

OJC



EIGHTEENTH ANNUAL REPORT

2012 – 2013

**ONTARIO
JUDICIAL COUNCIL**



The Honourable Annemarie E. Bonkalo

CHIEF JUSTICE

ONTARIO COURT OF JUSTICE

Co-Chair, Ontario Judicial Council



ONTARIO JUDICIAL COUNCIL

March 26, 2014

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

Dear Minister:

On behalf of the Ontario Judicial Council, I am pleased to submit the Annual Report of the Ontario Judicial Council concerning its eighteenth 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, 2012 to March 31, 2013.

Respectfully submitted,

A handwritten signature in cursive script that reads "Annemarie E. Bonkalo".

Annemarie E. Bonkalo
Chief Justice
Ontario Court of Justice



TABLE OF CONTENTS

Introduction	1
1) Composition and Terms of Appointment	2
2) Members	3
3) Administrative Information	6
4) Functions of the Judicial Council	7
5) Education Plan	8
6) Communications	8
7) Principles of Judicial Office	8
8) Judicial Appointments Advisory Committee	9
9) The Complaints Procedure	9
10) Notification of Disposition	14
11) Legislation	15
12) Compensation for Legal Costs Incurred	15
13) Summary of Complaints	15
Appendix A – Case Summaries	A - 19
Appendix B – <i>Principles of Judicial Office</i>	B - 67
Appendix C – <i>Hearing about the Conduct of the Honourable Justice Howard I. Chisvin</i>	C - 71



INTRODUCTION

The period of time covered by this Annual Report is from April 1, 2012 to March 31, 2013.

The Ontario Judicial Council investigates complaints made by the public about the 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 334 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 2013, the population was approximately 13,505,900. In an average year, judges of the Court deal with over 250,000 adult and youth criminal cases and over 24,000 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 22 new complaints in its eighteenth year of operation, as well as carrying forward 29 complaint files from previous years. Of these 51 complaints, 24 files were completed and closed before March 31, 2013. Twenty-seven complaints remained open to be carried over into the nineteenth year of operation. Information about the 24 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.ca/ocj/ojc/. 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.

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 for orders of accommodation of 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.

2. MEMBERS – REGULAR

The membership of the Ontario Judicial Council in its eighteenth year of operation (April 1, 2012 to March 31, 2013) 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 Kathryn Hawke (Hamilton)

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

The Honourable Justice Fern Weinper (Toronto)
The Honourable Justice Eileen S. Martin (Welland)



Lawyer Members:

TREASURER OF THE LAW SOCIETY OF UPPER CANADA

Mr. Thomas G. Conway, Cavanagh LLP (Ottawa)
(Effective June 28, 2012)

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

Mr. W. A. Derry Millar, Weir Foulds LLP (Toronto)
(Until February 22, 2013)

LAWYER MEMBER APPOINTED BY THE LAW SOCIETY OF UPPER CANADA:

Ms. Kim Bernhardt, Grant and Bernhardt (Toronto)

Community Members:

Mr. Anish Chopra (Toronto)
Managing Director, TD Asset Management Inc.

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

Ms. Sylvie Powell
President/Senior Consultant (Ottawa)
MediaLane Communications Inc.
(Effective September 19, 2012)

Mr. Ray Sharma (Toronto)
Founder and President XMG Studio Inc.
(Until February 24, 2013)



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)

During the period covered by this report, the following judge of the Court of Appeal of Ontario was appointed by the Chief Justice of Ontario to serve on a Hearing Panel of the Ontario Court of Justice:

The Honourable Justice Robert Sharpe..... (Toronto)

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 Deborah K. Livingstone (London)
- The Honourable Justice Claude H. Paris (Toronto)
- The Honourable Justice Marietta L.D. Roberts(Woodstock)
- The Honourable Justice Margaret F. Woolcott..... (Kitchener)

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 staff.

Councils’ offices are used for meetings of both Councils and their members, and as needed for meetings with judicial officers that may result as part of the disposition of complaints. The Councils have a shared telephone reception and fax number. They share 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.

In the eighteenth 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 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;
- ♦ to consider applications under section 45 for orders that needs of judges arising from disabilities be accommodated; 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 in the courts, such as an appeal.

Under section 51.1 of the *Courts of Justice Act*, the Council may establish rules of procedure for complaint subcommittees, review panels and hearing panels and the Council must make the rules available to the public. The Council has established procedures containing rules for the complaints process which are posted on its website at the link for “Policies and Procedures” at www.ontariocourts.ca/ocj/ojc/policies-and-procedures/.

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 is developed by the Chief Justice in conjunction with the Education Secretariat. In the most recent version, competencies for the judges and a new section on computer education have been added. The computer education was originally focused on basic skills. There is now an intermediate level focused on legal research. The Court has also increased funding for self-directed education. The most recent version of the continuing education plan can be found on the Council's website at: www.ontariocourts.ca/ocj/ojc/education-plan/.

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.ca/ocj/conduct/do-you-have-a-complaint/. 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' associations 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" and is posted on the website at www.ontariocourts.ca/ocj/ojc/principles-of-judicial-office/.

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 was appointed by the Judicial Council to act as its representative on the Judicial Appointments Advisory Committee during the time covered by this Report.

9. 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. 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 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.ca/ocj/ojc/policies-and-procedures/procedures-document/.

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 of 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.



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;
- ◆ 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 or her 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.

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, called ‘Presenting 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 disposition.

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:

- ◆ 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.

10. 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.

11. 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:

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c43_e.htm

12. 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 may 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 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. One recommendation for compensation was made to the Attorney General during the period covered by this report.

13. SUMMARY OF COMPLAINTS

The Ontario Judicial Council received 22 complaints in its eighteenth year of operation, as well as carrying forward 29 complaint files from previous years. Of these 51 complaints, 24 files were closed before March 31, 2013. One of the files closed was from the fifteenth year (2009-2010), four from the sixteenth year (2010-2011), 12 from the seventeenth year (2011-2012) and seven from the eighteenth year (2012-2013).

Of the 24 files that were closed during the period covered by this Report, 13 arose from proceedings under the *Criminal Code*, five arose from family court proceedings, one related to the conduct of a judge outside of court, four arose from matters in Small Claims Court, and one related to a *Provincial Offences Act* appeal.



Three of the 24 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.

Fourteen of the 24 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 and considered by a review panel before a decision was made.

Four complaints were referred to a Chief Justice. A review panel will refer a complaint to a Chief Justice where the majority of the panel are of the opinion that there is some merit to the complaint and the disposition is, in the opinion of the majority of the review panel, a suitable means of informing the judge that his or her course of conduct was not appropriate in the circumstances that led to the complaint.

A review panel will order a hearing where a majority of the members of the review panel are of the opinion that there has been an allegation of judicial misconduct which the majority of the members believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct. Three complaints were ordered to a public hearing in relation to one incident involving the conduct of the Honourable Justice Howard I. Chisvin. The hearing panel was of the view that confidence in the administration of justice on the part of a member of the public apprised of all of the facts would be restored by the following dispositions: a formal reprimand for his misconduct; and, a warning that any repetition would have serious consequences for the administration of justice and for him as a judge. The panel did not make a recommendation to the Attorney General that His Honour should be compensated for his legal costs. A copy of the reasons for the panel's decisions is included in Appendix C of this Annual Report and on the Council's website at www.ontariocourts.ca/ocj/ojc/public-hearings-decisions/

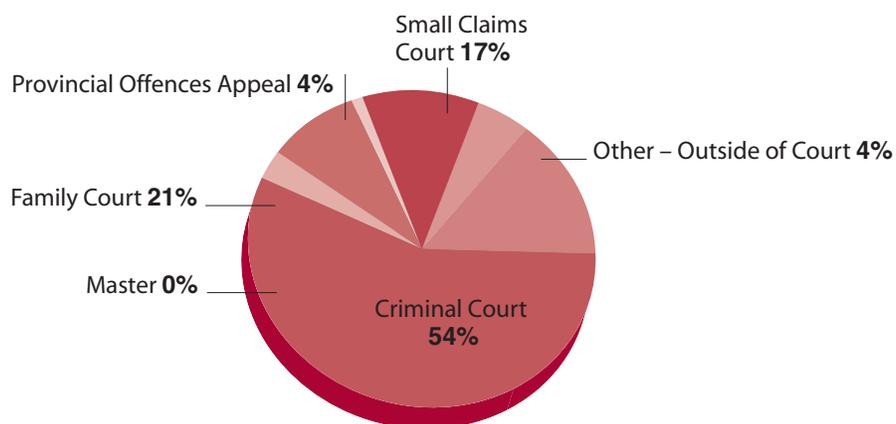
Twenty-seven complaints remained open to be carried over into the nineteenth year of operation. Of those 27 files, one file was from Year 15 (2009-2010), one was from Year 16 (2010-2011), ten were from Year 17 (2011-2012) and 15 were from Year 18 (2012-2013).

DISPOSITIONS IN 2012/2013

DISPOSITION	NUMBER OF CASES
Dismissed – Out of Jurisdiction	3
Dismissed – unfounded, not judicial misconduct, etc.	14
Referred to Chief Justice	4
Ordered to a Hearing	3
TOTAL	24

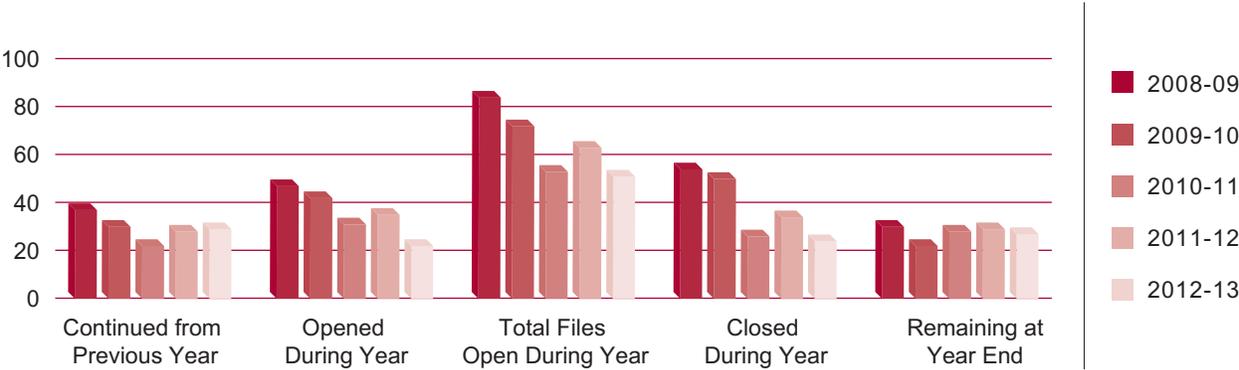
TYPES OF CASES CLOSED IN 2012/2013

TYPES OF CASES CLOSED	NUMBER OF CASES
Criminal Court	13
Family Court	5
Other – Outside of Court	1
Small Claims Court	4
Provincial Offences Appeal	1
Master	0
TOTAL	24



CASELOAD IN FISCAL YEARS

FISCAL YEAR	08/09	09/10	10/11	11/12	12/13
Opened During Year	47	42	31	35	22
Continued from Previous Year	37	30	22	28	29
Total Files Open During Year	84	72	53	63	51
Closed During Year	54	50	26	34	24
Remaining at Year End	30	22	28	29	27



APPENDIX A

CASE SUMMARIES

APPENDIX A

Case Summaries

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. 18-001/12 was the first file opened in the eighteenth year of operation and was opened in calendar year 2012).

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

CASE NO. 15-037/10

The complainant was the defendant in a case before the subject judge. The complainant alleged that the proceeding was scheduled as a trial and was changed to a Settlement Conference without her knowledge or consent. She alleged that the judge made it clear that she wanted the hearing to be over fast. The other party made a settlement offer, and then the complainant realized that the judge was conducting a Settlement Conference. The plaintiff then made a lower second settlement offer. The complainant alleged that the judge thought she should settle, and that when she shook her head to indicate her unwillingness to settle, the judge scolded, "Don't you shake your head at me." The complainant said that she was intimidated by the judge's aggressive behaviour, and she stood silently by while the judge ordered what appeared to be a "snap judgment". The complainant alleged that the judge erroneously denied her company a right to a trial and asked that the judgment be quashed and a trial be scheduled.

The complaint subcommittee carefully reviewed the letter of complaint and asked the other party in the court proceeding for his recollection of the conduct of the judge. No response was received from the other party, despite two requests.

As Settlement Conferences are not generally on the record, the subcommittee was not able to obtain a transcript or audio recording of the appearance. In accordance with the Procedures of the Council, the subcommittee provided a copy of the complaint letter to the judge and gave her time to provide a response. The judge provided a response. After its review of the response letter, the subcommittee prepared a report for a review panel of the Judicial Council.

The review panel considered the letter from the complainant, the response from the judge, and the subcommittee's report.

APPENDIX A

Case Summaries

Following its careful review, the review panel found that signing judgment at a Settlement Conference was a matter of procedure and not a matter of conduct within the jurisdiction of the Judicial Council. With respect to the complainant's request that the judgment be quashed and a trial be scheduled, the panel observed that only an appeal court has the jurisdiction to grant such a request. The Council has no authority to overturn the decision of a judge.

After reviewing the complainant's letter, the review panel could understand why the complainant was left with negative perceptions of the judge's conduct and the overall handling of the proceedings.

The panel was of the view that judges have a duty to maintain high standards of conduct so as to preserve the integrity of the court and public confidence in the judiciary. Patience and civility are expected of a judge. The review panel found that in the instance that led to this complaint, the judge demonstrated a lack of patience and a failure to maintain civility.

The panel observed that the *Principles of Judicial Office* state in the preamble:

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.

As well, one of the Commentaries contained in the *Principles* states:

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.

The panel noted that the judge acknowledged in her response that she was inappropriately rude. The panel found that the judge had reflected on her conduct and she indicated that she understood and accepted the complainant's concerns. Her Honour acknowledged that she lost her patience. Her Honour also expressed her apology. While the review panel noted that the judge did express her apology, it appeared to the panel that she may not have fully appreciated what was lacking in her conduct and how such conduct impacts upon confidence of persons in the administration of justice or in Her Honour as a judge.

APPENDIX A

Case Summaries

In accordance with the Procedures of the Judicial Council, a review panel may refer a complaint to the Chief Justice, and may, if the judge who is the subject of the complaint agrees, impose conditions on a decision to refer the complaint to the Chief Justice. The Procedures provide for a referral to the Chief Justice in circumstances where it is necessary to inform the judge that his or her conduct was not appropriate in the circumstances leading to the complaint. The panel referred the complaint to the Chief Justice, with a condition that the judge participate in appropriate judicial education as selected by the Honourable Chief Justice.

Subsequent to the meeting with the judge, the Chief Justice reported back to the review panel. After considering the report from the Chief Justice, the panel observed that the judge accepted full responsibility for the conduct, and recognized that the manner of communication was inappropriate. The judge sincerely reflected upon the conduct and regretted the impact of the conduct upon the complainant. The judge acknowledged the importance of maintaining a professional and civil tone and recognized the critical role of a judge in promoting the public's positive perception of the judiciary in general and of the justice system. The Chief Justice advised that the judge would attend a course of education developed for members of the judiciary that would improve communications in the courtroom and civility as a judge.

The complaints process through the Ontario Judicial Council is remedial in nature and through the review of one's conduct improvements are made to how situations and individuals are treated and handled in the future. Following its consideration of the report from the Chief Justice, the review panel was satisfied that no further action was required. For the reasons noted, this file was closed.

CASE NO. 16-003/10

The complainant appeared before the subject judge for a trial. The complainant alleged that the judge made defamatory characterizations about him and spoke to him in a derogatory tone. He also alleged that the judge 'directed some serious charges towards me calling me dishonest, evasive, a vexatious litigant, etc. which nobody should have to tolerate.' He requested that the Council review the transcript and the audiotape.

APPENDIX A

Case Summaries

In a letter that the complainant sent to the judge, which he shared with the Council, he asked the judge to apologize to him for the comments that were directed at him. He also disagreed throughout his letter with how the judge weighed the evidence and arrived at the decision in his matter, and questioned the judge's lack of knowledge relating to some cases that he cited during his trial.

The complaint subcommittee ordered and reviewed the transcript of the proceedings. The subcommittee was of the view that a response from the judge should be invited. The judge reviewed the transcript and listened to the audio recording. The judge then provided a response. After its review, the subcommittee prepared a report for a review panel of the Judicial Council.

The review panel considered the correspondence from the complainant, the transcript, the response from the judge, and the subcommittee's report to them.

With respect to the complainant's disagreement with how the judge weighed the evidence and with the decision, the panel found that the proper way for the complainant to proceed on those matters would be through his legal remedies in the courts, such as an appeal. Such matters of law are outside of the jurisdiction of the Council.

The review panel found that the transcript showed that the judge made some inappropriate gratuitous comments to the complainant during final argument, including a suggestion that he was a vexatious litigant. The transcript also showed areas where the judge's tone may have been inappropriate.

The Judicial Council was of the view that judges have a duty to maintain high standards of conduct so as to preserve the integrity of the court and public confidence in the judiciary. Patience and civility are expected of a judge. The review panel found that the judge demonstrated a lack of patience and a failure to maintain civility toward the complainant.

The panel observed that the *Principles of Judicial Office* state in the preamble:

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.

APPENDIX A

Case Summaries

As well, one of the Commentaries contained in the *Principles* states:

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.

While the review panel noted that the judge did express an apology in the response, it appeared to them that the judge may not have fully appreciated what was lacking in the judge's conduct and how such conduct impacts upon confidence of persons in that judge or in the administration of justice.

In accordance with the Procedures of the Judicial Council, a review panel may refer a complaint to the Chief Justice, and may, if the judge who is the subject of the complaint agrees, impose conditions on a decision to refer the complaint to the Chief Justice. The Procedures provide for a referral to the Chief Justice in circumstances where it is necessary to inform the judge that his or her conduct was not appropriate in the circumstances leading to the complaint.

The panel referred the complaint to the Chief Justice, with a condition that the judge participate in appropriate judicial education as selected by the Honourable Chief Justice.

Subsequent to her meeting with the judge, the Chief Justice reported back to the review panel. After considering the report from the Chief Justice, the panel observed that the judge accepted full responsibility for the conduct, and recognized that the manner of communications was inappropriate. The judge had sincerely reflected upon the conduct and regretted the impact upon the complainant. The judge acknowledged the importance of maintaining a professional and civil tone and recognized the critical role of a judge in promoting the public's positive perception of the judiciary in general and of the justice system. The Chief Justice advised that the judge would attend a course of education developed for members of the judiciary that would improve communications in the courtroom and civility as a judge.

The complaints process through the Ontario Judicial Council is remedial in nature and through the review of one's conduct improvements are made to how situations and individuals are treated and handled in the future. Following its consideration of the report from the Chief Justice, the panel was satisfied that no further action was required.

For the reasons noted, this file was closed.

APPENDIX A

Case Summaries

CASE NO. 16-015/10

The complainant and his wife appeared for a trial before the subject judge. In his letter, the complainant advised that he attended with his wife for trial and during the trial, the judge ‘behaved in a manner that is inappropriate, biased, disrespectful, and harmful and beyond the bounds of the position.’ He described a number of comments allegedly made by the judge including, ‘Claim, Application, the same thing, not even you could be that dumb.’ He indicated that his wife wanted him to act as her agent; however, when he said “excuse me, Your Honour”, the judge responded that she would have him put out of the courtroom.

The complainant alleged that the judge then took actions which clearly placed the defendant, who was a lawyer, at an advantage, without allowing the complainant to speak.

The complainant stated, “It is not clear why the Judge would act in such a manner because as a mature person, she should know how to treat others respectfully and fairly.” He indicated that maybe the judge sees skin and believed that gave rise to a right to be disrespectful and abusive. Further, he alleged that the judge suggested to his wife that she should get a lawyer even though a judge should know that the cost of a competent lawyer could easily exceed the amount of the claim.

The complainant did not believe that they received a fair, professional and respectful hearing. He stated that he did not wish for the judge to be penalized but to be more respectful, sensitive and to act more professionally in dealing with individuals who come before the court, despite any personal biases that the judge may have. He also alleged that the judge stated that the court is the judge’s “playground”.

The complainant alleged that it appeared that the judge was aware that they had filed a complaint, and the judge ought to have recused herself from the case due to an underlying conflict of interest that made her unable to be the trier of fact. The complainant stated that the judge was vindictive and used the position of a judge as a tool of assault against them. They indicated that the judge protected a corrupt act and condoned illegal acts in the rulings made in the case. He alleged that the judge’s actions were so grave that her ability to serve the public justly and fairly must be reviewed and appropriate corrective actions taken against her. Further, he alleged that the judge was rude and disrespectful to both plaintiffs.

APPENDIX A

Case Summaries

He also alleged that he and his wife came prepared to proceed, based on the judge's ruling at the earlier appearance, and then when the judge would not allow him to act as her agent, the judge forced them to proceed without representation for the wife. He set out several aspects of how the proceeding proceeded with which he disagreed.

As well, he stated that when the complainant said that they did not review the court documents because the defendant failed to serve them within the proper timeframe, the judge "flew into a rage", and said, "That just goes to show what kind of person you are."

The complainant stated that they became disillusioned with the courts and the justice system due to the judge's behaviour.

The investigating subcommittee carefully reviewed all of the materials which the complainant submitted, and the transcripts of the proceedings on two dates when the complainant and his wife appeared before the judge. As well, the subcommittee ordered and reviewed the audio recordings.

In accordance with the Procedures of the Council, the subcommittee provided a copy of the correspondence from the complainant and the transcripts of the proceedings to the judge and requested a response. The judge also reviewed the audio recording and then provided a response. After its review, the subcommittee prepared a report for a review panel of the Judicial Council.

The review panel considered the correspondence from the complainant and the transcripts of the proceedings, the response from the judge and the subcommittee's report.

With respect to the complainant's concerns about the judge's decisions in the case and procedural matters, the review panel found that the proper way to proceed if the complainant disagreed with such matters was through his legal remedies, such as an appeal. Questions of law and procedure are outside of the jurisdiction of the Council.

With respect to the judge's conduct and comments, after reviewing the materials and the court record, the review panel could understand why the complainant was left with negative perceptions of the judge's conduct and the overall handling of the proceedings. Following its careful review of the first appearance before the judge, the review panel found that the transcript and audio recording showed that the judge appeared to display extreme irritation with the complainant, and that the judge was condescending and rude. For example, the judge said the following, "don't shake your head at me", "I am the Court.

APPENDIX A

Case Summaries

My staff will take a claim if it said the devil on it”, “I’m going to kick you out of the courtroom”, and “don’t tell me that you’re dumb.” The transcript and audio recording of the second appearance showed that the judge was condescending, edgy, short, sarcastic, and showed a general lack of patience. Examples of such inappropriate behaviour included: “...if you weren’t a plaintiff I’d have you out of the room” and “I don’t care what came first, the horse’s nose or the horse’s ass: let’s get to the issues.”

With respect to the allegation that the judge was being vindictive because the complainant filed a complaint, the review panel concluded that the evidence did not support that allegation. As well, the panel also noted that in accordance with the *Courts of Justice Act* and the Procedures of the Council, a judge is not informed by the Council about a complaint unless a response is requested of the judge. At the time of the appearances before the judge, a response had not yet been requested. The panel observed that even if the judge was aware of the complaint, the question of whether a judge should recuse from a case is a matter of judicial discretion that is outside of the jurisdiction of the Council.

The review panel found that the investigation showed that the judge’s conduct or comments were not the result of discrimination, gender issues or bias.

The review panel was of the view that judges have a duty to maintain high standards of conduct so as to preserve the integrity of the court and public confidence in the judiciary. Patience and civility are expected of a judge. The review panel found that during each of the appearances, the judge demonstrated a lack of patience, made inappropriate comments and failed to maintain civility.

The panel observed that the *Principles of Judicial Office* state in the preamble:

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.

As well, one of the Commentaries contained in the *Principles* states:

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.

APPENDIX A

Case Summaries

The panel found that the judge did express an apology in the response to the complaint. However, it appeared to the panel that the judge may not have fully appreciated what was lacking in the conduct and how such conduct impacts upon the confidence of persons in the judiciary and in the administration of justice.

In accordance with the Procedures of the Judicial Council, a review panel may refer a complaint to the Chief Justice, and may, if the judge who is the subject of the complaint agrees, impose conditions on a decision to refer the complaint to the Chief Justice. The Procedures provide for a referral to the Chief Justice in circumstances where it is necessary to inform the judge that his or her conduct was not appropriate in the circumstances leading to the complaints. The panel referred the complaint to the Chief Justice, with a condition that the judge participate in appropriate judicial education as selected by the Honourable Chief Justice.

Subsequent to the Chief Justice's meeting with the judge, the Chief Justice reported back to the review panel. After considering the report from the Chief Justice, the panel observed that the judge accepted full responsibility for the conduct, and recognized that the manner of communications was inappropriate. The judge had sincerely reflected upon her conduct and regretted the impact of his/her conduct upon the complainant. The judge acknowledged the importance of maintaining a professional and civil tone and recognized the critical role of a judge in promoting the public's positive perception of the judiciary in general and of the justice system. The Chief Justice advised that the judge would attend a course of education developed for members of the judiciary that would improve communications in the courtroom and civility as a judge.

The complaints process through the Ontario Judicial Council is remedial in nature and through the review of one's conduct improvements are made to how situations and individuals are treated and handled in the future. Following its consideration of the report from the Chief Justice, the panel was satisfied that no further action was required. The file was then closed.

CASE NO. 16-023/10

The complainant was a self-represented party who appeared in court before the judge. He made allegations in relation to a hearing before the judge and two court orders that the judge issued. He alleged that the judge's conduct was "very improper as many laws and

APPENDIX A

Case Summaries

rules of conduct were broken”. He tried to file a motion for a new trial but he was advised that the orders were final and that if he disagreed he would need to appeal.

The complainant made numerous allegations against the judge that included:

- ◆ procedural errors;
- ◆ the manner of speaking, including an allegation that the judge had a “manner of speaking to and interrupting the parties was unbecoming a presiding judge. It is alleged that this was done intentionally to intimidate and scare those addressing the Justice.”
- ◆ a lack of civility;
- ◆ bias;
- ◆ diligence errors, including that the judge did not appear to be knowledgeable of the purpose of or prepared on the subject matter of the files and made significant errors in law and in the conduct of the hearing; and,
- ◆ that the orders were written in anger.

The investigating subcommittee carefully reviewed all of the materials which the complainant submitted and the transcript of the proceedings. As well, the subcommittee ordered and reviewed the audio recording. The subcommittee noted that in the complainant’s materials, he referenced an appeal. The subcommittee obtained and reviewed a copy of the decision of the appeal court. The subcommittee invited the judge to respond to the complaint. The judge took the opportunity to listen to the audio recording. The judge then provided a response. After its review, the subcommittee prepared a report for a review panel of the Judicial Council.

The review panel considered the materials received from the complainant, the transcript, the report from the subcommittee, and the response from the subject judge.

Following its careful review, the review panel noted that the allegations related to procedural matters, laws and rules of the court were matters of law rather than conduct. The proper forum for the complainant to address such matters is through an appeal in the courts. An appeal court has the jurisdiction to consider the correctness of legal issues,

APPENDIX A

Case Summaries

and to review decisions made by a judge and to determine whether there was a breach of procedural fairness or a breach of the principles of natural justice.

The review panel found that the transcript of the proceeding for one of the court dates showed that the judge appeared to be irritable, sarcastic, abrasive and somewhat unprofessional in conducting the trial. After reviewing the materials and the court record, the review panel could understand why the complainant was left with negative perceptions of the judge's conduct and the overall handling of the proceedings.

The panel was of the view that judges have a duty to maintain high standards of conduct so as to preserve the integrity of the court and public confidence in the judiciary. Patience and civility are expected of a judge. The panel found that on each of the instances that led to the complaints, the judge demonstrated a lack of patience and a failure to maintain civility.

The panel observed that the *Principles of Judicial Office* state in the preamble:

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.

As well, one of the Commentaries contained in the *Principles* states:

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.

While the review panel noted that the judge did express an apology, it appeared to them that the judge may not have fully appreciated what was lacking in the conduct and how such conduct impacts upon confidence of persons in a judge and in the administration of justice.

In accordance with the Procedures of the Judicial Council, a review panel may refer a complaint to the Chief Justice, and may, if the judge who is the subject of the complaint agrees, impose conditions on a decision to refer the complaint to the Chief Justice. The Procedures provide for a referral to the Chief Justice in circumstances where it is necessary to inform the judge that his or her conduct was not appropriate in the

APPENDIX A

Case Summaries

circumstances leading to the complaints. The panel referred the complaint to the Chief Justice, with a condition that the judge participate in appropriate judicial education as selected by the Honourable Chief Justice.

Subsequent to her meeting with the judge, the Chief Justice reported back to the review panel. After considering the report from the Chief Justice, the panel observed that the judge accepted full responsibility for the conduct, and recognized that the manner of communications was inappropriate. The judge had sincerely reflected upon the conduct and regretted the impact of it upon the complainant. The judge acknowledged the importance of maintaining a professional and civil tone and recognized the critical role of a judge in promoting the public's positive perception of the judiciary in general and of the justice system. The Chief Justice advised that the judge would attend a course of education developed for members of the judiciary that would improve communications in the courtroom and civility as a judge.

The complaints process through the Ontario Judicial Council is remedial in nature and through the review of one's conduct improvements are made to how situations and individuals are treated and handled in the future. Following its consideration of the report from the Chief Justice, the panel was satisfied that no further action was required and the file was closed.

CASE NO. 16-030/11

The complainant was the mother of a Respondent father in a custody/access and child support proceeding. The Applicant mother and the complainant's grandchild resided in the jurisdiction of the court where the application was brought. The father lived some distance away in another jurisdiction. The complainant lived in a city quite a distance away from her son but had been assisting him and attended court on his behalf on occasion. She was present with her son in court on the date of a scheduled Motion for Summary Judgment brought by the Applicant.

The complainant said that the judge denied her son's request for an Assessment or the involvement of the Office of the Children's Lawyer, saying it was "too little, too late." She also stated that the judge told her son that he was "wasting time" and that if he pursued the matter further, he would make her son pay all legal costs for the Applicant. She further

APPENDIX A

Case Summaries

stated that the judge went on to say that since the child’s primary residence had been with her mother, she should stay there and he saw no reason to change it.

The complainant found the judge’s comments to be “rude and unjust” and biased. She felt the judge did not consider all the facts or what was in the child’s best interests.

She expressed her opinion that “the Judge’s failure to recognize what would be in the child’s best interest has been totally ignored in favour of what is in the Court’s interest in having the shortest possible time spent on fully evaluating the situation.”

The subcommittee ordered and reviewed the transcript of the court proceeding and, following their investigation, submitted a report to the review panel. The panel reviewed the complainant’s letter, the transcript and the report from the subcommittee. The panel found that the transcript showed that on the date when the Motion for Summary Judgment was scheduled, counsel for both parties agreed that the matter proceed before the subject judge as a Settlement Conference. The Respondent father made a request to have the Office of the Children’s Lawyer involved and the judge declined to make the order, commenting that this request was brought very late in the proceeding. The judge expressed his opinion that it was unlikely that the trial judge would alter the existing custodial arrangement which had been in existence for some years. He also theorized that the real issues left to be determined were likely child support and the amount of time that the Respondent could realistically spend with the child, taking into account his financial circumstances and the considerable distance between his residence and the child’s present home. The Settlement Conference was completed and the matter was adjourned to a Trial Management Conference. The matter was subsequently resolved by way of a final consent order granting the Applicant mother custody of the child and the Respondent specified access.

The review panel noted that two of the stated purposes of a Settlement Conference are for a judge to explore the chances of settling a case and also to provide an opinion as to how the judge who finally hears the matter might decide the case. In this case, the judge at the Settlement Conference provided his view to the parties that it was unlikely the longstanding custodial arrangement would be changed at trial. The judge expressed concern that the request for the involvement of the Office of the Children’s Lawyer was not warranted by the facts he had reviewed, and would only cause further delay in a matter that had commenced over a year previously.

APPENDIX A

Case Summaries

The review panel found that there was no evidence in the transcript of any rudeness or biased statements in the judge's comments, as alleged by the complainant. On the contrary, they found that the judge was forthright and candid in providing guidance to the parties as to the next appropriate steps in the proceeding. The review panel also noted that it was a normal part of a Settlement Conference for the judge to warn the complainant's son that if his position regarding the Applicant's care of the child was not borne out by the evidence at trial, the complainant's son would risk being penalized by an award of costs against him.

The review panel found that it was within the discretion of the judge to determine whether it was appropriate that the Office of the Children's Lawyer become involved in the matter. The judge expressed the reasons why he did not consider it appropriate to make such an order at this late stage in the proceeding. The review panel noted that the complainant and her son may not have agreed with the judge's opinion. However, the complainant's son had a legal remedy through the courts, such as making a motion, to request this relief.

The panel noted that the complainant alleged that the judge failed to recognize what would be in the child's best interest and that this was ignored in favour of what is in the Court's interest in having the shortest possible time spent on fully evaluating the situation. As indicated, the panel noted that part of the purpose of a Settlement Conference is to explore the chances of settling the case, to narrow the issues in dispute, and if possible, obtain a view of how the trial court might decide the case. It was different from a full trial where evidence may be called and witnesses may be heard.

The panel concluded that the issues raised by the complainant related to matters within the discretion of the judge during the Settlement Conference and they were outside of the jurisdiction of the Ontario Judicial Council.

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

CASE NO. 17-003/11

The complainant in a criminal matter was convicted by the subject judge of several offences. In his letter to the Council, the complainant made the following allegations:

- 1) The judge did not act in good faith.

APPENDIX A

Case Summaries

- 2) The judge did not remain fair throughout the complete trial proceedings.
- 3) The judge allowed witnesses to read from cheat sheets. The judge did not allow him to make full answer and defence.
- 4) The judge gave judgment very quickly and forgot to explain how she found him guilty.
- 5) At the beginning of the trial the judge ordered witnesses not to discuss their testimony with other witnesses, and the witnesses discussed and shared information about the case. The judge said on the record that she was aware of this.

The complainant said that this was a question of law, and he referred to his *Charter* rights, a miscarriage of justice, an abuse of process, a want of malicious prosecution, and witnesses committing perjury. He said that witnesses were coerced by the police, by the Crown Attorney and by his lawyer.

He also said that the judge was in doubt many times during the trial and he expressed his disagreement with some of her findings of fact. He noted that she did not say anything to a witness for the Crown Attorney about wearing a hat, even though that showed disrespect for the court system and the justice system.

The complainant wanted a review of the trial proceeding and stated that he wished to be acquitted of all counts.

The investigating complaint subcommittee reviewed the letter from the complainant and ordered and reviewed one transcript of the proceedings. The subcommittee instructed the Registrar to write to the complainant on behalf of the subcommittee to request further particulars about the allegations. The subcommittee observed that the trial occurred over numerous days and the subcommittee instructed the Registrar to ask the complainant to provide the dates on which the alleged misconduct took place and to provide more details on the conduct that he was alleging. Relatives of the complainant telephoned the Office of the Ontario Judicial Council and advised that the complainant was pursuing an appeal of the criminal matter. Subsequently, the Registrar wrote two more letters asking for the additional information. In the last letter, the Registrar provided a deadline. The complainant telephoned the Office of the Ontario Judicial Council and said that he had filed an appeal that addressed many of his concerns with respect to the conduct of the judge. The complainant promised to call or write to the Registrar when the date

APPENDIX A

Case Summaries

for his appeal was set. He advised that he would then provide the particulars that were requested. A further extension was granted by the subcommittee for him to provide the additional information. The appeal was dismissed by the Court of Appeal for Ontario. No further details were received from the complainant.

Upon the completion of its investigation, the complaint subcommittee submitted a report to a review panel. The review panel reviewed the complainant's letter to the Council, the letters written to him by the Registrar on behalf of the complaint subcommittee requesting further information, one transcript of the proceedings before the subject judge and the Court of Appeal judgment.

The review panel noted that Items two to five above related to legal matters that should properly be pursued through legal remedies in the courts, and the complainant had taken that step. A judge's assessment of the evidence and decisions in a case are matters outside of the jurisdiction of the Council.

With respect to the general allegations that the judge did not act in good faith and was not fair throughout the trial, the panel observed that despite four requests, the complainant did not provide the particulars of misconduct. In the absence of those particulars, and having read one of the transcripts of the proceedings, the panel concluded that there was no evidence to support the allegations that the judge acted in bad faith or was unfair.

The review panel noted that when the appeal was dismissed by the Court of Appeal for Ontario, the Court upheld the actions and decisions of the trial judge.

The complaint was dismissed by the review panel and the file was closed.

CASE NO. 17-014/11

The complainant was involved in a child protection case and appeared before the judge on three separate occasions on matters that were procedural in nature. In her letter to Council, the complainant alleged that she was at a recreational building in the community and there was a lack of professionalism and inappropriateness in the behaviour of the judge. She indicated that she had appeared before the judge previously, and on this date the judge started talking to her about the court case at the recreational centre. The complainant said that she felt extremely uncomfortable that the judge was talking to her

APPENDIX A

Case Summaries

about the case at a place where the complainant went to rest and relax, not to be reminded of times in her life that were very difficult for her. She asked the Council to address this issue with the judge so that similar situations would not occur.

The complaint subcommittee, by way of letter, asked the complainant to provide further information. The complainant provided further details including information that she recognized the judge and the judge identified herself. She alleged that the judge followed her in a room and talked to her about her court case and questioned the complainant about her ability to speak in English. The complainant had requested a French trial during the court proceedings. The complainant informed the subcommittee that after the conversation, she was not able to calm down and found it impossible to be in the frame of mind to relax and do the recreational activity. She said that she felt uncomfortable being in such close proximity to someone who had just finished interrogating her both in court and out of court. She stated that she decided to leave because the judge had made her too uncomfortable and caused her to feel distressed. As well, she said that, overwhelmed with emotions, before leaving she once again confronted the judge in front of a witness. She alleged that she told the judge that she was “the most ignorant person that I have ever met” and that she had to leave because the judge’s presence made her feel very uncomfortable. She also said that the judge also interrupted her. She indicated that the witness heard the end of the conversation. The complainant provided the name of the independent witness whom she said heard the end of her conversation with the judge.

The investigating complaint subcommittee contacted the witness by letter and asked her to provide her observations of the incident on the date in question.

The complaint subcommittee also ordered and reviewed the transcripts of the three court proceedings where the complainant appeared before the subject judge. Following the conclusion of its investigation, the committee submitted a report to a review panel.

The review panel reviewed the complainant’s letters, the letters sent to and received from the independent witness, the transcripts of the court proceedings and the subcommittee’s report. With respect to the complainant’s allegations about the events at the recreational facility, the review panel found that investigation showed that the events were not corroborated.

The review panel noted that during all three court appearances before the subject judge the complainant was represented by counsel. The review panel found that the judge was fully aware that the complainant was requesting a hearing and a trial in the French

APPENDIX A

Case Summaries

language. Her Honour confirmed unequivocally that the complainant had that right. The judge also addressed the complainant in the French language to ensure that she understood what was going on. Further, the judge personally took steps to ensure that the Trial Coordinator was made aware of the situation. The review panel found no evidence whatsoever that the judge was disrespectful or condescending to the complainant during the court proceedings. Her Honour was professional and acted appropriately and showed full respect for the right of the complainant to have a trial conducted in French.

For the reasons noted the review panel dismissed this complaint as unsupported by the evidence and closed the file.

CASE NO. 17-015/11

The complainant, who had a legal background, represented himself on a trial before the subject judge. He alleged in his letter that the judge displayed discrimination, racial bias and bad faith during a trial. In support of his allegation, he stated that the defendants and their lawyer were white and he was the only non-white person. He also said that Her Honour ignored his request for warrants to be issued for witnesses who had been served with summonses but had not appeared. He alleged that without considering the request for an adjournment which he believed entitled him to costs, she allowed the solicitor for the defendants to bring an oral motion to quash the summonses. He also stated that the judge wanted him to take the stand even without his witnesses present, and without awarding costs against the defendants for not coming ready for trial.

He also alleged that the judge was rude and descended into the arena. He alleged that she was grossly rude in her attitude and temperament, threatened him and said if he submitted material after the date of action, it would be rejected and she would declare a mistrial and order penal costs. He alleged that the judge did not allow him to give his evidence freely but interrupted and cross-examined him on irrelevant matters and issues not even raised by the defendants. He stated that Her Honour questioned him about matters that she claimed to have read about him elsewhere and produced irrelevant documents which she had taken from other files and cross-examined him on them. He stated that when he objected, the judge yelled at him and overruled him. He indicated that he wondered whether she was the judge or the solicitor for the defendants. He described her manner as outrageous.

APPENDIX A

Case Summaries

As well, the complainant alleged that the judge procured a paralegal whose conduct was harassing and intimidating toward the complainant.

He further alleged that the judge caused the destruction of tapes or materials for two previous court dates because her misconduct was recorded on them. He said that when she came up on the bench, Her Honour announced that those selected tapes were not available and/or were blank, and on account of that, Her Honour wanted the parties to move for a mistrial and she recessed court to give the parties time to make submissions. He stated that neither Her Honour nor the court reporter had a response as to how this had happened. He alleged that after the recess, the other parties were not present and when he asked about the transcript and started making submissions, she did not allow him to do so freely and yelled at him, “Stop there.” He alleged that when he said he wasn’t finished, she yelled and said “I have finished. You sit down.” He alleged that after the other party came in, she smiled at them, said she would return with her order, and left the bench. He alleged that she did not come back, and abused her authority and sent security officers who removed him from the court. He described her conduct as outrageous and high-handed.

He also alleged that she made an order in Chambers which read, “At the request of the Plaintiff I hereby declare a mistrial” even though the mistrial was declared at the initiative of Her Honour.

The complaints subcommittee ordered and reviewed the transcripts and audio recordings of the proceedings and upon completion of the investigation, the committee submitted a report to the review panel.

The review panel reviewed the subcommittee’s report, the complainant’s letters and the transcripts of the proceedings. The review panel found no evidence in the court record to support the allegations of bias or discrimination on the part of the judge. There was no evidence that the judge procured a paralegal whose conduct was harassing and intimidating toward the complainant.

The panel noted that the transcript showed that during the trial, the judge sometimes interrupted the complainant and asked questions; however, it appeared that she did so to try to keep the complainant focused on relevant matters and to gain a clear understanding of the facts. As well, the panel noted that Her Honour made comments that showed that she was frustrated and annoyed with the complainant. She made comments such as,

APPENDIX A

Case Summaries

“That’s what we’re here for is a trial, not for games, not for your whining, not for your complaining about [the legal representative] or the subpoenas, at this time. Get in the stand and let’s have your evidence.” She said, “I said you can only play ‘poor me, I’m a self-represented litigant’ so many times before you annoy me. So just stop playing it and down what I ask...”

The transcript also showed that the complainant was yelling at the judge, and that he said, “Because you upset me.” The transcript also showed that the judge explained to the complainant that she had raised her voice because the complainant was not listening to her and she did so to emphasize that she had made her decision and rulings.

After reading the transcript, the panel observed that it appeared that the conduct, comments and difficult manner of the complainant, a sophisticated witness with a legal background, contributed to the judge showing impatience and making some comments that were rude and impatient. The panel noted that a judge should remain dignified, patient and courteous when presiding in court, despite the behaviour of a party appearing before him or her. However, in the circumstances of this case, the panel concluded that the judge was trying to keep the complainant focused on the appropriate stage of the proceedings, and to keep the proceeding moving along. The review panel concluded that the judge was firm with the complainant because he would not listen to the instructions of the judge and he raised matters that were not before the court. The review panel concluded that the conduct and comments of the judge in the circumstances of this case, while inappropriate, when considered in conjunction with the tone heard on the audio recording, did not amount to judicial misconduct.

In relation to the allegations that the judge failed to properly issue warrants, improperly quashed a summons and considered irrelevant documents, the review panel found that these allegations related to matters of judicial discretion outside of the jurisdiction of the Ontario Judicial Council. If the complainant disagreed with her rulings in the case or with how she considered the evidence, the proper way to proceed was through his legal remedies in the courts.

The panel found that the court record showed that the blank or deficient tapes were not the fault of the judge. The reporter had noted in one of the transcripts, “Due to mechanical malfunction, a portion of these proceedings is unavailable.”

APPENDIX A

Case Summaries

A

The panel observed that it appeared that the judge sought to be fair by informing the parties of the problem with the audio recordings, and she provided an opportunity for the parties to consider whether they wanted to seek a mistrial on that basis. The transcript showed that Her Honour said that in preparing for the continuation of arguments by the parties, she had reviewed the tapes of two of the proceedings and it was discovered that two tapes were incomplete or blank. Her Honour stated that according to her notes, one of the tapes recorded the complainant's motion for a recusal and some of his argument. She said that she was prepared to grant a mistrial at the request of either party and that she would recess to allow them to consider this. She also stated that if the parties were content to proceed, then the matter would proceed. The transcript disclosed that after the recess, one of the parties was not present and the complainant asked that a mistrial be declared and that the judge recuse herself from the case. Her Honour granted the mistrial at his request.

With respect to the allegations that Her Honour did not allow him to make his submissions freely and yelled at him, "Stop there" and that when he wasn't finished, she yelled and said, "I have finished. You sit down", the panel found that the transcript showed that the complainant commented that the missing tape contained conduct of the court and suggested that it was strange that the tape was gone missing. He also said that Her Honour's conduct had been brought to the notice of proper authorities, and referred to the Judicial Council. He began to talk about an unrelated case when the judge politely interrupted him. He attempted to continue to talk about the other case and the judge politely told him that she would not allow him to continue and after he said he was not finished, she said, "I am finished and you are finished. You have asked me for a mistrial and I am declaring it now. You may sit down." The complainant objected and when told to sit down, suggested to the judge that she was threatening him. The transcript also showed that the complainant continued to interrupt the judge and said that he could not be intimidated. After the clerk announced, "All rise" to adjourn the proceedings, the judge said if you wait a moment, I will give you a copy of my endorsement." There was no indication on the transcript that the judge's conduct was outrageous or high-handed. Nor was there evidence that Her Honour ordered security to remove him from the court.

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

APPENDIX A

Case Summaries

CASE NO. 17-016/11

The complainant was a self-represented Applicant in a court application against her son. The litigation had continued for over three years. On at least two occasions, the matter had been adjourned due to the Applicant's health. A trial management conference was held, and the matter was set for trial. Three months later, a motion was heard by the subject judge regarding the complainant's request that the trial be delayed. The judge denied the request. She noted that delays in the proceeding had been the fault of both parties. She concluded that the Applicant's medical condition, and any side effects from her medical treatments, could be accommodated during the trial.

The parties attended before the judge a month later to schedule the trial dates. The Applicant had not filed a Trial Record as previously ordered. The judge ordered that the Respondent's solicitor prepare and file the Record, and that he be compensated in costs for doing so. The Applicant/complainant again requested an adjournment of the trial, relying on a recent affidavit. The affidavit contained a letter from her medical specialist that stated she was undergoing treatment, and it was "not advisable" that she attend court for at least three months. The judge denied the complainant's request that the trial be delayed. The complainant subsequently settled the matter with her son.

In her letter to the Judicial Council, the complainant alleged that the judge "dismisses all my Motions, making it more difficult for me." She said that the judge did not read any of the affidavits which she presented to the court. She further alleged that "this person is very prejudice, uncooperative, preconceived opinion, bias, or partiality" and "passed judgement" on her before the trial. In a subsequent letter, the complainant alleged that the judge had failed to read her affidavit before making a ruling. She had "vetoed, ignored or denied (with prejudice)." She stated that due to the ruling of the subject judge she had been "forced" to sign a settlement document. As well, she alleged that the judge prevented and hindered her from receiving full, fair, impartial hearings and a full, fair and impartial administration of justice.

The complaint subcommittee reviewed the complainant's correspondence, and ordered and reviewed the transcript of the motion to adjourn the trial. Upon the conclusion of the investigation, the subcommittee submitted a report to a review panel.

APPENDIX A

Case Summaries

The review panel reviewed the complainant's letters, the transcript and the subcommittee's report. The review panel found no evidence in the transcript of any biased or prejudicial comments or behaviour on the part of the judge. The panel noted that the matter was scheduled to proceed to trial and the judge had already ruled on one motion to adjourn the matter. She had not initially reviewed the recent affidavit of the complainant, which had likely been filed the day when the matter was to be spoken to. After the affidavit had been drawn to Her Honour's attention, she read the affidavit and she referred to the doctor's letter in her ruling.

The review panel found that there was no evidence that Her Honour forced the complainant to enter into a settlement with her son. The transcript confirmed that the judge was courteous but firm that the matter should proceed. Her Honour was prepared to accommodate the complainant's medical condition, and recommended that the matter be heard over a time span two months apart, so the complainant could avoid the strain of attending court on continuous days.

The review panel noted that if the complainant was unhappy with the judge's decision that the trial must proceed, the appropriate way for her to proceed was through an appeal. Review of the correctness of a decision is a matter outside of the jurisdiction of the Council.

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

CASE NO. 17-017/11

The complainant appeared before the subject judge from 2001 to 2003 in a family law proceeding involving issues of custody/access of two children and child support. The complainant was initially granted interim *ex parte* custody of her children. The Respondent father was granted access and ordered to pay temporary child support. Subsequently, the children began to live with their father. Both parties brought a motion for interim custody which was heard by the subject judge. After a period of time, the judge granted interim custody of the children to the Respondent father with access to the complainant mother for two weekends out of three.

The judge subsequently granted a transfer of the proceeding to another jurisdiction upon the request of the complainant, but continued to hear all interim matters in the proceeding.

APPENDIX A

Case Summaries

The complainant failed to attend at the final hearing of the matter. The children remained in the custody of the Respondent father. The complainant indicated that she did not see the children for over several years. She said that when she subsequently located them and communicated with them via the internet, they refused to see her.

The complainant submitted her letter of complaint after the complainant noticed a recent newspaper article that referenced the subject judge.

In the letter of complaint, the complainant alleged that:

- 1) During the time her common-law spouse was represented by a black male, the judge would never entertain his requests for custody, and continuously asked him to provide financial disclosure. During this same time period, she was represented by a white male who claimed he had gone to school with the judge and that they were in the same graduating class. He told her this gave her an advantage in this judge's court.
- 2) When the complainant retained a lawyer of South Asian descent and the Respondent spouse retained a white woman, the judge began to entertain, for the first time, the Respondent's claim for custody.
- 3) The judge refused to read a letter verifying her allegations of abuse.
- 4) The judge made a statement: "Look you two need to stop this, I mean your children are black and this puts them already at a disadvantage in society and you guys are making it worse." The complainant concluded that she didn't have a fair chance in the judge's court because of her racist views of black people being disadvantaged solely because of the colour of their skin. She could not provide a date when this statement was made by the judge.
- 5) The judge awarded the Respondent father interim custody because she viewed the complainant to be unstable based on stereotypes of black people.
- 6) The complainant wished to file this complaint so as "not be silent on the tragedy of losing my children to racism, bias and judicial misconduct" by the subject judge.

The complaint subcommittee ordered and reviewed the transcript of the proceedings and also the Reasons for Decision of the judge on the interim motion. The subcommittee also noted that the court records provided the name of one of the lawyers who had

APPENDIX A

Case Summaries

A represented the complainant. The subcommittee had a search done of the directory of lawyers posted on the website of the Law Society of Upper Canada in an attempt to find the lawyer. An enquiry was made to a lawyer with a very similar name. The lawyer did not respond. A letter was sent to the lawyer to ask whether he had represented the complainant and to invite his recollections of the matter. The lawyer did not respond. Subsequently, information was received that he had left the law firm. The subcommittee completed its investigation and submitted a report to a review panel.

The review panel reviewed the letter of complaint, the transcript and the judge's Reasons for Decision on the interim motion. The panel found no evidence that the judge improperly favoured any lawyer or party.

The transcript showed that there was no suggestion of bias or racist views in the comments made by the subject judge. At no time was the parties' ethnic background mentioned by the judge in either her comments or Reasons for Decision. The allegation that the judge commented on disadvantaged black people was not supported by the transcript.

The review panel noted that the judge declined to accept into evidence a letter provided by the complainant's lawyer because proper notice had not been given to the Respondent's lawyer. There was no explanation as to why the document had not been previously filed.

The Reasons for Decision showed that the judge had concluded that the children had moved from parent to parent over time and that there was much conflicting evidence. She concluded that the most recent status quo, with the children living with their father, should continue until the court could more fully explore the issues. She awarded liberal access to the complainant consisting of two weekends out of three. The review panel noted that there was nothing in the Reasons that indicated the judge had concluded the complainant was unstable because of her background.

The review panel observed that the complainant was obviously unhappy with the decision of the judge. Matters of judicial decision-making are outside of the jurisdiction of the Council. The Council has no discretion to act on complaints that do not fall within its jurisdiction.

The review panel dismissed the complaint and the file was closed.

APPENDIX A

Case Summaries

CASE NO. 17-022/11

The complainant appeared before the subject judge for a trial on criminal charges. He was convicted and sentenced to incarceration. The complainant alleged that:

- 1) The judge was biased and abused her powers on the bench.
- 2) The police lied, contradicted themselves and committed perjury.
- 3) The judge rejected his lawyer's submission on sentence and said that because the complainant refused to take a guilty plea offered by the Crown Attorney, she was going to make him a scapegoat or punish him by sentencing him to nine more months of incarceration.
- 4) He was a victim of discrimination and of a police witch-hunt that was aided by the judge.

The complainant requested that the Council look into the matter and help him.

The complaint subcommittee ordered and reviewed the transcript of the judge's Reasons for Sentence and following the completion of its investigation, it submitted a report to the review panel.

The review panel reviewed the letter of complaint, the transcript of the judge's Reasons for Sentence and the subcommittee's report. In relation to the first allegation of bias and abuse of power, the review panel found that the transcript showed there was no evidence that the judge was biased or abused her powers in any way. The panel noted that the judge was firm in her decisions and applied the law in her decision.

With respect to the second allegation about the police, the review panel noted that this allegation did not relate to the conduct of the subject judge. It was an allegation about the conduct of police and was therefore outside the jurisdiction of the Council. The complainant was referred to the Office of the Independent Police Review Director.

In relation to the third allegation that the judge imposed her sentence to make him a scapegoat or punish him, the review panel found that the transcript showed that the judge never made any comments that suggested she thought the complainant should have entered a guilty plea. The panel noted that the complainant had a history of offences of a similar nature as the ones before the subject judge. The judge said that

APPENDIX A

Case Summaries

A

the sentence needed to act as a specific deterrent and a general deterrent. In giving her reasons, she also stated, “I’m content as well that there needs to be a sentence that will be a denunciatory sentence. I’m also content that in this particular case, [name of the complainant redacted] needs to have a sentence that will bring home to him what his responsibilities are should he ever be permitted to drive again legally”. In this case, the judge allowed credit for pre-sentence custody on a one-for-one basis and sentenced him to a period of custody that was less than what the Crown Attorney had requested. The review panel found no evidence that the judge used the complainant as a “scapegoat”.

The review panel noted that the transcript did not support the fourth allegation that the judge inappropriately supported the police or in any way discriminated against the complainant.

The panel concluded that the complainant’s allegations reflected his disagreement with the sentence imposed by the judge. If he wished to have the sentence reviewed, the proper way to proceed was through his legal remedies in the court. Such matters are outside of the jurisdiction of the Council.

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

CASE NO. 17-026/12

The complainant owned a farm in rural Ontario. He had a dispute with a neighbour. The complainant was later admitted to hospital under a Form 1 for a medical assessment. The police sought a firearms prohibition order pursuant to s. 111 of the *Criminal Code*.

The complainant was self-represented during the hearing about the application for a firearms prohibition. The complainant resisted the application. The complainant alleged that the judge admitted to being a family friend of the neighbour. He alleged that the friend used his influence with the judge to destroy the complainant’s livelihood and marriage. He also alleged that the judge discriminated against newcomers to Canada as a member of an “old boy’s club,” and made it impossible for the complainant to continue the farm. The complainant indicated that the prohibition against owning a firearm prevented him from protecting his livestock on his farm. The complainant alleged that the judge had destroyed his livelihood as a new farmer to Ontario and violated the *Charter of Rights*.

APPENDIX A

Case Summaries

The complaint subcommittee reviewed the complainant's correspondence. The subcommittee also requested and reviewed a copy of the application for the firearms prohibition, the notice of hearing, the Prohibition Order, and the case file synopsis that had been prepared by the police. The subcommittee also ordered and reviewed all of the transcripts of the proceedings. In addition, one member of the subcommittee listened to the audio recording for one of the appearances before His Honour. Upon completion of the investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed the letter of complaint, the transcript of the appearance when the complainant requested that the judge disqualify himself from hearing the case, the transcript of the judge's ruling on the weapons prohibition hearing and the subcommittee's report.

The review panel noted that the judge carefully considered the evidence and was satisfied on a balance of probabilities that he should make the firearms prohibition order pursuant to s. 111(5) of the *Criminal Code*. The review panel observed that the complainant disagreed with the decision of the judge that he would not disqualify himself, and with the prohibition order. He also thought the judge violated the *Charter of Rights*. The panel noted that for these matters, the proper way to proceed was through an appeal in the courts. Such matters are outside of the jurisdiction of the Council.

Further, with respect to the allegation that the judge's decision was a result of his friendship with the complainant's neighbour, the panel found that the transcript showed that on one of the hearing dates in this matter, the judge stated that he recognized two of the witnesses from years ago when their sons played hockey together. The complainant asked the judge to step down from hearing the case. The judge declined to disqualify himself. He stated that he did not know the witnesses socially. He did not know where they lived and he had never been on their property. Nor were the particular witnesses present at the time when the events occurred that led to the prohibition order. The Crown Attorney was asked for his view of the request for recusal. The Crown Attorney indicated that there were no grounds for recusal, observing that "if every time a justice in a small community had persons coming before them, whether they be witnesses or accused, and happen to have had contact over the course of their lives, then we'd never get anything done in small communities."

The review panel found that there was no evidence that the judge was a family friend of the neighbour. The panel found no evidence that the neighbour used his influence

APPENDIX A

Case Summaries

with the judge to affect the outcome of the hearing. Nor was there any evidence that the judge discriminated against newcomers to Canada as a member of an “old boy’s club”. The panel noted that the transcript showed that the judge was sympathetic to the complainant’s argument that he needed the firearm to protect his livestock from predators. This was reflected in his ruling that he would consider revoking the prohibition order if the complainant passed a firearms safety course and satisfied certain conditions.

The review panel found that the allegations of misconduct were unfounded and, for the reasons noted, the complaint was dismissed and the file was closed.

CASE NO. 17-027/12

The subject judge convicted the complainant of criminal harassment and sentenced him to a jail term, probation, with a term that he remove information from a website. The complainant was self-represented throughout the proceedings.

In his letter to the Council, the complainant made the following allegations:

- 1) When the complainant appeared before the judge, there was no Information and the judge told him he was free to go. He alleged that later the same day he was charged again with the same offence. When he went back to court to obtain a copy of the earlier proceeding with the judge’s remarks, he alleged that the judge dealt with another case and took a break. He also alleged that court security told him to leave the building. The complainant wrote in his letter to the Council: “obviously [the judge’s name has been redacted] would not enter the courtroom while I was still there”.
- 2) The complainant appeared before the judge on another occasion on a charge of criminal harassment. The complainant alleged that:
 - a. The complainant told the judge that His Honour had a conflict of interest and should recuse himself from hearing this case but the judge decided not do so.
 - b. At the trial, the judge refused to allow him to cross-examine a witness on his notes.
 - c. The judge also refused to acknowledge or allow as evidence exhibits that the complainant intended to introduce.

APPENDIX A

Case Summaries

- d. The judge prevented him from making full answer and defence, found him guilty and ordered a pre-sentence report.
 - e. The complainant stated, the judge “was clearly biased toward the police and crown attorney.”
- 3) The complainant appeared before the judge at a later date for sentencing on the criminal harassment conviction. He alleged that the judge and the Crown Attorney prevented him from recording his sentencing hearing. He also alleged that the judge and the Crown Attorney orchestrated the sentencing hearing ordering him to return to court for sentencing on yet another date.
 - 4) On the return date for the sentencing, the complainant was sentenced. He alleged that he was not given a copy of the probation order prior to being led to jail or when he was released. He also alleged that he explained to the judge that he could not comply with one of the probation terms. He said that, “after being ignored and put down in earlier court proceedings before the judge, I felt completely powerless to say anything further in this judge’s domain. The judge has set me up to breach my probation condition (iv) of the probation order”.
 - 5) The complainant further alleged that because the judge also presided over Family Court proceedings “the informal chats between [the judge’s name has been redacted] do not look good and re-enforce the perception that [the judge] has some special relationship with the Children’s Aid Society, the Police, Crown or lawyers in general. I thought that the administration of justice not only had to be unbiased but appear to be unbiased.” He also indicated that “based on my experience before the judge I am thoroughly convinced that [the judge] has determined that he is going to continue supporting the position of the Crown/[local police service] members and obstruct my ability to seek justice without accepting and giving proper weight to the evidence before him”.
 - 6) The complainant also alleged that lawyers have expressed concern about transcripts of court proceedings being altered, and that it is common practice for judges to review and approve transcripts before they are released.

In his letter to Council, the complainant requested that the judge never be assigned to his case when he is in court.

APPENDIX A

Case Summaries

The investigating complaint subcommittee reviewed the letters from the complainant and ordered and reviewed the transcript of the first proceeding referred to by the complainant where there was no Information before the court. The subcommittee also reviewed the transcripts of the criminal harassment trial, the sentencing submissions and the sentencing. Upon completion of the investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed the complainant's letters, the subcommittee's report, and the transcripts of the proceedings.

With respect to the first proceeding, the review panel noted that the transcript showed that the complainant had gone to court and told the Crown Attorney that he had been summoned to court. The Crown Attorney advised the court that there was no Information before the court and that if there was an issue, he would need to be re-served. The judge told the complainant he was free to go. The panel found no evidence that when the complainant returned to court to obtain a transcript of what transpired that day, the judge would not enter the courtroom while the complainant was still there.

The panel also found no evidence that the judge altered the transcript. The Procedures of the Ontario Judicial Council that govern the investigation by a subcommittee provide that: "If a transcript is ordered, court reporters are instructed not to submit the transcript to the subject judge for editing." The transcript was certified to be correct by the court reporter.

The panel observed that if the complainant was charged after his court appearance, that would be a matter within the authority of the police and not the judge.

The review panel found that there was no evidence for a finding of judicial misconduct arising from the first court appearance.

With respect to the allegation that the judge had a conflict of interest and should recuse himself from hearing the criminal harassment proceedings, the review panel noted that the transcript showed that the judge listened attentively to the complainant's arguments that there should be a recusal and then made an informed decision not to recuse himself. As well, the panel found that the judge listened attentively to the submissions of the complainant and the Crown Attorney on whether the complainant should be permitted to record the sentencing. The judge decided to not permit the complainant to record the sentencing. The review panel determined that these matters related to decisions made

APPENDIX A

Case Summaries

by the judge which were outside of the jurisdiction of the Council. If the complainant was unhappy or disagreed with the decisions of the judge, the proper way to proceed was through other legal remedies in the courts such as an appeal.

The review panel noted that the transcript showed that the judge explained the trial procedure to the complainant, who was self-represented. The judge also assisted the complainant in formulating questions and accorded the complainant great leeway in his cross-examination of the witnesses. The judge stopped examination of one of the witnesses by the complainant when the complainant continued to ask questions that the judge determined were not deemed relevant to the issues before the court. Similarly, the judge declined to allow the complainant to submit documents as exhibits that were deemed not relevant to the charges before the court. The panel found that the court record showed that there was no support for the allegation that the judge prevented the complainant from making full answer and defence. The panel also noted that if the complainant disagreed with the judge decisions about the evidence, the proper way to proceed was through his legal remedies in the courts.

With respect to the allegation that the judge and the Crown Attorney orchestrated the sentencing hearing, the panel found that the transcript showed that the judge listened to sentencing submissions from the Crown Attorney and from the complainant; he reviewed the pre-sentence report and the complainant's criminal record and rendered his decision. If the complainant disagreed with the judge's finding and sentence, or the conditions of his probation, the proper way to proceed was through his legal remedies in the courts. Those matters are not within the jurisdiction of the Ontario Judicial Council.

Further, with respect to the complainant's request that the judge never be assigned to his case, the review panel noted that the assignment of judges is within the power of the Regional Senior Justice and is not within the jurisdiction of the Council.

The review panel found no evidence that the judge was biased in favour of anyone who appeared before him during the proceeding or toward the Children's Aid Society, the police, the Crown Attorney or lawyers in general. There was no evidence that the judge ignored or put the complainant down in any way. The panel observed that the judge was professional, patient, fair and courteous with the complainant throughout the proceedings.

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

APPENDIX A

Case Summaries

CASE NO. 17-035/12

The complainant appeared before the subject judge in family court on matters relating to custody and access. Approximately two years later, he read a story about the judge in a newspaper and submitted a letter of complaint to the Ontario Judicial Council related to his court matter before her.

In his letter to the Council, the complainant made the following allegations against the subject judge:

- 1) The judge was biased against him and against fathers in general.
- 2) He alleged that the comments made by the subject judge during his proceeding were not only insensitive towards fathers and ignorant of virtually all currently accepted research in child psychology, they were also a bald expression of her contempt for and bias against fathers. He alleged that Her Honour said “you get whatever access the mother gives you.” He also said Her Honour stated that in her long experience in family law, she has seen that children do well not because they have a good relationship and regular contact with their father but because the father gets along well with the mother.

He indicated that the judge granted a non-removal order at the request of the mother without any justification. He also said that the judge granted a request by the mother that his motion regarding access should be moved to the Superior Court of Justice. He alleged that the judge spoke to counsel for the mother and suggested that the Superior Court of Justice would most likely be sympathetic to the mother.

The complaint subcommittee ordered and reviewed the transcripts of two dates before the subject judge. No other transcripts were available. Following the completion of its investigation, the subcommittee submitted a report to the review panel.

The review panel reviewed the subcommittee’s report, the complainant’s letter and the two transcripts.

The review panel noted that the first transcript showed that the complainant brought a motion before the judge on an urgent basis with shortened timelines. The judge, after hearing from both sides, determined that the matter was not urgent and adjourned the case. The panel observed that in her adjournment, the judge expedited the matter to be

APPENDIX A

Case Summaries

heard at the earliest possible date. The panel observed that this was a clear indication that the judge had considered the complainant's concerns. The transcript showed that Her Honour did not say, "You get whatever access the mother gives you." Rather, Her Honour made enquiries about what access was being given by the mother and what access the father was exercising before making her decision to adjourn the motion.

When the matter returned to court, the Respondent mother had commenced an application in Superior Court of Justice. The mother's lawyer requested that the matter in the Ontario Court of Justice be stayed. The transcript showed that the judge explained to the parties that the courts generally try to avoid having a case proceed in two different courts and instead they consolidate the case in a single court that can deal with all issues. Her Honour also confirmed that the complainant was getting access to his children, and she determined that his motion was not urgent. The panel observed that the step taken by the judge was appropriate and did not constitute judicial misconduct.

The review panel found that the transcript showed that the judge told both parents, "But what is going to be required, and I say this to both of you, for your children's well-being and for you to have that, is for you to figure out how to get along better..."

Later in the proceeding, the judge also said, "Now I'm not saying that means you shouldn't have a wonderful relationship with your children, I'm merely saying that now that you've come back, I don't think it's fair for you to say, I run the train, I get what I want. I think it's rather fair for everybody to say, let's sit back and work this out in a way that makes sense for the children, because at the end of the day, it's not about the adults, it's about them." The judge also said that in all of her years on the bench, the most important thing to know is that children who are not from intact families are at a much higher risk of having problems in adulthood and that children who are exposed to conflict between their parents do badly. The review panel observed that these comments were made in the context of the judge encouraging the parties to get along and to improve their relationship in matters involving the children. The panel found that there was no support in the transcripts for the allegation that the judge was biased towards the complainant or towards fathers in general. The panel noted that the judge was firm in her approach but there was no evidence of judicial misconduct.

With respect to the alleged comment by the judge about the Superior Court of Justice, the panel found that the judge said that she thought the parties would hear the same thing

APPENDIX A

Case Summaries

from those judges as she was saying, in effect, that the parents should tone down the rhetoric, stop dealing with anxiety, relate with more trust and respect and figure out how to get along for the sake of the children.

The review panel dismissed the complaint and closed the file because the complainant's allegations were not supported and there was no evidence of judicial misconduct.

CASE NO. 18-001/12

The complainant wrote to the Ontario Judicial Council alleging that the subject judge shot and killed a police officer 28 years ago and framed her for the offence. She also alleged that the judge harassed her, made her life difficult with Ontario Works and kept locking her up in psychiatric hospitals as part of the cover-up.

The complaints subcommittee attempted to obtain more information from the complainant but the complainant did not provide details with respect to her allegations or specific dates.

The complaints subcommittee also attempted to obtain the history of charges against the complainant through the court records to see whether she had ever appeared before this judge in any court proceeding. Court staff advised that their records indicated charges dating back to the time when the complainant was 31 years of age. Court staff were not able to access the particulars due to the length of time that had passed. There was no court record available to verify that the complainant ever appeared before the subject judge or that he ever issued any orders that would keep her in the hospital. Following the investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed the complainant's letters and the subcommittee's report. The review panel found that the allegations were put forward without any supporting detail or evidence. The limited information that was available through the court records did not support the allegations. Although the complainant was asked for particulars, no details were provided by her. As well, the allegation that the judge shot someone and framed the complainant, which was an extremely serious allegation, was only raised for the first time many years after it was alleged to have occurred. For those reasons, the review panel dismissed the complaint and closed the file.

APPENDIX A

Case Summaries

CASE NO. 18-002/12

The complainant appeared before the subject judge on charges of criminal harassment and repeatedly communicating with a person contrary to section 264(3) of the *Criminal Code*.

In his letter to the Council, the complainant stated that the judge was a former Crown Attorney. He provided a Statement of Argument asserting that a trial judge who was a Crown Attorney in the same trial court and who represented the interests of the Crown and the police prior to her or her appointment as a judge is incapable of making an impartial and independent judgement due to perceived and actual conflict of interest. He indicated that the Council should investigate the operation of trial courts where Crown Attorneys had become judges, and requested an order that judges who are ex-Crown Attorneys should be dismissed without pay and not allowed any benefits.

The complaints subcommittee reviewed the letter of complaint and the transcript of the judge's reasons for decision. When the subcommittee concluded its investigation, it submitted a report to a review panel.

The review panel reviewed the complainant's letter, the transcript of the Reasons for Decision and the subcommittee's report. The review panel found that the broad issue of whether persons who are Crown Attorneys should be appointed as judges is a legal issue that is not within the jurisdiction of the Ontario Judicial Council.

With respect to the conduct of the judge who presided over the complainant's proceeding, the review panel noted that the transcript showed that the judge exhibited no bias or partiality in favour of the Crown Attorney. Although the Crown Attorney requested a sentence that included a jail term, the judge granted the complainant a conditional discharge.

The Council has no jurisdiction to order an inquiry into general issues regarding the administration of justice.

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

APPENDIX A

Case Summaries

CASE NO. 18-003/12

The complainant, who was self-represented, appeared before the judge on a trial for two charges under the *Criminal Code*. At trial, the complainant was found guilty of one charge and acquitted of the other.

The complainant wrote letters to the Council indicating that he was disabled as a result of a brain injury. He provided a medical report that confirmed his medical condition. He alleged that the judge misjudged him, then preyed upon him and set him up for a guilty verdict. He alleged that she discriminated against him directly in finding him guilty because she found that his evidence was not credible. He also alleged that the judge discriminated against him indirectly. In particular, he stated:

- 1) The judge did not allow the complainant to read aloud a pre-written statement prepared by him about the incident. The complainant submitted that the judge should have allowed him to read it to accommodate his memory disability. He stated that he prepared this statement because “my on-the-spot memory was useless”. He says that in court, he told the judge that he was severely disabled, and that this would cause him to be unable to recall relevant details. By forcing him to testify, instead of allowing him to read his statement, he said this forced him to attempt something he was not humanly able to do.
- 2) In her judgment, the judge disregarded his testimony because he had “a spotty memory” and “an inconsistent recollection of events”.
- 3) He was shocked to be convicted in the circumstances. He felt that he was the victim of an assault.

In addition to the materials filed by the complainant, the complaint subcommittee reviewed the transcripts. Following the investigation, the subcommittee submitted a report to a review panel.

The review panel read the complainant’s letters, the subcommittee report and the transcript of the judge’s reasons for decision. The review panel noted that a review of the transcripts did not support the allegations. The review panel noted that the judge consistently accommodated the complainant. Before the complainant testified, she stated: “Well normally we don’t have people read their statements but you can try and tell

APPENDIX A

Case Summaries

us as much as you can, you know, from your memory but then you can use it as much as is necessary, okay.” The transcript showed that the complainant did use his written statement to assist him. He provided a full account of the day in question and then turned to the statement to include additional and other points.

The panel noted that the admissibility of evidence, including the exclusion of evidence, is a matter of law that is outside of the jurisdiction of the Judicial Council. If the complainant disagreed with how the judge dealt with the evidence, the proper way to proceed was through legal remedies in the courts.

With respect to the allegation that the judge, in her judgment, disregarded the complainant’s testimony because he had a “spotty memory”, and “an inconsistent recollection of events”, the panel observed that the transcript showed that there were photographs of the victim’s injuries which the judge relied upon in making her decision. Her Honour found that the evidence of the complainant was not consistent with the injuries shown in the photographs. The panel noted that on the second charge, where the evidence was only the victim’s version of events and the complainant’s version of events, the judge dismissed the charge against him. The panel found no evidence of discrimination.

With respect to the complainant’s statement that he was shocked to be convicted in the circumstances, the review panel noted that a judge’s decision in a case, including findings of credibility that the decision is based upon, is outside of the jurisdiction of the Judicial Council. The proper way to proceed is through legal remedies in the courts.

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

CASE NO. 18-004/12

The complainant was a person with a disability who pled guilty to a charge of mischief before the subject judge. He acknowledged sending 50 or more e-mails to a local police force in Ontario. He had been asked on many occasions to cease his behaviour but he continued to send them. He sent spam e-mails, with links that were believed to be viruses. His e-mails also contained lewd comments about prostitution which he believed was occurring within the local jurisdiction. The judge suspended the passing of sentence and placed the complainant on probation for three years.

APPENDIX A

Case Summaries

The complainant alleged that the judge made insulting comments about his disability and discriminated against him about his beliefs, practice, and observance.

The subcommittee reviewed the complainant's letter and ordered and reviewed the transcript of the guilty plea and the transcript of the sentencing. After concluding its investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed the complainant's letter, the above-noted transcripts, and the subcommittee's report. The review panel noted that throughout the proceedings the judge was mindful of and sympathetic to the complainant's needs. The panel observed that this was reflected in sentence imposed by the judge.

The review panel found that the transcript showed that the judge stated to the complainant at the beginning of her reasons for sentence, "Well, let me just make it really clear to you, you are a pain in the neck. You have caused the officer and other officers thousands of hours of work. They do not want you, and they do not need you."

The review panel concluded that the judge spoke in such a manner to stress and make very clear to the complainant the impact of his actions on the police force. The review panel found that while other words may have been more appropriate to make the point, this comment did not amount to judicial misconduct.

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

CASE NO. 18-005/12

The complainant appeared before the judge on a charge of having over 80 milligrams of alcohol in 100 millilitres of blood while operating a motor vehicle contrary to the *Criminal Code*. The complainant alleged that:

- 1) When he arrived at court at 10:00 a.m., the Crown Attorney's witness was not present.
- 2) There was no judge when his case was called up at 10:00 a.m. He had to wait until 2:00 p.m. when the subject judge was available.
- 3) At 2:00 p.m., the Crown Attorney's witness was still not present.

APPENDIX A

Case Summaries

- 4) The judge did not hear the complainant's account of the case.
- 5) The judge went ahead and accepted the plea bargain of the complainant's lawyer and the prosecutor.
- 6) The judge did not ask the complainant if he understood the terms and conditions of the plea bargain.
- 7) At one point, the complainant's lawyer asked him to leave the courtroom and the case was decided in his absence.
- 8) The judge overlooked the complainant's rights by not dismissing the charge because he was there for trial and the witness was not there.
- 9) The charge was dropped and the complainant received a fine and probation for careless driving even though the police "did not stop me while I was driving a car. I was not even in position of such car."

The complainant requested in his letter that "... this conviction be overturned, if it cannot be done in your office, please apprise me where to go from here."

The complaint subcommittee reviewed the complainant's letter and ordered and reviewed the transcript of the proceeding. Following the conclusion of the investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed the complainant's letter, the transcript of the proceedings and the subcommittee's report. Following its review, the panel noted that:

- 1) In the afternoon, the Prosecutor explained to the court that the witness was on his way. Given this, and the explanation provided by the Crown Attorney, the panel found that there was support for the complainant's statement that the witness was not there at 10 a.m.
- 2) The transcript did not have times on it but the first words in the transcript were, "Good afternoon, Your Honour". The panel accepted that the appearance was likely at 2:00 p.m. as suggested by the complainant. The panel had no independent information available as to the availability of a judge or the judge earlier in the day.
- 3) The words of the Crown Attorney noted in paragraph one above confirmed that the witness was not present when the case proceeded in the afternoon.

APPENDIX A

Case Summaries

- A
- 4) The transcript confirmed that the judge did not hear the complainant's account of the case. The transcript showed that this was because the complainant did not enter a plea of not guilty and have a trial where he would have had an option of giving his account. Rather, he proceeded by way of a guilty plea. Specifically, the transcript showed that the complainant's lawyer, on the complainant's behalf, entered a plea of not guilty to the charge and a plea of guilty to a charge of careless driving under the *Highway Traffic Act*. Thereafter, facts were read and the complainant's lawyer said the facts were admitted.
 - 5) The transcript confirmed that the judge went ahead and accepted the plea agreed to by the complainant's lawyer and the Crown Attorney.
 - 6) The transcript confirmed that the judge did not ask the complainant if he understood the terms and conditions of the plea bargain. However, the transcript showed that the judge said, "Okay. All right. Has he – done a plea comprehension inquiry?" The panel noted that the court must be satisfied a guilty plea is voluntary, that the accused person understands that the plea is an admission of the essential elements of the offence; the nature and consequences of the plea; and, understands the court is not bound by any agreement between defendant and prosecutor. The complainant's lawyer replied: "I certainly have, Your Honour. And I'm satisfied in that regard". Although it was not carried out by the subject judge, the panel noted that this was a clear reference to the enquiry required under the *Criminal Code* and counsel for the complainant assured the judge that everything was in order.
 - 7) The transcript did not support the claim that at one point the complainant's lawyer asked him to leave the courtroom and the case was decided in his absence. He was present during the entire proceeding.
 - 8) With regard to the allegation that the judge overlooked the complainant's rights by not dismissing the charge because he was there for trial and the witness was not there, the transcript revealed that the judge had no knowledge of the non-attendance of the witness until the complainant's lawyer mentioned this in sentencing submissions after the guilty plea was entered. The panel observed that the transcript showed that the judge was hearing a guilty plea with a joint submission so he would have no reason to turn his mind to witnesses, nor was it raised with him beyond what has just been mentioned.

APPENDIX A

Case Summaries

- 9) The final allegation was that the “UI” charge was dropped and the complainant received a fine and probation for careless driving even though the police “did not stop me while I was driving a car. I was not even in position of such car.” The complainant pled guilty to careless driving as described in paragraph four above. This issue related to the judge’s decision and was a matter outside of the jurisdiction of the Council.

The review panel noted that the Ontario Judicial Council does not have the power to interfere with, or change, a judge’s decision in a case as was requested by the complainant. The complainant was informed that if he disagreed with the decision, the proper way to proceed was through his legal remedies.

The review panel concluded that there was no evidence of judicial misconduct on the part of the judge, the complaint was dismissed as unfounded and the file was closed.

CASE NO. 18-006/12

The complainant appeared before the judge for a Trial Management Conference in a family court matter. The proceeding was a Motion to Change commenced by the complainant. The matter was scheduled to proceed to Assignment Court and to trial within the following month.

He alleged that when the Applicant complained that she could not afford a lawyer, the judge did everything possible to provide her with a lawyer, and even called “a secretary” into the courtroom and questioned her as to why the Applicant could not obtain legal aid representation. However, when he tried to tell the judge about his financial situation and his inability to get a lawyer, the judge “completely ignored” him.

He alleged that the judge refused to listen to his explanation that the Family Responsibility Office did not have the current temporary order, and that the judge therefore did not have the correct information. He said in his letter that he assumed it was the judge’s duty to make sure that all documents and issues were resolved before the trial, but due to this judge’s “unprofessional acts and discriminatory attitude” the matter remained unresolved. He also indicated that at the conclusion of the Trial Management Conference, the judge made an order requiring him to bring the payments of spousal and child support under the current court order into good standing by the next court date or his pleadings would be struck and his motion dismissed.

APPENDIX A

Case Summaries

The complainant alleged that at the next appearance, he tried to explain but the judge did not want to listen. He alleged that she was unprofessional with a discriminatory attitude, and questioned how she could make a fair decision. He stated that after the Trial Management Conference, he had a strong impression that he was not treated as equal to the Applicant and that all of the sympathy was on the Applicant. He said he expected everyone to be treated equally, regardless of gender, race or social status.

The complaint subcommittee reviewed the complainant's letter, the transcript of the Trial Management Conference and also the transcript of the subsequent Assignment Court appearance at which time the complainant's proceeding was dismissed. Following its investigation, the complaint subcommittee submitted a report to the review panel.

The review panel review the complainant's letter, the subcommittee's report, the transcript of the Trial Management Conference and the Assignment Court proceeding.

The review panel found no evidence in the transcripts that the judge preferred or favoured the Applicant over the complainant Respondent. The judge discussed the issues with the parties and reviewed appropriate trial preparation with them. The judge asked each party about the witnesses he or she intended to call, and provided some guidance as to the kinds of documents each of them should bring to the trial.

The transcript showed that the judge also urged both parties to obtain legal advice by way of a legal consultation. The Applicant expressed concern that she did not qualify for a legal aid certificate for spousal support issues. The judge called forward the lawyer in charge of legal aid duty counsel at that court house to confirm whether this was the case. The complainant did also express concern that he could not afford a lawyer. The panel noted that although the judge did not question the legal aid duty counsel about the complainant's situation, the transcript showed that the complainant had already confirmed what his earnings were and a person with that level of income would be financially ineligible for legal aid assistance.

The review panel noted that the transcript indicated that there appeared to be some confusion about a temporary order relating to support payments that had been previously made which had reduced the support payments for a set period of time but then returned the monthly payments to the amounts previously ordered. The panel also noted that the judge spent some time attempting to carefully clarify these orders for the benefit of both parties.

APPENDIX A

Case Summaries

The review panel further noted that the transcript showed that judge, upon hearing submissions from the Applicant that the Respondent was in arrears of payment of spousal and child support, ordered that the Respondent bring the payments into good standing by the date of the Assignment Court, or his pleadings would be struck. The panel noted that the judge had the appropriate authority and discretion to make such an order.

The panel noted that if the complainant disagreed with the decisions made by the judge, the proper way to proceed was through legal remedies in the courts. The Council had no jurisdiction over such matters.

The review panel found that the transcript did not in any way support the complainant's allegation that the judge unfairly favoured the Applicant.

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

CASE NO. 18-013/12

The complainant appeared before the judge as a witness in criminal trial proceedings against her husband who was charged with uttering death threats to her daughter and herself. He was found not guilty.

In her letter to Council, the complainant made several allegations against the judge as follows:

- 1) No interpreter was provided. She stated that she had never been to court and that it was difficult to testify. She stated that she did not speak English well and that she had asked for an interpreter but did not get one. She asked, "where are my human rights?" She wrote that she tried to do her best even though it was hard to understand what was happening.
- 2) The judge made incorrect findings. The complainant alleged that the judge said things about her that were incorrect and he did not understand her situation. She stated that he did not listen and made her feel like a criminal for speaking up. She said that in her culture women do not speak up against their husbands. She alleged the judge said she was a bad actor and that her performance was embarrassing. He did not believe her and instead said that she had used the police and the Crown Attorney. She stated that the judge found that she went to the police so that she could get the house, and she said that was not true. She stated, "I am writing this

APPENDIX A

Case Summaries

letter because I want you to know what [the judge] did by saying that I was acting. That is not true at all.”

- 3) The complainant stated that she only saw the lawyer from the Crown Attorney’s office four days before the trial and then only for a few minutes. She also said that during this meeting with the Crown Attorney she provided three medical letters that had disappeared and the Crown Attorney failed to bring the medical evidence to the attention of the judge.
- 4) The complainant alleged that her husband made fun of her voice in the courtroom and no-one stopped him.

In addition to the complainant’s letter, she also provided to the Council: a copy of the three medical letters; a copy of the transcript of the trial proceedings; and, a copy of the judge’s reasons for his judgment. Following its investigation, the complaint subcommittee submitted a report to a review panel.

The review panel reviewed the subcommittee’s report, the complainant’s letter and the judge’s reasons for his decision. The review panel noted that there was nothing in the transcript to support the allegation that the complainant requested an interpreter or that her request was turned down. Nor was there anything in what the complainant said during the trial or in how it was conveyed that would have alerted the judge of any need for an interpreter.

The review panel found that the transcript showed that the judge listened politely to the evidence and rendered an oral judgment, providing reasons for his decision.

With respect to the allegation that the judge said things about her that were incorrect or that he did not understand the situation and that he made findings that were not true, the panel noted that a judge’s assessment of the evidence and determination of which party he or she believes are matters outside of the jurisdiction of the Council. If the complainant disagreed with the judge’s decision or with how the judge weighed the evidence, the proper way to proceed to raise her concerns with the Crown Attorney.

With respect to the allegation that the judge said she was a bad actor and that her performance was embarrassing, the review panel found that the transcript showed that the judge called the complainant’s evidence “histrionic” which can mean excessively dramatic or emotional, and he said: “The theatricality of her performance was embarrassing. She

APPENDIX A

Case Summaries

can turn the tears off and on in seconds and do so repeatedly. She appears to think that if she shouts at counsel and waves her arms violently, that this is a sign of honesty. What her evidence discloses more than anything else is that she is a bad actor.”

The panel observed that these comments were made by the judge in the context of his assessment of the evidence. The judge is the “trier of fact,” and must make decisions about the evidence and determine which witnesses he believes are telling the truth. As indicated above, if the complainant disagreed with the judge’s decision or with how the judge weighed the evidence, she could raise her concerns with the Crown Attorney.

With respect to the allegation that the judge said the complainant used the police and the Crown Attorney, and that she went to the police so she could get the house, the review panel found that the transcript showed that the judge said: “I find there is a legitimate concern, that [the complainant and her daughter] have used the police, the crown and the court to further their own purposes and not with any degree of legitimacy.”

The panel observed that it appeared from the transcript that the judge was troubled by the timing of the allegations made to the police and he found that it was the result of a strategic choice by the complainant to gain possession of the matrimonial home. His comments were made in the context of how he viewed the evidence.

The review panel noted that the allegations regarding the Crown Attorney, including the purported failure to tender the medical evidence, were not matters within the jurisdiction of the Ontario Judicial Council. If the complainant wished to pursue her concerns about the Crown Attorney, she could do so by writing to the Director of Crown Attorneys for the region in which the proceeding took place.

Finally, the review panel found nothing in the transcript to support the complainant’s allegation that her husband made fun of her voice during the trial, nor was there any evidence that such a concern was brought to the attention of the judge during the trial. This allegation was dismissed by the panel as unfounded.

For the reasons noted, the review panel found that there was no judicial misconduct on the part of the judge, dismissed this complaint and closed the file.

APPENDIX B

**PRINCIPLES OF
JUDICIAL OFFICE**

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 and set out standards of excellence 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.

APPENDIX B

Principles of Judicial Office

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.

Principles of Judicial Office

Commentaries:

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

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.

APPENDIX C

**HEARING ABOUT
THE CONDUCT
OF THE HONOURABLE
JUSTICE
HOWARD I. CHISVIN**

APPENDIX C

Hearing about the conduct of the Honorable Justice Howard I. Chisvin



ONTARIO JUDICIAL COUNCIL

**IN THE MATTER OF A HEARING
UNDER SECTION 51.6 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c. 43, as amended,**

***Concerning Complaints about the Conduct of
the Honourable Justice Howard I. Chisvin***

Before: The Honourable Justice Robert Sharpe, Chair
Court of Appeal for Ontario

The Honourable Justice Deborah K. Livingstone
Ontario Court of Justice

Mr. W. A. Derry Millar
WeirFoulds LLP
Lawyer Member

Mr. Anish Chopra
Community Member

Hearing Panel of the Ontario Judicial Council

Counsel:

Ms. Marie Henein
Henein and Associates

Presenting Counsel

Mr. Brian H. Greenspan
Greenspan, Humphrey and Levine

Counsel for His Honour Howard I. Chisvin

APPENDIX C

Hearing about the conduct of the Honorable Justice Howard I. Chisvin

REASONS FOR DECISION

This is the hearing by a panel pursuant to ss. 51.4 (18) and 51.6 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, to consider three complaints involving one incident regarding the conduct of the Honourable Justice Howard I. Chisvin.

The facts giving rise to the complaints are fully set out in a Statement of Facts agreed to by Presenting Counsel and counsel for Justice Chisvin and signed by Justice Chisvin himself. The facts set out below are taken from that Agreed Statement of Facts.

Facts

Justice Chisvin, the subject of the complaint, is a judge of the Ontario Court of Justice assigned to preside in the Central East Region. Justice Chisvin has served in that capacity since February 18, 2004.

The Ontario Judicial Council received three written complaints about his in-court conduct on July 21, 2011. The complaints were made by the Ministry of the Attorney General, a member of the public who was a lawyer that had practised in Ontario for over 50 years, and two members of the public who made a joint complaint.

The allegations were investigated by a complaint subcommittee of the Council. On January 24, 2012, Justice Chisvin was provided with the opportunity to respond to the complaints. The subcommittee completed its investigation and reported to a review panel of the Council.

After reviewing the information obtained through the investigation, including the response of Justice Chisvin, the review panel ordered a hearing into the allegations set out in the Notice of Hearing pursuant to s. 51.6 of the *Courts of Justice Act*.

Events of July 21, 2011

On the morning of July 21, 2011, Justice Chisvin was presiding in plea court in Courtroom 202 in the Ontario Court of Justice at 50 Eagle Street West in Newmarket. Plea court is a specially designated court in which it is expected that matters set down in the court are scheduled for resolution including guilty pleas and pre-trial conferences. Individuals attending court, including accused and complainants, generally expect that final resolution of their matters will occur on a scheduled plea court date.

APPENDIX C

Hearing about the conduct of the Honorable Justice Howard I. Chisvin

On July 21, 2011, court commenced at 10:05:01 a.m.. At 10:14:00, the court took a brief recess to allow the judge to get some materials from his office. Court reconvened at 10:17:28. Having dealt with further matters until there was nothing ready to proceed, court recessed from 10:21:30 to 10:29:10.

The court continued to deal with a number of matters. A recess was taken at 11:23:11. The clerk announced that the recess would be for 20 minutes.

Crown counsel remained in the courtroom to discuss some matters with defence counsel. He then went downstairs to obtain a drink from the cafeteria where he observed the judge also in the cafeteria line. After buying a drink, Crown counsel returned to his office and proceeded to read a psychiatric report pertaining to an accused person who was to be dealt with that day.

At the time when the morning recess was taken, the provincial list had at least 33 criminal charges involving ten accused persons remaining on the docket.

There were also federal matters on the docket.

The clerk was the first to return to court from the break at approximately 11:40:00. She unlocked the doors and paged all persons to attend court. There was also a separate page for the Crown Attorney. The court reporter returned sometime later and activated the recording equipment at 11:45:21. At that time, all persons having business in Courtroom 202 were again paged to the courtroom, stating court was about to commence. The clerk again paged the Assistant Crown Attorney to the courtroom.

Justice Chisvin heard the first page at approximately 11:40:00 and called the clerk to inquire if everyone was ready to proceed. The clerk responded that everyone was ready except for the Crown, and Justice Chisvin indicated that he would 'wander down' to the courtroom.

At 11:46:21, court resumed and Justice Chisvin re-entered the courtroom. The Assistant Crown Attorney was not present and the courtroom clerk again paged the Assistant Crown Attorney.

Justice Chisvin told the clerk to tell the Crown Attorney that "if there's not a prosecutor here within a minute, the list will go for want of prosecution".

APPENDIX C

Hearing about the conduct of the Honorable Justice Howard I. Chisvin

The clerk called the office of the Crown Attorney and spoke to a receptionist and said “I need a Crown in 202...”. Justice Chisvin told the clerk, “Tell them they have 30 seconds. The list is about to go for want of prosecution, Madam Clerk”.

The clerk advised the judge that the Crown Attorney’s office was sending a Crown Attorney to court. She paged the Assistant Crown Attorney again.

A defence lawyer asked whether the clerk had called the Crown Attorney’s office. Justice Chisvin responded, “It’s not her function (a) to call the Crown’s office, (b) the list is about to go for want of prosecution.”

The defence lawyer offered to personally attend the Crown Attorney’s office in order to locate the Crown. Justice Chisvin responded: “Thirty seconds...that’s all.”

At 11:47:48., one minute and 27 seconds after court had reconvened, Justice Chisvin dismissed all charges as follows: “All right, all provincial matters are dismissed for want of prosecution.”

As a result, individual accused and complainants who had expected matters to be dealt with on July 21, 2011 did not have their matters disposed of on the merits.

Federal matters that were on the docket were not affected by Justice Chisvin’s actions.

At 11:53:44, the provincial Crown Attorney returned to the Courtroom. The following exchange occurred between the Crown Attorney and the Court:

The Court: Mr. McCallion, all provincial matters have been dealt with by want of prosecution. There was no Crown in here for some 10 minutes and you were being paged and paged and paged. They’ve been dismissed for want of prosecution. We have only federal matters left on the list.

Mr. McCallion: I apologize Your Honour. I was-I’ve just, I’ve received a report from Ontario Shores with respect to Mr. S[name redacted] who is ...

The Court: That might be. Court comes when court is back. You were paged. You were paged in the hallway, the Crown’s office was called, no Crown. They’re dismissed for want of prosecution.

APPENDIX C

Hearing about the conduct of the Honorable Justice Howard I. Chisvin

At approximately 11:53:44, Justice Chisvin said court would deal with the federal matters.

Later in the day, Justice Chisvin recognized that he had made a significant error. He contacted the Regional Senior Justice and over the course of the next several days, arranged for a two week leave of absence to address various personal stresses that he was experiencing.

Attempts to remedy the dismissal of charges

As a result of the dismissal of the charges for want of prosecution, steps had to be taken by the Ministry of the Attorney General to remedy the impacts of Justice Chisvin's actions, including obtaining the consent of the Deputy Attorney General to re-swear the necessary informations, serving affected persons with new summons, and filing appeals to protect the right to proceed in the face of potential *autrefois acquit* defences.

Resources were expended to re-swear informations and re-summon accused persons. Individuals who had expected their matters to finally conclude on July 21, 2011 were required to re-attend court and have their matters protracted for weeks and in some cases months. Accused persons and victims who had anticipated that there would be decisions and finality in the cases were inconvenienced and left with uncertainty as to the outcomes of the court matters in which they were involved.

One matter was appealed to the Court of Appeal of Ontario: *R. v. Siciliano, 2012 ONCA 168*. The Court allowed the appeal, quashed the dismissal for want of prosecution and restored the convictions stating, at para. 9:

[9] It is clear that the trial judge had no power to make the order that he purported to make. It was illegal and an abuse of judicial authority. Furthermore, even if the power existed, there was no basis upon which to make the order on the facts of this case. The trial judge's actions were highhanded and did a real disservice to the proper administration of justice.

The Court of Appeal remitted the matter to Justice Chisvin for sentencing. On March 30, 2012, the scheduled appearance by Mr. Siciliano, Justice Chisvin stated as follows:

I want to express an apology to Mr. Siciliano, to you, to him, to the Crown, to the defence and to the public for the regrettable delay in the imposition of sentence in this matter. Mr. Siciliano last appeared before me on

APPENDIX C

Hearing about the conduct of the Honorable Justice Howard I. Chisvin

July 21, 2011, more than eight months ago at which time I unfortunately proceeded to dismiss charges against him and the remaining accused on the list that morning. I was clearly in error. I very much regret that decision. I trust the delay in having Mr. Siciliano return to court has not caused him any undue hardship. As I am sure you have explained to him, Mr. Goldglass, the Court of Appeal corrected my mistake and directed the matter to return before me for the imposition of sentence...

ADMISSIONS

Justice Chisvin admits the following:

- a. his actions were contrary to the standard of conduct expected of a judge and contrary to the *Principles of Judicial Office for Judges of the Ontario Court of Justice* that were established and approved pursuant to s. 51.9(1) of the *Courts of Justice Act*;
- b. his conduct on July 21, 2011 constitutes judicial misconduct that warrants a disposition under s. 51.6(11) of the *Courts of Justice Act*; and
- c. his actions negatively impacted the confidence of members of the public, including the accused parties, victims and counsel, in himself as a judge, in the judiciary in general and in the administration of justice.

ANALYSIS

The first step for the hearing panel to determine is whether there has been judicial misconduct. We are satisfied on the basis of the Agreed Statement of Facts and Justice Chisvin's admission that the conduct at issue does constitute judicial misconduct.

The central issue for this panel is to determine which of the dispositions set out in s. 51.6 (11) of the *Courts of Justice Act* are required to restore public confidence in the judiciary.

APPENDIX C

Hearing about the conduct of the Honorable Justice Howard I. Chisvin

That section provides that where there has been misconduct by the judge, the panel may:

- a. warn the judge;
- b. reprimand the judge;
- c. order the judge to apologize to the complainant or to any other person;
- d. order that the judge take specified measures, such as receiving education or treatment, as a condition to sit as a judge;
- e. suspend the judge with pay, for any period;
- f. suspend the judge without pay, but with benefits, for a period of up to thirty days; or
- g. recommend to the Attorney General that the judge be removed from office in accordance with s. 51.8.

Pursuant to s. 51.6 (12), we may adopt any combination of those dispositions, except that a recommendation to the Attorney General that the judge be removed from office cannot be combined with any other disposition.

We agree with the submission of Presenting Counsel that in determining the appropriate disposition it is necessary to focus on what is required to restore public confidence in the judge and in the judiciary. See *Re Douglas*, Ontario Judicial Council (March 6, 2006), at paras. 8-9:

- [8] Based on *Re: Baldwin and Re: Evans*, the test for judicial misconduct combines two related concerns: (1) public confidence; and (2) the integrity, impartiality and independence of the judge or the administration of justice. The first concern requires that the Hearing Panel be mindful not only of the conduct in question, but also of the appearance of that conduct in the eyes of the public. As noted in *Therrien*, the public will at least demand that a judge give the appearance of integrity, impartiality and independence. Thus, maintenance of public confidence in the judge personally, and in the administration of justice generally, are central considerations in evaluating impugned conduct. In addition, the conduct must be such that it implicates the integrity, impartiality or independence of the judiciary or the administration of justice.

APPENDIX C

Hearing about the conduct of the Honorable Justice Howard I. Chisvin

[9] Accordingly, a judge must be, and appear to be, impartial and independent. He or she must have, and appear to have, personal integrity. If a judge conducts himself or herself in a manner that displays a lack of any of these attributes, he or she may be found to have engaged in judicial misconduct.

In *Re Baldwin*, Ontario Judicial Council, (May 10, 2002), at p. 6, the panel held:

Once it is determined that a disposition under s. 51.6(11) is required, *the Council should first consider the least serious - a warning - and move sequentially to the most serious - a recommendation for removal - and order only what is necessary to restore the public confidence in the judge and in the administration of justice generally.* [Emphasis added]

We also find helpful the list of factors identified by the Washington State Supreme Court in *In re Hammermaster*, 985 P.2d 924 (1999), at pp. 941-2, as being relevant to an assessment of the appropriate sanction for judicial misconduct:

- i. Whether the misconduct is an isolated incident or evidenced a pattern of misconduct;
- ii. The nature, extent and frequency of occurrence of the acts of misconduct;
- iii. Whether the misconduct occurred in or out of the courtroom;
- iv. Whether the misconduct occurred in the judge's official capacity or in his private life;
- v. Whether the judge has acknowledged or recognized that the acts occurred;
- vi. Whether the judge has evidenced an effort to change or modify his conduct;
- vii. The length of service on the bench;
- viii. Whether there have been prior complaints about this judge;
- ix. The effect the misconduct has upon the integrity of and respect for the judiciary;
and
- x. The extent to which the judge exploited his position to satisfy his personal desires.

APPENDIX C

Hearing about the conduct of the Honorable Justice Howard I. Chisvin

In the present case, on the aggravating side, the misconduct here occurred in the courtroom in the judge’s official capacity.

In addition, the misconduct at issue was serious. It plainly had a detrimental effect upon public confidence in the administration of justice. It resulted in significant inconvenience to accused persons, to victims, to counsel, and to court administration. The matters dismissed could only be restored and dealt with appropriately at considerable public expense and after considerable delay.

On the other hand, there are many mitigating factors.

It is clear on the record before us, which includes some 45 letters of support written by Justice Chisvin’s judicial colleagues and by counsel who regularly appear before him, that his misconduct was an “aberration” and an isolated incident.

The incident occurred in a matter of minutes. Justice Chisvin acknowledged and recognized his misconduct. He recognized that he had made a serious error and, later in the day, he went to his Regional Senior Justice to report his mistake and to seek assistance.

He has repeatedly expressed his regret over what occurred. Before us today at this hearing, he again expressed his profound regret for his actions and for the consequences for the administration of justice and the public.

There is no suggestion that this isolated incident was preceded by or has been followed by any similar conduct on the part of the judge. Justice Chisvin has been a member of the bench for eight years. There have been no prior complaints made to the Ontario Judicial Council about his conduct.

We observe as well that Justice Chisvin has taken steps to address and modify his behaviour. He immediately recognized that he had acted under unusual stress because of personal problems. He requested and was granted a short leave of absence to seek professional assistance.

The letters of support from his immediate judicial colleagues, from other judges who know him, and from members of the bar who regularly appear in his court confirm that Justice Chisvin is a hard-working, dedicated judge, committed to improving the administration of justice. His colleagues report that he is always willing to help by sitting extra hours during vacation or non-presiding time and that he is seen as a “go to” judge

APPENDIX C

Hearing about the conduct of the Honorable Justice Howard I. Chisvin

when some need or difficulty arises. His colleagues describe him as a self-deprecating, “low maintenance” judge. He is a frequent contributor to judicial education programs and to mock trial programs for law students. He has gone out of his way to encourage and mentor young lawyers.

While Justice Chisvin’s otherwise apparently exemplary behaviour does not excuse the conduct giving rise to this hearing, it is our view that it bears directly upon the disposition that must be imposed in order to restore public confidence in his ability to deliver justice and in the justice system as a whole.

We conclude that the incident giving rise to this hearing was an aberration by a hard-working, dedicated judge who has fully acknowledged his misconduct and who does not minimize its impact. He has done what he can to redress his wrong by seeking personal assistance for himself and by proposing an educational program for other judges on “The Reality of Stress”.

In our view, the confidence in the administration of justice on the part of a member of the public apprised of all of these facts would be restored by the following disposition.

Justice Chisvin is hereby formally reprimanded for his misconduct and warned that any repetition would have serious consequences for the administration of justice and for him as a judge.

Given the steps that Justice Chisvin has already taken, including apologizing for his misconduct, seeking professional assistance, proposing an educational program on the issue of stress, which we strongly encourage him to pursue, and serving with integrity since this incident arose, we are of the view that no additional disposition is required.

Dated this 26th day of November, 2012.

HEARING PANEL:

The Honourable Justice Robert Sharpe, Chair
Court of Appeal for Ontario

The Honourable Justice Deborah K. Livingstone
Ontario Court of Justice

APPENDIX C

Hearing about the conduct of the Honorable Justice Howard I. Chisvin

Mr. W. A. Derry Millar
Weir Foulds LLP
Lawyer Member

Mr. Anish Chopra
Community Member

APPENDIX C

Hearing about the conduct of the Honorable Justice Howard I. Chisvin



ONTARIO JUDICIAL COUNCIL

**IN THE MATTER OF A HEARING
UNDER SECTION 51.6 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c. 43, AS AMENDED,**

***Concerning Complaints about the Conduct of
the Honourable Justice Howard I. Chisvin***

Supplementary Reasons

Before: The Honourable Justice Robert Sharpe, Chair
Court of Appeal for Ontario

The Honourable Justice Deborah K. Livingstone
Ontario Court of Justice

Mr. W. A. Derry Millar
WeirFoulds LLP
Lawyer Member

Mr. Anish Chopra
Community Member

Hearing Panel of the Ontario Judicial Council

Counsel:

Ms. Marie Henein
Henein Hutchison, LLP

Mr. Brian H. Greenspan
Greenspan, Humphrey and Levine

Presenting Counsel

Counsel for His Honour Howard I. Chisvin

APPENDIX C

Hearing about the conduct of the Honorable Justice Howard I. Chisvin

SUPPLEMENTARY REASONS

- [1] Presenting Counsel, Ms. Henein, and Mr. Greenspan, Counsel for His Honour, are to be thanked for their helpful submissions and careful answers to questions from the Hearing Panel. We have come to a decision in this matter and I will read our reasons for disposition of this request.
- [2] On behalf of Justice Chisvin, his counsel asks that we order compensation for his legal costs in this matter in the amount of \$43,241.99. Presenting Counsel provided us with a list of the factors we might take into account but took no position as to the order we should make.
- [3] While section 51.7(4) of the *Courts of Justice Act* gives us jurisdiction to order compensation, we are not persuaded that we should make such an order in this case.
- [4] As we noted in our reasons for disposition, Justice Chisvin is to be commended for facing up to the fact that his conduct fell below the required standard. However, it remains that he did fall below that standard and we did make a finding of misconduct.
- [5] Taking into account all the circumstances of this matter, it is our view that the public purse should not be required to bear the cost of his legal representation.
- [6] Accordingly, the request for compensation is dismissed.

Dated this 22nd day of February, 2013.

HEARING PANEL:

The Honourable Justice Robert Sharpe, Chair
Court of Appeal for Ontario

The Honourable Justice Deborah K. Livingstone
Ontario Court of Justice

Mr. W. A. Derry Millar
WeirFoulds LLP
Lawyer Member

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