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**SIXTEENTH  
ANNUAL REPORT**

**2010 – 2011**

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**ONTARIO  
JUDICIAL COUNCIL**

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ISSN 1206-467X



*The Honourable Warren K. Winkler*

CHIEF JUSTICE OF ONTARIO

PRESIDENT OF THE COURT OF APPEAL  
FOR ONTARIO

Co-Chair, Ontario Judicial Council



*The Honourable Annemarie E. Bonkalo*

CHIEF JUSTICE  
ONTARIO COURT OF JUSTICE

Co-Chair, Ontario Judicial Council



ONTARIO JUDICIAL COUNCIL

March 30, 2012

The Honourable John Gerretson  
Attorney General for the Province of Ontario  
720 Bay Street, 11th Floor  
Toronto, Ontario  
M5G 2K1

Dear Minister:

It is our pleasure to submit the Annual Report of the Ontario Judicial Council concerning its sixteenth year of operation, in accordance with subsection 51(6) of the *Courts of Justice Act*. The period of time covered by this Annual Report is from April 1, 2010 to March 31, 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'W. Winkler'.

Warren K. Winkler  
Chief Justice of Ontario  
President of the Court of Appeal for Ontario

A handwritten signature in black ink, appearing to read 'Annemarie E. Bonkalo'.

Annemarie E. Bonkalo  
Chief Justice  
Ontario Court of Justice



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## INTRODUCTION

The period of time covered by this Annual Report is from April 1, 2010 to March 31, 2011.

The Ontario Judicial Council investigates complaints made by the public about conduct of provincially-appointed judges and masters. In addition, it approves the continuing education plan for provincial judges on an annual basis. The Council has approved criteria for continuation in office and standards of conduct developed by the Chief Justice of the Ontario Court of Justice which are called the *Principles of Judicial Office*. The Judicial Council may make an order to accommodate the needs of a judge who, because of a disability, is unable to perform the duties of judicial office. Such an accommodation order may be made as a result of a complaint (if the disability was a factor in a complaint) or on the application of the judge in question. Although the Judicial Council itself is not directly involved in the appointment of provincial judges to the bench, a member of the Judicial Council serves on the provincial Judicial Appointments Advisory Committee.

The Ontario Judicial Council had jurisdiction over approximately 321 provincially-appointed judges, including full-time and *per diem* judges, and two masters during the period of time covered by this Annual Report. Most of the judicial officers whose conduct is under the jurisdiction of the Ontario Judicial Council preside over proceedings of the Ontario Court of Justice. The Ontario Court of Justice is the busiest trial court in Ontario, which is the province in Canada with the largest population. In 2011, the population was 13,373. In an average year, judges of the Court deal with 600,000 adult and youth criminal charges and over 27,000 new family law proceedings. The Court holds sittings at approximately 200 locations across Ontario, ranging from large courthouses in cities to fly-in locations in northern Ontario.

The Ontario Judicial Council received 31 complaints in its sixteenth year of operation, as well as carrying forward 22 complaint files from previous years. Of these 53 complaints, 26 files were completed and closed before March 31, 2011. Twenty-seven complaints remained open to be carried over into the seventeenth year of operation. Information about the 26 files that were completed and closed is included in this Report.

We invite you to find out more about the Council by reading this Annual Report, and by visiting its website at [www.ontariocourts.on.ca/ojc/en/](http://www.ontariocourts.on.ca/ojc/en/). On the website, you will find the Council's current policies and procedures; updates about any public hearings; the *Principles of Judicial Office*; the Education Plan; and links to the governing legislation.

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## 1. COMPOSITION AND TERMS OF APPOINTMENT

The Ontario Judicial Council includes:

- ◆ the Chief Justice of Ontario (or designate from the Court of Appeal)
- ◆ the Chief Justice of the Ontario Court of Justice (or designate from the Ontario Court of Justice)
- ◆ the Associate Chief Justice of the Ontario Court of Justice
- ◆ a Regional Senior Judge of the Ontario Court of Justice appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General
- ◆ two judges of the Ontario Court of Justice appointed by the Chief Justice of the Ontario Court of Justice
- ◆ the Treasurer of The Law Society of Upper Canada or another bencher of the Law Society who is a lawyer, designated by the Treasurer
- ◆ a lawyer who is not a bencher of The Law Society of Upper Canada, appointed by the Law Society
- ◆ four persons, neither judges nor lawyers, who are appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General

The Chief Justice of Ontario or another judge of the Court of Appeal designated by the Chief Justice chairs all proceedings dealing with complaints against particular judges that deal with applications to accommodate a judge's needs resulting from a disability or requests for continuation in office by a Chief Justice or an Associate Chief Justice. The Chief Justice of the Ontario Court of Justice, or another judge of that Court designated by the Chief Justice, chairs all other meetings including review panel meetings.

The judges appointed by the Chief Justice, the lawyer appointed by the Law Society of Upper Canada, and the community members appointed by the Lieutenant Governor hold office for four year terms and may not be re-appointed. In the appointment of these members to the Council, the importance of reflecting Ontario's linguistic duality and the diversity of its population and ensuring overall gender balance on the Council is recognized.



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## 2. MEMBERS – REGULAR

The membership of the Ontario Judicial Council in its sixteenth year of operation (April 1, 2010 to March 31, 2011) was as follows:

### *Judicial Members:*

#### CHIEF JUSTICE OF ONTARIO

The Honourable Warren K. Winkler ..... (Toronto)  
*Co-Chair*

#### CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

The Honourable Annemarie E. Bonkalo ..... (Toronto)  
*Co-Chair*

#### ASSOCIATE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

The Honourable Peter D. Griffiths ..... (Ottawa/Toronto)

#### REGIONAL SENIOR JUSTICE

The Honourable Robert G. Bigelow ..... (Toronto)

#### TWO JUDGES APPOINTED BY THE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE:

The Honourable Justice Timothy R. Lipson ..... (Toronto)

The Honourable Justice Eileen S. Martin..... (Welland)



**Lawyer Members:**

TREASURER OF THE LAW SOCIETY OF UPPER CANADA

Mr. W. A. Derry Millar, Weir Foulds LLP ..... (Toronto)  
(Until June 29, 2010)

Ms. Laurie H. Pawlitz, Torkin Manes.....(Toronto)  
(Effective June 29, 2010)

LAWYER DESIGNATED BY THE TREASURER OF THE LAW SOCIETY OF UPPER CANADA

Mr. W. A. Derry Millar, Weir Foulds LLP ..... (Toronto)  
(Effective July 29, 2010)

LAWYER MEMBER APPOINTED BY THE LAW SOCIETY OF UPPER CANADA:

Ms. Kim Bernhardt, Grant and Bernhardt ..... (Toronto)

**Community Members:**

Mr. William Blake ..... (Ottawa)  
*Retired Police Officer, Ottawa Police Service*

Ms. Delores Lawrence, O. Ont.....(Markham)  
*NHI Nursing and Homemakers Inc.*

Mr. Ray Sharma .....(Toronto)  
*Founder and President XMG Studio Inc.*

**Members – Temporary**

Sections 87 and 87.1 of the *Courts of Justice Act* give the Ontario Judicial Council jurisdiction over complaints made against every person who was a master of the Supreme Court prior to September 1, 1990 and every provincial judge who was assigned to the Provincial Court (Civil Division) prior to September 1, 1990. When the Ontario Judicial Council deals with a complaint against a master or a provincial judge of the former Civil Division, the judge member of the complaint subcommittee is replaced by a temporary member appointed by the Chief Justice of Superior Court of Justice – either a master or a provincial judge who presides in “Small Claims Court”, as the case may be.



During the period of time covered by this report, the following individuals served as temporary members of the Ontario Judicial Council to deal with any complaints against these provincially-appointed judges and masters:

**Masters**

- ◆ Master Rick B. Peterson  
(Superior Court of Justice)
- ◆ Master David H. Sandler  
(Superior Court of Justice)

**Judges**

- ◆ The Honourable Mr. Justice M. Don Godfrey  
(Superior Court of Justice)
- ◆ The Honourable Madam Justice Pamela Thomson  
(Superior Court of Justice)

Subsection 49(3) of the *Courts of Justice Act* permits the Chief Justice of the Ontario Court of Justice to appoint a provincial judge to be a temporary member of the Ontario Judicial Council to meet the quorum requirements of the legislation with respect to Judicial Council meetings, review panels and hearing panels. During the period covered by this report, the following judges of the Ontario Court of Justice were appointed by the Chief Justice to serve as temporary members of the Ontario Judicial Council when required:

- The Honourable Justice Jeff Casey ..... (Toronto)
- The Honourable Justice Jean-Gilles Lebel ..... (North Bay)
- The Honourable Justice Claude H. Paris ..... (Toronto)

**3. ADMINISTRATIVE INFORMATION**

Separate office space adjacent to the Office of the Chief Justice in downtown Toronto is utilized by both the Ontario Judicial Council and the Justices of the Peace Review Council. The proximity of the Councils’ office to the Office of the Chief Justice permits both Councils to make use of financial, human resources and technology support staff, as needed, and computer systems without the need of acquiring a large support staff.

Councils’ offices are used primarily for meetings of both Councils and their members. Each Council has a separate phone and fax number and its own stationery. Each has a toll-free number for the use of members of the public across the province of Ontario and a toll-free number for persons using TTY/teletypewriter machines.



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In the sixteenth year of operation, the staff of the Ontario Judicial Council and the Justices of the Peace Review Council consisted of a registrar, two assistant registrars and a secretary:

Ms. Marilyn E. King, LL.B. – *Registrar*

Ms. Ana M. Brigido – *Assistant Registrar*

Mr. Thomas A. Glassford – *Assistant Registrar*

Ms. Janice C. Cheong – *Administrative Secretary*

#### **4. FUNCTIONS OF THE JUDICIAL COUNCIL**

The *Courts of Justice Act* provides that the functions of the Judicial Council are:

- ◆ to consider applications under section 45 for the accommodation of needs;
- ◆ to establish complaint subcommittees from amongst its members to receive and investigate complaints against judges, and report to the Judicial Council;
- ◆ to establish review panels to consider every complaint referred by the complaint subcommittees and decide upon dispositions under section 51.4(18);
- ◆ to hold hearings under section 51.6 when hearings are ordered by review panels pursuant to section 51.4(18)
- ◆ to review and approve standards of conduct;
- ◆ to consider continuing education plans; and,
- ◆ to consider requests by the Chief Justice or the Associate Chief Justices to continue in office beyond age sixty-five.

The Judicial Council does not have the power to interfere with or change a decision made by a judge. If a person believes that a judge made an error in assessing evidence or in making a decision, the proper way to proceed is through other legal remedies, such as an appeal.

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## 5. EDUCATION PLAN

The Chief Justice of the Ontario Court of Justice is required by section 51.10 of the *Courts of Justice Act* to implement and make public a plan for the continuing judicial education of provincial judges and the education plan must be approved by the Judicial Council, as required by subsection 51.10(1). The continuing education plan was developed by the Chief Justice in conjunction with the Education Secretariat. The most recent continuing education plan was approved by the Judicial Council on March 8, 2011. A copy is included in Appendix B of this Report and can be found on the Council's website at [www.ontariocourts.on.ca/ojc/en/](http://www.ontariocourts.on.ca/ojc/en/).

## 6. COMMUNICATIONS

The website of the Ontario Judicial Council continues to include information regarding the Council, as well as information about any upcoming hearings. Copies of “Public Hearings Decisions” for public hearings are posted on the website when released and all of the publicly available Annual Reports are included in their entirety.

A brochure to inform the public about the process to make complaints about judges and justices of the peace is available in hard copy at courthouses or by contacting the Council's office, and electronically on the website at [www.ontariocourts.on.ca/](http://www.ontariocourts.on.ca/). The brochure, “*Do you have a complaint?*” provides information on what a judge does, on how to tell whether the presiding judicial officer is a judge or a justice of the peace, and on how to make a complaint about conduct.

## 7. PRINCIPLES OF JUDICIAL OFFICE

The Chief Justice of the Ontario Court of Justice was empowered to establish “standards of conduct for provincial judges” by section 51.9 of the *Courts of Justice Act*. A document entitled, the *Principles of Judicial Office* was prepared by the Judicial Conduct Subcommittee of the Chief Judge's Executive Committee in consultation with the Judges' Association and the judges of the court. The document was then submitted to the Ontario Judicial Council for its review and approval in the second year of Council's operation, as required by subs. 51.9(1) of the *Courts of Justice Act*. The *Principles of Judicial Office* is a guide to assist judges in addressing ethical and professional dilemmas. It may also serve in assisting the public to understand the reasonable expectations which the public may have of judges in the performance of judicial duties and in the conduct of judges' personal lives. A copy of the *Principles of Judicial Office* is attached as Appendix “C”.

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## 8. JUDICIAL APPOINTMENTS ADVISORY COMMITTEE

A member of the Ontario Judicial Council serves on the provincial Judicial Appointments Advisory Committee as its representative. The Honourable Justice Eileen Martin has been appointed by the Judicial Council to act as its representative on the Judicial Appointments Advisory Committee until August 9, 2013.

## 9. POLICY ON ACCESSIBILITY AND ACCOMMODATION – ACCESS TO SERVICES

Having considered the customer service standard requirements that came into effect under the *Accessibility for Ontarians with Disabilities Act* (AODA) on January 1, 2010, the Council established an Accessibility and Accommodations of Disabilities Policy – Access to Services. This Policy reflects the Council’s commitment to providing accommodation for persons who have needs related to disability to ensure access for them to the Council’s services, unless to do so would cause undue hardship to the person responsible for accommodating. The policy sets out a process for persons to inform the Registrar about situations where accommodation is needed in order to access the complaints process. The policy is included in this Report at Appendix D and is also posted on the Council’s website under the link for “Policies and Procedure” at <http://www.ontariocourts.on.ca/ojc/en/policy/accessibility.htm>. Staff in the Council’s office also completed training on customer service and accessibility.

## 10. THE COMPLAINTS PROCEDURE

Any person may make a complaint to the Judicial Council about the **conduct** of a judge. Complaints must be made in writing and signed by the complainant. The governing legislation and the principles of natural justice do not provide for the Judicial Council to act on anonymous complaints or to initiate inquiries into the conduct of a judicial officer. Rather, an investigation conducted by the Judicial Council must be in response to specific allegations submitted by a complainant. All correspondence is reviewed to determine whether or not the complaint is within the jurisdiction of the Judicial Council. If an individual is complaining about his/her lawyer, a Crown Attorney or another office, the complainant is referred to the appropriate office of authorities to make the complaints.

In cases where the complaint is within the jurisdiction of the Judicial Council to consider, a complaint file is opened and a letter of acknowledgement is sent to the complainant, usually within a week of his or her letter being received by the Council. If the complainant expresses



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dissatisfaction with a **decision** that has been made by a judge, the letter of acknowledgment advises the complainant that the Judicial Council has no power to change a decision made by a judge. In such cases, the complainant is advised that he or she may wish to consult with legal counsel to determine what, if any, legal remedies may be available.

A brief outline of the complaints process follows below. A more detailed outline of the Judicial Council's procedures can be found on the Judicial Council's website at: [www.ontariocourts.on.ca/ojc/en/](http://www.ontariocourts.on.ca/ojc/en/).

### *A) Investigation and Review of Complaints*

The complaint is assigned to a complaint subcommittee for review and investigation. A complaint subcommittee of Judicial Council members, comprised of a provincially-appointed judicial officer (a judge, other than the Chief Justice of the Ontario Court of Justice, or a Master if the complaint relates to conduct of a Master) and a community member, is assigned to examine each complaint made to the Council. Complaints are generally not assigned to members from the same region where the judge who is the subject of the complaint presides. This avoids any risk of or perception of bias or conflict of interest between a member of the Council and the judge.

Subsection 51.4(6) of the *Courts of Justice Act* states that the investigation must be conducted in private.

Subsection 51.4(3) empowers the complaint subcommittee to dismiss complaints which are either outside of the jurisdiction of the Council (e.g., it is a complaint about how a judge exercises his or her discretion, such as findings of credibility, or disagreement with the decision of a judge) or which, in the opinion of the complaint subcommittee, are frivolous or an abuse of process. All other complaints are investigated further by the complaint subcommittee.

Frequently, the subcommittee orders and reviews the transcript of the proceedings. The subcommittee may also order and listen to the audio recording. In some cases, the subcommittee may decide to conduct further investigation, such as interviewing witnesses. Under section 51.4(5), the subcommittee may retain external persons, including counsel, to assist it in the investigation by conducting interviews with witnesses.

The subcommittee may decide to request a response to the complaint from the judge. If a response is requested, a copy of the complaint, the transcript (if any), and the relevant materials considered by the subcommittee will be provided to the judge, together with a letter from the Judicial Council inviting a response. The judge may seek independent legal advice to provide him or her with assistance in responding to the Council.



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Once the investigation is completed, under subsection 51.4(13) of the *Act*, the complaint subcommittee will report to a review panel of the Judicial Council. The subcommittee may recommend that the complaint be dismissed, that it be referred to the Chief Justice of the Ontario Court of Justice for discussion with the judge about his/her conduct, that it be referred for mediation, or that a hearing be held under section 51.6.

### ***B) Dispositions of Review Panels***

Review panels are composed of two provincial judges (other than the Chief Justice of the Ontario Court of Justice), a lawyer and a community member. The Council (or a review panel thereof) will review the complaint, the report of the investigating complaint subcommittee and all materials that are recommended by the subcommittee. At this stage of the process, only the two complaint subcommittee members are aware of the identity of the complainant and the judge who is the subject of the complaint. Complaint subcommittee members who participated in the investigation of the complaint do not sit on the review panel or, if a hearing is ordered, on the hearing panel at the subsequent hearing. Similarly, review panel members who dealt with a complaint's review or referral will not participate in a hearing of the complaint, if a hearing is ordered. By the end of the investigation and review process, all decisions regarding complaints made to the Judicial Council will have been considered and reviewed by a total of at least six members of Council – two members of the complaint subcommittee and four members of the review panel – including two community members and one lawyer.

Under subsection 51.4(18) the Council (or a review panel thereof) may decide upon the following dispositions:

- ◆ dismiss the complaint;
- ◆ refer it to the Chief Justice of the Ontario Court of Justice;
- ◆ refer it to a mediator; or
- ◆ order that a hearing into the complaint be held.

A complaint may be dismissed where, in the opinion of the review panel:

- ◆ it is frivolous or an abuse of process;
- ◆ it falls outside of the Judicial Council's jurisdiction because it is a complaint about how a judge exercises his or her judicial discretion (the proper way to proceed in such cases is through other legal remedies in the courts);
- ◆ it does not include an allegation of judicial misconduct;

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- ♦ the allegation is not proven; or,
  - ♦ the misconduct does not rise to the level of misconduct that requires further action on the part of the Council.

A mediation process may be established by the Council and only complaints which are appropriate (given the nature of the allegations) will be referred to mediation. Under subsection 51.5(3) of the *Courts of Justice Act*, complaints of conduct may not be referred for mediation in the following circumstances:

- ♦ where there is a significant power imbalance between the complainant and the judge, or there is such a significant disparity between the complainant's and the judge's accounts of the event with which the complaint is concerned that mediation would be unworkable;
- ♦ where the complaint involves an allegation of sexual misconduct or an allegation of discrimination or harassment because of a prohibited ground of discrimination or harassment referred to in any provision of the *Human Rights Code*; or
- ♦ where the public interest requires a hearing of the complaint.

Provisions for temporary members have been made in order to ensure that a quorum of the Council is available to fulfill the requirements of the complaints process, including conducting a hearing into a complaint if a hearing has been ordered.

Proceedings, other than hearings to consider complaints against specific judges, are not required to be held in public.

### ***C) Hearings Under Section 51.6***

Hearing panels are made up of at least two of the remaining six members of Council who have not been involved in the process up to that point. At least one member of a hearing panel is a community member. The Chief Justice of Ontario, or his designate from the Court of Appeal, chairs the hearing panel.

A hearing into a complaint is public unless the Council determines, in accordance with criteria established under subsection 51.1(1) of the *Courts of Justice Act*, that exceptional circumstances exist and the desirability of holding an open hearing is outweighed by the desirability of maintaining confidentiality, in which case the Council may hold all or part of a hearing in private. In certain circumstances, for example, where a complaint involves allegations of sexual misconduct or sexual harassment, the Council also has the power to prohibit publication of information that would disclose the identity of a complainant or a witness.



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The *Statutory Powers Procedure Act*, with some exceptions, applies to hearings into complaints.

The Judicial Council engages legal counsel for the purposes of preparing and presenting the case against the judge. The legal counsel operates independently of the Judicial Council. The duty of legal counsel retained under this part is not to seek a particular order against a judge, but to see that the complaint against the judge is evaluated fairly and dispassionately to the end of achieving a just result.

The judge has the right to be represented by counsel, or to act on his or her own behalf during the proceeding.

After a hearing, under subsection 51.6(11) the hearing panel of the Council may dismiss the complaint (with or without a finding that it is unfounded) or, if it finds that there has been misconduct by the judge, it may impose one or more of the sanctions set out below or may recommend to the Attorney General that a judge be removed from office.

The sanctions which can be imposed under section 51.6 by the Judicial Council for misconduct, either singly or in combination, are as follows:

- ◆ a warning;
- ◆ a reprimand;
- ◆ an order to the judge to apologize to the complainant or to any other person;
- ◆ an order that the judge take specific measures, such as receiving education or treatment, as a condition of continuing to sit as a judge;
- ◆ suspension, with pay, for any period;
- ◆ suspension, without pay, but with benefits, for up to thirty days.

The hearing panel may also recommend to the Attorney General that the judge should be removed from office. A recommendation by the Council to the Attorney General that the judge be removed from office cannot be combined with any other sanction.

#### ***D) Removal from Office***

A judge may be removed from office only if a hearing panel of the Judicial Council, after a hearing under section 51.6, recommends to the Attorney General that the judge should be removed on the ground that he or she has become incapacitated or disabled from the due execution of his or her office by reason of:

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- ♦ inability, because of a disability, to perform the essential duties of his or her office (if an order to accommodate the judge's needs would not remedy the inability, or could not be made because it would impose undue hardship on the person responsible for meeting those needs, or was made but did not remedy the inability);
  - ♦ conduct that is incompatible with the due execution of his or her office; or,
  - ♦ failure to perform the duties of his or her office.

Only the Lieutenant Governor in Council may act upon the recommendation and remove the judge from office.

## **11. NOTIFICATION OF DISPOSITION**

The Judicial Council communicates its decision to the person who made the complaint and to the judge. A judge may waive notice of the complaint if it is being dismissed and no response was requested from the judge by the Council. In accordance with the Procedures of the Judicial Council, if the Council decides to dismiss the complaint, brief reasons will be provided.

## **12. LEGISLATION**

The official version of the *Courts of Justice Act*, which governs the work of the Ontario Judicial Council is posted on the government's e-laws website at [www.e-laws.gov.on.ca/](http://www.e-laws.gov.on.ca/). A link to the e-laws website is also available on the Judicial Council's website at: [www.ontariocourts.on.ca/ojc/en](http://www.ontariocourts.on.ca/ojc/en).

## **13. COMPENSATION FOR LEGAL COSTS INCURRED**

When the Judicial Council has dealt with a complaint, section 51.7 of the *Courts of Justice Act* makes provision for a judge to request compensation for costs of legal services incurred in connection with the investigation and/or mediation and/or hearing under sections 51.4, 51.5 and 51.6 of the *Act* respectively. Such a request would generally be submitted to the Council after the complaints process has been completed, along with a copy of the statement of account of legal services to support the request.

The Judicial Council must make a recommendation to the Attorney General that a judge be compensated, indicating the amount of compensation. Pursuant to section 51.7(7) of the *Act*, the Council's order for compensation may relate to all or part of the judge's costs for legal



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services and must be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services. The Attorney General is required to pay compensation to the judge if such a recommendation is made.

## **14. SUMMARY OF COMPLAINTS**

The Ontario Judicial Council received 31 complaints in its sixteenth year of operation, as well as carrying forward 22 complaint files from previous years. Of these 53 complaints, 26 files were closed before March 31, 2011. One of the files closed was from the fourteenth year (2008-2009) and 17 were from the fifteenth year (2009-2010) and eight from the sixteenth year (2010-2011).

Of the 26 files that were closed during the period covered by this Report, 16 arose from proceedings under the *Criminal Code*, 5 arose from family court proceedings, three related to the conduct of a judge outside of court, one arose from matters in Small Claims Court, and one related to a *Provincial Offences Act* appeal.

Eleven of the 26 complaint files closed by the Ontario Judicial Council during the period of time covered by this report were dismissed on the basis that they were found to be outside of the jurisdiction of the Council. This occurred if a complainant expressed dissatisfaction with the result of a trial or with a judge's decision, but the complaint contained no allegation of misconduct. While the decisions made by the trial judge in these cases could be appealed, the absence of any alleged misconduct meant that the complaints were outside of the jurisdiction of the Judicial Council.

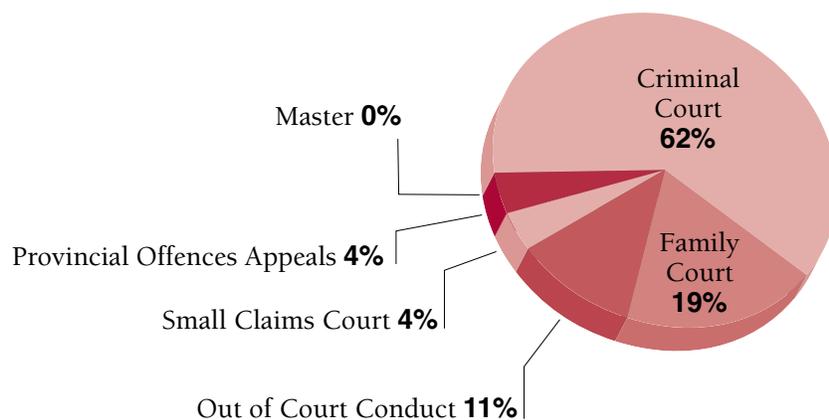
Thirteen of the 26 files closed were dismissed by the Council on the basis that they contained allegations of misconduct that were unfounded or that did not amount to judicial misconduct. The complaints included allegations such as improper behaviour (e.g., rudeness, belligerence, etc.), lack of impartiality, conflict of interest or some other form of bias. The allegations contained in each of these files were reviewed and investigated in each case by a complaint subcommittee before a decision was made.

In one case a judge retired and in one case a judge died. In these cases, the Council lost jurisdiction over the judge. The files were administratively closed.

Twenty-seven complaints remained open to be carried over into the seventeenth year of operation. Of those 27 files, four files were from Year 15 (2009-2010) and 23 were from Year 16 (2010-2011).

## TYPES OF CASES CLOSED IN 2010/11

TYPES OF CASES CLOSED	
Criminal Court	16
Family Court	5
Other – Outside of Court	3
Small Claims Court	1
Provincial Offences Appeal	1
Master	0
<b>TOTAL</b>	<b>26</b>



## DISPOSITIONS IN 2010/2011

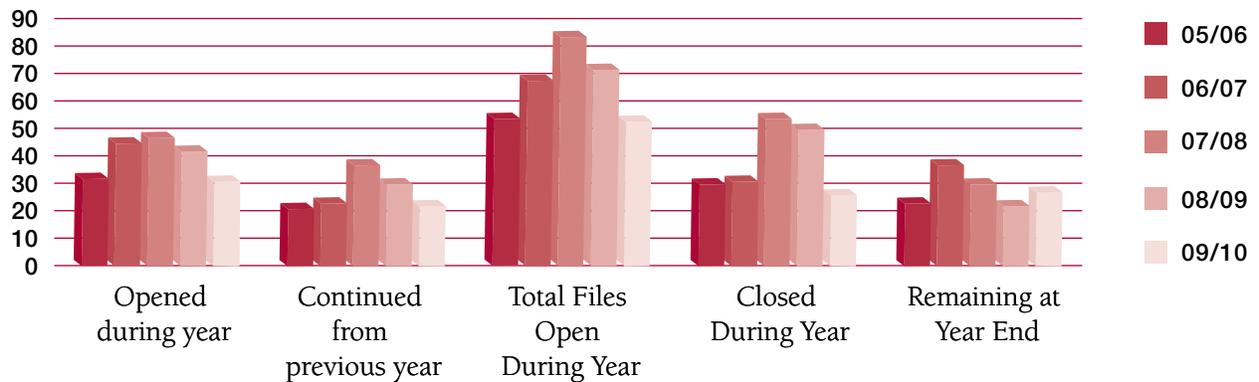
DISPOSITION	NUMBER OF CASES
Dismissed – Out of Jurisdiction	11
Dismissed – unfounded, not judicial misconduct, etc.	13
Loss of Jurisdiction	2
<b>TOTAL</b>	<b>26</b>



## CASELOAD IN FISCAL YEARS

FISCAL YEAR	06/07	07/08	08/09	09/10	10/11
Opened during year	32	45	47	42	31
Continued from previous year	21	23	37	30	22
Total Files Open During Year	54	68	84	72	53
Closed During Year	30	31	54	50	26
Remaining at Year End	23	37	30	22	27

## CASELOAD IN FISCAL YEARS



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**APPENDIX A**

**CASE SUMMARIES**

## APPENDIX A

### Case Summaries

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Files are given a two-digit prefix indicating the year of the Council's operation in which they were opened, followed by a sequential file number and by two digits indicating the calendar year in which the file was opened (i.e., file no. 16-001/10 was the first file opened in the sixteenth year of operation and was opened in calendar year 2010).

Details of each complaint, with identifying information removed as required by the legislation, follow.

#### **CASE NO. 14-021/08**

The complainant father was a party in a child protection matter commenced by Family and Children Services (“the Society”) involving the father, his ex-wife and their children. A temporary order had earlier been made placing the children in the mother's care subject to the supervision of the Society and granting the father supervised access to take place at a Therapeutic Access Center. The Office of the Children's Lawyer had been appointed to represent the children.

The complainant alleged that the judge told him that because he was unrepresented, his oral consent to the court was not of equal value and not believed to be in comparison to that of a lawyer. He claimed that he was treated unfairly and the judge was biased against him because he was unrepresented.

He also claimed that there was a discussion between him and the judge regarding his refusal to sign the Consent unless the judge dealt with the issue that was not on consent. He alleged that the judge agreed to deal with the issue but “lied to him” and proceeded to adjourn the matter after the Consent had been signed. He further alleged that the judge tricked him into signing a document with a false promise.

The subcommittee ordered and reviewed the full transcript of the hearing and submitted a report to a review panel.

The subcommittee reported that the transcript showed that the complainant appeared before the court representing himself. Two motions were to be heard. The first was a motion by the Society seeking an Assessment of the parents and the children with terms and conditions pursuant to section 54 of the *Child and Family Services Act*. The second motion was brought by the father seeking a change in his access terms, the addition of another child to the protection application and other relief. The Office of the Children's Lawyer was not available to attend court but had sent a letter confirming his consent to the Assessment on behalf of the children, and taking no position with respect to the father's motion.

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The subcommittee also reported that the judge made a Consent order with regard to the Assessment after a recess to allow the parties to discuss the issues. He required the complainant to sign the Consent to confirm that he agreed on those issues. The complainant wished to proceed with the argument of his motion related to varying access to the children. After the judge heard that the children's lawyer had not yet seen the Society's file or completed his investigation, the judge elected to adjourn the complainant's motion to a later date in order to hear evidence of the children's views and preferences. He continued the existing access order with the possibility of expanding the father's access depending upon the progress of the therapeutic access.

The review panel reviewed the complaint, the transcript and the complaint subcommittee's report. With respect to the signing of the Consent, the review panel found that the transcript showed that the judge was very careful to explain to the complainant that a Consent would only be accepted if the complainant was prepared to sign it, for the very reason that he was self-represented. The judge did not wish there to be any misunderstanding as to what the complainant was agreeing to, and preferred that he actually sign the Consent rather than simply state his consent on the record. The judge told all of the parties that either the complainant signed the Consent, or there was no consent, and the matter would be argued. In the panel's opinion, the judge was firm but clear that he required the complainant to sign the Consent if he agreed with the terms.

The review panel noted that when parties are represented by counsel, consent is reviewed and explained by the lawyer to them, and often the lawyer will verbally confirm to the court a client's consent to the matter. The panel found that because the complainant was self-represented, the judge correctly required him to sign the consent to illustrate that he understood the significance of the Consent.

The review panel also found that the transcript showed that the judge did not trick the complainant into signing the Consent. Rather, the judge took steps to confirm whether there was consent on the numbered items in the written Consent or whether there was not. The judge stated that after that was clarified "we will get on to the other issues that need to be addressed." The judge then proceeded to deal with the complainant's motion regarding access. However, after preliminary comments from each of the parties present, the judge concluded that he could not proceed to determine these issues until the representative of the Office of the Children's Lawyer had completed his investigation, interviewed the children and could be present to present their views. In his endorsement, the judge clearly stated that he felt it important to be able to ascertain the children's views and preferences on the issue of access. The judge also provided for the possibility of increased access by the complainant prior to the next court date.

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The review panel observed that the complainant did not agree with the judge's reasons for adjourning his motion to a later date. The panel advised that if the complainant disagreed with the judge's decision or with how he assessed the evidence or determined the issues, the proper way for him to proceed was through other legal remedies through the courts, such as an appeal. Such questions of law are not matters within the jurisdiction of the Council.

For the reasons noted, the review panel dismissed this complaint.

#### *CASE NO. 15-005/09*

The complainant appeared, as a paralegal, before the subject judge. He complained about his treatment by the judge in two separate court matters.

In 2007, the complainant appeared before the judge representing an appellant in a Provincial Offences Appeal from a speeding conviction. In the course of the hearing, the judge raised issues with respect to the competence of the complainant based both on his behaviour in that matter and previously.

In 2009, the complainant appeared before the subject judge representing a client on a judicial pre-trial with respect to a charge of impaired driving.

The complainant alleged that the judge:

- 1) Showed overt racial hostility and bias towards him each and every time he appeared before him;
- 2) Purported to nullify the Ontario paralegal legislation;
- 3) Violated his free speech;
- 4) Gave judicial authority to perjury; and,
- 5) Chastised and humiliated the complainant.

The complaint subcommittee ordered and reviewed the transcripts and listened to the audio recording of the proceedings. Following the investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed the complainant's letter, the transcripts and the subcommittee's report. The review panel found:

- 1) The only references to race contained in the record were the references made by the complainant alleging that the police officer involved in the 2007 case had stopped the

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accused because he was black. Both the justice of the peace at trial and the subject judge on the appeal had pointed out that on both the accused's version of events and the police officer's version of events, the police officer would not have had any opportunity to know the race of the accused prior to stopping him. There was nothing in the court record to support any inference of racism or bias by the judge. While the record showed that it was clear that the judge was concerned about the complainant's forensic competence, there was nothing to suggest that the concern had anything to do with his race or bias towards him.

- 2) The complainant seemed to suggest that by indicating that he would inquire into the competence of an agent appearing in his court, the judge was ignoring the amendments to the *Law Society Act* governing the licensing of paralegals. The panel noted that transcript did not support the allegation. Rather, the transcript showed that the judge acknowledged the fact that paralegals are now governed by the Law Society of Upper Canada and pursuant to a licensing arrangement the complainant was not licensed at the time. He also expressed concern about the standards of the complainant, based upon his previous experience with the complainant.
- 3) It was unclear what the complainant was referring to when he alleged a violation of his right to free speech. The panel noted that if the complainant was suggesting that the power of the court to refuse to allow him to appear in his court constituted a violation of his right of free speech that would not be a basis for such a claim. In any event, the panel advised that if the complainant felt that there was a legal argument that his right to free speech had been violated, the proper way for the complainant to proceed would be through other legal remedies.
- 4) With respect to the allegation that the judge gave judicial authority to perjury, the panel noted that both the justice of the peace who heard the trial and the subject judge, who heard the appeal, found that the evidence of the police in the Provincial Offences trial was credible. The panel advised that if the complainant disagreed with how the judge weighed the evidence, the proper way for him to proceed was through other legal remedies. Such matters are outside of the jurisdiction of the Judicial Council.
- 5) While the panel noted that the judge's comments towards the complainant were somewhat blunt, the court record showed that it was clear that the judge was concerned about the complainant's competence.

The review panel found that there was no basis in the record for any of the allegations made by the complainant and dismissed this complaint as unfounded.

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#### *CASE NO. 15-015/09*

The complainant in this matter was a mother who was involved in a custody and access proceeding in which both she and the child's father sought custody of their son. The subject judge presided over the trial of the matter and granted custody to the child's father and access to the mother.

The complainant alleged that the judge ignored her request to have counsel and that as a result she was unable to present her case properly. She further alleged that as a result of the decision of the court and the abusive conduct of her former spouse, she suffered significant emotional harm which had resulted in her needing to seek the assistance of mental health professionals, and had prevented her from pursuing her career goals. She also raised numerous other complaints about the justice system and alleged that her husband abused her and misled the courts for years. She suggested that the Judicial Council should obtain her husband's arrest record and investigate the laying of criminal charges.

The complaint subcommittee reviewed the materials provided by the complainant and obtained copies of the endorsements of the judge in the case, along with a copy of his Reasons for Judgment. The subcommittee attempted to obtain a transcript of the proceedings in which the judge declined to grant the adjournment but Court Services advised that the tape of the proceedings was unavailable. The subcommittee noted that it was likely that the transcript of the proceedings could not be obtained because the proceedings took place ten years prior. Following their investigation, the complaint subcommittee submitted the report to a review panel.

The review panel reviewed the complaint, the judge's endorsement, the judge's Reasons for Judgment and the report from the subcommittee. The panel advised that the judge's endorsement indicated that previous counsel representing the complainant had been removed from the record and the complainant sought an adjournment to seek new counsel. The judge indicated that this would be her third lawyer and he determined that in the circumstances, the child's best interests and the integrity of the administration of justice required that the trial should proceed as scheduled.

The review panel observed that the judge's decision to grant custody to the father was supported by a report from a social worker retained by the Office of the Children's Lawyer who strongly recommended that custody be granted to him. The review panel also noted that the documents showed that the judge also took into account the many tragedies suffered by the complainant in her personal life but was of the view that, on the evidence before him, granting custody to the father was in the child's best interests.

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Following their review, the panel also found that the judge did not ignore the complainant's request for an adjournment to obtain another lawyer. Rather, the judge took the view that, in the circumstances before him where the complainant was seeking an adjournment to retain her third lawyer, the best interests of the child required that the matter proceed. This decision was clearly within his judicial discretion. The panel advised that if the judge made any errors in law or in assessing any of the evidence (and the review panel is not suggesting that he did), the proper way for the complainant to proceed would be through an appeal of the decision. The Judicial Council has no authority to review a decision of a judge.

The review panel also advised that the Council has no legislative authority to commence an investigation of the complainant's ex-husband, as she had requested. If the complainant wished to pursue allegations of criminal behaviour against him, the appropriate authority for her to contact was the police.

For the reasons noted, the review panel dismissed this complaint as there was no evidence of judicial misconduct by the judge.

#### *CASE NO. 15-023/10*

The complainant represented herself in a trial on a charge of assault before the subject judge after he dismissed her application to have the court direct that the Attorney General should pay for a lawyer for her. Following the trial, she was found guilty and was given a suspended sentence and put on probation.

She made numerous allegations in relation to several rulings of the judge that were made during the course of her trial. She also maintained that she was wrongfully convicted. The letter of complaint included allegations that the judge did nothing to ensure that she received a fair trial, including that he:

- 1) Refused the complainant's request to have certain evidence admitted when particular witnesses were still present and then later allowed it to be admitted;
- 2) Released the Crown witnesses at lunch time even though the complainant had reserved the right to further question them, denying her rights to a fair trial and ultimately leading to a wrongful conviction;
- 3) Ignored inconsistencies in the evidence and allowed perjury and corruption on the part of some witnesses, causing obstruction of justice;
- 4) Ignored the testimony of the complainant's daughter;

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- 5) Refused the complainant's *Rowbotham* application to have legal counsel appointed for her;
- 6) Ignored the fact that a Crown witness was coaching another witness;
- 7) Ignored the complainant's submissions about the evidence of other witnesses;
- 8) Overlooked the manner in which the police conducted a criminal record search;
- 9) Allowed the alleged victim to badger and threaten the complainant while the complainant was questioning her;
- 10) Proved his lack of impartiality when he questioned the complainant's twelve year old daughter about whether she goes to Church;
- 11) Based his decision on statements that the complainant says were false; and,
- 12) Refused to allow the complainant to speak at sentencing.

The complaint subcommittee ordered and reviewed the transcripts of the proceedings. Following their investigation, the subcommittee submitted a report to the review panel.

The review panel reviewed the letter of complaint, the transcripts and the subcommittee's report. The review panel reported that the complainant alleged that the judge made errors in how he assessed the evidence and in a number of his rulings during the trial. As well, she alleged that the judge made the wrong decision in finding her guilty. The panel advised that if the judge made any errors in assessing the evidence or determining any of the issues (and the review panel did not suggest that he did), the proper way for the complainant to proceed was through other legal remedies. Such matters are outside of the jurisdiction of the Judicial Council.

Further, the review panel reported that the transcript did not support any of the allegations of the complainant in relation to the conduct of the judge. As well, the panel noted that the transcript showed that while the victim was being questioned by the complainant, they talked over one another and strongly disagreed with one another. There was no evidence of the victim badgering or threatening the complainant, nor any indication that the complainant raised any concerns to the judge about being threatened.

The panel also reported that the transcript did not support the allegation that the judge ignored a witness who was coaching another witness. On the contrary, the transcript showed that the judge took great care with the witnesses. He issued an order that the witnesses should not speak to one another until the matter was finished. The transcript disclosed that the judge also reminded witnesses after they finished testifying that they were not to talk with other witnesses until the case was over.

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While the transcript did show that the judge asked the complainant's daughter whether she and her family go to church, the panel advised that it was part of the judge's inquiry, in accordance with his judicial duties for receiving evidence of a child under the age of 16 pursuant to section 16.1 of the *Canada Evidence Act*, to confirm that the witness understood the duty to tell the truth in order to determine whether she was able to give sworn evidence. The transcript also confirmed that the judge gave the complainant several opportunities to provide her input as to sentence. The complainant indicated that she needed legal advice. The judge adjourned the matter to another date to allow her to seek legal advice. On the return date, when she was asked by the judge for her comments on an appropriate sentence and for information about her background, the complainant refused to go ahead without a lawyer and stated that there were errors of law and suggested that she would appeal the matter.

For all of the above reasons, the review panel dismissed the complaint.

#### **CASE NO. 15-024/09**

The complainant pleaded guilty before the subject judge to a charge of producing a controlled substance contrary to section 7(1) of the *Controlled Drugs and Substances Act*. A search warrant was executed at the complainant's residence. Police seized marijuana plants that the complainant admitted cultivating for his personal use for pain relief from a number of medical problems. The complainant was not licensed to legally possess marijuana. The complainant received a six month conditional sentence and a firearms prohibition order for ten years under section 109 of the *Criminal Code of Canada*.

The complainant alleged that the judge:

- ◆ Violated his right to have cannabis and firearms;
- ◆ Was banking the flow of capital for corporate profiteering;
- ◆ Adjudicated “without my free discussion or negotiation therefore excludes himself without good faith or the presumption of innocence”;
- ◆ Denied the complainant's right to a fair trial with a jury and “obstructed his right to defend an unlawful dismissal with Free Speech” demanding information about his chronic medical conditions;
- ◆ Was “playing with fraud, torts and harm” and “joins himself to acts of war crimes and terror made in May 2003”;

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- ◆ Was an accomplice to “war crimes of the O.P.P., R.C.M.P., National Defence and the Ministry of National Resources thinking he has authority over God to order [the complainant] not to take part in his sacrament of Self preservation”;
- ◆ Had no authority or jurisdiction to make an order that would damage the complainant’s health;
- ◆ Was responsible for the theft of his medication; and,
- ◆ Did not consider the fact that the complainant was wrongfully arrested and kidnapped by the police and taken to jail, thus making [the judge] an accessory to kidnapping.

The complaint subcommittee reviewed the voluminous materials submitted by the complainant and the transcript of his guilty plea and sentencing. Upon completion of their investigation, the subcommittee submitted a report to the review panel.

The review panel reviewed the letter and materials from the complainant, the report of the subcommittee, and the transcript. The panel found that the transcript revealed that the judge conducted a careful plea comprehension inquiry to ensure that the complainant was making an informed and voluntary guilty plea in this case. They noted that the complainant acknowledged that he was aware of the charges he was facing and that he waived his right to have a trial by jury, and elected to be tried by the judge. He attempted to plead guilty “with an explanation”. The complainant gave his explanation which, as his lawyer acknowledged, did not amount to a legal defence. The transcript showed that the judge gave the complainant two further opportunities to choose to plead not guilty and have a trial. The complainant entered the guilty plea. The review panel also noted that the complainant was assisted throughout by his lawyer. There was no dispute as to the allegations. The panel noted that the firearms prohibition order under section 109 was mandatory and was not contested by the lawyer for the complainant during the proceeding.

The review panel further noted that there were three main aspects to the allegations raised by the complainant:

The first aspect concerned the judge’s sentencing decision, particularly the firearms prohibition order under section 109. The panel noted that if the complainant disagreed with the sentence, the proper way for the complainant to proceed was through other legal remedies. Fitness of any sentence is an issue for an appeal court and lies outside of the jurisdiction of the Judicial Council.

The second aspect concerned the complainant’s dissatisfaction with the state of the law with respect to marijuana cultivation and possession for individuals (such as the complainant) who suffered from medical disabilities but were not licensed to grow or possess marijuana.

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The panel observed that the complainant did not mount a constitutional challenge to the law in his case. The panel advised that if the complainant disagreed with the law, the proper way for the complainant to proceed was through other legal remedies. This is a legal issue that lies outside of the jurisdiction of the Judicial Council.

The third aspect of this complaint was the complainant's dissatisfaction with the fact that he was arrested and charged with this offence. The panel noted that the transcript showed that at his trial, the complainant did not contest the search of his residence nor the allegations underlying the charge. The panel advised that if the complainant wished to challenge the lawfulness of his arrest and with being charged, the proper way for the complainant to proceed was through other legal remedies. Issues relating to the arrest and prosecution of the complainant also lie outside of the jurisdiction of the Judicial Council.

The review panel found no evidence of judicial misconduct on the part of the judge during the proceeding and dismissed this complaint.

#### *CASE NO. 15-026/09*

The complainant indicated in his letter to the Judicial Council that he was in court as a friend of the plaintiffs in a Small Claims Court matter and wished to represent them. He was not a lawyer or a licenced paralegal.

The complainant alleged that on a motion before the court, His Honour did not allow him to speak on behalf of the plaintiffs, which the complainant alleged was in contravention of the spirit of common and case law. Further, he alleged that, as a hearing-impaired person, he was denied access to the courts by court staff and the judge. He provided a copy of e-mail exchanges with Court Services staff, in which he corresponded with them about his need for an American Sign language interpreter.

The complainant provided a copy of a portion of a Reply to Notice of Motion that indicated that the proposed method of hearing the motion was by oral arguments by the complainant as a hearing-impaired person with an ASL interpreter. He provided a copy of a document that he stated had been delivered to the lawyer for the defendant in which the complainant made legal arguments.

There was no transcript available in this matter, as settlement conferences are not routinely recorded in Small Claims Court. The investigating complaint subcommittee reviewed all of the materials that were provided by the complainant and asked the judge for a response to the complaint. The subcommittee received and reviewed the judge's response. At the conclusion of their investigation, the complaint subcommittee prepared and submitted a report to a review panel.

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The review panel reviewed the complaint letter and supporting documents, the judge's response to the complaint and the subcommittee's report. The review panel noted that the investigation showed that on the first appearance that gave rise to the complaint, the judge had dismissed the motion before him on the basis that the defendant who brought the motion did not attend. Costs were awarded to the plaintiffs who were present in the courtroom on that date. The judge had explained to the complaint subcommittee that he had been of the view that there was no need to hear from the plaintiff because the motion was being dismissed. The judge had also indicated that he would have explained to the plaintiff that there was no need for the plaintiff to put forward a response to the court.

The investigation showed that the defendants re-filed the motion and it was heard by the same judge. The review panel found that the letter of complaint did not make it clear whether the complainant was in attendance on the date when the motion was again heard. Further, the panel observed that the investigation showed that the judge's recollection was that he was not aware of the complainant's attendance on that date. The motion by the defendant had again been dismissed by the judge with costs awarded to the plaintiffs.

The review panel noted that it is common practice for a judge to not call upon a party if the judge is intending to find in favour of that party on the particular issue and, in the view of the judge, it is not necessary to hear from the party.

The review panel also found that the investigation showed that the plaintiffs did not advise the court that they wished to have the complainant represent them. If that had occurred, the plaintiffs could also have made a motion to the judge for a ruling from the judge that there should be indemnification with respect to the costs for an ASL interpreter to be made.

Rather, the panel noted from the materials that the complainant provided, he was working with Court Services staff about his desire to have an interpreter present at court. His correspondence with Court Services showed that court staff had not ordered an interpreter for the motion because he had not filed documentation that enabled him to be considered the agent for the plaintiffs. The correspondence provided by the complainant on this issue was only correspondence between the complainant and the Ministry of the Attorney General.

Following its careful review of all of the materials, the review panel concluded that there was no evidence of any misconduct by the judge. Further, the panel advised that if the complainant was unhappy with the decision of court staff to not have an interpreter available in the circumstances, the proper remedy would be to write to the Assistant Deputy Attorney General of Court Services Division in the Ministry of the Attorney General. The Judicial Council has no jurisdiction to review a decision by Court Services staff.

For the reasons noted, the review panel dismissed this complaint.

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#### *CASE NO. 15-027/09*

The complainant appeared before the subject judge on a child protection proceeding. The judge made an interim order for the children to reside in the care and custody of the mother, with supervision by the Children's Aid Society. The father was granted access but had difficulties in exercising it. In a later divorce proceeding, the father obtained an order on consent for access. In his letter to Council the complainant made the following allegations:

- 1) The judge engaged in "wilful and deceitful abuse" of her judicial authority and colluded with the local Children's Aid Society in their malicious and negligent application.
- 2) The judge displayed gender bias and prejudice towards him when she granted the Society's requests at the first court attendance.
- 3) The judge was in contravention of the law and restricted his fundamental rights under the *Canadian Charter of Rights and Freedoms* when ordering him to vacate his home by a certain date. She had no authority to do so under the *Child and Family Services Act*. Her decision to remove him from his home and his children was an act of tyranny.
- 4) Her decision resulted in isolating the complainant from his children. It was a wilful act of child abuse, emotional abuse against the complainant, and "part of an unlawful and malicious initiative" to interfere in a private divorce matter.
- 5) The order constituted a gross abuse of judicial power and in effect resulted in the criminal "abduction" of two children for the purposes of parental alienation, a form of child abuse.
- 6) The judge displayed further gender bias in appearing indifferent towards the father's isolation from his children. He stated: "I was left with the impression that Her Honour considers fathers to be nothing more than pay cheques for their families, and beyond this they are irrelevant and disposable." He alleged she appeared unconcerned about the effect of her order on the complainant's relationship with his sons.
- 7) On the second court attendance, the judge displayed further instances of gender bias. She tried to dismiss the case in an attempt to avoid the parenting capacity assessment and improperly "assisted" the mother's case by ordering her to file an Answer and Plan of Care in the proceeding.
- 8) The judge, in accepting the local Children's Aid Society's claims of "woman abuse", engaged in further gender discrimination. The complainant stated: "I cannot escape the conclusion that Her Honour's true and only motivation throughout our case was to "do her duty" as a woman to prevent "woman abuse".

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- 9) The judge breached her oath as a judge to serve the ideals of Justice and Truth. She deliberately set out to suppress the truth of the mother's child abuse.

The complaint subcommittee reviewed the complainant's correspondence and ordered and reviewed the transcripts of the complainant's court proceedings before the judge. Upon conclusion of their investigation, the subcommittee submitted a report to the review panel.

The review panel reviewed all of the complainant's correspondence to the Council, the transcripts and the complaint subcommittee's report to them. Following their review, the panel noted that there was nothing in the transcripts to support the allegations made by the complainant. There was no evidence to suggest gender bias or prejudice on the part of the judge towards the complainant. The transcripts showed that judge appeared concerned about the level of conflict and animosity between the parties and how that affected the children. The transcripts also disclosed that the judge went to great pains to assure both parents that she was not, at this preliminary stage, identifying who was more "at fault" for the level of conflict. It was clear that the judge simply wished to alleviate the stress on the children. The judge determined it was more appropriate for the complainant to vacate the home as he was about to move out in any event, and this order would reflect the children's views and preferences as expressed to the Children's Aid Society workers. The judge directed each party to refrain from any verbal or physical abuse towards the other and ordered representation for the children. The matter was scheduled for a further court date within two weeks.

The review panel observed that the complainant was unhappy with the judge's decision, and that he felt it had the effect of entrenching his alienation from his children. The panel advised that if the complainant felt the judge made any errors in assessing the evidence or determining any of the issues (and the review panel did not suggest that she did), the proper way for the defendant to proceed was through other legal remedies in the courts. Such matters are outside of the jurisdiction of the Ontario Judicial Council.

Following their review, the review panel also advised that the transcripts showed that during the complainant's second court attendance, the judge displayed no bias towards the complainant. The panel further noted that the judge spent some time enquiring as to whether or not the Children's Aid Society's protection concerns were sufficiently identified to be addressed by the proposed assessor. Discussions continued about the appropriate wording of the questions to be proposed to the assessor. Efforts were made to keep the wording of the questions gender neutral, or directed equally to both parents. The judge did direct that the mother prepare and file an Answer, which would be forwarded to the assessor with the other pleadings. This was not seen by the panel to be bias on the judge's part, or an attempt to bolster the mother's case at

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the expense of the father. Rather, the review panel found this was an appropriate monitoring of the assessment procedure by the judge, to ensure that the process was fair and balanced. This did not constitute judicial misconduct.

For the reasons noted, the review panel dismissed this complaint.

#### **CASE NO. 15-028/10**

Pursuant to section 74 of the *Firearms Act*, the subject judge conducted a judicial review of a decision of the Chief Firearms Officer of Ontario revoking the complainant's licence to carry firearms. The judge affirmed that decision.

In his complaint, the complainant alleged that the judge made a “terrible mistake” when he failed to properly take into account the views of a doctor who had assessed him during an admission to a mental health facility. The complainant also took issue with the judge's acceptance of evidence based on information from an individual whom the complainant believed to lack any credibility, and with how the judge assessed the credibility of the complainant.

The complainant stated that he “would appreciate any help regarding the unfair judgment of myself just because I suffer from a disability in which I feel I have been discriminated.”

The complaint subcommittee reviewed the complaint and the transcripts of the hearing and of the judge's reasons and submitted a report to a review panel.

The review panel reviewed the complaint letter, the transcripts and the subcommittee's report. The panel noted that the judge was satisfied, based on the evidence that he had heard, that there were good and sufficient reasons for the Chief Firearms Officer to revoke the complainant's firearm licence. The panel also observed that in affirming the decision of the Chief Firearms Officer, the judge considered the weight to be given to the medical evidence found in the discharge summary. Following its review and consideration of all of the materials, the review panel found that the complainant disagreed with the judge's assessment of the evidence and with his determination that certain evidence was admissible. The panel noted that the proper way for the complainant to proceed if he disagreed with the judge's findings and his decision was through other legal remedies, such as an appeal. These are not matters within the jurisdiction of the Judicial Council.

Following the investigation, the review panel found no evidence of judicial misconduct and no evidence to support the allegation that the judge discriminated against the complainant on account of the complainant's disabilities.

The review panel dismissed this complaint as unfounded.

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#### *CASE NO. 15-029/10*

A complaint was received and assigned to a complaint subcommittee for investigation. Before the investigation was completed, the Council was informed that the subject judge had passed away. As a result, the Council lost jurisdiction and this file was closed administratively.

#### *CASE NO. 15-030/10*

The complainant appeared before the judge on an application under section 672.11 of the *Criminal Code* by the Crown for a mental health fitness assessment to determine whether she was unfit to stand trial or not criminally responsible.

The complainant alleged that the judge's reference to himself, the Crown, and the complainant's lawyer as "we" and his reference to the complainant as "these people" made it "clear that the judge intended to segregate me from them in bias". The complainant objected to the judge's description of her as "an eccentric loner". Further, she alleged that the judge accepted evidence about how the complainant protested against the treatment of her dog as evidence that she was mentally ill.

She also alleged that the judge did not grant her lawyer's request for an adjournment that had been requested.

She stated: "I believe the Crown system intentionally targeted and exploited [subject judge's name]'s bias to get an Order of Assessment based on falsehoods in records of complaints I'd made of the reprisal that an OPP and university dean said were sufficient to restrict police from serving and protecting me and to ensure I never worked again..." and "[subject judge's name] does not deserve to be the target of any attempt to manipulate the court to rely on an assessment of NRC and/or unfit for trial to incarcerate a mentally competent whistle blower without ever reviewing the evidence at trial."

In her letter of complaint, the complainant asked that the Council use "whatever influence and authority you have to help right the wrongs in this matter."

The complaint subcommittee reviewed the complainant's letter ordered and reviewed transcripts of the proceedings before the judge. The subcommittee submitted a report to a review panel.

The review panel reviewed the complainant's letter, the transcripts and the subcommittee's report to them. The review panel noted that the portion of the complaint that related to the judge's order for an assessment under s.672.11 of the *Criminal Code* addressed issues that are outside of the jurisdiction of the Ontario Judicial Council. The panel noted that the complainant

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also raised objections to how the judge weighed the evidence. The panel advised that if the judge made any errors in assessing the evidence or determining any of the issues (and the review panel did not suggest that he did), the proper way for the complainant to proceed would have been through other legal remedies.

With respect to the allegation that the judge called the complainant “an eccentric loner”, the panel found that the transcript showed that the Crown Attorney described her as living an isolated existence. The transcript did not show that the judge had made the statement alleged by the complainant.

The review panel found no support in their review of the court record for the complainant’s allegation that the judge was biased in favour of the Crown and found no judicial misconduct on the part of the judge.

For the reasons noted, the review panel dismissed this complaint.

#### *CASE NO. 15-031/10*

The complainant wrote to the Judicial Council as a result of a newspaper article that he had seen. In the article, comments were attributed to the subject judge in relation to the federal government’s proposed elimination of two-for-one pre-trial credit prisoners receive for pre-trial time served in jail. The judge was quoted by the reporter as saying, “Judges are skilled at devising creative ways to fight back against laws they believe may skew the system.” The complainant alleged that if the judge made these comments, he has ceased to be an impartial judge and should remove himself from the bench. The complainant quoted a remark made by the reporter that there is now an “on-the-record statement from a sitting judge to the effect that some members of the judiciary will ignore or work around any criminal law sanction with which they disagree...”

The complainant stated that, “I am an individual who is getting very concerned at the level of judicial activism of the type exhibited by (the subject judge), and think it time that judges were reminded of their place in the legal system”.

The complaint subcommittee reviewed the letter of complaint and the article. The subcommittee submitted a report to a review panel.

The review panel reviewed the complaint letter, the newspaper article and the complaint subcommittee’s report. In the opinion of the panel, the complainant’s letter was an expression of concern with judicial activism, as reflected in the conduct of this judge. The panel advised that the Chief Justice of the Supreme Court of Canada has observed that the role of a judge

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has changed over the past twenty years, with the entire spectrum having shifted in favour of a greater willingness on the part of judges to speak out. The Chief Justice has noted that this shift is a reflection of the changing role of the judiciary, and perhaps a reflection of the fact that our democracies are becoming more participatory, with citizens taking a more active interest in the way social policy is made. The panel appreciated that at the same time, when a judge speaks out publicly on a policy issue, there is a risk that the public remarks may be seen as an actual or perceived impartiality on the part of that judge.

The panel also noted that in this particular matter, even if the judge made the comments that were referenced in the newspaper article, the comments appeared to be observations of what could happen in Canada based on the judge's knowledge of what happened in other jurisdictions. The comments appeared to constitute general observations by the judge on an issue of concern in the justice system, rather than a personal view of how he himself would address cases in the future.

For those reasons, the review panel did not find any misconduct on the part of the judge and dismissed this complaint.

#### ***CASE NO. 15-033/10***

The complainant was the Respondent in a *Children's Law Reform Act* proceeding. Her ex-husband was the Applicant. In an earlier *Child and Family Services Act* proceeding, the child had been apprehended due to mental health concerns regarding both parents. The child was subsequently placed in the care of the father under supervision of the Children's Aid Society for a period of twelve months. Following the termination of that order, the Children's Aid Society remained involved with both parties on a voluntary basis.

In the proceeding that gave rise to the complaint, the Applicant father sought custody of the child. The complainant had filed an answer claiming custody and child support.

The parties appeared before the subject judge on a number of occasions. Most of the appearances concerned procedural issues such as the completion of filings, the setting of conference dates, and the argument of a motion brought by the complainant to strike the Applicant's pleadings. On the last attendance, the judge recused himself from the case and set an immediate trial management conference before another judge.

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The complainant made a number of allegations about the judge as follows:

- 1) Obvious disregard for the rights of victims.
- 2) Secondary victimization.
- 3) Postponed and delayed the court dates on a continual basis.
- 4) Used vague and suggestive language.
- 5) Confused causes with symptoms.
- 6) Topic avoidance.
- 7) Conformed with other social groups to neutralize the complainant's past.
- 8) Used an Altruistic Defence of "Public Guardian Trustee" to suggest it was in the complainant's best interest and to also release himself of any liability.
- 9) Dismissed a motion after encouraging her to bring a motion.
- 10) Ignored a motion she submitted for temporary custody and never gave her a chance to challenge it or gave a reason why he ignored it. Basically he never gave an answer.
- 11) Displaced the blame by letting the bullies off the hook by casting the bullied person as the bully.
- 12) Could have recommended getting Children's Lawyer as part of the process many months earlier to prevent further delays.
- 13) Allowed the complainant to be further alienated from her child's life. (Parental Alienation Syndrome).
- 14) Subjected the complainant to more labelling and stigma as a result of engaging in gender issues.
- 15) Continually informed her that she needed to play by the rules and retain legal counsel while ignoring the fact that she had made many attempts and was often abused and mistreated by some.
- 16) Used the "Public Guardian Trustee" recommendation to further downplay and trivialize her past victimizations, while at the same time redirecting the focus and flow of the case and releasing himself of any liability.
- 17) He made a fake claim. He never said that she had until a particular date or timeframe to submit an answer.

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In a subsequent letter additional allegations were set out as follows:

- 1) The judge never said the complainant had until a particular date to submit an answer. He was obviously mistaken because she wrote everything down.
- 2) The complainant would always consult (FLIC) lawyers and some would give her advice and guidance but others were rude, offensive and would try to sabotage her case by giving her wrong instruction and sending her on wild goose chases.
- 3) In the judge's ruling on the motion document, he stated that the complainant made bald allegations without any statements of facts, particulars and detail. In some of her complaints to specified agencies were attempts to explain some of the reasons why. However, particulars are limited due to relatively poor power position and lack of care or interest on the part of the appointed authorities.

The complainant also included in her materials to the Judicial Council particulars of a series of complaints she had made against various doctors, social workers and lawyers in the previous child protection proceeding, as well as allegations regarding misconduct on the part of members of the police force and the Crown Attorney's office.

The complaint subcommittee ordered and reviewed the transcripts of numerous court dates. The subcommittee provided a comprehensive report to the review panel that included a detailed history of what occurred on each of these court appearances.

The review panel reviewed the complainant's letters and the complaint subcommittee's report. Following their review of the materials, the panel made the following observations about the history of the matter. Throughout the appearances, the judge showed concern that the complainant was not represented. He extended the time for her to file as he was aware she had not yet been able to retain counsel. He encouraged her to obtain legal representation. On several dates, he explained the process to her and how she could obtain information about the *Family Law Rules*. He also explained that she would be required to follow these *Rules* even if she represented herself.

The transcript showed that in light of his concerns that the complainant remained unrepresented and appeared unable to understand the process, the judge observed that this might be an appropriate case for the Public Guardian and Trustee to act as a representative for her pursuant to Rule 4. He also asked the complainant if she wished to speak to duty counsel to assist her in requesting potential remedies at an appearance when she appeared; however, she declined duty counsel to assist her "for personal reasons."

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At a later date, the judge expressed his concern that there might be genuine issues regarding the capacity of the complainant to act on her own behalf. He ordered that the Office of the Children’s Lawyer become involved and adjourned the settlement conference. The Office of the Children’s Lawyer subsequently sent notification to the court and the parties on declining to become involved in the matter.

On the eighth court date before this judge, the parties appeared for the scheduled settlement conference. When the judge asked the complainant if there was any possibility of resolving the matter, she provided a lengthy response. In the course of her speech, she complained that she found the court process emotionally draining. She stated that she found the judge’s ruling on her motion offensive and “Machiavellian” and alleged that he was “biased” because of things he had read that doctors had written about her. She did not like the things that he had said about the Public Trustee. She complained about the lawyers in the Family Law Information Centre and also about past professionals involved in her previous court case. She advised the judge that she had written to “the Judicial Board” complaining about him. The subject judge set an immediate trial management date before another judge to move the matter ahead expeditiously. He assured the complainant that he would no longer have any involvement in the proceeding.

The review panel concluded that the transcripts confirmed that the subject judge at all times treated the complainant with patience and respect. The panel found that at no time did he bully her or victimize her and there was no evidence that he utilized any gender biased language or labelling in his contacts with her. On the contrary, he carefully explained the court process to her on many occasions, and continually expressed his concern that she had not retained counsel and made efforts to have duty counsel available to assist her. She refused to utilize the services of duty counsel.

The panel noted that the judge had an obligation pursuant to Rule 1(3) of the *Family Law Rules* to ensure that the court dealt with this matter justly and in a manner that would be fair to all parties. If, in his opinion, there was evidence that the complainant was mentally incapable and required legal representation by the Public Guardian and Trustee, he was required to raise this issue for possible further determination. It appeared to the panel that the judge was acting in a manner which was consistent with his obligation under the law. It did not appear to the panel that he was inappropriately exercising his discretion in an attempt to control the court process.

The review panel found no evidence to suggest the judge delayed the process. Rather, the investigation showed that he had attempted to move the matter ahead to further dates as soon as possible, and had required the Applicant to pay costs to the complainant for a missed court attendance.

The review panel noted that the judge gave reasons for his decision to dismiss the complainant’s motion to strike the Applicant’s pleadings. The panel advised that if the complainant disagreed

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with his decision, the proper way to proceed was through other legal remedies through the courts, such as an appeal. The Judicial Council had no jurisdiction over the decision.

With respect to the allegations about doctors, social workers and lawyers in the previous child protection proceeding, and members of the police force and the Crown Attorney's office, the Judicial Council's legislative authority does not extend to the review of conduct about persons other than judges. Other bodies have jurisdiction to review the conduct of those persons.

For the reasons noted, the review panel dismissed this complaint.

#### *CASE NO. 15-036/10*

The complainant, who had appeared on numerous occasions before this judge in a long-running family court matter, wrote to the Judicial Council to complain about the content of the judge's speech before a group of law students at a university which was subsequently posted on You Tube.

In his letter, the complainant stated that he found it inappropriate that the judge compared himself to "Judge Judy." He quoted the judge as having said at one point: "Judge Judy, that bitch stole my act." The complainant considered this comment an improper perception of women that was inappropriate for a sitting judge to articulate. He also cited a further quote from the judge: "When you piss in your pants you can't stay warm for too long", which the complainant considered improper.

The complainant also expressed concern about the judge's reference to litigation matters over which he had presided, particularly one story regarding a man who claimed his wife was trying to poison him and another story about a seven year old child.

The complainant also alleged that he had witnessed inappropriate comments from the judge in two cases in which he was the presiding judge.

The investigating complaint subcommittee reviewed the complaint and noted that the presentation by the judge was no longer posted on YouTube at time of the investigation. The subcommittee obtained a DVD of the presentation and reviewed it. Following its investigation, the subcommittee submitted its report to a review panel.

The review panel reviewed the correspondence received from the complainant, considered the subcommittee's report and listened to an audio recording of the judge's presentation at the university. Because a review panel is not told the identity of the judge who is the subject of the complaint, the visual portion of the DVD was not seen by the panel.

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The panel noted that the role of judge as legal educator is one that has broadened in recent years and there is recognition of the changing role of the judiciary in a technologically advanced, informed public. The panel also recognized that there are potential pitfalls when a judge speaks publicly. There could be a risk that his or her impartiality is compromised or seen to be compromised or political biases revealed. However, the panel noted that each case must be examined on its own merits.

The panel noted that the lecture by the judge to law school students was made with the objective of encouraging law students to consider a career in family law. He called upon them to change the future image of lawyers, and become more available to the media to educate the public about various aspects of the law. The panel was not concerned by the messages that he delivered to the students about a possible career in family law or about the challenges and personal satisfactions that arise in family courts. On the contrary, the panel appreciated the efforts by the judge to encourage law students to consider a career in family law.

However, the panel did have concerns about some of the language and comments in delivering the messages. The panel also found that when describing some of the difficult family litigants and cases that he had presided over, some of the expressions that he used were concerning. The panel noted that referring to a litigant as “a piece of work” in a public forum could give rise to negative perceptions among litigants or other members of the public. The panel was also concerned that the use of bawdy language could serve to undermine and take away from the important messages that the judge was delivering.

Further, while the panel agreed with the content of the messages that the judge was communicating to the students, the panel also noted that in such circumstances he would be perceived as exemplifying the judiciary and the standard of conduct expected of a member of the bench. The panel was of the view that the public rightfully expects a high level of professionalism from the judiciary, and law students would look to a judge as a role model of appropriate behaviour in the officers of the court.

The panel requested a response from the judge about the allegations in relation to his use of inappropriate language, his use of obscenities and bawdy jokes.

The judge provided a response in which he expressed his regret for any embarrassment caused to the judiciary by his speech and expressed his apology that he had offended the complainant. The judge also provided a copy of a letter that was sent to him by the Dean of the law school in which he thanked the judge for the speech and observed that it had been an unqualified success in every way. The judge also shared with the panel a copy of a news article that reported that very positively on the presentation by the judge.

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After reading the response, the majority of the review panel concluded that the judge not been aware that the presentation would be posted on the internet and viewable by the public. The speech was posted on YouTube without his consent or knowledge. The panel observed that the judge had conveyed a number of key messages in a way that young people could relate to, and that this was a sophisticated audience of law students who understood that the use of humour was intended to make the key messages resonate more clearly. Noting that the objective of the complaints process is a remedial one, the majority of the panel was satisfied that the judge had learned from the experience, that he would take steps in the future to avoid such conduct in the future, and that no further action was necessary.

One member of the review panel dissented. While the member agreed that the messages delivered by the judge were valuable and positive, the member was of the view that the nature of the language was injudicious and unbecoming to a member of the bench, and that it was demeaning to the office of the judiciary in general.

With respect to the allegation by the complainant that he had witnessed inappropriate comments from the judge during two court cases in which he was the presiding judge, no further information was provided by the complainant. These allegations were dismissed by the review panel as unsupported by any evidence.

For the reasons set out above, the complaint was dismissed and the file was closed.

#### *CASE NO. 15-038/10*

The complainant was a self-represented accused before the subject judge. The complainant alleged that the judge did not comply with his request to compel Legal Aid to represent him. He also alleged that the judge's "posture toward the preceding issues was one of intolerance and frustration, as reflected in his arrogant and condescending comment – 'You have the right to defend yourself.'"

The complaint subcommittee reviewed the correspondence from the complainant and submitted a report to the review panel.

After reviewing the complainant's letters and the subcommittee's report, the review panel determined that this complaint related to the judge's decision which is a matter outside of the jurisdiction of the Judicial Council. If the complainant believed that the judge made any errors in law or in determining any of the issues (and the review panel did not suggest that he did), the proper way for the complainant to proceed would have been through other legal remedies.

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In relation to the alleged comment made by the judge, “You have the right to defend yourself”, the review panel noted that this was a factually correct and appropriate statement for a judge to make and it did not constitute judicial misconduct.

For the reasons noted, the review panel dismissed this complaint.

#### **CASE NO. 15-039/10**

The complainant alleged that he was found guilty by the subject judge after two separate trials when there was no evidence that he had done anything wrong. In support of his allegations, he indicated that the Superior Court of Justice had overturned his convictions.

The complaint subcommittee obtained a copy of the reasons of the Superior Court of Justice with respect to the first court case. Attempts to obtain a copy of the judgment of the Superior Court of Justice in the other matter were unsuccessful. Following their investigation, the complaint subcommittee submitted their report to a review panel.

The review panel reviewed the letter of complaint, the subcommittee’s report and the reasons of the Superior Court of Justice in the earlier court matter. The complainant had been convicted of threatening bodily harm and of failing to comply with a probation order. The panel noted that the appellate court overturned the conviction for threatening bodily harm on the basis that the judge had not given sufficient reasons for rejecting the evidence given by the complainant at the trial. The appellate court upheld the conviction with respect to the charge of breach of a probation order.

The review panel found that there was no allegation of judicial misconduct. Rather, the complaint was with respect to decisions made by the judge. The panel advised that if the judge made any errors in assessing the evidence or determining any of the issues (and the review panel is not suggesting the he did), the proper way for the complainant to proceed was through an appeal.

The review panel dismissed the complaint as outside of the jurisdiction of the Judicial Council.

#### **CASE NO. 15-040/10**

The complainant was a party in a custody and access dispute under the *Children’s Law Reform Act*. The children were represented by a lawyer from the Office of the Children’s Lawyer and the Children’s Aid Society (“The Society”) was involved, on a peripheral basis.

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The complainant stated that he asked the judge for permission to unobtrusively record the court proceedings on his hand-held audio recorder in order to supplement his notes. He alleged that the judge refused to grant his request and threatened to have him removed from the court if he attempted to record the proceedings. He alleged:

- 1) The judge failed to uphold the law and protect his rights under section 136 of the *Court of Justice Act*, which the complainant asserted gives persons the right to audio record their own court hearings.
- 2) By refusing to allow the complainant to exercise his rights under the law, the judge obstructed justice and violated her sworn oath and duty as a judge.
- 3) That by showing such a blatant lack of knowledge and respect of the application of section 136 of the *Courts of Justice Act*, the judge brought the administration of justice into disrepute.

He also stated that while transcripts could be ordered, it did not seem fair for him to be forced to purchase official court transcripts “at great expense” when he could get the same information with his own recording device and avoid waiting for days or weeks to get transcripts. In addition, he alleged that he had seen correspondence that indicated that court transcripts had been permanently lost by court staff and altered or edited, which raises questions about the security surrounding court transcripts.

He requested that the Judicial Council or the powers responsible put out a memorandum to judges to remind them that they must not interfere with a party’s request to audio record his or her court hearing if the party is doing it in a reasonable manner. He also asked that the Council advise the judge to recuse herself from hearing any court matter in which the complainant may be a party at the hearing.

The complaint subcommittee reviewed the full transcript of the case conference. One of the members also listened to the audiotape of the proceedings. The subcommittee also reviewed section 136 of the *Courts of Justice Act* and submitted a report to a review panel. Section 136 states as follows:

#### ***Prohibition against photography, etc., at court hearing***

136. (1) *Subject to subsections (2) and (3), no person shall,*
- (a) *take or attempt to take a photograph, motion picture, audio recording or other record capable of producing visual or aural representations by electronic means or otherwise,*

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- (i) *at a court hearing,*
  - (ii) *of any person entering or leaving the room in which a court hearing is to be or has been convened, or*
  - (iii) *of any person in the building in which a court hearing is to be or has been convened where there is reasonable ground for believing that the person is there for the purpose of attending or leaving the hearing;*
- (b) *publish, broadcast, reproduce or otherwise disseminate a photograph, motion picture, audio recording or record taken in contravention of clause (a); or*
- (c) *broadcast or reproduce an audio recording made as described in clause (2) (b). R.S.O. 1990, c. C.43, s. 136 (1).*

#### Exceptions

- (2) *Nothing in subsection (1),*
- (a) *prohibits a person from unobtrusively making handwritten notes or sketches at a court hearing; or*
  - (b) *prohibits a lawyer, a party acting in person or a journalist from unobtrusively making an audio recording at a court hearing, in the manner that has been approved by the judge, for the sole purpose of supplementing or replacing handwritten notes. R.S.O. 1990, c. C.43, s. 136 (2); 1996, c. 25, s. 1 (22).*

#### Exceptions

- (3) *Subsection (1) does not apply to a photograph, motion picture, audio recording or record made with authorization of the judge,*
- (a) *where required for the presentation of evidence or the making of a record or for any other purpose of the court hearing;*
  - (b) *in connection with any investitive, naturalization, ceremonial or other similar proceeding; or*
  - (c) *with the consent of the parties and witnesses, for such educational or instructional purposes as the judge approves.*

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#### *Offence*

- (4) *Every person who contravenes this section is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 or to imprisonment for a term of not more than six months, or to both. R.S.O. 1990, c. C.43, s. 136 (3, 4).*

The review panel reviewed the letter of complaint, the transcript and the complaint subcommittee's report. The review panel noted that the ability of a lawyer, party or journalist to record a court proceeding is not an automatic "right". Rather, it is an exception to the general prohibition against the taking of photographs, motion pictures or audio recording at a court hearing. It is only allowed if it is for the sole purpose of supplementing handwritten notes and the manner of the recording has been approved by the judge. The provision is not mandatory. On the contrary, the provision gives discretion to judges to determine whether recording will be allowed on a case by case basis.

The review panel found that the transcript confirmed that at no time did the complainant make a formal request pursuant to section 136 of the *Courts of Justice Act* for permission to record the proceedings. Nor did the complainant make an informal request to do so. He did not divulge to the court that he had a recording device. The judge only became aware that he had a recording device when this was disclosed by a third party. At that time, Her Honour ordered the complainant to turn off the recording device or give it to a security officer. The complainant stated that the matter should not proceed until she gave a written ruling. Her Honour confirmed that the matter would be proceeding and reminded him that the proceedings were being recorded and that a transcript of that recording could be made available. The complainant stated to her his concern that transcripts could be altered.

The panel also found that the transcript also showed that the complainant continued to interrupt the judge, and that when he failed to stop, she then requested that he be removed by a security officer. After the case conference was completed, she ordered that the complainant be notified of the next court date.

The review panel also noted that the judge, in this instance, determined that it was not appropriate for the complainant to record the proceedings. One consideration may have been the complainant's lack of candour in failing to tell the court that the complainant had a recording device. She did not fail to uphold the law under section 136; she simply exercised her discretion as she was permitted to do by the legislation. The panel observed that while a fuller explanation of her ruling may have been helpful, it was not required. The judge was not obliged to give written reasons for the exercise of her discretion.

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The panel advised that if the complainant disagreed with how the judge applied section 136 of the *Courts of Justice Act* or with how she assessed the evidence or determined the issues, the proper way for the complainant to proceed was through other legal remedies through the courts, such as an appeal. Such questions of law are not matters within the jurisdiction of the Council.

For the reasons noted, the review panel dismissed this complaint as unfounded.

With respect to the complainant's request that the Council should issue a memorandum to direct judges on how section 136 should be applied, and his request that the Council should advise the judge to recuse herself from future proceedings in which the complainant may be a party, the review panel noted that such matters were outside of the jurisdiction of the Judicial Council. Further, the panel observed that judges have a constitutionally protected right of judicial independence.

#### **CASE NO. 15-041/10**

The complainant appeared before the judge on charges of assault. Subsequently, he received a conditional discharge and was placed on probation for a year.

In his letter to the Judicial Council, the complainant alleged that the judge was biased and violated his rights of equality, contrary to the *Charter of Rights and Freedoms*, by not holding a fair trial by:

- ◆ Introducing restrictive rules exclusively against him, limiting the questioning to the events on one date and considering as irrelevant other events that happened before or after that date;
- ◆ Ignoring the fact that the Crown excluded or suppressed two subpoenaed witnesses days before the trial on the justification that they were not direct witnesses to the events on the date of the alleged assault;
- ◆ Accepting evidence from one of the Crown witnesses and ignoring evidence that the complainant believed to demonstrate the opposite, and basing his decision on that evidence; and,
- ◆ Making findings of credibility that the complainant believed were not correct.

The complaint subcommittee reviewed the materials provided by the complainant and submitted a report to the review panel.

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The review panel carefully reviewed the complainant's materials and the subcommittee's report.

The review panel advised that the complainant's allegations related to how the judge exercised his discretion in applying the rules of evidence, in weighing the evidence of witnesses and in making findings of credibility. The panel observed that if the complainant believed that the judge made any errors in his decision, in assessing the evidence or in determining the issues (and the review panel is not suggesting that he did), the proper way for the complainant to proceed would have been through other legal remedies. Such matters are not within the jurisdiction of the Judicial Council.

With respect to the allegation that the judge ignored the fact that the Crown Attorney didn't call two witnesses, the review panel noted that the Crown Attorney has the prosecutorial discretion to determine which witnesses will be called and how he or she wishes to conduct the case. In the circumstances of this case, there would be no basis for a judge to intervene in the prosecution. In any event, the proper way to proceed if the complainant felt that the judge failed to make a decision would be through other legal remedies. The Judicial Council does not have the authority to review decision-making in the absence of judicial misconduct.

For the reasons noted, the review panel dismissed the complaint and the file was closed.

#### *CASE NO. 15-042/10*

After a trial in criminal court, the subject judge found the complainant's father guilty of uttering a threat to cause serious bodily harm. The complainant was a witness for his father at trial. The victim was a neighbour of the accused who alleged that he had made a threatening gesture towards her.

The complainant alleged that:

- 1) On a date prior to the trial date, the judge, his father's lawyer and the Crown Attorney had a meeting in a room behind the courtroom.
- 2) The judge and the Crown Attorney "forced his father's lawyer to lie". The complainant alleged that the lawyer improperly advised the complainant to testify that the events giving rise to the charge happened on a date other than when the complainant knew that they had happened. The judge also told the complainant and his father that they were liars but it was the judge who committed perjury. The judge also "forced our lawyer into a bad position to shut up so he didn't say anything to protect me or my dad or help us out."

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- 3) The judge was biased in favour of women both in his father's case and in the case that preceded that of his father. He alleged that in the case preceding his father's case in court, the judge sided with a female accused who was driving a stolen car while a male passenger, her boyfriend, robbed a store. The judge allegedly told the female that what she did "wasn't a big thing" and the judge gave her "walking papers".

The complaint subcommittee ordered and carefully reviewed the transcript of the complainant's father's trial and that of the case preceding it. Following the completion of its investigation, the subcommittee submitted its report to a review panel. The review panel reviewed the complainant's allegations, the transcripts and the subcommittee's report.

With respect to the allegation that prior to the trial date, the judge, his father's lawyer and the Crown Attorney had a meeting in a room behind the courtroom, the review panel observed that the complainant may have been referring to a judicial pre-trial conference that was held regarding his father's case. Such conferences involve a judge, Crown counsel and defence counsel. The review panel noted that judicial pre-trial conferences are informal meetings that are usually held in conference rooms and not in a courtroom. The discussions which take place are not recorded. The complainant did not allege that anything improper took place at this particular pre-trial conference. The review panel agreed with the complaint subcommittee that the pre-trial conference is an accepted and encouraged aspect of the criminal justice process. It is designed to promote a fair and expeditious proceeding.

Regarding the second allegation, the review panel observed that the transcript showed that in his reasons for judgment, the judge accepted the evidence of the alleged victim. He rejected the claim of the accused and his son that the victim was not threatened. At the conclusion of his testimony and in response to questions posed by the judge, the complainant admitted that he had misled the court about the date when the incident giving rise to the charge occurred. He had testified that the incident involving the alleged victim occurred on the alleged offence date when in fact the complainant believed that it happened on a different date. The complainant then blamed his father's lawyer for influencing his testimony on this point. The review panel found that the transcript showed that on the record, counsel for the complainant's father had strongly denied that he instructed the complainant or any other witness to use one date as opposed to another. The judge told counsel, "Mr. [name of counsel], you enjoy an excellent reputation. You don't even need to make those comments but I appreciate it." Following its review of the transcript, the review panel concluded that there was no evidence that the judge forced counsel for the accused "to lie" about anything. With respect to the allegation about the lawyer's conduct, the review panel advised that if the complainant wished to pursue his complaint about the conduct of his father's lawyer, any complaint concerning the conduct of a lawyer is a matter for the Law Society of Upper Canada and not the Judicial Council.

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The review panel noted that the complainant disagreed with the judge's assessment of the credibility of the witnesses in this trial. The review panel observed that if the complainant disagreed with how the judge assessed credibility, the proper way to proceed was through other legal remedies, such as an appeal. Such matters are outside of the jurisdiction of the Judicial Council.

Regarding the third allegation that the judge was “biased in favour of women”, the complaints subcommittee and the review panel reviewed the transcript of the case that preceded that of the complainant's father. The preceding case involved a guilty plea and sentencing of a woman for robbery. The woman's boyfriend, who was her co-accused, had committed the armed robbery of a bank. His girlfriend was the driver in the commission of the offence. The review panel observed that, in his reasons for sentence, the judge referred to her secondary role in the offence, her lack of prior criminal record, the weakness of the prosecution case against her, the fact that she had already served some time in custody and the fact that the proposed sentence was a joint submission. The review panel found no evidence in the transcript to support the allegation that the judge was “siding with women”. The transcript confirmed that the judge did not state that “this wasn't a big thing as she didn't go into the store” as alleged by the complainant. In addition, the review panel found that the court record showed that there was no basis to support the complainant's allegation that the judge was “more supportive of women and more against men”. The review panel determined that there was no merit to the complainant's position that the judge was biased and unfair in either his father's case or in the preceding matter.

Following its review of the transcript, the review panel concluded that there was no evidence of judicial misconduct.

For all the above reasons, the review panel dismissed this complaint.

#### ***CASE NO. 16-002/10***

Police executed a search warrant at the residence of one of the complainants, 'A', and seized a number of firearms and prohibited weapons. 'A' was charged with a number of offences arising out of the search and seizure. Subsequently, 'A' swore an Information before a justice of the peace alleging that the police who entered his residence had committed the offence of break, enter and theft. The justice of the peace issued process with respect to some of the police but not all. Those charges were subsequently withdrawn by the Crown Attorney.

'A' then requested transcripts of the proceedings before the justice of the peace and was advised by Court Services staff that they would only provide those transcripts upon receipt of a court Order.

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'A' then brought an application before the Ontario Court of Justice where his charges were being heard for, among other things, a court Order that the transcripts of those proceedings must be provided to him. A pre-trial was scheduled to estimate the time required for both the application and the trial with respect to the weapons charges over which the subject judge presided.

At the pre-trial another individual, 'B', appeared who indicated that he was not acting as agent for 'A' but he was appearing as one of the complainants in the Information sworn before a justice of the peace. The judge initially addressed him by a European name and 'B' advised that he was now known by an "Indian" name which he stated to the judge. For the remainder of that proceeding, the judge referred to him by the name which 'B' had requested to be used. However, the judge ruled that 'B' had no standing to address the matter since he was not part of the criminal proceeding that was the only matter before him.

In his application, 'A' also raised issues with respect to the jurisdiction of the Ontario Court of Justice over Aboriginal peoples and over matters occurring on Aboriginal land. The judge indicated that prior to his appointment, he had argued that issue on behalf of the Crown and it was his belief that the issue had been decided. He also stated that he felt uncomfortable dealing with the matter but noted that he was only dealing with the pre-trial and that 'A' would be able to argue that issue before the trial judge. The motion for release of the transcripts ended up being heard by the judge. He ordered that the transcripts be produced, whereupon he would seal the transcripts and forward them to the Superior Court of Justice where a judge of that court could determine whether or not they should be released.

The complaint to the Council was signed by both 'A' and 'B' and raised a number of grounds of the alleged misconduct:

- 1) The judge should have disqualified himself from dealing with the matter after he had indicated that he had dealt with the issue of the court's jurisdiction over Aboriginal peoples when he was a Crown Attorney.
- 2) When the judge addressed 'A' by his preferred name, he mispronounced it in a way which made it sound similar to the word 'hooters' and in doing so deliberately insulted 'A' and all Aboriginal peoples. He also alleged that the judge repeated the name far more frequently than was necessary and that a staff member at the court had later commented on that fact.
- 3) In refusing to allow 'B' standing to bring an application for release of transcripts, he denied 'B' his right as a member of the public to bring an application for access to public documents.

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- 4) The judge refused to address 'A' by his "Indian" appellation, thereby deliberately violating his rights as an indigenous person.

The complaint subcommittee ordered and reviewed the transcripts. Following its investigation, the committee submitted a report to the review panel. The review panel reviewed the complaint letter, the transcripts and the subcommittee's report. In relation to the complainants' allegations, the review panel made the following findings:

- 1) The review panel noted that it was the judge who brought up the potential concern about conflict. He acknowledged that he would be uncomfortable dealing with the matter as a trial judge. The panel found that in as a pre-trial judge, he was not adjudicating or making decisions. The panel also noted that no-one requested that the judge recuse himself. The review panel was of the view that in those circumstances, there was no basis for a finding of misconduct with respect to the allegation of conflict.
- 2) After reviewing the transcripts and receiving the report from the investigating complaint subcommittee, which had listened to the audio recordings of the appearances, the review panel found that the pronunciation used by the judge of complainant 'A's 'Indian Appellation' was not in any way similar to the word suggested by the complainant. The record showed that the complainant requested that he be addressed by his Indian name and the judge complied with that request. The review panel found that the judge did not use the complainant's name any more than necessary and that the judge addressed the complainant in an appropriate and respectful manner.
- 3) The review panel advised that the decision of the judge with respect to standing was a question of law and the Council had no jurisdiction to review that decision. If the complainant disagreed with the decision, the proper way to proceed was to pursue the appropriate legal remedy through the courts.
- 4) Following its review of the transcripts and the subcommittee's report, the review panel found that during the appearance, the judge did in fact refer to 'A' by his English name but there was no request by 'A' to use any other name, nor any objection to the use of the English name. The review panel concluded that absent such a request or objection to the use of the English name, there was nothing to support a finding of misconduct. The panel found that the judge did refer to 'B' by his English name but 'B' did not object to the use of that name, as he had on the prior occasion. Nor did 'B' refer to that in his complaint. In those circumstances, the review panel found no evidence of misconduct.

For those reasons, the review panel dismissed this complaint as unfounded.

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#### *CASE NO. 16-004/10*

The complainant was an accused before the subject judge. In his letter to Council, he alleged that while he was waiting for his matter to be heard:

- 1) The judge let go of someone who was charged with a home invasion.
- 2) The judge was giving inmates lots and lots of breaks.
- 3) The judge let prisoners walk directly from the prisoner's box.
- 4) Someone told him that the judge would give him a big break on his criminal record.

The complaint subcommittee reviewed the letter of complaint and submitted their report to a review panel.

The review panel determined that the complainant was of the view the judge was too lenient with the accused persons appearing before him for bail. The panel noted that decisions of a judge are not within the jurisdiction of the Ontario Judicial Council to review. Rather, other levels of court have jurisdiction to review decisions made by judges and the appropriateness of sentences that have been imposed. The decisions made and sentences imposed by the judge did not amount to an allegation of judicial misconduct. For the reasons noted, the review panel dismissed this complaint.

#### *CASE NO. 16-005/10*

The complainant appeared before the subject judge charged with a number of counts of criminal harassment and breach of recognizance. The complainant entered guilty pleas to one count of criminal harassment and two counts of breach of bail. He was found not criminally responsible of the offences and referred to the Review Board for disposition.

The complainant alleged that the judge was aware that the charges were spurious, that the criteria necessary for the making of a finding of not criminally responsible had not been met since he had no prior criminal record or history of mental illness and that there had been no "cease and desist Order" made prior to his arrest. He also commented that he was misled by his counsel.

The complaint subcommittee ordered and carefully reviewed the transcripts of the proceeding and submitted its report to the review panel.

The review panel reviewed the complainant's letters of complaint, the transcripts of the proceedings and the complaint subcommittee's report. The panel noted that there was nothing

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in the record to suggest that the judge did anything inappropriate. The panel also noted that there is no requirement in law that an accused have a prior criminal record or a prior history of mental illness before a finding of not criminally responsible can be considered.

In relation to the complainant's concern that he was misled by his lawyer, the review panel noted that if the complainant felt that he was misled by his counsel, and the review panel made no such finding, the proper way to pursue such concerns would be through the Law Society of Upper Canada or an appeal court. The conduct of lawyers does not fall within the jurisdiction of the Ontario Judicial Council.

For the reasons noted, the review panel dismissed this complaint as unfounded.

#### **CASE NO. 16-006/10**

The complainant's brother was convicted of breaking and entering, sexual assault and criminal harassment. The subject judge sentenced the accused to a term of imprisonment plus probation, and ordered that a D.N.A sample from the accused be put in the National D.N.A. data bank. He also ordered a section 110 firearms prohibition for ten years pursuant to the *Criminal Code*.

The complainant alleged that the sentence was unjust and one-sided in favour of the Crown Attorney. The complainant felt that the judge had not taken into proper consideration his brother's remorse, previous good character, community involvement and ongoing family responsibilities. The complainant also alleged that the decision seemed one-sided and that comments made by the judge to the accused were biased towards the Crown Attorney's position and did not take into account letter from the accused's family and friends, and a community organization.

The complaint subcommittee reviewed the transcript of the sentencing submissions made by counsel and the judge's reasons for sentence. Upon completion of their investigation, the complaints subcommittee submitted a report to a review panel.

The review panel reviewed the complaint, the transcript and the subcommittee's report. The panel noted that the judge had the benefit of comprehensive submissions from counsel for the accused and counsel for the Crown Attorney. The transcript showed that in his reasons for sentence, the judge considered both the aggravating and mitigating factors present in the case, including the evidence of good character submitted by the defence, as well as a victim impact statement submitted by the Crown Attorney. The judge also considered the appropriate sentencing objectives and rejected the defence submission that a conditional sentence should be imposed.

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This review panel concluded that the complaint related to the correctness of the sentence imposed. The review panel found no evidence of judicial misconduct or that the judge was biased in favour of either the Crown Attorney or the accused. Following their review of the court record, the panel found that the judge carefully considered the positions put forward by both the Crown Attorney and the accused and made a sentencing decision with which the complainant strongly disagreed. The panel noted that the proper forum for a review of the correctness of this sentence was the Court of Appeal. The correctness of decision on sentencing is a matter outside of the jurisdiction of the Judicial Council.

For the reasons noted, the review panel dismissed this complaint.

#### ***CASE NO. 16-009/10***

After a lengthy trial, the subject judge convicted the self-represented complainant of two counts of assault, utter a threat to cause bodily harm, mischief under \$5,000 and assault with intent to resist arrest. The judge dismissed a count of criminal harassment.

The complainant alleged generally that the judge treated him “unfairly and unjustly”. He asserted that the judge was “prejudiced, biased and discriminatory” and denied him his right to a fair hearing. Several allegations attacked the judge’s professional integrity. Several allegations accused him of conspiring with others to deprive the complainant of a fair trial and improperly paint the complainant as a mentally unstable offender. The complainant took the position that, as a result of the misconduct of the judge (as well as others), the entire judicial proceeding was “destroyed, ruined, jeopardized and compromised in every aspect.”

The investigating complaint subcommittee observed that the complainant’s letter set out 65 allegations which fell into three general categories:

- 1) Allegations of misconduct relating to the fact that the judge ordinarily sat in another jurisdiction and was assigned to preside over the complainant’s trial.
- 2) Allegations that the judge was biased and that he conspired with other officials in the justice system to prevent the complainant from receiving a fair trial.
- 3) Allegations that the judge colluded with the Crown Attorney to have the complainant undergo a mental assessment and, in doing so, undermined the complainant’s right to a fair trial.

The complaint subcommittee ordered and reviewed the transcripts of the trial, as well as the judge’s reasons for decision. Following their investigation they submitted a report to the review panel.

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The review panel reviewed the letter of complaint, additional correspondence received from the complainant, numerous transcripts (including the transcript of the first day of the trial, the transcript of the proceeding related to the application by the Crown Attorney for a mental health assessment, the transcript of the judge's reasons for decision on the application for a mental health assessment, the transcript of the submissions on the trial, the transcript of the judge's reasons for judgment, and the transcript of the sentencing), as well as the complaint subcommittee's report to them.

The review panel observed that several allegations related to the fact that the judge ordinarily sat in another jurisdiction and was assigned to preside over the complainant's trial, such as:

- ◆ Being called in from out of the jurisdiction would have upset the judge. The judge was “upset that he had to travel outside his jurisdiction to preside over [his] matter”.
- ◆ There must have been a directive to the judge to ensure the case “was dealt with expeditiously” because the judge was “rushing through the trial”. The judge was “obviously directed “by his superiors...to push this matter through court”.
- ◆ Being called in from out of the jurisdiction was unusual and would have negatively impacted the complainant's right to a fair trial.
- ◆ Scheduling issues for the judge would result in bias against the complainant.
- ◆ Being called in to preside over the complainant's trial would offend other justices in the local jurisdiction.
- ◆ The choice of this judge to preside over the complainant's case was a “deliberate and calculated move by members of the justice system”.

The review panel noted that this judge did not ordinarily sit in the jurisdiction where the complainant's trial took place. They also noted that the complainant raised no issue about this until the recusal application. In her submissions responding to the application, Crown counsel advised the court that a local administrative judge was of the view that it would be preferable for a judge from outside of the jurisdiction to hear the complainant's trial since the main witness was a local police officer. The Crown Attorney observed that judges from other jurisdictions are routinely assigned to hear cases in similar circumstances. The review panel found that the complainant was unable to offer any evidence or information to support the above allegations. Further, the panel found that there was no indication in the transcript that the judge was “rushing through” the trial or that he was in any way upset or annoyed about his assignment as the trial judge.

The review panel concluded that the above allegations were unsubstantiated.

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The second set of allegations asserted that the judge was biased and that he conspired with other officials in the justice system to prevent the complainant from receiving a fair trial, such as:

- ◆ The judge was improperly influenced by another judge who was presiding over an unrelated case involving the complainant in another jurisdiction.
- ◆ The judge “must have previously conducted some extensive research about me”.
- ◆ The judge and other legal officials purposely used a particular courtroom for the complainant’s trial.
- ◆ The judge “would have had to been part of closed door meetings amongst his colleagues in order to figure out and determine how to handle the situation involving me”.
- ◆ The judge was not providing the complainant “with all of his rights” and denied him specific rights such a pre-trial.
- ◆ The judge did not afford the complainant “leniency and latitude” in the presentation of his defence.
- ◆ The judge was visibly and verbally upset about the complainant’s knowledge.
- ◆ The judge was biased in favour of the Crown Attorney.
- ◆ The judge was “tipped off” as to what questions the complainant would ask witnesses.
- ◆ The judge was prepared to find the complainant guilty before the evidence and submissions had concluded.
- ◆ The judge unfairly prevented the complainant from presenting full answer and defence.
- ◆ The judge deliberately prevented the complainant from entering certain evidence and improperly prevented the complainant from fully questioning the Crown Attorney’s witnesses. This was done in order to assist the Crown Attorney and undermine the complainant’s defence.

The review panel found that the trial transcript showed that the judge afforded this self-represented complainant a substantial degree of assistance and latitude in presenting his case. The panel found no evidence that the judge was unfair or biased. Rather, the judge conducted himself in a civil, patient and professional manner throughout the trial. There was no evidence that the judge had any prior information or had formed any preconceived notions concerning the complainant or the evidence.

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The panel found that the transcript showed that the judge plainly and carefully explained to the complainant the basic principles of criminal law, procedure and evidence as they applied to the case. He helped the complainant to properly frame some of his questions for the witnesses. The judge properly advised the complainant of his rights such as whether to testify or call other witnesses in his defence. The judge ensured that the complainant had received full disclosure from the Crown Attorney. The judge involved duty counsel to assist the complainant with respect to resolution discussions and also to oppose the mental assessment application brought by the Crown Attorney. The judge explained his rulings and the reasons for his rulings in a plain and understandable manner. The judge complied with his duty to provide the complainant with reasonable assistance throughout the trial and to ensure that the complainant was able to make full answer and defence.

The review panel noted that the complainant objected to certain rulings excluding some evidence he wanted to introduce. The panel advised that if the complainant disagreed with how the judge ruled on the evidence, the proper way to proceed was through his legal remedies through the courts, such as an appeal. It is outside the jurisdiction of the Judicial Council to determine the correctness of the findings or rulings of the judge.

The review panel found no evidence that the judge had any prior information concerning any other current or past case involving the complainant. There was no evidence that the judge colluded with anyone in the conduct of the trial or that he was “tipped off” about what questions the complainant intended to ask the witnesses. There was no evidence that the judge denied the accused his “specific rights such as a pre-trial”. The subject judge was the trial judge and played no role in deciding whether a pre-trial was to be held or not. The panel noted that a trial judge does not ordinarily conduct a pre-trial. The transcript showed that the Crown Attorney pointed out that judicial pre-trials are rarely held in that particular jurisdiction. The panel found that the investigation showed that when the judge learned that there had been no pre-trial, he arranged for duty counsel to meet with the complainant and the Crown to determine whether the case could be resolved or whether the case had to proceed to trial.

The third group of allegations stated that that the judge had colluded with the Crown Attorney to have the complainant undergo a mental assessment and, in doing so, undermined the complainant’s right to a fair trial, such as:

- ◆ The judge is “in collusion with others in a collaborative effort in order to imply that I am unstable”.
- ◆ The judge and duty counsel were attempting to “set up” the complainant.
- ◆ The judge was part of the “justice system’s premeditated plan to attempt to prove that [the complainant] has some mental defect.

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The review panel found that these allegations were also unfounded. The transcript showed that the judge had requested duty counsel to assist the complainant in opposing the Crown Attorney's application. There was no evidence to support the complainant's claim that he was "set up". After the letter of complaint was received by the Judicial Council, the trial resumed. The judge dismissed the Crown Attorney's application for an order for a mental assessment. In doing so, the judge commented that the complainant had represented himself "admirably". The judge indicated that while he had "some concerns" about the complainant's mental health, insufficient evidence had been adduced to justify an order for an assessment.

In summary, the review panel carefully considered each of the allegations made by the complainant and, after its review of all of the materials, concluded that they were unsubstantiated.

For all of the above reasons, the review panel dismissed this complaint.

#### **CASE NO. 16-013/10**

A justice of the peace convicted the complainant of speeding, contrary to the *Highway Traffic Act*. The subject judge heard and dismissed the complainant's appeal from conviction. The complainant makes several allegations against the judge which can be summarized as follows:

- ◆ The judge was incompetent and unfair.
- ◆ The judge's behaviour was unprofessional and arrogant and "showed little regard for the rights of a member of the public in Ontario".
- ◆ The judge was unprepared, confused and had not read the trial transcript. The complainant expressed concern that "senility has set in to where [the judge] is incapable of doing his job properly".
- ◆ The judge would not allow the complainant to argue his appeal until the end of the case list at 4 p.m. As a result, the complainant was "unable to do proper justice to his case" because he was tired due to his age and poor health.
- ◆ The complainant had to wait several hours for the judge to give his decision on the date set for judgment. "Because of the senility factor, probably he forgot and became a no-show".
- ◆ The judge's decision "made no sense whatsoever and was wrong in every respect". His decision was purely arbitrary and not based on law or fairness.

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- ◆ After the decision was read, the complainant asked if he could speak. The complainant wanted to ask for reimbursement for the trial transcript. “The judge just stood up arrogantly and left the court room, denying [the complainant’s] rights.”

The complaint subcommittee ordered and carefully reviewed the transcripts of the appeal proceeding and the judge’s reasons and following their investigation, submitted a report to a review panel.

The review panel reviewed the complaint letter, the transcripts, and the report from the subcommittee. Following its review, the panel noted that in his letter to the Judicial Council, the complainant correctly observed that the Council has no authority to review the correctness of a judge’s decision. Nevertheless, the complainant took the position that this judge’s decision constituted “serious and egregious misconduct”. The complainant raised several grounds of appeal. The panel observed that in his reasons for dismissing the appeal, the judge addressed each ground raised by the complainant in a concise and reasoned fashion. In the panel’s view, the complainant strongly disagreed with the decision. However, the panel noted that the Judicial Council has no jurisdiction to review the correctness of the judgment. If the complainant was unhappy with the decision, the proper way to proceed would be through a further appeal in the courts.

The review panel further noted that it was unfortunate that the complainant was required to wait until the late afternoon of the day scheduled for the appeal in order to present his arguments. However, the panel found that it was clear from the transcript that the judge had a very busy docket that day and, understandably, wished to deal with adjournments and other shorter matters before proceeding with the complainant’s appeal. At the outset of the appeal, the judge acknowledged that the complainant had been waiting patiently for his case to be heard.

The review panel found that the transcript of the appeal showed that the judge treated the complainant with considerable patience and courtesy during submissions. They found that the judge was attentive to each issue raised by the complainant and attempted to assist him during his argument. An example of this was that he requested that the complainant direct him to specific passages of the trial transcript evidence which supported his position. The complainant suggested that this demonstrated that the judge had not read the trial transcript prior to the argument. The review panel disagreed with the complainant’s position because throughout the complainant’s submissions, the judge demonstrated that he was familiar with the evidence given at trial, including the testimony of the accused as well as the reasons of the justice of the peace.

The review panel commented that the reasons for judgment demonstrated that the judge carefully considered and addressed all of the arguments raised by the complainant. They noted that the complainant was correct that after rendering judgment, the judge did not permit him

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### Case Summaries

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to make further submissions. In his letter to the Council, the complainant indicated that he wished to request reimbursement for the cost of the trial transcript. In the appeal transcript, the complainant's request was to "just say a few words." The panel noted that the complainant never raised the issue of reimbursement for the cost of transcripts during his submissions or prior to the judge giving his judgment.

For the reasons noted, the review panel dismissed this complaint.

#### **CASE NO. 16-014/10**

A complaint was filed with the Ontario Judicial Council by a member of a local bar association in relation to the subject judge.

A complaint subcommittee comprised of a judicial member and a community member of the Council was investigating this complaint when information was received advising that the subject judge had retired from the bench.

The judge's retirement resulted in a loss of jurisdiction by the Ontario Judicial Council to continue its review and investigation and this file was administratively closed.

#### **CASE NO. 16-024/10**

The complainant appeared before the subject judge on an appeal of a *Provincial Offences Act* matter.

The complainant's driver's license had been suspended since 2005 as a result of unpaid fines for driving offences and unpaid parking tickets. The complainant indicated that in 2009, he went before a justice of the peace and asked for leniency, and forgiveness of the debt or an extension of time because of his health issues and personal circumstances. However, the justice of the peace denied his request. He appealed the decision of the justice of the peace and appeared before the subject judge.

The complainant indicated that the judge dismissed his appeal, asking the Crown Attorney to ensure collection of the debts, possibly in modest monthly payments because of his limited income. The complainant also stated that the Crown Attorney had convinced the judge that an arrest warrant had been sent to him previously, and that it was now time to arrest him and put him in jail for seven days. He alleged that he was incarcerated and then released after having been mistreated as a criminal for the five days of the sentence.

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### Case Summaries

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The complainant also made the following allegations against the judge:

- 1) By ruling that he should be arrested and imprisoned for seven days, the judge infringed the *Canadian Charter of Rights* and failed to inform him during the proceedings of his right to be defended by a lawyer while on bail.
- 2) The judge favoured the complainant's arrest and incarceration, where due to his serious health condition he ran a high risk of malpractice and even of death.
- 3) The judge, whose court is in a sector where the majority of the accused are low on the socioeconomic scale and which has many members of underprivileged groups appearing before him, was more likely to consciously or unconsciously make a stereotyped connection between this offence and those groups. In his ruling, His Honour subtly made an allusion to and took into account the complainant's status as an unemployed and low income individual and therefore sentenced him more severely. The complainant wondered if, in comparison to another offender with a stable job and a medium or high income, he would have received the same sentence for the same offence.
- 4) The judge should have been surprised that an arrest warrant had been issued and returned without any follow-up, even though the complainant's residential address was listed. He should have taken the time to check that allegations before making his ruling.
- 5) The judge failed to show any humanitarian compassion and his court was conducted in such an atmosphere of suspicion and disbelief about the complainant's health conditions that the decision that was made did not at all reflect the relevance of this situation.

The complainant stated that if the judge's decision could be reviewed by the Council or the Court of Appeal, then he hoped that adequate measures will be taken whenever the law was not being applied appropriately.

The complaint subcommittee reviewed and considered the complainant's letter and submitted a report to a review panel.

The review panel reviewed the letter of complaint and the report of the subcommittee.

The review panel noted from its review that the judge was informed of an outstanding warrant, which had been issued by another judge, for the arrest of the complainant. The warrant was executed and the complainant served seven days in custody. The panel also observed that the judge had asked the Crown Attorney to consider modest monthly payments from the complainant in satisfaction of the debt given the complainant's limited income.

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The review panel concluded that the complainant disagreed with the judge's decision to dismiss the appeal. The panel noted that if the complainant disagreed with the decision, the proper way to proceed was through other legal remedies such as an appeal to a high level of court. The review of the correctness of a judge's decision is a matter outside of the jurisdiction of the Judicial Council.

The panel observed that the complainant also alleged that the judge breached his *Charter* rights by permitting the warrant to be executed, and having him arrested and incarcerated; that he failed to inform the complainant that he had the right to be defended by a lawyer; and, that he was discriminated against due to his low income. The panel advised that these allegations raised questions of law outside of the jurisdiction of the Council. The proper way to proceed was through other legal remedies such as an appeal to a high level of court or a judicial review.

Further, the panel found that when the judge suggested a modest repayment plan to the Crown Attorney, the judge exhibited compassion towards the complainant.

For the reasons noted, the review panel dismissed this complaint.

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**APPENDIX B**

**CONTINUING  
EDUCATION PLAN**

## APPENDIX B

# Continuing Education Plan

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### ONTARIO COURT OF JUSTICE

## CONTINUING EDUCATION PLAN 2010-2011

The Continuing Education Plan for the Ontario Court of Justice has the following goals:

- 1) Maintaining and developing professional competence;
- 2) Maintaining and developing social awareness;
- 3) Encouraging personal growth.

The Plan provides each judge with an opportunity of having approximately ten days of continuing education per calendar year dealing with a wide variety of topics, including substantive law, evidence, *Charter of Rights*, skills training and social context. While many of the programs attended by the judges of the Ontario Court of Justice are developed and presented by the judges of the Court themselves, frequent use is made of outside resources in the planning and presentation of programs. Lawyers, government and law enforcement officials, academics, and other professionals have been used extensively in most education programs. In addition, judges are encouraged to identify and attend external programs of interest and benefit to themselves and the Court.

### **EDUCATION SECRETARIAT**

The coordination of the planning and presentation of education programs is assured by the Education Secretariat. The composition of the Secretariat is as follows: the Chief Justice as Chair (*ex officio*), four judges nominated by the Chief Justice and four judges nominated by the Ontario Conference of Judges. Research counsel of the Ontario Court of Justice serve as consultants. The Secretariat meets approximately five times per year to discuss matters pertaining to education and reports to the Chief Justice. The mandate and goals of the Education Secretariat are as follows:

The Education Secretariat is committed to the importance of education in enhancing professional excellence.

## APPENDIX B

# Continuing Education Plan

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It is the mandate of the Education Secretariat to promote educational experiences that encourage judges to be reflective about their professional practices, to increase their substantive knowledge, and to engage in ongoing, lifelong and self-directed learning.

To meet the needs of an independent judiciary, the Education Secretariat will:

- ◆ Promote education as a way to encourage excellence; and
- ◆ Support and encourage programs which maintain and enhance social, ethical and cultural sensitivity.

The goals of the Education Secretariat are:

- 1) To stimulate continuing professional and personal development;
- 2) To ensure that education is relevant to the needs and interests of the provincial judiciary;
- 3) To support and encourage programs that maintain high levels of competence and knowledge in matters of evidence, procedure and substantive law;
- 4) To increase knowledge and awareness of community, the diversity of the population and social services structures and resources that may assist and complement educational programs and the work of the courts;
- 5) To foster the active recruitment and involvement of the judiciary at all stages of program conceptualization, development, planning, delivery and evaluation;
- 6) To promote an understanding of judicial development;
- 7) To facilitate the desire for life-long learning and reflective practices;
- 8) To establish and maintain structures and systems to implement the mandate and goals of the Secretariat; and
- 9) To evaluate the educational process and programs.

The Education Secretariat provides administrative and logistical support for the education programs presented within the Ontario Court of Justice. In addition, all education program plans are presented to and approved by the Education Secretariat as the Secretariat is responsible for the funding allocation for education programs.

The current education plan for judges of the Ontario Court of Justice is divided into two parts:

- ◆ First Year Education
- ◆ Continuing Education

## APPENDIX B

# Continuing Education Plan

### I. FIRST YEAR EDUCATION

Each judge of the Ontario Court of Justice is provided with certain texts in print or electronic format and materials upon appointment including:

- ◆ *Conduct of a Trial*
- ◆ *Conduct of a Family Law Trial*
- ◆ *Judge's Manual*
- ◆ *Rules of the Ontario Court of Justice in Criminal Proceedings*
- ◆ *Writing Reasons*
- ◆ *Commentaries on Judicial Conduct (Canadian Judicial Council)*
- ◆ *Ethical Principles for Judges (Canadian Judicial Council)*
- ◆ *The Sentencing Finder*

The Ontario Court of Justice organizes a one-day orientation program for newly-appointed judges shortly after their appointment which deals with practical matters relating to the transition to the bench, including judicial conduct and ethics, courtroom demeanour, and administrative procedures. This program is presented twice a year.

Upon appointment, each new judge is assigned by the Chief Justice to one of the seven regions of the Province. The Regional Senior Judge for that region is then responsible for assigning and scheduling the new judge within the region. Depending on the new judge's background and experience at the time of appointment, the Regional Senior Judge will assign the newly-appointed judge for a period of time (usually several weeks prior to swearing-in) to observe senior, more experienced judges and/or specific courtrooms. During this period, the new judge sits in the courtroom, attends in chambers with experienced judges and has an opportunity to become familiar with their new responsibilities.

In April of their first year, new judges are encouraged to attend a seven-day New Judges' Education Program presented by the Canadian Association of Provincial Court Judges (CAPCJ). This intensive one-week program is largely substantive in nature and is oriented to criminal law. In 2010, the program was presented at Château Bromont in the Province of Quebec.

The Ontario Court of Justice, the National Judicial Institute and the Canadian Association of Provincial Court Judges jointly present a five-day intensive program focusing on judicial skill training in November of each year at Niagara-on-the-Lake. The program includes sessions on

## APPENDIX B

# Continuing Education Plan

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the delivery of judgments (both written and oral), issues related to self-represented accused, controlling the courtroom, communication skills and the effective conduct of a judicial pre-trial. The program has been very successful. It is constantly refreshed. In 2010, new teaching problems were developed to enhance the skills of family court judges and a new module was presented on problem-solving approaches to criminal and family dispositions.

Judges in their first year of appointment are also encouraged to attend all education programs relating to their field(s) of specialization presented by the Ontario Court of Justice. These programs are outlined under the heading “Continuing Education”.

Each judge at the time of appointment is also invited to participate in a mentoring program which has been developed within the Ontario Court of Justice by the Ontario Conference of Judges and funded through the Education Secretariat. New judges also have the opportunity (as do all judges) to discuss matters of concern or of interest with their peers at any time.

A Library Committee of the Court develops a list of texts and reporting services from which each judge is permitted annually to select materials of a value of up to \$2,600 for their personal chamber’s library.

## **II. CONTINUING EDUCATION**

Continuing education programs presented to judges of the Ontario Court of Justice are of two types, either internal or external:

- A) Programs developed and presented internally by the Ontario Conference of Judges with the involvement of the Education Secretariat; and
- B) Programs presented by external organizations, such as the National Judicial Institute, the Canadian Association of Provincial Court Judges and the International Association of Women Judges.

### **A) PROGRAMS ADMINISTERED BY THE EDUCATION SECRETARIAT**

The programs presented by the Education Secretariat and the Ontario Conference of Judges constitute the Core Program of the Ontario Court of Justice education curriculum. The Ontario Conference of Judges selects a director of criminal law education and a director of family law education. The two directors in turn may create a support committee to advise and assist them in putting together the core education programs. Part of the core programming is annual in occurrence and part of it is presented “as needed”.

## APPENDIX B

# Continuing Education Plan

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### 1) **Annual Core Programs**

Seven family and criminal programs are presented each year with a changing curriculum to reflect the educational needs of the Court. These courses are open to every criminal and family judge in accordance with their area of practice. They are more particularly described below:

There are two education programs dedicated to family law issues—the Judicial Development Institute in January and the Annual Family Law Program in the fall. Generally speaking, the principal topics are devoted to child welfare and family law (custody, access and support). Additional topics involving skills development, case management, legislative changes, social context and other areas are incorporated as the need arises. Each program is of two to three days' duration and is open to any judge who spends a significant amount of his or her time presiding over family law matters.

A family law education component is also included in the Annual General Meeting of the Ontario Court of Justice held in May.

There are five major criminal law education conferences presented each year.

- a. At four regional locations, a three-day Regional Seminar is organized to be delivered in October and November of each year. These seminars cover a wide range of topics in the area of criminal law. Four separate agendas are developed each year to be responsive to the issues found in each region.
- b. A two and a half day education seminar is presented annually in May in conjunction with the Annual General Meeting of the Ontario Court of Justice.

All judges are entitled and encouraged to attend these seminars.

### 2) **“As Needed” Recurring Programs**

These are programs presented annually or biannually with limited enrolment. They fulfil a variety of education needs such as the development of judicial skills and leadership and social context training. Particulars of the programs offered are set out below.

- a. **JUDGMENT WRITING/ORAL JUDGMENTS:** Professor Emeritus Edward Berry and faculty from the Ontario Court of Justice and the National Judicial Institute present an intensive course to assist judges in developing the skills required to deliver oral judgments and to write effective judgments. This course was not offered in 2010.
- b. **PRE-RETIREMENT SEMINARS:** Intended to assist judges and their domestic partners in their retirement planning, this one and one-half day program deals with the social

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# Continuing Education Plan

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- and financial issues that arise in the transition from the bench to retirement. This seminar was presented in March 2009. PRE-RETIREMENT SEMINARS: Intended to assist judges and their domestic partners in their retirement planning, this one and one-half day program deals with the social and financial issues that arise in the transition from the bench to retirement. This seminar was presented in March 2009.
- c. JUDICIAL COMMUNICATION PROGRAM: The Court, in partnership with the National Judicial Institute, developed a Communication Skills in the Courtroom seminar presented annually for one week in Stratford. Judges learn and practice techniques to improve both their verbal and non-verbal communication skills. The faculty includes judges and Stratford performers who coach judges to improve their ability to communicate effectively. The Ontario Court of Justice did not participate in this course in 2010, but it will return in 2011.
- d. FAMILY LAW PRIMER: A number of judges who preside primarily in the criminal courts throughout the province expressed an interest in presiding in family court. As well, in a number of jurisdictions judges preside in both family and criminal courts. A Family Law Primer program was developed with the assistance of the National Judicial Institute, and, in September 2006, 28 judges participated in an intensive week-long family law seminar. Judges who preside primarily in family courts across the province provided a comprehensive overview in the following areas of family law:
- ◆ Child Protection and Adoption
  - ◆ Introduction to Domestic Proceedings
  - ◆ Custody and the *Children's Law Reform Act*
  - ◆ Enforcement: *Family Responsibility and Support Arrears Enforcement Act*

This in-depth Family Law Primer was held again in April 2008 and, for the first time, was jointly developed and delivered by and for the judges of both the Ontario Court of Justice and the Superior Court of Justice. In 2010, the Education Secretariat chose to explore new ways to prepare new family court judges. The development of this program will continue in 2011.

- e. SOCIAL CONTEXT PROGRAMS: The Ontario Court of Justice has presented significant programs dealing with social context. The first such program, entitled *Gender Equity*, was presented in the fall of 1992. That program used professional and community resources in its planning and presentation phases. A number of Ontario Court of Justice judges were trained as facilitators for the purposes of the

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# Continuing Education Plan

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program during the planning process, which lasted over twelve months. Extensive use was made of videos and printed materials which form a permanent reference. The facilitator model has since been used in a number of Ontario Court of Justice education programs.

The Court undertook its second major social context program, presented to all of its judges, in May 1996. The program, entitled *The Court in an Inclusive Society*, was intended to provide information about the changing nature of our society, to determine the impact of the changes and to equip the Court to respond better to those changes. A variety of pedagogical techniques, including large and small group sessions, were used in the course of the program. A group of judicial facilitators were specifically trained for this program which was presented following significant community consultation.

In September 2000, the Ontario Conference of Judges and the Canadian Association of Provincial Court Judges met in Ottawa for a combined conference which covered poverty issues and issues related to aboriginal justice.

At the Court's Annual General Meeting in 2003, the theme of the education program was "Access to Justice". A play followed by a panel discussion was used to describe issues of literacy, race, poverty, neglect, abuse and violence in the home affecting access to justice. Another session used lectures, videos, panel discussions and small group work to explore the issue of literacy and the courts.

As a result of our experience with these special programs, social context education is now integrated into most of the courses presented by the Education Secretariat.

Our approach to social context education has changed and matured since these courses were offered. We no longer deliver these programs as stand-alone courses that can serve to isolate the issues from the day-to-day experience of judges. Instead, social context education is now integrated into most of our core programming.

- f. UNIVERSITY EDUCATION PROGRAM: This program takes place annually over a five-day period in the spring and makes extensive use of academics. It provides an opportunity for approximately 30 judges to deal in depth with criminal law education topics in a more academic context. The program, with some modification, remains largely unchanged over a three-year period to enable a larger number of judges to receive the benefits of the program. In June 2008, the latest cycle of this program entitled "Judges to Jails" was delivered. It is a week-long education initiative held in Gananoque to permit the judges to tour federal and provincial correctional institutions in the Kingston area and to participate in seminar work related

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### Continuing Education Plan

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to correctional issues. The Judges to Jails program was repeated in 2009. In 2010, this program was taken over by the National Judicial Institute. The timing of this week-long event in June and the changing demographic of this Court has resulted in a steady drop in attendance. No replacement program was developed in 2010, and the Education Secretariat is debating the utility of continuing. One alternative under consideration is to reassign most of the resources from the University Program to support judges attending external programs.

- g. JUDICIAL ADMINISTRATION CONFERENCE: This is an occasional conference last held over two days in February 2008. It brought together about 75 administrative judges of the Ontario Court of Justice and was also open to those judges who have shown an interest in judicial administration. The conference addressed issues of leadership and human resource management in a judicial environment. It also addressed the changing landscape of judicial administration and provided an overview of the tools available to assist judges to make the courts more accessible and effective. The program returned in January 2011 and was attended by five Chief Judges and seven Associate Chief Judges from other provinces as well as 70 judges of the Ontario Court.
- h. COMPUTER TRAINING: The Computer Effectiveness and Skills Training Seminar, developed in 2008, was delivered for the first time in February 2009. This course was designed by judges of the Ontario Court of Justice, the National Judicial Institute and the Judicial Information Technology Office. The course was divided into two programs—one designed for judges at the beginner level and another designed for those at the intermediate level where a new note-taking template was introduced. This note-taking template was developed to assist and encourage judges who wish to use their computers in the courtroom. In 2010, this course was extensively redesigned in response to course evaluations recommending it focus on judges with entry-level computer skills.

In 2009-2010, the computers of the Ontario Court of Justice were upgraded and a change was made from Outlook 2003 to Outlook 2007. The Judicial Information Technology Office, in partnership with the NJI, developed an extensive series of training modules pre-loaded onto each new computer to assist the judiciary in making the transition to Outlook 2007.

- i. AD HOC PROGRAMS: From time to time, a need is identified for a focussed program of education for which judges are individually selected to ensure regional and gender balance. In October 2009, such a program was offered on the subject of

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# Continuing Education Plan

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problem-solving courts. This program looked at the challenges, rewards and best practices for the development of problem-solving courts to address the special needs of aboriginals, mentally-disordered offenders and drug-addicted offenders.

In 2010, a special course was developed and delivered to educate judges and justices of the peace on the policy and procedures of the Courts' newly implemented Discrimination and Harrassment Policy. These judicial officers will serve as mediators/advisors to help in resolving conflicts between members of the Ontario Court of Justice that arise out of discriminatory actions or words. A follow up two-day course was presented in the fall of 2010 to develop mediation skills.

### **B) EXTERNAL EDUCATION PROGRAMS**

- 1) FRENCH-LANGUAGE COURSES: Judges of the Ontario Court of Justice who are proficient in French may attend courses presented by the Office of the Commissioner for Federal Judicial Affairs. The frequency and duration of the courses are determined by the judge's level of proficiency. The purpose of the courses is to assure and to maintain the French language proficiency of those judges who are called upon to preside over French language matters in the Ontario Court of Justice. There are two levels of French-language courses: Terminology courses for francophone judges and Terminology courses for anglophone (bilingual) judges. This program is offered annually.
- 2) OTHER EDUCATIONAL PROGRAMS: Judges of the Ontario Court of Justice are encouraged to pursue educational interests by attending education programs presented by other organizations and associations including but not limited to:
  - ◆ Canadian Association of Provincial Court Judges
  - ◆ National Judicial Institute
  - ◆ Federation of Law Societies: Criminal (Substantive Law/Procedure/ Evidence) & Family Law
  - ◆ International Association of Juvenile and Family Court Magistrates
  - ◆ Canadian Bar Association
  - ◆ Criminal Lawyers' Association
  - ◆ The Advocates' Society
  - ◆ Ontario Association for Family Mediation/Mediation Canada

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# Continuing Education Plan

- ◆ Canadian Institute for the Administration of Justice
- ◆ International Association of Women Judges (Canadian Chapter)
- ◆ Ontario Family Court Clinic Conference
- ◆ Canadian Institute for Advanced Legal Studies (Cambridge Lectures)

The Education Secretariat has established a Conference Attendance Committee to consider applications by individual judges for funding assistance to attend conferences/seminars/programs other than those presented by the Ontario Court of Justice. But judges are able to claim travel and accommodation expenses over and above this subsidy against a judicial allowance received by each judge in the amount of \$2,500. Over the last two years, the budget has quadrupled as some resources assigned to the University Program were shifted to enable judges to define and meet their individual education needs.

- 3) In accordance with a Memorandum of Understanding with the Ontario Conference of Judges, the Ontario Court of Justice annually sends 10 judges selected by the Conference to the annual meeting and education program of either the Canadian Bar Association or the Canadian Association of Provincial Court Judges.
- 4) **COMPUTER COURSES:** In 2006, a position of Education Librarian Consultant to the Ontario Court of Justice and the Superior Court of Justice was established as a joint initiative of the two Courts. The consultant provided the judges of both Courts with a dedicated resource to provide enhanced training and support on electronic legal resources. The consultant's time was made available to train judges on a one-on-one basis and, if appropriate, in group sessions in court locations around the province. This position was continued until mid-2007 when the contract expired. Other less structured formats are now used to deliver computer training. Most Regional Seminars and the Annual General Meeting contain a module dedicated to providing and improving computer research skills.

In 2007, the Ontario Court of Justice IT Committee was established. Its mandate includes promoting opportunities for computer training.

- 5) **NATIONAL JUDICIAL INSTITUTE (NJI):** The Ontario Court of Justice, through its Education Secretariat, makes a financial contribution to the operation of the National Judicial Institute. Based in Ottawa, the NJI is a world leader in the development and delivery of judicial education programs. Since 2002 the Ontario Court of Justice has made a significant financial contribution to the NJI in return for receiving dedicated education assistance from a senior NJI advisor. This relationship has given many judges

## APPENDIX B

### Continuing Education Plan

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of the Ontario Court of Justice the opportunity to work on the development of innovative programming and to serve as faculty for the delivery of that programming across the country. They are then able to bring their expertise back to the Court to the benefit of all aspects of the education portfolio.

- 6) Judges have access to remote learning computer-based courses prepared and hosted by the NJI covering substantive law issues such as unlawful detention, mental health, and evidence. These programs, offered usually twice per year, are available at no cost to the judges of the Ontario Court of Justice.

#### OTHER EDUCATIONAL RESOURCES

- 1) CENTRE FOR JUDICIAL RESEARCH AND EDUCATION: The Centre is a law library and computer research facility located in Toronto and staffed by five research lawyers and three assistants. It is accessible in person, by telephone, e-mail or fax. The Centre responds to specific requests from the judiciary for research assistance and provides bi-weekly updates with respect to legislation and relevant case law through its electronic publication *Items of Interest*.
- 2) SELF-FUNDED LEAVE: In order to provide access to educational opportunities that fall outside the parameters of regular judicial education programs, the Ontario Court of Justice has developed a self-funded leave policy that allows judges to defer income over a period of years in order to take a period of self-funded leave of up to twelve months. Prior approval is required for such leave, and a peer review committee reviews the applications in selecting those judges who will be authorized to take such leave.
- 3) In addition to the educational programs outlined above, the fundamental education of judges continues to be self-directed and is effected in large part through continuing peer discussions and individual reading and research.

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**APPENDIX C**

**PRINCIPLES OF  
JUDICIAL OFFICE**

## APPENDIX C

# Principles of Judicial Office

*“Respect for the Judiciary is acquired through the pursuit of excellence in administering justice.”*

## PRINCIPLES OF JUDICIAL OFFICE

### PREAMBLE

A strong and independent judiciary is indispensable to the proper administration of justice in our society.

Judges must be free to perform their judicial duties without fear of reprisal or influence from any person, group, institution or level of government.

In turn, society has a right to expect those appointed as judges to be honourable and worthy of its trust and confidence.

The judges of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

The following principles of judicial office are established by the judges of the Ontario Court of Justice (Provincial Division) and set out standards of excellence and integrity to which all judges subscribe.

These principles are not exhaustive. They are designed to be advisory in nature and are not directly related to any specific disciplinary process. Intended to assist judges in addressing ethical and professional dilemmas, they may also serve in assisting the public to understand the reasonable expectations which the public may have of judges in the performance of judicial duties and in the conduct of judges' personal lives.

# Principles of Judicial Office

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## *PRINCIPLES OF JUDICIAL OFFICE*

### **1. THE JUDGE IN COURT**

1.1 Judges must be impartial and objective in the discharge of their judicial duties.

*Commentaries:*

Judges should not be influenced by partisan interests, public pressure or fear of criticism.

Judges should maintain their objectivity and shall not, by words or conduct, manifest favour, bias or prejudice towards any party or interest.

1.2 Judges have a duty to follow the law.

*Commentaries:*

Judges have a duty to apply the relevant law to the facts and circumstances of the cases before the court and render justice within the framework of the law.

1.3 Judges will endeavour to maintain order and decorum in court.

*Commentaries:*

Judges must strive to be patient, dignified and courteous in performing the duties of judicial office and shall carry out their role with integrity, appropriate firmness and honour.

### **2. THE JUDGE AND THE COURT**

2.1 Judges should approach their judicial duties in a spirit of collegiality, cooperation and mutual assistance.

2.2 Judges should conduct court business with due diligence and dispose of all matters before them promptly and efficiently having regard, at all times, to the interests of justice and the rights of the parties before the court.

2.3 Reasons for judgment should be delivered in a timely manner.

2.4 Judges have a duty to maintain their professional competence in the law.

*Commentaries:*

Judges should attend and participate in continuing legal and general education programs.

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## APPENDIX C

# Principles of Judicial Office

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2.5 The primary responsibility of judges is the discharge of their judicial duties.

*Commentaries:*

Subject to applicable legislation, judges may participate in law related activities such as teaching, participating in educational conferences, writing and working on committees for the advancement of judicial interests and concerns, provided such activities do not interfere with the judges' primary duty to the court.

### 3. THE JUDGE IN THE COMMUNITY

3.1 Judges should maintain their personal conduct at a level which will ensure the public's trust and confidence.

3.2 Judges must avoid any conflict of interest, or the appearance of any conflict of interest, in the performance of their judicial duties.

*Commentaries:*

Judges must not participate in any partisan political activity.

Judges must not contribute financially to any political party.

3.3 Judges must not abuse the power of their judicial office or use it inappropriately.

3.4 Judges are encouraged to be involved in community activities provided such involvement is not incompatible with their judicial office.

*Commentaries:*

Judges should not lend the prestige of their office to fund-raising activities.

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## APPENDIX D

# POLICY ON ACCESSIBILITY AND ACCOMMODATION – ACCESS TO SERVICES

**Note:**

This version reflects decisions of the Council up to March, 2011.

For the current version, please see the Council's website at

[www.ontariocourts.ca/ojc/en/policy/accessibility](http://www.ontariocourts.ca/ojc/en/policy/accessibility)

## APPENDIX D

# Policy on Accessibility and Accommodation – Access to Services

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## POLICY ON ACCESSIBILITY AND ACCOMMODATION – ACCESS TO SERVICES

This policy is available on the Internet at <http://www.ontariocourts.on.ca/ojc/en/>. A large size version and an audio version of the policy are also available.

The Council is committed to providing an inclusive and accessible environment in which all members of the public have equal access to its services and are treated with dignity and respect.

The Council is committed to providing accommodation for needs related to disability, unless to do so would cause undue hardship. Disability includes physical disabilities, sensory disabilities, mental health disabilities, and “invisible” disabilities such as learning disabilities or environmental sensitivities.

This policy sets out a process for persons to let the Council know about situations where accommodation is needed so that it can work with individuals to make its services accessible to them.

### *PRINCIPLES*

The following principles will guide the Council in making its processes accessible:

- ◆ Services should be provided in a manner that respects the dignity and independence of members of the public.
- ◆ Services should be provided in a manner that fosters physical and functional access to the Council’s processes.
- ◆ All persons should be given equal opportunity to obtain, use and benefit from the Council’s services. Where required, individualized accommodation will be provided, short of undue hardship.

The Council will be sensitive to the privacy concerns of those who seek accommodation.

## APPENDIX D

# Policy on Accessibility and Accommodation – Access to Services

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### *APPLICATION OF THE POLICY*

This policy applies to all of the Council's services. The Council will promote equal access for all individuals including complainants, subjects of complaints, witnesses and representatives, to fully participate in its processes, short of undue hardship. This policy applies to the Council's office, hearing rooms used to conduct public hearings, and all Council staff and members.

### *PROCESS*

Requests for accommodation will be considered on an individualized case-by-case basis. Please see the section **Requests for Accommodation** for information on how to make a request.

### *THE COUNCIL'S COMMITMENT TO ACCESSIBILITY*

The Council will conduct meetings and hearings in barrier-free environments. These are in addition to specific accommodations that may be requested on a case-by-case basis.

The Council may be contacted by mail, email, facsimile, telephone and TTY line. The phone line has a toll free number. Bell Relay services may be requested.

Letters inviting persons to meetings, public notices and summons will include a notice to persons to advise them of the Council's commitment to accommodation for needs related to disability, unless to do so would cause undue hardship. The notice will also advise persons who require accommodation how to make a request for accommodation.

When requested to accommodate needs, the Council will arrange for the provision of visual interpretation services, such as American Sign Language (ASL) or real time captioning.

The Council recognizes that some individuals require the use of support services to assist with daily needs including communication, mobility, personal care or medical needs. The Council will work to accommodate such services but will not generally arrange for them.

The Council further recognizes that some individuals may require the use of a service animal or assistive device to participate in the Council's proceedings. The Registrar should be contacted in advance of the proceedings if any special arrangements are required for the animal or device.

Where an accessibility or accommodation measure provided by the Council becomes unavailable, the Council will provide notice as soon as practicable and make reasonable arrangements to make alternate arrangements or reschedule a proceeding to ensure that it is accessible.

## APPENDIX D

# Policy on Accessibility and Accommodation – Access to Services

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### *REQUESTS FOR ACCOMMODATION*

The Council's Registrar and Assistant Registrars are fully informed of this policy and will receive and respond to inquiries and requests for accommodation. If you require accommodation from the Council, contact the Registrar:

Marilyn King  
Registrar  
Ontario Judicial Council  
P.O. Box 914  
Adelaide Street Postal Station  
31 Adelaide Street East  
Toronto, Ontario M5C 2K3  
Telephone (416)327-5672  
Toll free 1-800-695-1118  
Fax (416)327-2339  
Email: [marilyn.king@ontario.ca](mailto:marilyn.king@ontario.ca)

The Registrar and Assistant Registrars will work with you to make the Council accessible in relation to your needs. Information necessary to understand the basis for an accommodation request and to allow the Council to respond appropriately should be provided.

The Council recognizes that accommodation needs may arise during any aspect of the process. If an accommodation issue comes to the attention of Council staff, it will be directed to the Registrar. During Council proceedings, a Council member may directly address a request, as appropriate, or refer the request to the Registrar.

### *TRAINING*

Training will be provided for Council staff as appropriate. Training will ensure that Council employees and members understand this policy, and understand how to undertake accessibility and accommodation measures in accordance with this policy, and the Accessibility Standards for Customer Service.

## **APPENDIX D**

# Policy on Accessibility and Accommodation – Access to Services

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### ***FEEDBACK***

Comments or complaints about the accessibility of the Council or about accommodation provided by the Council may be provided by contacting the Registrar or the Council at:

Ontario Judicial Council  
P.O. Box 914  
Adelaide Street Postal Station  
31 Adelaide Street East  
Toronto, Ontario M5C 2K3  
Telephone (416)327-5672  
Toll free 1-800-695-1118  
Fax (416)327-2339

