

As a direct consequence of the COVID-19 lockdowns, LCROs were faced with an increased number of jurisdiction challenges. A number of these applications sought leave to file applications out of time. The foundation for a number of these jurisdictional challenges, was argument that COVID-19 management legislation permitted departure from the LCRO's strict approach of refusing to accept applications that had been filed out of time.

In a number of jurisdiction cases, the nature and multiplicity of the issues raised, required the LCRO to deliver comprehensive decisions.

Cases heard by the LCRO in the reporting year, reflected the wide range of complaints that continue to be the subject of review to the LCRO.

It is commonly reported by Review Officers, that the time required to complete a number of the reviews received is increasing, this in part due to the complexity of the issues that are being raised in the reviews, but also because of a discernible trend for lawyer applicants to adopt an increasingly formal approach to advancing their reviews. It is not uncommon for lengthy submissions to be filed, accompanied by a significant volume of documentation.

The LCRO continues to receive a number of applications that seek to review Standards Committee's fee decisions. It is concerning that a difficulty in sourcing appropriately qualified costs assessors for fee complaints where the fee charged is significant, has resulted in an increasing number of fee reviews being advanced in circumstances where the Standards Committee has had to undertake the assessment without the benefit of a report from a costs assessor. In circumstances where the fee is considerable, and the work completed by the lawyer is specialist in nature, it is of considerable advantage to the LCRO to have access to a report from a practitioner experienced in the area of law engaged by the complaint.

Review Officers are unanimous in their view that the task of undertaking an assessment as to the reasonableness of a fee charged (particularly in circumstances where the fee is substantial) has been made more difficult by the absence of a costs assessor's report. This has resulted increasingly in requests being made of lawyers to provide their files to the LCRO, and escalating time being required to be spent on fee reviews.

It is also clear from the reviews that came before the LCRO in the reporting period, that the Complaints Service are managing a number of complaints through its Early Resolution process. This process is designed to expeditiously advance complaints in circumstances where, after completing an initial assessment, the Standards Committee forms a preliminary view that no further action needs to be taken on the complaint. The lawyer complained about is given indication of the Standard Committee's initial view, and whilst invited to provide response to the complaint, is not required to do so. Understandably, most lawyers are content with indication that the complaint is to go no further, and do not feel motivated to respond to the complaint.

This is an effective process for the Complaints Service, and one that ensures that low level complaint matters can be expeditiously managed. But the process can have time consequence for the LCRO. The fact a lawyer has not been required to respond to a complaint is not infrequently perceived by review applicants as a failure on the part of the Standards Committee to properly address their complaint, this in itself is sufficient to prompt an application to review the Standards Committee decision.

Not infrequently, a lawyer who has not been required to respond to the complaint at the Standards Committee stage of the investigation, will elect to do so on review, this prompting a fresh exchange of submissions and, somewhat inevitably, further amplifying the issues.

The LCRO continues to receive valuable support from the New Zealand Law Society Complaints Service, who are efficient and prompt in providing the LCRO with Standards Committee files and in responding to requests from case managers for clarification of matters relating to particular files. The LCRO is frequently assisted by Professional Standards Officers, whose knowledge and understanding of the process by which a complaint file has been administratively managed, is invaluable in assisting the LCRO in clarifying concerns raised in a course of the review that the complaint was not managed in a procedurally fair manner.

The LCRO continues to be supported by members of the tribunal's legal and research team who provide the LCRO with significant legal and administrative support. In addition to attending to the day-to-day tasks of reviewing decisions and responding to inquiries directed towards specific legal issues, members of the legal and research team have made significant contribution to assisting the LCRO in the preparation of an extensive database of notated LCRO decisions.

Pivotal to the effective day to day running of the office has been the team of case managers, ably lead and managed by the team's service manager, Jan Pilkington. Ms Pilkington's commitment to ensuring that every request from members of the public for assistance is managed by her team promptly and courteously, has been instrumental in assisting in the LCRO and Deputies in managing the significant number of applications that continue to be received.

I have, in addressing the task of review, been ably supported by the Deputy LCROs Owen Vaughan, Robert Hesketh and Bruce Galloway. Their combined years of practical experience, acquired working in a variety of legal environments, as well as their considerable backgrounds in the field of professional discipline, have ably equipped them to bring both a practical and legally-informed approach to determining the review applications they have been tasked with managing.



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 **223** applications for review during the reporting period of 1 July 2021 to 30 June 2022. This is an increase compared to the previous reporting year, in which 189 applications were received.

The 223 applications can be broken down into the following types:

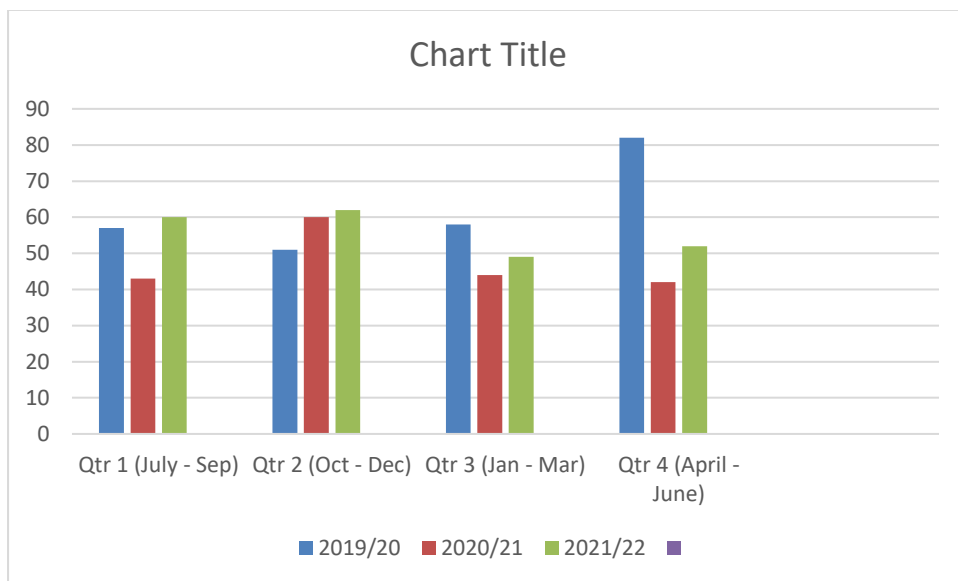
- **209** related to a Standards Committee determination on a complaint made, pursuant to s 194 of the Act
- **5** related to a Standards Committee determination following own motion inquiries pursuant to s 195 of the Act
- **9** related to a Standards Committee decision to refer a matter to the Lawyers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

In addition to the above, **3** matters were remitted back for reconsideration following Judicial Review but retained existing file numbers.

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 2019/20 to 2021/22



Rate of review applications

Information received from the NZLS indicates that Standards Committees disposed of 1333 complaints in the reporting period. During the same period, the LCRO received 223 review applications, meaning 16.7% of Standards Committee decisions proceeded to a review.¹

Completion of reviews

During the reporting period the LCRO completed **194** reviews.² This compares with 264 and 265 reviews completed in the previous two reporting years. Of the 194 completed reviews, 102 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 194 reviews completed:

- 97 (50 per cent) were completed within six months
- 39 (20 per cent) were completed within seven to twelve months
- 58 (30 per cent) were completed in over twelve months

Outcomes of reviews

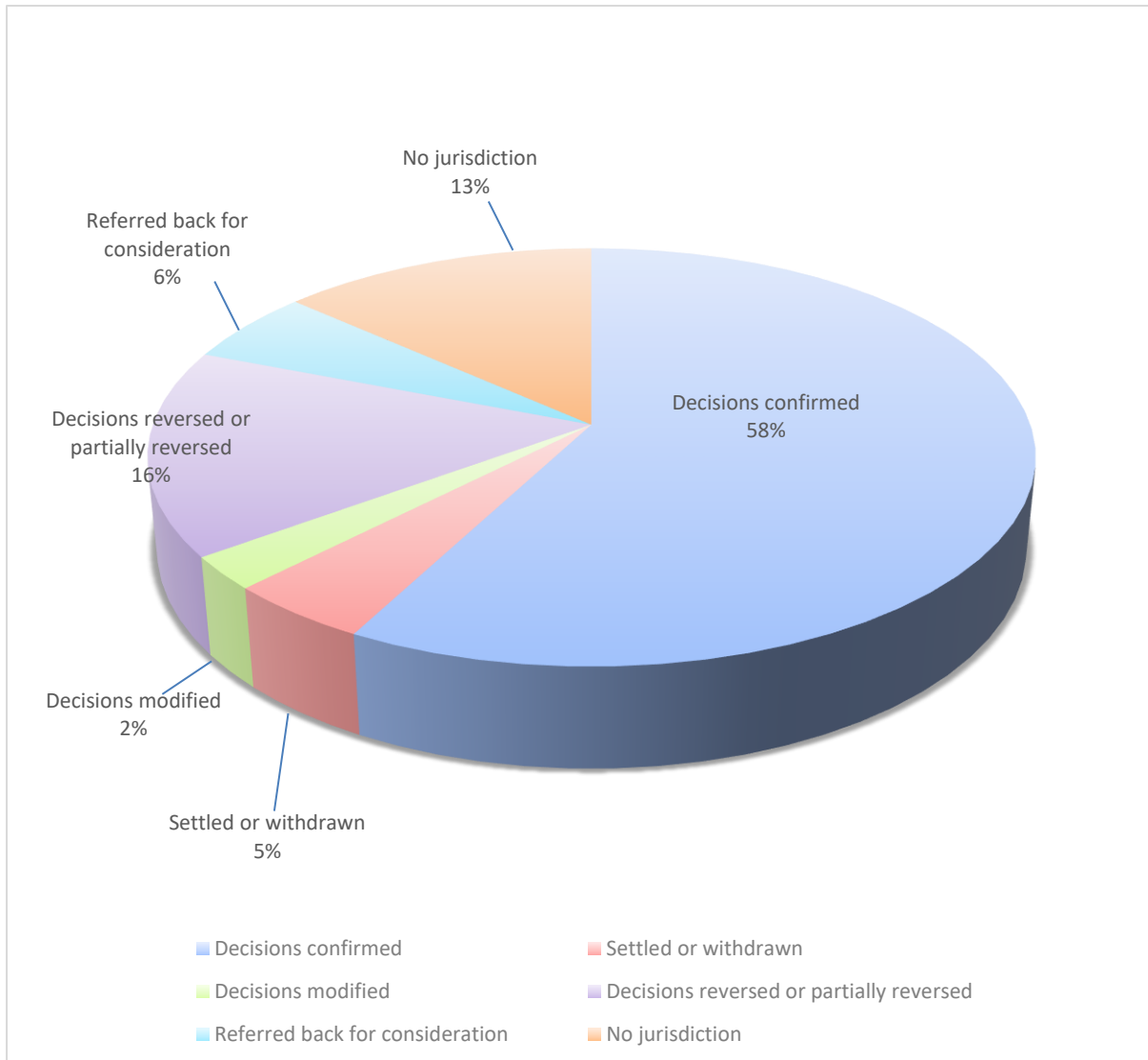
The outcomes of the 194 reviews completed by the LCRO in the reporting year are shown below. Under s 211 of the Act, the LCRO can confirm, modify or reverse any decision of a Standards Committee. The LCRO also has the power, under s 209, to direct a Standards Committee to reconsider a decision.

In the reporting year:

- **112** 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:
 - reaching a further finding of unsatisfactory conduct
 - increasing the amount of compensation ordered
 - reversing a requirement to undergo practical training or education in relation to estate administration.
- **31** decisions of Standards Committees were reversed or partially reversed. Examples include:
 - reversing unsatisfactory conduct findings. Associated orders falling away include:
 - a reprimand, fines (\$44,000) and costs (\$21,500)
 - reversing a referral to the Lawyers and Conveyancers Disciplinary Tribunal
 - 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 censure, ordering an apology, compensation, fee reduction, fines and costs.
- **11** decisions were referred back to a Standards Committee for reconsideration. Examples include a direction that the Complaints Service:
 - appoint a new Standards Committee to investigate the complaint and address specific issues
 - appoint a costs assessor
 - provide opportunity for the practitioner to respond to the complaint
 - promote resolution of this matter by way of negotiation, conciliation or mediation as required by s 130(b) of the Act.
 - call for the Practitioner's complete file.
- **26** reviews were declined for lack of jurisdiction to review.
- **9** 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



- **60%** of Standards Committee decisions were either confirmed or confirmed subject to modifications. This compares with 68% in the previous reporting period
- **16%** of Standards Committee decisions were reversed or referred back to the Committee for reconsideration. This compares with 19% 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 \$27,350 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 \$18,000 (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 \$12,300 were imposed by the LCRO and orders made to reduce fees totalling \$2,921 (this includes orders modified by the LCRO).

Applications for review to be completed

As at 30 June 2022, 181 applications for review were active, compared to 153 at the end of the previous reporting period.

Of the reviews pending:

- 131 were lodged in the last 12 months
- 50 were lodged prior to July 2021.

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 4 such complaints forwarded to the LCRO. One was in relation to the NZSoC and the remaining 3 related to the NZLS Complaints Service. 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 2021/22 reporting year was \$ 149.50 (incl. GST).

Revenue Received

- LCRO filing fees: \$10,870 (excl. GST)
- LCRO levies: \$ 1,752,114 (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 2022/23 has been set at \$120 (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.