

# Complaints about Judicial Conduct

*Issued by the Judicial  
Conduct Commissioner*

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Judicial Conduct Commissioner  
Office of the Judicial Conduct Commissioner  
PO Box 2661  
Wellington

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## COMPLAINING ABOUT THE CONDUCT OF A JUDGE

This booklet sets out how you can make a complaint about a Judge's conduct. The booklet replaces an earlier publication called *Judicial Complaints Process* and explains the process outlined in the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004.

The Act provides a way for people to complain about the conduct of a Judge and to have those complaints assessed. An independent Judicial Conduct Commissioner receives complaints, conducts preliminary investigations and decides what further actions, if any, are to be taken.

## THE JUDICIAL COMPLAINTS PROCESS

If you would like to make a complaint about the conduct of a Judge you should write to the Judicial Conduct Commissioner. All complaints about the conduct of a Judge are to be sent to the Commissioner in the first instance.

The process is intended to help maintain public confidence in the Judicial system, and to protect its impartiality, integrity and independence.

Anyone can complain about a Judge, but complaints may only be made about the conduct of a Judge, whether inside or outside court. You cannot use this process to complain about a decision a Judge has made. If you do not agree with a Judge's decision, in most cases it can be reviewed by another judicial authority or appealed to a higher court.

When considering a Judge's conduct, you should be aware that it is sometimes necessary for Judges to be assertive in their manner. Judges must manage the court so that the proceedings are dealt with efficiently and effectively, without undue delay. If you feel that a Judge has dealt with you too briefly, it may be for this reason.

Complaining about a Judge is a serious matter. While Parliament makes laws, Judges interpret and apply laws to people who appear in court. Judges must be independent of Government. They have protection for anything they do while performing their duties so that they are able to make decisions which are right in law and fairly arrived at, without being influenced by any other factors.

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Before making a complaint you may find it helpful to talk to a lawyer or your nearest Community Law Centre. They can outline various options, such as whether you should appeal a Judge's decision or ask for a judicial review, rather than make a complaint.

Judges are not responsible for the conduct of court officials such as registrars and court managers, or lawyers. Complaints about the behaviour of court staff or about court facilities should be made in writing to the Secretary for Justice, PO Box 180, Wellington. Complaints about the behaviour of lawyers should be directed to your District Law Society.

### *Making a complaint*

A complaint has to be made in writing to the Judicial Conduct Commissioner at the following address:

Judicial Conduct Commissioner  
Office of the Judicial Conduct Commissioner  
PO Box 2661  
Wellington

Your written complaint has to:

- identify the Judge you are complaining about;
- identify yourself; and
- state what your complaint is about.

The Commissioner will give reasonable assistance to enable you to complete the above steps.

The Commissioner will have to dismiss your complaint if it does not include all of the above information.

The Commissioner will confirm in writing that he or she has received your complaint. The Judge you are complaining about may also be notified and may receive a copy of your complaint.

Because complaining about the conduct of a Judge is so serious the Commissioner may ask that you complete a statutory declaration about your complaint. Refusal to do so will result in your complaint being dismissed. The Commissioner will give reasonable assistance to enable you to complete a statutory declaration if required.

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### *Preliminary examination*

The law requires the Commissioner to conduct a preliminary examination of the complaint. During the examination, and in accordance with the principles of natural justice, the Commissioner may make any enquiries and look at any relevant court documents. At the conclusion of the preliminary examination, the Commissioner must take one of the following steps:

- dismiss the complaint (section 16);
- refer the complaint to the Head of Bench (section 17);
- recommend that the Attorney-General appoint a Judicial Conduct Panel to inquire into any matter concerning the conduct of the Judge concerned (section 18).

In some cases a complaint may be deferred (e.g. if the complaint relates to matters currently being dealt with by a court).

### **DISMISSING A COMPLAINT**

The Commissioner must dismiss a complaint if:

- the complaint is not within the Commissioner's jurisdiction;
- the complaint has no bearing on judicial functions or judicial duties;
- the complaint is frivolous, vexatious, or not in good faith;
- the subject matter of the complaint is trivial;
- the complaint is about a judicial decision, or other judicial function, that is or was subject to a right of appeal or right to apply for judicial review;
- the person who is the subject of the complaint is no longer a Judge;
- the subject matter of the complaint was considered before the commencement of the Act by the Head of Bench or the Judicial Complaints Lay Observer; or
- the Commissioner has previously considered the subject matter of the complaint, and there are no grounds to justify referring the complaint to a Head of Bench, or recommending that the Attorney-General establish a Judicial Conduct Panel.

When the Commissioner dismisses a complaint he or she will write to both you and the Judge to explain why.

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## REFERRING A COMPLAINT TO A HEAD OF BENCH

The Commissioner must refer complaints to a Head of Bench if the complaint has not been dismissed or a Judicial Conduct Panel is not recommended. When the Commissioner refers a complaint to a Head of Bench, the Commissioner will advise both you and the Judge. The Commissioner will refer the complaint to the Head of Bench responsible for the court the Judge complained about currently sits on.

The Judiciary in 1999 set up an internal complaints process and this process continues to apply to deal with complaints that would not justify a Judge's removal from office.

This is a voluntary process, because each Judge is independent from all other Judges. In general, Judges are accountable through the public nature of their work and the requirement that they give reasons for their decisions. The immunity from direct discipline exists to ensure that justice is administered impartially. Where complaints are about the outcome of a case, someone who is affected and is dissatisfied with the outcome will generally have rights of appeal or review. A complaint about the outcome of a case cannot be considered under the complaints process. If any misconduct of the Judge could be addressed on appeal or review, a complaint will not generally be accepted about the Judge's conduct until those opportunities have been taken. If the Commissioner refers a complaint to the Head of Bench, the Commissioner will advise you and the Judge who is the subject of the complaint that this has happened.

### *Action on complaint*

For complaints of substance, the Head of Bench will determine how to deal with the matter appropriately. The Head of Bench will consider responses such as asking the Judge to apologise to the complainant, or by offering the Judge appropriate assistance to avoid the inappropriate conduct happening again.

If you are not satisfied with the response from either the Head of Bench or the Judge concerned you may write to the Judicial Complaints Lay Observer. The Lay Observer is an entirely separate office from the Judicial Conduct Commissioner.

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### *Judicial Complaints Lay Observer*

The role of the Judicial Complaints Lay Observer is to consider the complaint and the way it was handled by the Judiciary and to then decide whether the matter should be reconsidered by the Head of Bench. The Judicial Complaints Lay Observer has the power to review the complaint, the way it was processed, any response from the Judge and any other matters that may be relevant.

If the Judicial Complaints Lay Observer considers that a decision by the Head of Bench not to pursue the complaint should be reviewed, he or she may request that the Head of Bench reconsider the complaint.

Both the consideration of the complaint, and any request to reconsider, will be in confidence. The Judicial Complaints Lay Observer will inform you whether or not a request for reconsideration has been made. The Head of Bench may then reconsider whether the complaint has substance.

### *Time limit on seeking a review by the Lay Observer*

All requests for a review of the decision made by a Head of Bench in regard to any complaint against a Judge must be referred to the Judicial Complaints Lay Observer within six months from the date that the Head of Bench decided that a complaint did not have substance.

### *Contacting the Judicial Complaints Lay Observer*

All communications with the Judicial Complaints Lay Observer must be in writing. You can write to the Judicial Complaints Lay Observer at the following address:

The Judicial Complaints Lay Observer  
Office of the Judicial Complaints Lay Observer  
PO Box 2538  
Wellington

## **RECOMMENDING A JUDICIAL CONDUCT PANEL**

The Commissioner may recommend to the Attorney-General that a Judicial Conduct Panel be appointed to inquire further into the complaint. The Commissioner will recommend a Panel be appointed if the conduct complained of may warrant consideration of removal of the Judge. The Panel may recommend that the Judge be removed from office.

The Commissioner has to write to both you and the Judge with reasons for the recommendation that a Panel be convened.

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The Attorney-General then consults the Chief Justice about choosing the three members of the Panel, which must include at least one Judge or retired Judge, and one lay person. The Panel may also include a senior barrister or solicitor.

The job of the Panel is to inquire further into the conduct of the Judge. The Panel has the same powers as a Commission of Inquiry and is required to act according to the principles of natural justice.

The Panel will typically hold hearings in public, although part or all of a hearing may be held in private to protect your privacy, the Judge's privacy, or the public interest. The Panel also has the power to restrict publication of any documents that are part of the hearing, or any information about the hearing.

The Attorney-General will appoint a special counsel to present the case against the Judge. The Judge being complained about may appear at the hearing and be represented by a lawyer. The Panel may also give permission for other people to appear at the hearing and be represented by a lawyer.

Once the hearing is over, the Panel reports to the Attorney-General on the Panel's:

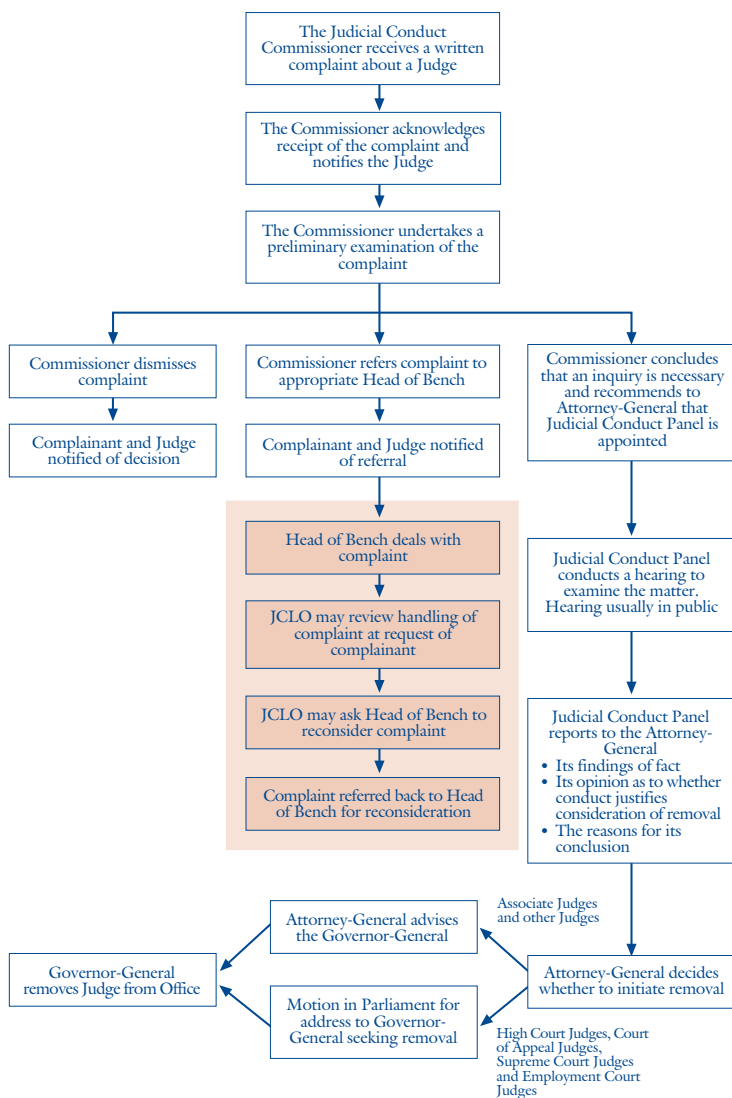
- findings of fact;
- opinion as to whether conduct justifies consideration of removal; and
- reasons for its conclusion.

### *Removing a Judge*

If the Panel recommends removing the Judge, the Attorney-General must decide whether to agree or disagree with the recommendation. If the Attorney-General agrees that the Judge should be removed, then one of two processes occurs, depending on the type of Judge being complained about.

- For Judges of the Supreme Court, Court of Appeal, High Court, and Employment Court, the Attorney-General must address Parliament to propose that it recommend to the Governor-General that the Judge is removed. If Parliament makes that recommendation the Governor-General will then remove the Judge from office.
- For Associate Judges and all other Judges, the Attorney-General advises the Governor-General who can then formally remove the Judge from office.

## OVERVIEW OF JUDICIAL COMPLAINTS PROCESS





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## FREQUENTLY ASKED QUESTIONS

What if I complain directly to the Head of Bench or the Judge instead of to the Commissioner?

The Head of Bench will forward any complaint concerning the conduct of a Judge to the Commissioner.

Why is there both a Judicial Conduct Commissioner and a Judicial Complaints Lay Observer?

The Judicial Conduct Commissioner is part of the statutory complaints process. The Judicial Complaints Lay Observer is a separate office that deals with the way the Head of Bench and the Judge handle a complaint in terms of the voluntary judicial complaints process.

What happens if my complaint is against the Head of Bench?

The Chief Justice is responsible for complaints made against the President of the Court of Appeal, Chief High Court Judge, Chief Judge of the Employment Court, Chief District Court Judge and Chief Judge of the Māori Land Court.

The Chief District Court Judge is responsible for complaints made against the Principal Family Court Judge, Principal Youth Court Judge and Principal Environment Court Judge.

The Attorney-General is responsible for complaints made against the Chief Justice.

What is the role of Judges?

Judges are members of the New Zealand Judiciary, which is an independent branch of government. The two other branches are the Executive and the Legislature (Parliament).

The Judge's role is to apply the law to every case that comes before the court. Judges do not just act in accordance with the law set down by Parliament – they also develop law. This includes interpreting the meaning of legislation passed by Parliament.

It is important that political or other pressures do not influence Judges when they are making decisions in individual cases, otherwise the integrity of the justice system would be undermined. There are a number of mechanisms in place that help to protect Judges' independence, such as permanent tenure and salary protection.

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Judicial immunity is another protection for Judges. This is a protection given to members of the Judiciary, meaning they cannot be sued for actions that are performed in their judicial capacity. Judges can therefore make the best decisions on the cases before them, without interference or fear of adverse consequences to themselves.

If the decisions of a Judge result in negative or unfair consequences appeal and review rights are available.

### Who are Judges accountable to?

Judges are accountable mainly through the appeal process and public scrutiny. They are not answerable for their decisions to any superior authority, nor are they accountable in the same way as, for example, Ministers are to Parliament.

This is because Judges have to be independent, so that the justice system will be impartial. To do their job effectively, however, Judges must have the confidence of the public. This means that although Judges do not have to have public support for everything they do, the public must have confidence in their honesty and integrity, and in the impartiality, consistency and fairness of their decisions.

### How do Judges maintain public confidence?

There are a number of ways to ensure that Judges keep the confidence of the public in New Zealand. These are:

- an appointment process that aims to choose only the best people to be Judges;
- ongoing education for Judges;
- public scrutiny through open justice; and
- appeals and judicial review.

### *Appointments Process*

Great care is taken to make sure that everyone who becomes a Judge is suitable to hold that office, given its constitutional significance. New Judges are sought through advertisements and/or getting nominations from a range of people and agencies. Applicants have to hold legal qualifications, have been a barrister or solicitor for at least seven years, and have a reputation for honesty, integrity, impartiality and good judgement.

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The Governor-General generally appoints all Judges, in most cases on the advice of the Attorney-General. There are two exceptions. First, Māori Land Court Judges are appointed on the advice of the Minister of Māori Affairs. Second, the Governor-General takes the advice of the Prime Minister when appointing the Chief Justice. The final recommendations for appointment are made only after an extensive consultation process.

More information about the appointment of Judges is available from the Attorney-General's Judicial Appointments Unit. The Unit's contact details are:

The Judicial Appointments Officer  
The Attorney-General's Judicial Appointments Unit  
PO Box 280  
Wellington  
Telephone: 04 473 3890 or 0800 473 389  
Facsimile: 04 473 3891

### *Ongoing Education*

Judges get ongoing education from the Institute of Judicial Studies. Further training helps Judges maintain and enhance the quality of their decisions and keeps them up to date on issues they deal with.

### *Open Justice*

Judges do their work in public and have to give reasons for their decisions. Most court hearings are open to the public except some cases that are sensitive and confidential. This public scrutiny is a check on the conduct of Judges. Because Judges' decisions are published, their reasoning is open to further scrutiny and professional criticism in the media and specialist legal journals.

### *Appeal and Review*

Judges are accountable because their decisions are open to appeal and review. If a Judge has made an error in law, or misinterpreted the facts in a case, then it is possible to appeal. Every decision a Judge makes can be appealed, except for the decisions made by a final appeal court, such as the Supreme Court.

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### What are the three branches of Government?

The government in New Zealand is made up of three separate branches, or parts: the Legislature; the Executive; and the Judiciary.

The Legislature (Parliament) is made up of the Head of State of New Zealand (Queen Elizabeth II) represented by the Governor-General and all elected Members of Parliament, or MPs. Parliament makes law by considering, debating and voting on Bills introduced to the House. When a majority of MPs support a Bill, and the Governor-General assents, it becomes an Act (or law).

The Executive includes Cabinet Ministers and all government departments. The Executive makes decisions on policy and legislative proposals that may become Bills to be considered by Parliament. The Executive also carries out policy decisions and enforces the law.

The Judiciary is made up of Judges. As mentioned earlier, Judges interpret and apply the law, as well as develop it.

### Why are there three branches of Government?

Government is divided into three branches so that all the power is not held by any one person or group. This ‘separation of powers’ is a fundamental principle of our democratic government.

For the system to work, Judges in particular have to make independent decisions that are free from direction and influence by the other branches.