

OJC



TWENTY-FIRST ANNUAL REPORT

2015 – 2016

**ONTARIO
JUDICIAL COUNCIL**



The Honourable George R. Strathy

CHIEF JUSTICE OF ONTARIO

Co-Chair, Ontario Judicial Council



The Honourable Lise Maisonneuve

CHIEF JUSTICE

ONTARIO COURT OF JUSTICE

Co-Chair, Ontario Judicial Council



ONTARIO JUDICIAL COUNCIL

December 16, 2016

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

Dear Minister:

It is our pleasure to submit the Annual Report of the Ontario Judicial Council concerning its twenty-first 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, 2015 to March 31, 2016.

Respectfully submitted,

Handwritten signature of George R. Strathy in black ink.

George R. Strathy
Chief Justice of Ontario

Handwritten signature of Lise Maisonneuve in black ink.

Lise Maisonneuve
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	9
7) Principles of Judicial Office	9
8) Judicial Appointments Advisory Committee	10
9) The Complaints Procedure	10
10) Notification of Disposition	16
11) Legislation	16
12) Compensation for Legal Costs Incurred	16
13) Summary of Complaints	17
Appendix A – Case Summaries	A - 21
Appendix B – <i>Principles of Judicial Office</i>	B - 83



INTRODUCTION

The period of time covered by this Annual Report is from April 1, 2015 to March 31, 2016.

The Ontario Judicial Council investigates complaints made by the public about the conduct of provincially-appointed judges. In addition, it approves the continuing education plan for provincial judges. 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 350 provincially-appointed judges, including full-time and *per diem* judges 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 2015, the population was approximately 13,792,100. In an average year, judges of the Court deal with over 215,000 adult and youth criminal cases and approximately 20,000 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 21 new complaints in its twenty-first year of operation, as well as carrying forward 25 complaint files from previous years. Of these 47 complaints, 28 files were completed and closed before March 31, 2016. Eighteen complaints remained open to be carried over into the twenty-second year of operation. Information about the 28 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 *Courts of Justice Act* sets out the membership of the Ontario Judicial Council and terms of appointment:

- ◆ 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 twenty-first year of operation (April 1, 2015 to March 31, 2016) was as follows:

Judicial Members:

CHIEF JUSTICE OF ONTARIO

The Honourable George R. Strathy (Toronto)
Co-Chair

CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

The Honourable Lise Maisonneuve (Ottawa)
Co-Chair
(Effective May 4, 2015)

The Honourable Annemarie E. Bonkalo (Toronto)
Co-Chair
(Until May 3, 2015)

ASSOCIATE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

The Honourable Peter J. DeFreitas (Oshawa)
(Effective June 3, 2015)

The Honourable Lise Maisonneuve (Ottawa)
(Until May 3, 2015)

REGIONAL SENIOR JUSTICE

The Honourable Martin P. Lambert..... (Sudbury)
(Until July 14, 2015)

The Honourable Sharon Nicklas..... (Hamilton)
(Effective August 25, 2015)



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

The Honourable Justice Howard Borenstein..... (Toronto)
(Effective January 6, 2016)

The Honourable Justice Peter De Freitas (Oshawa)
(Until June 2, 2015)

The Honourable Justice Martin P. Lambert..... (Sudbury)
(Effective July 15, 2015)

The Honourable Justice Fern Weinper (Toronto)
(Until December 31, 2015)

Lawyer Members:

TREASURER OF THE LAW SOCIETY OF UPPER CANADA

Ms. Janet Minor.....(Toronto)

DESIGNATED BY THE TREASURER

Mr. Chris Bredt(Toronto)
Borden Ladner Gervais LLP
(Effective May 11, 2015 to December 11, 2015)

LAWYER MEMBER APPOINTED BY THE LAW SOCIETY OF UPPER CANADA:

Mr. David M. Porter (Toronto)
McCarthy Tetrault
(Effective April 8, 2015)

Community Members:

Mr. James Dubroy (Ottawa)
JAMES R. DUBROY LTD
(Effective May 6, 2015)



Mr. Anish Chopra (Toronto)
Managing Director, TD Asset Management Inc.
(Until May 3, 2015)

Ms. Sylvie Powell (Ottawa)
President/Senior Consultant, MediaLane Communications Inc.

Mr. Farsad Kiani (Markham)
President and Chief Executive Officer at ENSIL Canada Inc.

Mr. Ranjit Singh Dulai (Brampton)
President and Chief Executive Officer at Petroleum Plus

Members – Temporary


Sections 87 and 87.1 of the *Courts of Justice Act* give the Ontario Judicial Council jurisdiction over complaints made about 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 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 – 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 provincially-appointed judges to whom those provisions of the Act apply:

The Honourable Mr. Justice M. Don Godfrey (Superior Court of Justice)

The Honourable Madam Justice Pamela Thomson (Superior Court of Justice)

Subsection 49(3) of the *Courts of Justice Act* permits the Chief Justice of the Ontario Court of Justice to appoint a provincial judge to be a temporary member of the Ontario Judicial Council to meet the quorum requirements of the legislation with respect to Judicial Council meetings, review panels and hearing panels.



During the period covered by this report, the following judges of the Ontario Court of Justice were appointed by the Chief Justice to serve as temporary members of the Ontario Judicial Council when required:

The Honourable Justice Manjusha Pawagi..... (Brampton)

The Honourable Justice Barry Tobin (Windsor)

3. ADMINISTRATIVE INFORMATION

Office space is utilized by both the Ontario Judicial Council and the Justices of the Peace Review Council. The Councils' make use of financial, human resources and technology support staff in the Office of the Chief Justice, 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 twenty-first 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*

Ms. Michelle M. Boudreau – *Assistant Registrar*

Ms. Claudia Cammisa – *Administrative Assistant*
(Effective November 2, 2015)

Ms. Ingrid Richards – *Administrative Assistant*
(Effective February 23 to August 14, 2015)


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 about the conduct of 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's jurisdiction is limited to the investigation and imposition of dispositions of complaints about conduct. It 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/.



The Council operates under an Order to uphold the confidentiality framework intended by the statute that established the complaints process. The Order states:


The Judicial Council has ordered that, subject to an order by the Council, a review panel or a hearing panel, any information or documents relating to a mediation or a Council meeting or hearing that was not held in public are confidential and shall not be disclosed or made public. The order applies whether the information or documents are in the possession of the Judicial Council, the Attorney General or any other person. The order of non-disclosure does not apply to information and/or documents that the *Courts of Justice Act* requires the Judicial Council to disclose or that have not been treated as confidential and were not prepared exclusively for the purposes of the mediation or Council meeting or hearing.

The Toronto Star newspaper made an application to the Council seeking disclosure of the contents of a complaint file and challenging the validity of the Order. The Criminal Lawyers Association joined as a party. On October 14, 2015, the Council issued its decision on the application. In the decision, the Council discusses the confidentiality framework established by the *Courts of Justice Act* and the important role confidentiality plays in judicial discipline. The decision and a related addendum to the decision are posted on the Council's website at www.ontariocourts.ca/ocj/ojc/confidentiality/ under the menu item "Confidentiality".

The Toronto Star and the Criminal Lawyers' Association have filed an application for judicial review of the decision. The application was still before the courts at the time when this Report was written.

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. Updates on ongoing hearings are posted on the website under the link “Public 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’ Association and the judges of the court. The document was then submitted to the Ontario Judicial Council for its review and approval in the second year of Council’s operation, as required by subs. 51.9(1) of the *Courts of Justice Act*.

The *Principles of Judicial Office* serve as a guide 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. 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 Peter De Freitas was appointed by the Judicial Council to act as its representative on the Judicial Appointments Advisory Committee until June 2, 2015. The Honourable Justice Martin P. Lambert was appointed to act as the Judicial Council’s representative effective July 23, 2015.

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 does 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.

If the complaint raises allegations of conduct about a judge who is presiding over a court proceeding, the Council will not generally commence an investigation until that court proceeding and any appeal or other related legal proceedings have been completed. This will ensure that any investigation by the Council is not interfering or perceived to be interfering with any on-going court matters.

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


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) and a community member, is assigned to examine each complaint made to the Council. Complaints are generally not assigned to members from the same region where the judge who is the subject of the complaint presides. This avoids any risk of or perception of bias or conflict of interest between a member of the Council and the judge.

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

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

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

The subcommittee may decide to request a response to the complaint from the judge. If a response is requested, a copy of the complaint, the transcript (if any), and the relevant materials considered by the subcommittee will be provided to the judge, together with a



letter from the subcommittee 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. Therefore, of the six persons who consider each complaint, at least half of the members are not judges 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 exercised his or her judicial discretion and made a decision (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 supported by the evidence gathered during the investigation; or,
- ◆ the actions or comments of the judge do 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.

Because of the role of the Council in balancing judicial independence and accountability for judicial conduct, the legislation provides that proceedings, other than hearings to consider complaints against specific judges, may be private and confidential.

C) Hearings under Section 51.6

Hearing panels are made up of four members of Council who have not been involved in the process up to that point. At least one member of a hearing panel is a community member. The Chief Justice of Ontario, or his designate from the Court of Appeal for Ontario, chairs the hearing panel. A judge of the Ontario Court of Justice and a lawyer also sit on 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 in writing 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: www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c43_e.html

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. No recommendations for compensation were made to the Attorney General during the period covered by this report.

13. SUMMARY OF COMPLAINTS

The Ontario Judicial Council received 21 complaints in its twenty-first year of operation, as well as carrying forward 25 complaint files from previous years. Of these 46 complaints, 28 files were closed before March 31, 2016.

Twenty of the 28 closed files were opened in the twentieth year (2014-2015), and eight were opened in the twenty-first year (2015-2016).

Of the 28 files that were closed during the period covered by this Report, 17 arose from proceedings under the *Criminal Code*, five arose from family court proceedings, one related to allegations about a judge's conduct outside of court, three arose from provincial offences appeals, and two arose from matters in Small Claims Court.

Ten of the 28 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 28 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.

One complaint was 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.



In three cases of the files closed, the Council lost jurisdiction over the complaints. This occurs when a judge retires, resigns or dies and no longer holds the office of a judge.

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. No hearings were ordered during the period of time covered by this Report. Information about hearings is available on the Council's website under the link Public Hearings.

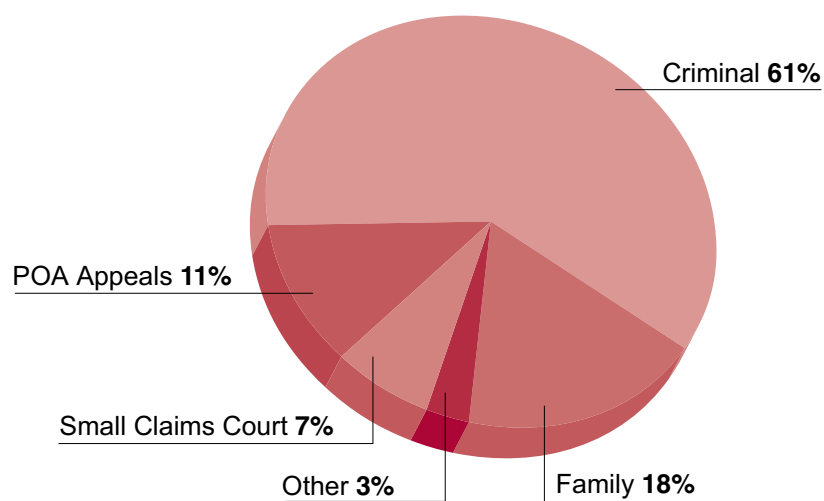
Eighteen complaints remained open to be carried over into the twenty-second year of operation. Of those 18 files, three were from Year 19 (2013-2014), two were from year 20 (2014-2015) and 13 were from Year 21 (2015-2016). In the case of the older files, the files were held in abeyance after the Council became aware of ongoing related court proceedings. If a complaint raises allegations of conduct about a judge who is presiding over a court proceeding, the Council will not generally commence an investigation until that court proceeding and any appeal or other related legal proceedings have been completed. This will ensure that any investigation by the Council is not interfering or perceived to be interfering with any on-going court matters. The Council must be respectful of the constitutional right of judicial independence and of the importance of preserving public confidence in the judiciary.

DISPOSITIONS IN 2015/2016

DISPOSITION	NUMBER OF CASES
Dismissed – Out of Jurisdiction	10
Dismissed – unfounded, not judicial misconduct, etc.	14
Referred to Chief Justice	1
Loss of jurisdiction	3
Ordered to a Hearing	0
TOTAL	28

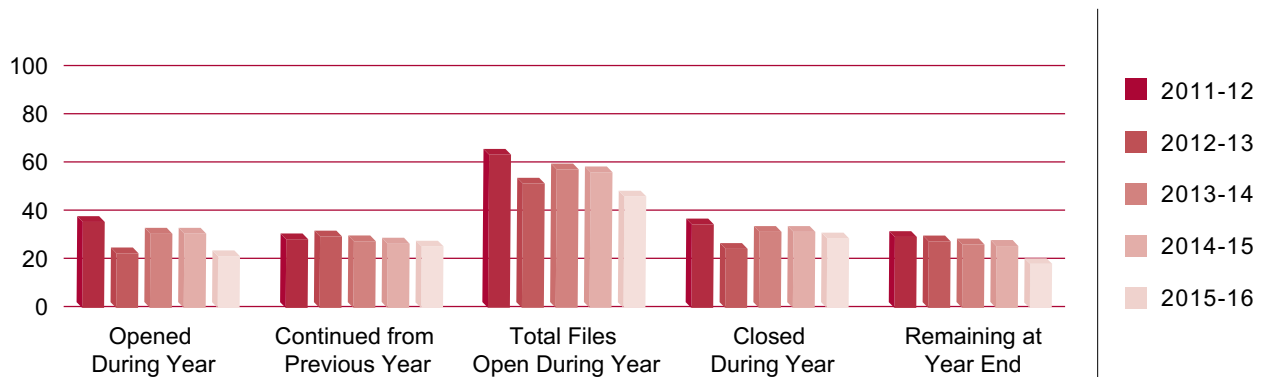
TYPES OF CASES CLOSED IN 2015/2016

TYPES OF CASES CLOSED IN 2015/2016	
Criminal Court	17
Family Court	5
Other – Outside of Court	1
Small Claims Court	2
Provincial Offences Appeal	3
TOTAL	28



CASELOAD IN FISCAL YEARS

FISCAL YEAR	11/12	12/13	13/14	14/15	15/16
Opened During Year	35	22	30	30	21
Continued from Previous Year	28	29	27	26	25
Total Files Open During Year	63	51	57	56	46
Closed During Year	34	24	31	31	28
Remaining at Year End	29	27	26	25	18



CORRECTION: A statistical error was identified after transmission of this Report to the Attorney General, which was not reflected in the hard copy version that was tabled.

Due to a data entry error, the data base system did not capture one file opened in 2013-2014. The number of new files in 2013-2014 is 30 and not 29 as stated in the chart in the tabled report. The above chart, and all other references to data in this online version of the Report, is accurate.

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. 21-001/15 was the first file opened in the twenty-first year of operation and was opened in calendar year 2015).

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

CASE NO. 20-001/14

The complainant was the alleged victim in a criminal trial on domestic-related charges under the *Criminal Code*. The complainant said that the events that led to the charges occurred when she was young. Several years later, when she was an adult, she reported the incident to the police. In her letter, the complainant said that during the accused's trial, she testified before the subject judge and then the matter was put over for the accused to testify. Subsequently, the complainant called the Crown Attorney to inquire when the judge might render her decision and she was told that the judge had declared a mistrial.

The complainant alleged that the Crown Attorney told her that while he was in the judge's chambers discussing another case, the judge said to him, "How is he going to get out of this?" The Crown Attorney advised the accused's lawyer of the comment made by the judge. The judge declared a mistrial and a new trial was ordered. The complainant advised that the matter was subsequently stayed by another judge for unreasonable delay, contrary to the *Charter's* guarantee of a trial within a reasonable time under Section 11(b).

The complainant was upset because the accused was free "because of a judge who made inappropriate remarks that ruined the trial". She stated that she needed to be validated for coming forward and needed closure. She wanted a new trial to have all of the evidence heard. The complainant wanted the accused to be held accountable for his actions.

The Registrar wrote to the complainant and explained that the Council does not have any authority to review a judge's decision, including the decision of the second judge who stayed the charges.

APPENDIX A

Case Summaries

The complaint subcommittee read the letter from the complainant and ordered and read the Information and the transcript of the proceeding when the judge declared a mistrial. The subcommittee retained independent counsel to interview the Crown Attorney who was present when the judge made the comment about the accused's trial in her chambers. A transcript of the interview was provided to the subcommittee. The subcommittee invited the judge to respond to the complaint. The subcommittee read her response. After the investigation was completed, the subcommittee provided a report to the review panel.

The review panel read the letter from the complainant, the transcript of the proceeding in which the judge declared a mistrial, the Information, the transcript of the interview with the Crown Attorney, the response from the judge and the report from the subcommittee.

The review panel observed that the investigation showed that the day after the complainant testified in the criminal trial, and before the defence had tendered any evidence in the trial, the Crown Attorney was in the chambers of the judge for a pre-trial on an unrelated matter. The investigation showed that on that occasion, in chambers, in the presence of other defence counsel, the judge stated: "It will be interesting to hear what he, the accused, has to say. That's all I'm going to say".

The panel noted that the investigation showed that the Crown Attorney did not consider that the judge was pre-judging the case. He informed defence counsel for the accused, by email, of the precise contents of the judge's comment. The defence counsel advised the Crown Attorney that it was his intention to seek a mistrial. The Crown Attorney and the defence counsel attended before the judge, in chambers, to alert her to the defence counsel's concerns and his intention to bring a mistrial application. The panel observed that the investigation showed that when Her Honour met with counsel on the matter, she was upset with herself for making the comment and advised that she would be granting the mistrial. After the meeting, the judge sent an email to both defence counsel and the Crown Attorney and apologized for her emotional state when they conveyed to her that a mistrial application was going to be brought.

The panel noted that the investigation showed that both the Crown Attorney and the defence counsel expressed the view that they knew the judge to be a very conscientious and forthright person.

A

APPENDIX A

Case Summaries

The panel observed that the transcript and the Information confirmed that the mistrial was granted by the judge on the trial continuation date. A different judge subsequently granted a motion by the defence a stay of proceedings based on section 11(b) of the *Charter*.

After reviewing Her Honour's response, the panel could see that the judge realized that she should not have made any comment on the case in chambers while the case was ongoing before her and she regretted her actions. The panel was satisfied that the comment was not an indication that Her Honour had lost impartiality or objectivity in the case. The panel noted that in Her Honour's letter, she extended an apology to all parties and in particular to the complainant, and Her Honour provided her assurance that the mistake would not be repeated.

The review panel considered the general ethical rule that a judge should not initiate or engage in *ex parte* communications (communications with one party where another party is absent) about an ongoing proceeding. *Ex parte* communications are barred to ensure that every party to a proceeding has a full right to be heard. They can suggest partiality, improper influence or bias on the part of a judge.

The panel concluded that Her Honour's comment to the Crown Attorney about the case in the absence of the accused and his lawyer did constitute an *ex parte* communication. However, the panel noted that Her Honour did not express how she would ultimately decide the case and the comment did not demonstrate partiality, unfairness or bias on her part. Nevertheless, the panel was of the view that Her Honour should never have made the comment.

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

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

The panel noted the importance of being seen to be impartial and objective.

After considering the results of the investigation and Her Honour's response, the review panel concluded that her actions did not amount to judicial misconduct. Although the comment was made in the absence of the accused and his lawyer, it was made in the presence of counsel other than just the Crown Attorney. The panel could see that the comment was not intended to be secret or confidential and it was a neutral comment, not an expression of how the case would be judged.

APPENDIX A

Case Summaries

The panel noted that confidence in the justice system and in the judiciary is affected by the level of transparency in the judicial system. When a judge comments on a case over which he or she is presiding in the absence of the accused, the alleged victim and members of the public, those persons may be left with negative perceptions of the administration of justice.

The panel noted that Her Honour agreed to the request by the Crown Attorney and defence counsel to meet with in chambers, rather than ensuring that the discussion about the case took place in the courtroom.

The complaints process through the Judicial Council is remedial in nature. The panel decided in all of the circumstances to refer the complaint, pursuant to section 51.4(17) (c) of the *Courts of Justice Act*, to the Chief Justice of the Ontario Court of Justice. Under the Council's Procedures, a review panel will refer a complaint to the Chief Justice under section 54.1(18) of the *Courts of Justice Act* where the majority of the review panel are of the opinion that the conduct complained of does not warrant another disposition and there is some merit to the complaint and the disposition is a suitable means of informing the judge that her course of conduct was not appropriate in the circumstances that led to the complaint.

The Chief Justice met with the judge and after her meeting, the Chief Justice provided a report to the review panel. The panel noted that at the time of the events that gave rise to the complaint, Her Honour was a relatively new judge. The panel could see from the report that Her Honour deeply regretted her actions. The panel noted that after the meeting, the Chief Justice was satisfied that through this experience, the judge fully appreciated the concerns raised by her actions and the expectations of judicial office.

After the panel reviewed the report from the Chief Justice, the file was closed.

CASE NO. 20-004/14

The complainant was a lawyer who appeared as a witness in a criminal trial heard by the subject judge. The complainant's former common law spouse was the alleged victim at trial. The complainant alleged that the trial judge was insensitive to the victim during the trial, allowed the defence lawyer to "run rough shod" over the Crown Attorney, and committed judicial misconduct by imposing common law peace bonds on both the

APPENDIX A

Case Summaries

complainant and the victim at end of the trial. The complainant later advised that the peace bonds were quashed by a judge of the Superior Court of Justice and he provided the transcript of the proceeding in that court.

The complaint subcommittee reviewed the correspondence received from the complainant and the enclosures, and ordered and reviewed the full transcript of the court proceeding before the subject judge. The subcommittee also reviewed the transcript of the proceedings in the Superior Court of Justice. The subcommittee reported on its investigation to the review panel.

The review panel reviewed the correspondence and enclosures received from the complainant, an excerpt from the transcript of the trial, the transcript of the Reasons for Judgment of the judge, the transcript of the proceeding in the Superior Court of Justice and the report from the subcommittee.

The review panel noted that the complainant alleged that the judge showed “absolute disregard...for the concerns and emotions of victims in this criminal matter”. In support of that allegation, the complainant pointed to the judge’s handling of an exhibit and to the language used to describe the alleged victim in his Reasons for Judgment. The subcommittee reported that the accused was charged with a number of offences including criminal harassment. The Crown Attorney’s theory involved a photograph of the alleged victim and the judge referred to it in his reasons for judgment. The subcommittee reported that the photograph and the message written on it were central to the Crown Attorney’s case. Crown counsel referred to it in submissions as the “strongest evidence” of criminal harassment.

The review panel noted that in the circumstances, the trial judge was obligated to address the photograph in his reasons. They accepted the findings of the subcommittee that there was nothing to suggest that he did so inappropriately or to unduly ‘re-victimize’ the witness. Further, the panel observed that the investigation showed that during the trial, when defence counsel asked a police officer to read the caption on the photo the judge interjected saying, “We’ve heard it already”, preventing it from being read. In his reasons for judgment, the judge described the message on the photograph as “offensive.”

With respect to the judge’s choice of language, the complainant alleged that the trial judge further victimized the alleged victim by the way he referred to her in the reasons for judgment stating: “...’people like [her]’ (i.e. the victim) probably deserve at least that

APPENDIX A

Case Summaries

one grain of courtesy.” The review panel noted that the members of the subcommittee had reviewed the trial transcripts and the reasons for judgment and they found that the passage quoted by the complainant did not appear in the trial record. The panel found that after imposing peace bonds on the defendant and the complainant, the trial judge said the following:

Ms. [victim], could you come forward, please? I have come to the conclusion that the facts in this case leave me to have some grave concern about the peace and safety in this realm. I find that under the common law I have jurisdiction to have someone, like you, enter - ordered into a peace bond for a period of one year.

The review panel concluded that read in context, the trial judge’s reference to “someone like you” was neither derogative nor insensitive. It was simply a statement of fact: a trial judge has the jurisdiction to have someone other than an accused enter into a peace bond.

The review panel accepted the findings of the subcommittee that a review of the transcript did not substantiate the allegation that the trial judge allowed the defence to “run rough shod” over the Crown Attorney. The investigation by the subcommittee showed that the trial judge was exacting with both counsel. On a number of occasions, he admonished defence counsel for his behaviour and that of his client. The subcommittee found that the trial judge treated both counsel with respect and courtesy. The panel observed that the complainant had alleged that there were many egregious violations of the rule in *Browne v. Dunn* (an evidentiary rule regarding the cross-examination of witnesses). The panel concluded that the rule in *Browne v. Dunn* is a matter of judicial decision-making beyond the jurisdiction of the Council.

The panel observed the transcript of the Superior Court of Justice proceedings showed that the peace bonds issued by the judge were quashed and that the complainant’s lawyer expressed the view that the subject judge should be directed to afford procedural fairness, particularly to witnesses in proceedings where he is considering imposing a peace bond on a complainant or a witness after a trial. The appeal judge hearing the matter said there was no basis for the judge doing what he did. The panel considered its jurisdiction and concluded that those concerns related to the exercise of judicial discretion made in the course of a judge’s duties, not judicial conduct. Judges have decision-making

APPENDIX A

Case Summaries

independence in accordance with the *Constitution Act, 1867*. The Council's legislated jurisdiction is limited to the conduct of judges. The Council has no jurisdiction to act on allegations that do not fall within its jurisdiction. If a person is of the view that the judge erred in his rulings or his decisions, a higher level court is the body with jurisdiction to determine whether there were errors in law and, if so, to change the decision. The review panel noted that in this case, that proper way to proceed had been followed in relation to those matters.

The review panel dismissed the complaint on the basis that the transcripts did not support a finding of judicial misconduct and the allegations related to the judge's decisions and his application of the law were outside the Council's jurisdiction. The file was closed.

CASE NO. 20-006/14

The complainant was convicted by the judge on criminal charges. She alleged that the judge ignored the provisions of the *Child and Family Services Act* which justified her actions in the events that gave rise to the criminal charges, and that he was oblivious to her rights under that *Act* and under the *Charter*.

She alleged that before the Crown Attorney or defence lawyer had a chance to speak, His Honour demanded that another party and the complainant approach the bench and he offered her a deal. She alleged that he said that all trials were "crap shoots" and could go either way, and he stated that by her signing a peace bond, the lengthy trial that had not begun could go away.

She indicated that it seemed to her that the judge had arrived at his own conclusion that the charges laid against her and the co-accused persons were not serious and withdrawal would not affect public safety.

She also objected that she after she fired her lawyer and wanted to represent herself, the judge refused her the right and ordered her lawyer to remain as her representative until the end of the trial. She asserted this was contrary to her rights under section 7 of the *Charter*.

She disagreed with the judge's decision at the end of the trial to find her guilty of a criminal charge and with his decision on the sentence.

APPENDIX A

Case Summaries

She alleged that the judge called her stubborn and inflexible out of spite for her initial refusal to sign a peace bond.

The complaint was assigned to a complaint subcommittee for investigation.

Before the complaints process was completed, the Ontario Judicial Council received information that the judge had fully retired. The retirement resulted in a loss of jurisdiction by the Ontario Judicial Council. The complaint file was administratively closed due to the loss of jurisdiction by the Council.

CASE NO. 20-009/14

The complainant was also the complainant in a criminal trial against her former husband. There were several charges against the accused. The judge acquitted the accused of all counts except one count of assault causing bodily harm. The judge considered, amongst other things, pre-trial custody served by the accused and the accused ultimately was placed on a probation order.

The complainant alleged that the judge demonstrated bias, discrimination, disrespect and prejudice toward her. She further alleged that there was ample evidence in the judge's behaviour to conclude that, from the beginning, he viewed her as a manipulative, sexually deviant, coercive seductress, while the accused was seen as the true victim. She stated that the accused was accorded favoritism and his manner in the courtroom encouraged an atmosphere of mockery and contempt for the complainant. She further stated that she believed the judge had deep biases against women, sexuality and abuse and he believed that if a situation is really so bad, then women should just leave.

She stated that the judge was profoundly ignorant about the dynamics of abuse and the behaviour of sexual sadists. She stated that the judge used the abuse as an excuse to view and treat her as dirty, tainted and not to be believed.

The complainant also alleged that the accused's father and friends laughed and smirked during her evidence and the judge did nothing to stop the behaviour.

The complainant referred to various aspects of the judge's Reasons for Judgment which she said demonstrated his bias and prejudice. She disagreed with the judge's assessment of the evidence.

APPENDIX A

Case Summaries

The complainant objected to the judge permitting the accused to read what she perceived to be a self-serving statement before sentence was imposed. She objected to the judge's comments regarding the accused's strict bail conditions. Further, she complained that he failed to refer to the impact the offences had on her, as set out in her victim impact statement.

The complaint subcommittee read the correspondence from the complainant and all of the transcripts from the trial, as well as the transcripts of the Reasons for Judgment and Reasons for Sentence. After its investigation, the subcommittee reported to the review panel.

The review panel read the correspondence from the complainant, the transcript of the Reasons for Judgment, the transcript of the Reasons for Sentence and the report from the complaint subcommittee.

The panel accepted the findings of the subcommittee about the judge's conduct during the trial, based on the review of the transcripts, which included the following. During the trial, the judge was quiet and polite. There was nothing in the record to suggest that the judge's manner in the courtroom encouraged an atmosphere of mockery or contempt for the complainant. At the conclusion of the testimony of some of the witnesses, including the complainant and the accused, the judge asked questions to clarify the evidence he had just heard. The judge then asked counsel if they wished to ask further questions arising out of his clarification questions. The judge conducted the entire trial in a professional manner; he was respectful to all the criminal justice participants. There was nothing on the record to suggest that the judge was biased or prejudiced or that he exhibited favoritism. There was no evidence that the judge had preconceived views that he permitted to influence his judgment or sentencing.

The panel noted that one of the allegations of the complainant was that the judge said that if she did not want to engage in the violent activity, she should simply have left and that she had many opportunities to leave. The panel concluded that his comments did not show a prejudice or bias, or ignorance about the dynamics of domestic abuse, sexuality or women. Rather, the panel found that in the context of assessing the facts of the case, the judge considered that the complainant did not leave the relationship notwithstanding that there were plenty of times when she could have done so. The panel concluded that this related to how the judge assessed the evidence and determined the issues,

APPENDIX A

Case Summaries

which were matters of judicial decision-making outside the jurisdiction of the Council, not matters of conduct.

The panel noted that the complainant referred to the judge's comment that he looked in the yellow pages and saw that there were local sex shops where one can buy the items that were used during the sexual activity that was proven during the trial. The judge also commented that one can go on-line and access manuals about different types of sexual behaviour and find clubs where the members engage in sexual practices similar to what the parties engaged in. The review panel observed that the judge made these comments in the course of finding that it was difficult to say what is normal in a sexual relationship. The panel found that the question of whether the judge could consider materials or information extraneous to the trial was a question of law outside the jurisdiction of the Council, not a matter of conduct.

The panel accepted the findings of the subcommittee that there was nothing in the record to suggest that early on in the trial the judge believed the accused was the true victim.

The panel noted that the investigation showed that there was nothing on the record to indicate that the accused's father and friends laughed or smirked with contempt during the complainant's evidence or that the detective and the victim-witness worker had to tell these people to stop laughing and gesturing. In any event, the panel accepted the findings of the subcommittee that there was nothing on the record to suggest that the judge saw such activities and failed to intervene.

With respect to the allegations about how the judge assessed the evidence given by the witnesses, and his conclusion that he had a reasonable doubt about the defendant's guilt of all of the charges but one, the panel concluded these concerns related to matters of judicial decision-making and judicial discretion outside the jurisdiction of the Council, not conduct. Judges have decision-making independence in accordance with the *Constitution Act, 1867*. The Council's legislated jurisdiction is limited to the conduct of judges. The Council has no jurisdiction to act on allegations that do not fall within its jurisdiction. Only a higher level court has the jurisdiction to determine whether there were errors in law and, if so, to change the decision.

With respect to the complainant's allegation that at the sentencing hearing, the judge allowed the accused to read a prepared statement aloud and that the judge said nothing while the accused was allowed to have the last word, the panel noted that the *Criminal*

APPENDIX A

Case Summaries

A Code requires that before sentencing, a judge must ask the accused if he wishes to say anything. An accused person is permitted to address the court and the accused may read from a prepared statement. Further, a judge is permitted to consider restrictions on a person's liberty as a result of stringent bail conditions when crafting an appropriate sentence. The panel concluded that these concerns related to how the judge applied the law on sentencing and the decision he made on the appropriate sentence. The panel found that these were matters of judicial decision-making and judicial discretion outside the jurisdiction of the Council, not matters of conduct.

The panel dismissed the complaint on the basis that there was no evidence of judicial misconduct and that the allegations about how the judge assessed the evidence, applied the law, determined the issues and decided the case were matters outside the jurisdiction of the Council. The file was closed.

CASE NO. 20-012/14

The complainant, a paralegal, sent a letter of complaint on behalf of his firm. He alleged that the judge did not follow the rules and regulations of the *Court of Justice Act* during an appeal. He alleged that His Honour "...dismissed an appeal without any factum being handed in or any input or response by the opposing counsel, when it was clear that the previous Justice of the Peace had erred in law."

He also alleged that His Honour acted in a manner prejudicial manner towards his colleague and did not allow her to make legal arguments pertaining to the appeal. The complainant said he felt that His Honour's actions were unprofessional and denied the defendant right to a fair appeal.

The complainant indicated that this was not the first negative encounter with His Honour whereby, His Honour "does not allow you to speak, is short-tempered and completely disrespectful to his colleagues."

The subcommittee reviewed the letter and instructed the Registrar to send a letter to the complainant to request additional information. No response was received. Two more letters were sent to the complainant to request details. No response was received. The subcommittee reviewed the transcript and listened to the recording of the argument on the appeal. After completing its investigation, the subcommittee reported to the review panel.

APPENDIX A

Case Summaries

The review panel reviewed the complainant's letter, the correspondence sent by the complainant, the excerpts of the transcript of the appeal proceedings and the subcommittee's report. The panel noted that the transcript showed that the judge permitted the complainant's colleague to make legal arguments during the appeal. The transcript also showed that the judge explained that he had read her factum and that he did not need to have the specific errors outlined in the factum repeated to him in argument. The panel observed that the transcript revealed that His Honour was direct with the complainant's colleague during argument, but not short-tempered or disrespectful.

The panel observed that the transcript indicated that having heard from the appellant, the judge did not call on the respondent. The panel noted that a judge is not obligated to do so. The panel concluded that there was no evidence in the transcript to suggest that the judge made that decision for any improper purpose. Further, the panel observed that while it appeared that the respondent did not file a factum, the judge's decision to proceed without one was a matter of judicial decision-making outside of the jurisdiction of the Council.

The panel noted that the complainant's general allegations about other negative encounters with this judge were not supported by any particulars or evidence.

The review panel dismissed the complaint and closed the file.

CASE NO. 20-013/15

The complainant was a respondent in a child protection case brought following an investigation by a Children's Aid Society. The investigation was initiated because of criminal proceedings brought against the complainant.

The child protection case was managed primarily by the judge who was the subject of this complaint. In investigating this matter, the subcommittee reviewed the complaint, supporting documents provided by the complainant and transcripts of nine appearances before the judge. The subcommittee also sent a letter to the complainant to ask for further details about his allegations. The complainant sent a letter with information, and the subcommittee considered that information. Following its investigation, the subcommittee submitted a report to a review panel.

APPENDIX A

Case Summaries

The review panel reviewed the complainant's letters and the subcommittee's report to them. The review panel outlined the allegations and its findings as follows:

Allegation # 1:

The lawyer appointed by the Office of the Children's Lawyer to represent the complainant's children had at one time worked in the law firm where the judge worked prior to his appointment. As well, the lawyer representing the Children's Aid Society worked at the same law firm as the judge prior to his appointment.

The review panel noted that the subcommittee reviewed each of the transcripts of the court appearances that took place before the judge with respect to the child protection case. The panel observed that the subcommittee's report showed that that counsel for the complainant's spouse appeared at every court date and the complainant attended or was represented at six of the court appearances. The subcommittee reported that the transcripts showed that at no time during any of the court appearances was an issue raised by the parties that the judge might be in a conflict of interest because of a past association with the law firm which employed the two lawyers. The panel observed that the judge had been on the Bench for more than a decade prior to the start of this child protection case. The review panel concluded that a reasonable, fair-minded and informed person would not have a reasonable suspicion of a conflict of interest such that the judge's ability to act impartially was compromised.

Further, the panel noted that the decision of a judge as to whether to recuse himself or herself from hearing a case is a matter of judicial decision-making outside the jurisdiction of the Judicial Council. The Council's legislated jurisdiction is limited to the conduct of judges. Judges have decision-making independence in accordance with the *Constitution Act, 1867*. The *Courts of Justice Act* states that the Council must dismiss a complaint if it falls outside the Judicial Council's jurisdiction.

Allegation # 2:

The judge conducted a pre-trial in the related criminal case.

The review panel observed that the complainant asked in his letter whether this was a conflict of interest. The panel noted that the investigation showed that no concern about the judge conducting the criminal pre-trial was raised in any of the court appearances in the child protection cases by counsel or the parties. The panel also noted that the report

APPENDIX A

Case Summaries

from the subcommittee showed that there was no evidence in the transcripts to support a conclusion that because the judge presided at the complainant's criminal pre-trial, he prejudged the child protection case. The panel noted that the subcommittee found no evidence in the transcripts of a perceived bias or conflict of interest and dismissed this allegation as unfounded.

Allegation # 3:

A child of the complainant was taking medication which required that child not be exposed to tuberculosis. The complainant said that the judge ordered the Children's Aid Society worker to be tested for tuberculosis but the worker refused. The complainant said that the judge did nothing about this disobedience.

The review panel observed that the subcommittee reported that the issue of the children and their exposure to tuberculosis was addressed by the judge, though not as described by the complainant. The subcommittee reported that the relevant transcript showed that the judge wanted the complainant's wife to refrain from setting conditions for the child's lawyer, appointed by the Office of the Children's Lawyer, and the Children's Aid Society workers to have contact with the child. The review panel accepted the finding reported by the subcommittee that the transcript showed that the judge held that it was not necessary for Children's Aid Society workers to be tested for tuberculosis or any other medical condition before seeing the child. The subcommittee reported that the transcript showed that the judge saw this request by the complainant's spouse as a tactic by her. The review panel found no evidence to support the allegation.

Further, the review panel noted that the judge's ruling about whether or not the workers had to be tested for tuberculosis was a matter of judicial decision-making outside the jurisdiction of the Judicial Council, not a matter of judicial misconduct.

Allegation # 4:

The judge did not allow the complainant's motion in which he requested that he should be allowed to speak by telephone to his children.

The review panel noted that the investigation showed that the particulars described by the complainant in relation to this allegation appeared to relate to a judge other than the judge who was the subject of this complaint. However, the panel noted that the subcommittee reported that the transcripts showed that there was an instance where the subject judge

A

APPENDIX A

Case Summaries

denied an access request. The review panel considered this instance as the basis of this allegation against the judge.

The panel noted that the subcommittee reported that the complainant's access was controlled by a temporary order which provided that access was to take place at the Children's Aid Society's office. As well, the transcript showed that conditions ordered in the criminal case allowed access in accordance with Society supervision. This supervised access ordered was to take place at a specific location. The transcript showed that the complainant asked to have the location moved to a more convenient one. The Society was not able to arrange for that to happen.

The subcommittee also reported that the transcript showed that the judge adjourned the case, expecting at the next court date, the child protection case would be withdrawn. When withdrawn, there would be no child protection order which would define the complainant's access. The issue of his access would be the subject of an order in the criminal case.

The panel observed that the investigation showed that the judge was not inclined, at that time, to make an order to facilitate it being easier for the complainant to see the children in circumstances where the complainant had been convicted of sexual offences against children. Though out on bail pending appeal, in law the complainant was presumed guilty at that point.

The review panel found that the decision of the judge on the question of whether to grant the request regarding access was a decision based on his consideration of the best interests of the children. The review panel concluded that this was a matter of judicial decision-making, not a matter of conduct. The Council's legislated jurisdiction is limited to the conduct of judges. If the complainant was dissatisfied with the order made, the proper procedure was to proceed through remedies in the courts.

Allegation # 5:

The judge was given many good reasons to end the child protection case before the Children's Aid Society eventually withdrew it.

The review panel observed that the subcommittee reported that the transcripts showed that the judge granted the Children's Aid Society leave to withdraw the child protection case with the consent of the parties. This occurred after the complainant's spouse allowed the Society to complete its investigation. The panel noted that the complainant believed

APPENDIX A

Case Summaries

that the court case was unnecessary and the judge should have ended it before it was eventually withdrawn. The panel noted that the judge's decision as to whether or not a case should be ended is a matter of judicial decision-making outside of the jurisdiction of the Judicial Council, not a matter of judicial conduct.

The review panel accepted the findings of the subcommittee that the transcripts showed no evidence of judicial misconduct. The panel also noted that the subcommittee found that the transcripts showed that the judge was respectful of the complainant spouse's desire for different medical options and was properly concerned about the child's need for medical treatment.

For all of these reasons noted, the review panel dismissed the complaint on the basis that there was no evidence to support the allegations relating to judicial conduct and the allegations relating to judicial decision-making were outside of jurisdiction of the Judicial Council.

CASE NO. 20-014/14

The complainant was a respondent in a child protection case. The Children's Aid Society apprehended the complainant's child alleging that the child was not being provided with proper medical care. The child protection case was managed by the judge who was the subject of this complaint.

In her letter of complaint to the Council, the complainant alleged that the judge:

- 1) Abused the court's authority to protect the judge's friend, who happened to be one of the child's doctors. The complainant said the doctor had misdiagnosed and mistreated the child.
- 2) Found the child to be in need of protection to protect His Honour's medical doctor friends and to find the Children's Aid Society blameless. As well, His Honour did not put to a stop the "religiously biased malicious harassment and hate crimes that [the Children's Aid Society worker] has perpetrated on [the complainant's] family."

The subcommittee reviewed the letter of complaint and the supporting documents provided by the complainant. The subcommittee ordered and reviewed the transcripts from nineteen court appearances before the judge. Following the investigation,

APPENDIX A

Case Summaries

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

The review panel noted found that the transcripts showed that the judge did not refer to any doctor as his friend. The review panel observed from the transcript that throughout the proceeding, His Honour considered the medical needs of the child and tried to facilitate the request from the complainant's spouse and the child for a second opinion and testing by a naturopath. The transcript showed that the complainant's wife said that her son felt most comfortable with the particular doctor and the judge commented that the doctor was a laid-back sort of individual. The complainant's wife remarked that the doctor was "pretty good" and confirmed that her son liked that doctor. The review panel could see from its review that there was no evidence in the transcripts from which it could be reasonably inferred that the judge acted in a manner designed to protect any doctor when ordering the child be apprehended.

The panel found no evidence to support the allegation that the judge acted to protect his friends in ordering the child apprehended or throughout the case. The review panel noted that the transcripts confirmed that His Honour gave detailed reasons for finding the child in need of protection. The panel found that there was no evidence to support any suggestion that the judge had an ulterior motive for finding the child in need of protection. The reasons showed that he addressed the relevant legislation, the onus that the Children's Aid Society had to meet and the facts in evidence and concluded that the child was in need of protection.

The panel noted that the judge's decision and his reasons were matters of judicial decision-making which were outside of the jurisdiction of the Council. The Council's jurisdiction is limited to matters of conduct. The Council has no discretion to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint without further investigation if it falls outside the Judicial Council's jurisdiction.

For these reasons, the complaint was dismissed and the file was closed.

APPENDIX A

Case Summaries

CASE NO. 20-016/15

This complaint arose from criminal proceedings held many years ago before the subject judge. The complainant was a family member of a person who died tragically. The complainant disputed the cause of death and took the position that the death was a homicide and not an accident. Persons were charged with criminal offences arising from the events and they entered pleas of guilt. They were convicted and sentenced by the judge. The complainant was asking that the decisions of the judge be overruled and that a re-trial be ordered in relation to the death of the family member. She expressed her disagreement with the charges that were laid and believed that the charges should have been manslaughter or criminal negligence causing death. She included excerpts from a court transcript and also alleged that the judge made an insensitive comment.

The complainant also complained about the conduct of the Crown Attorney and the police who decided on which criminal charges to proceed. In a letter to the complainant, the Registrar explained that the Council has no jurisdiction over persons other than provincial judges and referred her to the appropriate offices to pursue those concerns.

The complaint subcommittee read the letter from the complainant and the excerpts of transcripts which she included. The subcommittee ordered and reviewed the full transcripts of the proceedings of the guilty pleas and sentencing hearings before the judge for all accused persons involved. When the subcommittee completed the investigation, it submitted a report to a review panel.

The review panel reviewed the letter of complaint, the excerpts of the transcripts that were submitted with the letter and the subcommittee's report.

The review panel noted that when there is a plea of guilt in a criminal matter, a judge's decision is based on the facts that are presented in the courtroom. The sentencing is based on the charges and facts that are before the judge. The panel observed that the investigation showed that the judge accepted the guilty pleas to the charges, the facts were agreed to by both counsel and the judge considered the mitigating and aggravating factors, as well as Victim Impact Statements, in arriving at the sentences which he imposed.

The review panel noted that the Judicial Council's authority is limited to matters of judicial conduct. Decisions by a judge about the facts or the sentences in criminal cases are matters of judicial decision-making that are outside of the jurisdiction of the Council,

APPENDIX A

Case Summaries

not matters of judicial conduct. The Council has no legal authority to override a judge's decisions or to order a re-trial. Only a higher level of court can determine whether a judge made errors in his decisions and whether a new trial should be ordered.

The review panel accepted the findings of the subcommittee, after their review of all of the transcripts of the court proceedings, that the judge was sensitive to the issues before him and that there was no evidence that he coddled the accused persons. With respect to the particular comment referred to by the complainant as insensitive, the review panel noted that the investigation showed that the comment was made while the judge was distinguishing several cases that had been submitted to him for his consideration. The panel concluded that the comment was a description of tragic facts in the course of deciding upon the sentence that would be imposed; it was not judicial misconduct.

The review panel could see that the circumstances that gave rise to the complaint were very difficult and painful for the complainant.

The panel determined that the investigation showed that there was no judicial misconduct. The complaint was dismissed on the basis that the allegations about the judge's decision-making were outside the jurisdiction of the Council and the allegations of misconduct were not supported by the evidence. The file was closed.

CASE NO. 20-017/15

The complainant was the only witness called by the Crown Attorney in a criminal trial on a charge of assault that was heard by the subject judge. The accused was the only witness for the defence. At the end of the trial, the accused was found not guilty but was placed on a common law peace bond for twelve months.

The complainant made the following allegations about the judge:

1. He was "dragged" before the judge to testify without any consideration for his medical condition.
2. The judge refused him his own legal representation.
3. The judge denied him the use of a court interpreter.

APPENDIX A

Case Summaries

4. The judge denied him all of his rights under the *Charter of Rights and Freedoms*.
5. The judge told him to “shut up” several times and allowed defence counsel to turn an assault trial into a trial about his business.
6. The judge failed to see the agony that he was in and the judge should have been attuned to that because he attended the trial with his mental health worker.
7. The judge let a criminal free while denying the complainant his rights; and,
8. The complainant was denied a fair trial as he was the only person called as a witness.

The subcommittee reviewed the letters from the complainant and the transcript of the trial. After completing its investigation, the subcommittee provided a report to a review panel.

The review panel reviewed the correspondence from the complainant, an excerpt of the transcript of the trial, the transcript of the Reasons for Judgment given by the judge, and the report from the subcommittee. The review panel determined the following in relation to the allegations set out above:

1. The judge had no involvement in the process of having the complainant subpoenaed for court. The investigation showed that while the complainant was testifying, he made reference to the fact that he had had a spinal injury and that he had been walking with a cane for two years. He also referred to dealing with a lot of mental anguish including anxiety issues and agoraphobia. The report from the subcommittee confirmed that none of these issues prevented him from testifying.
2. The subcommittee’s review of the transcript of the trial showed that during the course of the trial, the complainant never requested legal representation and thus this was not addressed by the judge.
3. The subcommittee’s review of the transcript of the trial confirmed that judge did not deny the complainant the use of a court interpreter; no interpreter was ever requested. The transcript showed that the complainant testified that he was from outside of the country and that he had been in Canada for a number

APPENDIX A

Case Summaries

of years. At one point, the judge said “I’m having a little difficulty with your accent so I’m sorry to interrupt you, but...” The subcommittee observed that the transcript was clear that the complainant had no difficulty in testifying in the English language.

4. The allegation that his legal rights were violated related to matters of law outside of the jurisdiction of the Council, not matters of judicial conduct.
5. The subcommittee reviewed the transcript and found no instances where the judge told the complainant to “shut up”. The subcommittee reported that the judge did become a bit impatient at times, as the complainant did not wish to answer questions. The review panel could see from the excerpt of the transcript and from the report from the subcommittee that in the circumstances, that the judge’s impatience did not rise to the level of judicial misconduct. The panel also observed that the transcript showed that the judge apologized for the loss of patience when he gave his judgment.
6. The subcommittee’s review of the transcript confirmed that the judge was aware of the fact that testifying was difficult for the complainant and when the complainant requested a break, the judge allowed him a break to compose himself.
7. The judge’s assessment of the evidence and his decision to acquit the accused were judicial decision-making carried out as part of his judicial duties, not matters of conduct. The Council’s legislated jurisdiction is limited to the conduct of judges. Judges have decision-making independence in accordance with the *Constitution Act, 1867*. The *Courts of Justice Act* states that the Council must dismiss a complaint if it falls outside the Judicial Council’s jurisdiction. Any disagreement with the decisions of a judge falls within the jurisdiction of an appellate court and not the Judicial Council.
8. The panel noted that a trial judge has no role to play in the calling of witnesses. The prosecutor decides who will be called as a witness.

After its review of the results of the investigation, the review panel concluded that there was no evidence of judicial misconduct and that the allegations related to judicial decision-making were outside the jurisdiction of the Judicial Council. The complaint was dismissed and the file was closed.

APPENDIX A

Case Summaries

CASE NO. 20-019/15

The complainant and his company were charged by the Ministry of Natural Resources with operating without a licence over a number of years. Both the complainant and the company were tried before a justice of the peace and they were convicted on all charges. The complainant filed an appeal of the decision and the sentence. The appeal was heard by the subject judge. The appeal of the conviction was dismissed and the fines imposed by the justice of the peace were reduced.

The complainant appealed the subject judge's decision to the Superior Court of Justice. That court decided it did not have jurisdiction to hear the appeal and the proper route for an appeal was through the Court of Appeal for Ontario, with leave. The complainant sought leave to appeal from the Court of Appeal for Ontario. Leave to appeal was not granted.

In his correspondence to the Council, the complainant made numerous allegations against the subject judge including:

- ◆ The judge made incorrect statements in his decision;
- ◆ The judge made misrepresentations without basis in fact or law and he disregarded the evidence;
- ◆ The judge made an error in his description of the facts and he should not have referred to the transcript of the trial in making his decision;
- ◆ The decision made by the judge against hearing new evidence was discriminatory and a violation of the complainant's *Charter* rights to make full answer and defence;
- ◆ The judge should have overruled the decision of the justice of the peace in relation to the execution of the search warrant and decisions in relation to other points of law;
- ◆ The justice of the peace did allow the complainant to present evidence on some issues during the trial and, the Crown Attorney failed to prove the case beyond a reasonable doubt;
- ◆ Because the judge made errors in law, it should be concluded by the Council that he was biased;

APPENDIX A

Case Summaries

- ◆ There was prejudice because the judge provided no written reasons for more than 30 days and this prevented the complainant from filing an appeal;
- ◆ The judge did not provide an unbiased review of the decision made by the justice of the peace;
- ◆ The judge disregarded the complainant's *Charter* rights and made errors in law and fact; and,
- ◆ The judge's decision that there was nothing missing in the transcript of the trial was a false statement and an error in law.

With his letter of complaint, the complainant also submitted excerpts of the transcripts of the trial, a copy of the decision made by the trial judge, and materials and decisions related to motions in the court proceedings. He also provided appeal documents and excerpts of transcripts of other court proceedings involving the company.

The complaints subcommittee reviewed the complainant's letter and supporting materials. After they concluded their investigation, they prepared a report to a review panel.

The review panel reviewed the subcommittee's report, the letter of complaint, excerpts of materials provided by the complainant, the subject judge's decision, the Divisional Court decision and the Court of Appeal for Ontario's decision refusing leave to appeal.

The review panel concluded that the allegations made by the complainant related to his disagreement with the judge's view of the evidence, and the judge's determination of the issues, his interpretation and application of the law, and his decisions to uphold the conviction and reduce the fines. The panel found that the allegations related to decisions made in the course of a judge's duties, not allegations of conduct, and they were outside of the jurisdiction of the Council. The Council has no discretion to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint without further investigation if it falls outside of the Judicial Council's jurisdiction.

The panel found no evidence of judicial misconduct and dismissed the complaint on the basis that it was outside of the jurisdiction of the Council and closed the file.

APPENDIX A

Case Summaries

CASE NO. 20-020/15

The complainant was the mother of the accused who was before the court for a domestic violence trial. In her letter, she advised that the case was being appealed. She was informed of the Council's policy that if a complaint raises allegations of conduct about a judge who is presiding over a court proceeding, the Council will not generally commence an investigation until that court proceeding and any appeal or other related legal proceedings have been completed. This is to ensure that any investigation by the Council is not interfering or perceived to be interfering with any on-going court matters. The complainant was advised that she could contact the Council once the matter was no longer before the Courts. In a subsequent letter, she advised that the appeal had been abandoned and the matter was no longer before the courts.

She alleged that the judge was not interested in hearing the facts. She alleged that the judge's decision was predetermined prior to entering the courtroom.

She alleged that this was a clear case of gender bias in light of the judge's previous involvement with women's rights movements and abuse victims. The complainant believed that there was reason to suspect that the judge was frustrated with the rate of government change and decided to use her position as a judge to effect change, one case at a time, in her courtroom, and therefore she was incapable of making unbiased decisions.

The complainant alleged that the sentence of two years of probation, a fine and the Partner Assault Response (PAR) program was out of line. (The PAR program is a 16 week domestic abuse course that is approved by the Crown Attorney's office at a particular courthouse in Ontario for offenders convicted of domestic violence. Part of entering into PAR means accepting responsibility for what happened. It is noted in the police computer system and CPIC).

She alleged that the judge accepted all statements of the victim at face value and rejected all of those of the accused. She objected that during the trial, the judge did not recognize the dysfunctional relationship between the victim and the accused. The complainant also indicated that there were no reasons provided by the judge for her decision on the sentence. The complainant alleged that as the judge left the courtroom, after the proceedings were no longer being recorded, the judge made an unnecessary

APPENDIX A

Case Summaries

and antagonistic comment to the accused that she hoped he benefitted from the Anger Management sessions.

She alleged that the whole scenario was a blatant case of gender bias and conflict.

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

The review panel reviewed the complainant's letters and the judgment of the judge and the report from the subcommittee.

The review panel observed that the investigation showed no evidence in the transcripts of gender bias on the part of the judge, or that the judge was using her position or the case to support issues related to women's rights. The panel observed that the investigation showed that the judge listened while the witnesses were called. The transcript of the judge's reasons for a finding of guilt showed that she provided detailed reasons for her decision on the evidence. The judge assessed the accuracy and reliability of witnesses who testified at the trial. The subcommittee concluded that the court record showed that the judge's decision was based on her careful assessment of the evidence before her. The panel found that there was no evidence to support the allegation that her decision was predetermined or biased.

With respect to the allegation that the judge provided no reasons for the sentence, the review panel noted that the transcript showed that the judge provided reasons for the sentence she imposed. The judge referred to the Pre-Sentence Report and the Victim Impact Statement. The panel noted that the judge also considered that the accused had no criminal record. The panel also noted that if the complainant was of the view that the reasons were inadequate, that would be a matter of law, not a matter of conduct. The proper way for her son to proceed on matters of law was through remedies in the courts, such as an appeal.

With respect to the allegation that the judge accepted the statements of the victim at face value and rejected the evidence of the accused, the panel found that the transcript showed that Crown Attorney called two independent witnesses who gave corroborating evidence that corroborated the evidence of the victim about the assault. The panel also noted that a judge's assessment of the evidence, including the evidence about the

APPENDIX A

Case Summaries

dysfunctional relationship with between the accused and the victim, is a matter of judicial decision-making outside of the jurisdiction of the Council, not a matter of conduct. The Council's legislated jurisdiction is limited to the conduct of judges. Judges have decision-making independence in accordance with the *Constitution Act, 1867*. The Council has no discretion to change a judge's decision or to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint if it falls outside the Judicial Council's jurisdiction. If a person is of the view that a judge erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

The review panel concluded that the complainant's disagreement with the sentence related to a judge's decision, not a matter of conduct. The review panel noted that those were matters of law and judicial decision-making outside the jurisdiction of the Council, not allegations of conduct.

The complainant alleged that after the proceeding ended and the recording was turned off, the judge made an unnecessary and antagonistic comment to the accused that she hoped he benefitted from the Anger Management sessions in the PAR program. The review panel noted that the transcript showed that at the end of the matter, the judge said, "Hopefully the PAR program will be of some assistance to you, sir." When the lawyer said he didn't hear the comment, the judge said, "I said I hope the PAR counselling will be helpful to him." The review panel concluded that the comments reflected why the judge ordered that the accused the program. The comments did not appear to be antagonistic and they did not constitute judicial misconduct.

The review panel dismissed the complaint on the basis that there was no support for the allegations of misconduct and the allegations that related to judicial decision-making were outside the jurisdiction of the Council.

CASE NO. 20-021/15

The complainant's husband appeared before the judge on charges of sexual assault of family members and was found guilty. He was sentenced to a term in prison.

The complainant sent a letter to the Council that included complaints regarding the investigating officer, her husband's legal aid lawyer, the doctor who treated his children,

APPENDIX A

Case Summaries

and another lawyer who stopped by to see the trial. The majority of the allegations focused on each individual's religious beliefs. Her husband sent in letters in support of her complaint.

In her letter to the Council the complainant stated that "a great injustice was done by a provincial court judge". She described the proceedings as "a mockery of a trial". She alleged that several officers did not think the trial should have taken place. She further alleged that the lawyer said the judge was his good friend and that the judge prefers the girls over guys. She stated that the judge seemed to snub the lawyer and blamed him for the bad decision, saying he never asked certain questions. She further alleged that the judge appeared red-nosed and not in complete control of his faculties.

The complainant a number of further allegations including:

- ◆ He discredited her husband's testimony;
- ◆ Her husband and his witnesses had half the time to testify as his accusers;
- ◆ The judge appeared high on something;
- ◆ The judge stated, "God does not heal and this revealed his reproach for the Bible and Christianity. This precluded a fair trial;
- ◆ The judge didn't accept the evidence linking accusers with drugs;
- ◆ He seemed jealous of her husband because the judge has fewer children and the accused was in good physical shape;
- ◆ The judge made findings of fact that were not true and threw some facts out to come to the conclusion that he wanted; and,
- ◆ Only when the crowd in the courtroom erupted in laughter at his decision did the judge seem to wake up a bit.

She stated that when a lawyer was talking about "porno", the judge allowed the discussion. She commented that she assumed the judge partook, entertained or tolerated this type of activity.

Further, the complainant commented that throughout the trial the judge looked to the arresting officer for assurance of what to say and stated, "It would not be hard to believe

APPENDIX A

Case Summaries

that they had intimate relations.” She surmised that the police officer may have asked the judge to convict her husband to keep him from looking like a fool. Her final observation was that it was common knowledge among some circles that this judge accepted bribes.

The complaint subcommittee reviewed the letter received from the complainant and the letters sent in from her husband in support of the complaint. The subcommittee ordered and reviewed transcripts of the court proceedings, as well as the judgment issued by the appeal court dismissing her husband’s appeal. Following the subcommittee’s investigation, they submitted a report to a review panel.

The review panel reviewed the complainant’s correspondence, her husband’s supporting correspondence, the transcript of the appeal proceeding and the subcommittee’s report to them.

The review panel noted that the results of the investigation showed that the accused belonged to a religious organization and evidence about his religious beliefs was given during the trial. The panel observed that in the context of this trial, comments about religion were understandable. The panel accepted the findings of the subcommittee that their review of the transcripts of the trial showed that the judge made no comments that were inappropriate or that amounted to judicial misconduct.

The panel observed that several of the allegations constituted suspicions about the judge or allegations about the opinions of other persons or rumours that were not supported by evidence.

The review panel concluded that most of the allegations were related to the complainant’s disagreement with how the judge assessed the evidence or made decisions in the case. The panel noted that these are matters of judicial decision-making outside the jurisdiction of the Council, not matters of judicial conduct. Only a higher level of court can review a judge’s assessment of credibility and decisions to see whether they were correct or not. The review panel noted that the investigation showed that the complainant’s husband had filed an appeal to the Court of Appeal for Ontario that included arguments on these points and the appeal had been dismissed.

The review panel dismissed the complaint as out of jurisdiction and unsupported by the court record and closed the file.

A

APPENDIX A

Case Summaries

CASE NO. 20-022/15

The complainant appeared at a preliminary hearing before the subject judge on charges of criminal harassment and mischief.

The complainant alleged that his lawyer told him that the judge presiding on his case had a good reputation but had worked as a Crown prosecutor for the vast majority of her life, where she dealt with cases involving women who filed complaints against men. His lawyer also told him that the judge's "sympathies towards women and being such a staunch advocate of women's rights might not result in her being unbiased." However, his lawyer decided not to object to the judge presiding over the case.

The complainant alleged that the judge demonstrated a bias against him and in favour of the two female witnesses throughout the preliminary inquiry. His allegations included the following:

1. The judge prevented his lawyer from thoroughly cross-examining one of the two witnesses called by the Crown Attorney when the witness was clearly lying;
2. The judge was rude and disrespectful to him at various points during the proceeding;
3. The judge overruled a joint submission for a conditional discharge and, as a result, his lawyer told him that he would not argue against the complainant's committal for trial because he thought the judge was biased; and,
4. When the judge delivered her judgment, she looked at the Crown Attorney and started to smile, and the Crown Attorney smiled back, which suggested collusion between the two.

The subcommittee read the letter from the complainant. The subcommittee ordered and reviewed the transcripts of all of the appearances before the judge. One member of the subcommittee also received and listened to the audio recordings of the proceedings. After completing its investigation, the subcommittee reported to the review panel.

APPENDIX A

Case Summaries

The review panel reviewed the letter from the complainant, the subcommittee's report and excerpts of the transcripts identified by the subcommittee. The review panel noted the following with respect to the allegations set out above.

1. The judge's intervention during cross-examination

The allegation that the judge demonstrated bias against him by her intervention during the cross-examination of the key Crown witness was not supported by the subcommittee's review of the transcript. The panel accepted the findings of the subcommittee that after listening to extensive cross-examination on the same point (amounting to almost ten pages in the transcript), the judge intervened and asked the complainant's lawyer to explain the relevance of his continued questioning. The lawyer did so and, after cautioning him not to "go on interminably" on the issue, the judge allowed him to continue with his line of cross-examination. The panel found that the investigation disclosed no evidence of bias in the manner in which the judge intervened and that the judge did not prevent the witness from answering any questions.

2. The judge's treatment of the complainant

The panel observed that the subcommittee found that the transcript and the audio recording did not support the allegation that the judge was rude or disrespectful toward the complainant, or that she yelled at the complainant during the hearing. The subcommittee found that, after the review of the transcript along with the audio recording, there was no evidence of anything being deleted from the transcript.

The panel noted that the complainant alleged that when he tried to get his lawyer's attention to alert him that the witness was lying, the judge "...got out of her chair and started screaming at me...shouting ...'Mr. [complainant], don't raise your arms. This is a court. You sit there in your seat and don't move.' All of this was deleted from the transcript."

The review panel noted that the subcommittee found that the court record showed that the complainant stood up to get his lawyer's attention twice during cross-examination. On both occasions, the judge politely directed him to sit down. On the first, the judge said: "Sir, sit down. Make a note please.

APPENDIX A

Case Summaries

If you need to talk to your lawyer you can do it at the appropriate time.” The complainant got up again a few minutes later. Once again, the judge asked him to sit down. The subcommittee member who had listened to the audio recording reported that the audio recording showed that the judge did not yell at the complainant.

The panel observed that the complainant said that the judge “howled” at him for having candy in his mouth while court was in session. The panel found that its review of that excerpt of the transcript showed that the judge simply asked the complainant to take gum out of his mouth. The subcommittee member who listened to the audio recording confirmed that the audio recording showed that she did not raise her voice or howl at the complainant.

3. *The judge “overruled” a joint submission*

The panel noted that the complainant alleged that near the end of the preliminary inquiry, his lawyer and the Crown Attorney negotiated a plea and a joint submission on sentence but that the judge rejected it. The complainant said that as a result, his lawyer decided not to argue against committal, as he felt the judge was biased.

The panel noted that the subcommittee reported that the transcript of the last day of proceeding showed that, before calling the final witness, the Crown Attorney asked the judge if counsel could meet with the judge in chambers for an exit pre-trial. The defence lawyer said he also wanted the discussion but it may not be an exit pre-trial, depending upon the result. After a recess, the judge and the lawyers returned to court, completed the case, and the complainant’s lawyer consented to committal for trial. The subcommittee reported that it found no mention on the record of a plea negotiation or a joint submission.

The panel observed that there was no record made of what took place in the judge’s chambers with counsel. The panel noted that even if the allegation proved to be true and the judge rejected the joint submission, she was legally entitled to do so. Rejecting a joint submission in these circumstances would not amount to judicial misconduct. A judge is not bound to accept a joint submission.

APPENDIX A

Case Summaries

The panel noted that the argument that the judge was biased because of her decision to reject the joint submission was a matter outside of the Council's jurisdiction. If the complainant or his lawyer was of the view that the decision was wrong, the proper way to proceed was through remedies in the courts. The Council has no jurisdiction over judicial decision-making. Further, the panel noted that no application was brought during the preliminary inquiry.

4. *The judge colluded with the Crown Attorney*

The panel observed that the complainant alleged that when giving judgment, the judge smiled at the Crown Attorney and the Crown Attorney smiled back. That, he suggested, was evidence of collusion. The panel noted that there was no way to confirm the complainant's allegation but concluded that even if the judge smiled, it would not amount to evidence of collusion or bias.

Further, the panel noted that the investigation by the subcommittee found no evidence in the court record to support an allegation of collusion.

The review panel concluded that the complaint should be dismissed on the basis that the allegations were not supported by the court record and the remaining allegations were outside of the Council's jurisdiction.

CASE NO. 20-023/15

The complainant was involved in a long and acrimonious dispute with a former spouse and the Family Responsibility Office about the payment of child support. In his complaint letter, he stated that the matter had been before the court for more than ten years. When child support is not being paid pursuant to a court order, the Family Responsibility Office will bring default proceedings to enforce the payment of child support and a separate court file is opened which is what occurred in this case. The complainant brought a motion to stay enforcement by the Family Responsibility Office of an order that the complainant must pay support. The motion was dismissed by the judge who was the subject of the complaint.

APPENDIX A

Case Summaries

The complainant raised the following concerns:

1. He was unsure why the case continued to be dismissed “without addressing all the facts to the case presented”;
2. The judge “seems to pick and choose which parts he would like to deal with which 100% of the time is in the other party’s favour”;
3. The judge had “almost every time chorused the other party which I started to take notice of when observing prior orders which have been carefully manufactured and put in place”;
4. The judge ignored his current income in ordering child support and the judge manipulated the case giving the other party time to get into school so that ongoing child support will not be adjusted”;
5. The other party made false allegations to the police which were “thrown out by other judges”; and,
6. The judge dismissed his motion to change at the request of the other party and, “They all thought this was some kind of comedy show since they were laughing at me” and the judge blatantly insulted him.

He requested that the Council consider the facts of this case and that a fair trial and judgment be rendered.

The subcommittee reviewed the complainant’s letter and obtained and reviewed the transcript of his appearance before the judge. The subcommittee also carried out a careful review of all written endorsements in relation to the proceeding. After its investigation, the subcommittee made a report to a review panel.

The review panel reviewed the complainant’s letter, the subcommittee’s report and the transcript of the appearance before the judge. The subcommittee provided the review panel with background on each endorsement made in the case to assist the panel in gaining an understanding of the full history.

In his letter, the complainant requested that the Council consider the facts of his case and that a fair trial and fair judgment be rendered. The panel observed that the investigation showed that His Honour dismissed the complainant’s motion to stay

APPENDIX A

Case Summaries

enforcement by the Family Responsibility Office of the support order as he felt that he had no jurisdiction to order a stay. The review panel noted that the Judicial Council has no jurisdiction to intervene in a court case or to change a decision made by a judge. Such matters are outside of the jurisdiction of the Judicial Council. If the complainant sought to change a decision made by a judge, the proper way to proceed is through his remedies in the courts.

The panel observed that the complainant raised concerns about why the case was dismissed, how His Honour assessed the evidence and how he determined the issues in the case. The panel noted that these were matters of judicial decision-making, not allegations of conduct. The Council has no discretion to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint without further investigation if it falls outside of the Judicial Council's jurisdiction.

With respect to the allegation that during the court appearance, His Honour laughed at the complainant and blatantly insulted him, the panel accepted the subcommittee's finding that the transcript did not reveal any instance where he laughed at the complainant or in any way insulted him. The panel concluded that there was no support for these allegations.

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

CASE NO. 20-025/15

The complainant was the mother of a victim of a domestic assault. The accused entered a plea of guilt. The judge suspended sentence and the accused was placed on probation. The judge did not order that the accused provide a DNA sample or impose a firearms prohibition order as requested by the Crown Attorney. However, the judge imposed the mandatory Victim Fine Surcharge.

The complainant alleged:

1. The judge was unprofessional and did not take what happened seriously;
2. The judge argued with the Crown Attorney about the accused choking the complainant with a blanket;

APPENDIX A

Case Summaries

3. The judge, when asked by the Crown Attorney to consider a period of custody, made a comment to the effect “for God sake he beat her up, he didn’t beat her up with a golf club” and everyone in the courtroom laughed; and,
4. The judge imposed a sentence which was unfair and too light. The accused should have been made an example.

Before the review panel completed its consideration of the matter, the Council received information that the judge had retired from office. The Council administratively closed the file due to a loss of jurisdiction.

CASE NO. 20-026/15

The complainant appeared in Small Claims Court for a trial before the subject judge. He alleged that the judge showed bias towards the defendants and errors in the judgments. He asserted that that the judgment contained errors in the interpretation of law and appeared to be biased towards the defendants. In addition, he said that the costs awarded against him appeared disproportional to the actual damages the plaintiff sought to recover. He enclosed a copy of the judgment made by the judge and a copy of the Trial Record that included the Statement of Claim, photographs and documents that relate to the facts argued at the trial and the Defence. He also enclosed a copy of a letter that he had written to the Superior Court of Justice setting out his arguments, and a copy of a letter that he had written to the trial judge.

He stated that his allegations of misconduct were bias and that the judge was unfair. Examples he gave were:

- ♦ The judge ordered costs that were not proportionate to the amount involved in the action. That suggested that he was not basing his decision on the facts of the case, but rather he was biased towards the defendant. The judge based the costs on the total amount of the claim which included a claim for punitive damages. Further, he argued that the defendant could have mitigated the costs by settling, so it is not appropriate that the additional costs be recovered from the plaintiff.
- ♦ The judge requested documentation from the plaintiff but did not treat the defendants in the same way – he did not enquire about the insurance coverage the defendant

APPENDIX A

Case Summaries

claimed to have, even though this was a significant matter of law in the case and in his judgment.

- ♦ The judge ignored inconsistencies and inaccuracies in the evidence of the defendant's witness.

The complaint subcommittee reviewed the complainant's letter and all of the documents he enclosed with his letter. The subcommittee then made a report to a review panel.

The review panel reviewed the correspondence from the complainant, his letters to the Superior Court of Justice and to the judge, the judgment made by the judge, and the report from the subcommittee. The review panel concluded that the complainant's allegations related to how the judge assessed the evidence, how he applied the law, how he determined the issues and to the decision that he made on costs. The review panel noted that those were matters of law and judicial decision-making outside of the jurisdiction of the Council, not allegations of judicial conduct. Judges have decision-making independence in accordance with the *Constitution Act, 1867*. The Council's legislated jurisdiction is limited to the conduct of judges. The Council has no discretion to change a judge's decision or to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint if it falls outside the Judicial Council's jurisdiction. If a person is of the view that a judge erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

The review panel dismissed the complaint on the basis that it was outside the Council's jurisdiction and closed the file.

CASE NO. 20-027/15

The complainant was charged with assault of his father and damaging his father's property, contrary to the *Criminal Code*. When he first contacted the Council, the complainant's court case was ongoing before the court. A file was not opened at that time in accordance with the Council's policy that it will not generally commence an investigation until that court proceeding and any appeal or other related legal proceedings have been completed.

APPENDIX A

Case Summaries

The complainant wrote again after the matter was concluded and indicated in his letters to the Council that he was making a complaint about a judge whom he said presided over a preliminary inquiry. Court staff advised that there was no preliminary hearing held in the case. Further details were requested from the complainant in an attempt to identify the judge who presided at the preliminary inquiry, including the name of the judge, the date that the preliminary inquiry was held, and specific details as to the nature of the alleged conduct by the judge and the date(s) when the alleged conduct took place.

He responded in a further letter. In his correspondence, the complainant alleged:

- ◆ The judge was very rude and abrupt and was siding with the Crown Attorney.
- ◆ She told the Duty Counsel who was there to assist him to leave.
- ◆ She asked the complainant whether there was anything he wanted to state, and then she rebuffed a lot of his statements.
- ◆ She mentioned that his disclosure was not available and “too bad” in so many words. She said they were going to set a trial date even though he did not get the disclosure that he had asked for.
- ◆ The judge told him that the appearance was a preliminary hearing even though he didn’t know it was and that she was dismissive and told him that he could come back again on another date for a preliminary hearing.
- ◆ The Crown Attorney said he wanted to make an election and when the complainant asked what that was, the judge was very evasive to the point that she said she would look it up.
- ◆ When the complainant asked for direction “on how to symphony witnesses etc. and she rudely said I am not your lawyer”.

The complainant concluded by saying that his rights were violated and he was prejudiced against receiving a fair trial.

The subcommittee reviewed the letters from the complainant, the Information and the transcripts of two appearances before the subject judge. The subcommittee found that the Information confirmed that there was no preliminary inquiry but that the complainant

APPENDIX A

Case Summaries

appeared before the particular judge for a judicial pre-trial and case management. The transcripts confirmed that the complainant's case was put before the subject judge for case management because there had not been full disclosure by the Crown Attorney.

After its investigation was completed, the subcommittee made a report to a review panel.

The review panel reviewed the letters from the complainant, the transcripts of the two proceedings before the judge, the Information and the report from the subcommittee. The panel observed that the transcript of the first appearance before the judge showed that a representative appeared for Duty Counsel to speak to the matter. She informed the judge that she was not assisting in any capacity and that she was just told to come and introduce the case and explain what's going on. She provided information about the complainant's efforts to obtain and then indicated that was about all she knew about the matter. It appeared that she left shortly afterwards.

The panel found that the transcript showed that the judge explained to the complainant that the matter was there for a judicial pre-trial and case management and he asked her a number of questions about subpoenas. The judge politely answered a number of his questions and explained that she could not give him legal advice. The Crown Attorney attempted to provide a synopsis of the allegations so that the judge could estimate the length of time that would be needed for the trial, and the complainant kept interrupting. The judge explained to him that she needed to know the context so that she could estimate the trial time properly. She also explained that she was not the trial judge but that the matter was to be set for trial.

The panel noted that the transcript showed that the judge had the Crown Attorney provide information verbally in relation to the request for disclosure, and she told the Crown Attorney to look into having the complainant provided with a copy of the booking video upon which they would be relying. The judge explained to the complainant that she was trying to get his disclosure and asked the Crown Attorney questions to get him the disclosure he sought.

With respect to the election of the Crown Attorney, the Crown Attorney said that he may make an application under section 486.3 of the *Criminal Code*. That section permits the Crown Attorney to make an application so that the accused is not permitted to cross-examine a witness directly and instead the judge appoints a lawyer to conduct the cross-examination. In this case, the witness was the father of the complainant. The judge

APPENDIX A

Case Summaries

explained to the complainant what the section was and suggested that he look at the provision in the *Criminal Code*.

The panel found that the transcript disclosed that the complainant wanted the judge to give him advice on bringing a motion for disclosure and she said she was not giving legal advice. He could ask his lawyer. He had said he might hire one on the trial date. The matter was adjourned to a second date for a continuation of the judicial pre-trial at the request of the complainant so that the judge could follow up to see whether the Crown Attorney had made full disclosure. On that date, the complainant was provided with additional information about the case.

The review panel found no support in the transcripts for the complainant's allegations. The panel observed from the transcripts that judge was very restrained and patient with the complainant who was representing himself. The panel found that the transcript confirmed that the judge was not dismissive, rude or abrupt and there was no evidence to support the allegation that she was siding with the Crown Attorney. She asked the Crown Attorney questions to try to obtain disclosure for the complainant. It appeared to the review panel that on both occasions, the complainant came to court without any preparation. The panel found that the transcript showed that the judge patiently answered numerous questions from the complainant and explained matters of process. The transcript showed that she told him more than once that she could not provide him with legal advice and suggested that he would need to speak to a lawyer. She provided him with sources of information that could help him to prepare. The review panel observed that when he continued to ask for information to help him with his case, the judge told him that was something he had to figure out and he could get some advice from counsel or legal students. The review panel noted that she reiterated again that she could not provide him with legal advice.

The review panel concluded that the complaint should be dismissed on the basis that the allegations were not supported by the evidence.

CASE NO. 20-028/15

The complainant filed a complaint about the subject judge arising from an article in a newspaper that offered a glimpse of what happens in a child protection courts in Ontario on any given day. The complaint was in relation to a child protection case that was

APPENDIX A

Case Summaries

referenced in the article and which was heard by the subject judge. With his letter, the complainant included information about his own experience in family court and information that supported the view that men are persecuted in matters of divorce and child custody.

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

- ◆ His Honour did not appear impartial. In accepting evidence from the Children’s Aid Society (CAS), he appeared to act as their agent and not as an independent and impartial judge. This was reinforced by the judge ignoring the limitations on his powers. He caused injury to judicial impartiality by siding with the CAS on a motion for summary judgment.
- ◆ His Honour ignored (or was ignorant of) relevant provisions of the Child Protection Standards of Ontario. He also ignored section 281 of the *Criminal Code of Canada* (which deals with abduction of a child) in that he effectively, by his judgment, ordered the “abduction” of a child from her father. His Honour demonstrated professional incompetence by committing the offence of abduction and child abuse.
- ◆ His Honour failed to work in the interest of justice. The complainant stated that, given previous jurisprudence, His Honour’s decision was unlawful and he blatantly ignored the rights of the father and of the child. The judge showed a complete absence of due diligence.
- ◆ His Honour used his power improperly. He selected and disposed of this case in the manner which he did for the “primary purpose of a public demonstration of his judicial magnificence” and did not render justice in accordance with the Rule of Law.

The subcommittee reviewed the complainant’s letter of complaint and the newspaper article. The subcommittee found that the newspaper article named the judge but indicated that pseudonyms were used to protect the identity of the parties and there was no information given as to the date when the matter was heard in court. Enquiries were made of court staff to try to identify the parties referenced in the article, and court staff advised that they had carried out an extensive search and they were unable to identify the persons in the court records. Following their investigation, the subcommittee submitted a report to a review panel.

APPENDIX A

Case Summaries

The review panel reviewed the complainant's correspondence, the newspaper article (with the information that could identify the judge redacted) and the subcommittee's report to them. The panel noted, from the subcommittee's report that the newspaper article referred to being in a courthouse on a Wednesday and no date was provided. The article stated that the names of the parents who appeared in court were changed to comply with the *Child and Family Services Act*. The panel noted that court staff were unable to determine who the parties were or when the court proceeding took place.

The review panel found that there was no evidence in the newspaper story to support the allegations that the judge appeared to act as an agent of the Children's Aid Society or that he failed to remain impartial. The panel found that the newspaper article contained no evidence of judicial misconduct. The allegations made by the complainant about how the judge considered the evidence, interpreted and applied the law, and decided the case were matters of judicial decision-making that occurred in the course of exercising judicial duties, not matters of conduct, and as such, were outside the jurisdiction of the Judicial Council. The Council's legislated jurisdiction is limited to the conduct of judges. Judges have decision-making independence in accordance with the *Constitution Act, 1867*. The *Courts of Justice Act* states that the Council must dismiss a complaint if it falls outside the Judicial Council's jurisdiction.

The review panel dismissed this complaint on the basis that there was no support for the allegations of misconduct and the allegations related to judicial decision-making were outside the Council's jurisdiction and closed the file.

CASE NO. 20-029/15

The complainant was convicted by the subject judge of assault causing bodily harm. He received a suspended sentence with probation. The complainant was represented by experienced counsel at trial.

The complainant alleged that "...at the very least, [the subject judge] was prejudiced against me because I am male. At worst, she abused her position or power. Either way, she acted unethically and with bias against me." He alleged that the judge "knowingly closed her eyes to the evidence" and "turned a blind eye to all the indisputable facts entered into evidence before her." Finally, the complainant noted that a court official was

APPENDIX A

Case Summaries

overheard stating that the judge deserved to have “some of her decisions appealed.” In his letter, the complainant outlined the facts that led to the criminal charge, background about the trial, information that he felt could have been presented at the trial, his views on the credibility of the witnesses and the prosecutor, and his views on the judge’s assessment of the evidence and decision made by her to find him guilty.

The complaint subcommittee reviewed the complainant’s correspondence, the Information and the transcript of Her Honour’s Reasons for Judgment. Following their investigation, they submitted a report to a review panel.

The review panel reviewed the complainant’s letter, the transcript of the judge’s Reasons for Judgment and the subcommittee’s report.

The review panel noted that this was a trial arising from a landlord and tenant dispute. The panel found that the investigation showed that the Crown Attorney alleged that the complainant injured his tenant by using excessive force. The Crown Attorney called the tenant as a witness. The complainant testified in his own defence. The judge found that the complainant was not legally justified in using force to eject his tenant and found him guilty of assault causing bodily harm. The panel observed that the subcommittee reported that the complainant had filed an appeal of the judge’s decision which was dismissed.

The panel found that the transcript of the Reasons for Judgment showed that the judge considered the evidence of both the victim and the accused. The panel found no evidence in the transcript to support the allegations of bias or a lack of impartiality.

The panel noted that the information provided by the complainant, including his review of the facts, supplementary information not presented at the trial, a detailed analysis of the witnesses’ credibility, and an assessment of the reasons for judgment was directed at an effort to establish that the judge erred in her findings of fact and came to the wrong conclusion in finding the complainant guilty. The review panel observed that the allegations of bias and lack of impartiality were also grounded in the judge’s findings on credibility and legal analysis. The review panel concluded that those were all matters of judicial decision-making, not matters of conduct. The Council’s legislated jurisdiction is limited to the conduct of judges. Judges have decision-making independence in accordance with the *Constitution Act, 1867*. The *Courts of Justice Act* states that the Council must dismiss a complaint if it falls outside of the Judicial Council’s jurisdiction.

APPENDIX A

Case Summaries

The review panel determined that the comment overheard by the complainant that the judge “deserves to have some of her opinions appealed” was a statement of opinion about the judge’s decision-making, not evidence of judicial misconduct.

The review panel dismissed this complaint as outside of the Council’s jurisdiction and closed the file.

CASE NO. 20-030/15

The complainant’s mother was the alleged victim in a criminal trial that was before the subject judge. At the trial, the complainant and her mother testified for the prosecution. The accused, a caregiver for the mother, was the only person called by the defence. The accused was acquitted of all charges.

The complainant made the following allegations in her letter to the Council in relation to the judge:

1. The judge demonstrated abrasive and degrading behaviour during the trial.
2. The judge chose to believe the accused’s version of events despite a lack of credibility and integrity shown by her.
3. At the outset of the trial, it was obvious that the judge had no intention of convicting the accused. The complainant noted that the transcript does not show body language, tone of voice and facial expressions of the judge.
4. The judge was very sympathetic to the accused but was impatient when her mother was testifying.
5. The Crown Attorney and defence counsel were treated differently with deference being shown to defence counsel, while the judge was condescending and rude to the Crown Attorney.
6. The judge made errors of fact in arriving at his decision and failed to weigh evidence presented to him properly.
7. The judge made an insensitive comment in his judgment to the effect that, “Moreover, given the level of abuse she described, it is not credible that she

APPENDIX A

Case Summaries

chose to say nothing because she did not want to be involved in hiring a caregiver. On the other hand, if this level of abuse did exist, that may account for no complaint as there was really very little or nothing to complain about.”

8. The judge committed palpable and overriding errors in his assessment of the relevant facts in coming to his decision which lead him to err when he accepted the version of the accused.

The complaint subcommittee reviewed the letter from the complainant and ordered and reviewed the transcript of the proceedings and the audiotape of the entire proceeding. Following the investigation, the subcommittee submitted a report to a review panel.

The review panel read the complainant’s letter, the reasons for judgment provided to them by the complaint subcommittee and the subcommittee’s report to them. The review panel accepted the findings in the complaint subcommittee’s report that:

1. The transcript showed no instances where the judge was abrasive or degrading behaviour. His voice was never raised and he was not abrasive, nor did he ever make any degrading comments. The panel concluded that this allegation was not supported by the evidence.
2. The judge’s assessment of the evidence and findings of fact were matters of judicial decision-making outside the jurisdiction of the Ontario Judicial Council, not matters of conduct. Only a higher level of court has the authority to review such issues and decide whether the judge made an error in exercising his judicial discretion.
3. The transcript revealed no evidence of any predisposition by the judge at the outset of the trial as alleged by the complainant. There was no evidence of any predisposition in the audio recording of the proceeding. The panel concluded that this allegation was not supported by the evidence.
4. The transcript showed that the judge was courteous to the complainant’s mother and the accused while they were testifying. The review panel concluded that this allegation was unfounded.

A

APPENDIX A

Case Summaries

The review panel also made the following determinations:

5. The transcript showed that Crown counsel and the defence counsel were not treated differently during the trial. On a number of occasions, Crown counsel attempted to bring forward evidence and the judge made legal rulings on those issues. The panel noted those ruling were part of the responsibility of a judge to make. The panel found no instances where Crown counsel was treated rudely or unfairly. The panel concluded that this allegation was unfounded.
6. 7. and 8. The panel noted that all of these allegations related to the fact-finding process by the judge and did not demonstrate any judicial misconduct. As part of his constitutional duties, a judge must make findings of fact. The panel noted that these were matters of judicial decision-making outside the jurisdiction of the Ontario Judicial Council, not matters of conduct. Only a higher level of court has the authority to review such issues and decide whether the judge made an error in exercising his judicial discretion.

In her letter of complaint, the complainant also had concerns about another tribunal's decision and also with the decision of a Deputy Judge of the Small Claims Court involving the same parties. The complainant was informed by staff of the Council that this body and person do not fall within the jurisdiction of the Council. She was provided with information as to whom she should refer these complaints.

The review panel concluded that the transcript and the subcommittee's report showed that the judge was polite and courteous with counsel and the witnesses in the proceeding. The review panel concluded that the allegations related to conduct were not supported by the evidence and the remaining allegations were outside the jurisdiction of the Council. This complaint was dismissed and the file was closed.

CASE NO. 21-001/15

The complainant appealed his conviction by a justice of the peace on a charge of speeding under the *Highway Traffic Act*. The appeal was heard by the subject judge. At the trial and on the appeal, the complainant challenged the officer's evidence. After hearing submissions on the appeal, the judge dismissed the appeal. In his letter of complaint, the complainant set out reasons why he disagreed with the judge's view of the evidence.

APPENDIX A

Case Summaries

The complainant alleged that the judge turned a blind eye to the portions of evidence he did not like because it challenged the credibility of the officer. In his letter of complaint, he referred to the events that led to the charge as well as the reasons given by the judge when he dismissed the appeal. He questioned the integrity of a provincial court judge. He requested that the complaint be investigated and suggested that the relevant section of roadway be viewed, if necessary.

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

The review panel reviewed the complainant's letter, the appeal transcript and the subcommittee's report. The review panel found that the transcript showed that the judge did not turn a blind eye to the evidence. The transcript of the judge's reasons showed that he considered the evidence and the justice of the peace's findings on the evidence.

The review panel concluded that the complainant's disagreement with how the appeal judge and the justice of the peace assessed the evidence was a matter of judicial decision-making outside the jurisdiction of the Council, not a matter of conduct. The Council's legislated jurisdiction is limited to the conduct of judges. Judges have decision-making independence in accordance with the *Constitution Act, 1867*. The *Courts of Justice Act* states that the Council must dismiss a complaint if it falls outside the Judicial Council's jurisdiction. The review panel found that the transcript showed that the decision of the appeal raised no issues of conduct that would be within the Council's jurisdiction.

For the reasons noted above, the review panel dismissed the complaint as outside the Council's jurisdiction and closed the file.

CASE NO. 21-002/15

This complaint arose from allegations from a party in an acrimonious family law proceeding before the subject judge. The complainant alleged that during one court appearance, it seemed that the judge did not want to listen to her and the judge intimidated her with a sharp glare each time she tried to speak to her counsel. She said that as a result, she backed down and gave her ex-partner everything.

APPENDIX A

Case Summaries

She appeared before the same judge for a case conference two years later. She alleged that the judge listened to her ex-partner's lies and would not let the complainant's counsel say anything. She also alleged that the judge glared at her and told her to withdraw her motion to change or the judge would have to reconsider the complainant's custody of the children.

The complainant included the reporting letter from her lawyer after the last appearance in which the lawyer said it was the judge's opinion that the complainant moving the children away would not be in their best interest. The lawyer said that the judge seemed to ignore facts put forward by the complainant. He also said that the judge almost seemed hostile when the complainant spoke to him while the other party was speaking.

The complaint subcommittee reviewed the letters from the complainant and the lawyer. The subcommittee ordered and reviewed the transcripts and digital audio recordings of all of the complainant's court appearances before the judge, along with the endorsement record. When they completed their investigation, the subcommittee submitted a report to a review panel.

The review panel read the letter from the complainant and her lawyer and the excerpts of a transcript of a court appearance, as recommended by the subcommittee. The review panel also reviewed the report from the subcommittee.

The panel noted that the subcommittee reported that the court record showed that during the appearances, both parties were represented by lawyers.

The panel noted that the subcommittee found that their investigation showed that the judge's tone of voice was calm and measured throughout. The panel accepted the subcommittee's findings that the judge's voice did not sound threatening or at any time consistent with the judge attempting to intimidate the complainant in any way.

The review panel noted that during the first court appearance, the judge asked questions and heard submissions to better understand the position of the parties and Her Honour provided evaluative observations. The panel observed that the investigation showed that Her Honour allowed the parties to meet outside of the courtroom in an attempt to resolve matters then before the court. The judge made an order in accordance with the agreement reached by the parties.

APPENDIX A

Case Summaries

The review panel observed that the subcommittee found only one instance during the first court appearance where the judge addressed the complainant about courtroom behaviour. The subcommittee reported that the transcript showed that the judge said:

The Court: Sorry, when I'm talking I do want you to consult with your lawyer, but I'd like you to listen to me, and then I'll give you a chance to talk to [your lawyer].

The panel accepted the findings of the subcommittee that the audio recording showed that the judge's tone was polite when making this comment.

Neither the complaint subcommittee nor the review panel was able to determine whether the judge glared at the complainant as court proceedings in Ontario are not normally video recorded. This allegation could not be substantiated by the review panel.

The review panel noted that when the parties appeared before the judge four months later for a settlement conference, the judge engaged the complainant to ask what she thought about an aspect of the settlement being discussed. The panel accepted the findings of the subcommittee that after their review of the transcript, that there was no support for the allegation that the judge inappropriately prevented the complainant from speaking to counsel. The subcommittee reported that the judge asked the complainant's counsel if he wanted to speak to his client about the court's recommendation and, he was given an opportunity to do so. Subsequently, a final order was made in accordance with signed minutes of settlement.

The panel found that the subcommittee's investigation showed that the court record did not support the allegation that at a subsequent case conference, the judge would not let the complainant's lawyer say anything.

The panel noted that the subcommittee found that what was perceived by the complainant as a "threat" was the explanation by the judge that if the matter proceeded to be heard and determined by another judge, it was possible that the principal residence of the child might be changed to live with the father, as that might be in the child's best interest. The subcommittee reported that the judge was frank in assessing the merits of the complainant's case. The judge told counsel and the parties that in her opinion, the reasons advanced by the complainant in support of moving the child to a different municipality would not satisfy a court that the request would be in the child's best interests.

APPENDIX A

Case Summaries

The panel observed that the subcommittee found that the comments were made by Her Honour in the context of her assessment of the evidence before her and her interpretation of the law. The panel noted that it was not inappropriate judicial conduct for the judge to be frank when evaluating the strengths and weaknesses of the complainant's case. The panel noted that if the complainant disagreed with the way in which the judge assessed the evidence or determined the issues, the proper way to proceed was through remedies in the courts. The Council has no jurisdiction over judicial decision-making and has no legal authority to change a decision made by a judge.

The panel observed that the transcript showed that at one point during the last case conference while the complainant's former partner was speaking, the judge directed the complainant not to speak to counsel as follows:

The Court: Don't talk to your lawyer while I'm talking. You can consult with your lawyer but I'm trying to listen to [the partner]. I don't want you talking at the same time as [the partner] is talking.

Complainant: Sorry.

The panel noted that the subcommittee's report showed that the context was that the judge was asking the complainant not to speak to counsel while the judge was listening to the ex-partner who was speaking. It appeared that the judge found it distracting. The subcommittee reported that the judge's request was not made in an angry or hostile manner.

The review panel accepted the subcommittee's findings that the audio recordings showed that the judge was always calm, at times firm, but polite and patient. The panel accepted the subcommittee's findings that the judge was not discourteous or intemperate in dealing with the complainant or others during the court appearances.

The review panel agreed with the subcommittee that the judge's manner and comments while presiding over this matter did not constitute judicial misconduct.

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

APPENDIX A

Case Summaries

CASE NO. 21-003/15

The complainant was an accused in a criminal trial heard by the subject judge. The complainant was convicted by the judge of one count of failing to comply with a recognizance. He was acquitted of other charges. The judge found that the complainant breached a term of his release that provided that he not communicate with his wife. The judge suspended the passing of sentence; placed the complainant on probation for one year, and imposed the mandatory Victim Fine Surcharge.

The complainant alleged that the judge knew that he was in a position of conflict with the complainant because his daughter was adopted by an Order made by the judge several years before. The complainant stated that he did not complain about the conflict because the trial would have been adjourned to another date before another judge and it would therefore have taken longer before the complainant would be allowed to return home. (A condition of his release on bail had prohibited him from attending at his home.) The complainant alleged that the judge caused “a horror story” to his family and he did not want the judge to deal with his family again. The complainant further alleged that the Crown Attorney would not allow his wife to testify at the trial, only his “messed up” daughter. He alleged that the judge did not allow him to finish answering questions and only heard what he wanted to hear. He said that his family was starving, his wife begged him for help and he believed that it was unfair that he was convicted for breaching his recognizance when he only dropped food off at the end of the driveway. The complainant stated that he believed that the judge “enjoys blocking evidence so that he can have tunnel vision to punish someone.”

The subcommittee reviewed the letters from the complainant and ordered and reviewed the transcript of the trial, the reasons for judgment and the sentencing. Following the investigation, the subcommittee submitted a report to a review panel.

The review panel read the letters from the complainant, excerpts from the transcript of the trial and the transcript of the reasons for judgment and sentencing. The panel also reviewed the report of the subcommittee.

The review panel noted that the subcommittee reported that there was no explanation in the transcript as to why the wife was not called as a witness, either for the Crown or for the defence. In any event, the panel noted that it was not the role of the judge to call

APPENDIX A

Case Summaries

the witnesses or to intervene when particular persons were not called as witnesses. The decisions as to which witnesses will be called in a trial are made by the Crown Attorney and the defence lawyer.

The review panel observed that the transcript showed that there was no evidence that the judge prevented the complainant from fully testifying. The review panel reviewed the excerpts of the trial where there was dialogue between the judge and the complainant and found that the judge only interrupted the complainant in limited circumstances: in an attempt to keep him focused on the issues at the trial; when the complainant's evidence was confusing and the judge needed clarification as to the relevance of the complainant's evidence; and, when the complainant became emotional or raised his voice to ask him to remain calm. The panel observed that the complainant's lawyer competently and thoroughly brought out the position of the defence.

The review panel found that there was nothing in the reasons for judgment of the judge to support the allegations that the judge engaged in tunnel vision when arriving at his decision.

The review panel observed from the transcript that there was an exchange between the judge and the complainant during the sentencing proceedings. The complainant interrupted the judge and the complainant appeared to be, at times, angry and upset. The complainant's comments and behaviour during the sentencing indicated that he was unhappy with the terms upon which he was released on bail and with the criminal process in general. The judge attempted to calm the complainant and keep him focused on the sentencing issues. The panel found that there was nothing improper in what the judge said to the complainant during the sentencing. The panel noted that the transcript showed that the judge was patient, thoughtful and firm during this exchange. At the end of the proceedings the judge confirmed with defence counsel whether there was anything else that needed to be addressed and the defence counsel advised that there was nothing further. The panel found that the investigation showed no evidence that the judge took pleasure in punishing accused persons, as alleged.

The review panel noted that the complainant made a general allegation about inappropriate conduct of the judge during either child protection proceedings or adoption proceedings that may have been held several years prior. No particulars were provided in support of the general allegation. The panel noted that the investigation showed that during the trial that gave rise to the complaint, the issue of a potential conflict was not raised with the judge. The

APPENDIX A

Case Summaries

panel accepted the findings of the subcommittee that there was nothing in the transcript of the criminal trial to suggest that the judge knew that he presided over previous proceedings in relation to the complainant's daughter. The subcommittee also reported that there was no evidence in the transcript of bias or a reasonable apprehension of bias. The panel noted that the investigation showed that the judge conducted himself appropriately and there was no evidence of judicial misconduct in these proceedings.

The panel also noted that if the complainant was of the view that the judge should have recused himself because of an alleged conflict, or that the judge should have found him not guilty, those were matters of judicial decision-making outside the jurisdiction of the Council, not matters of judicial conduct. Those are matters of law that would need to be pursued through remedies in the courts, such as an appeal.

The review panel noted that if the complainant did not want the judge to deal with any cases involving his family in the future, he would need to speak to a lawyer about whether he could take any steps to prevent it. The Judicial Council has no authority to make an order about the cases that a judge may or may not preside over.

The panel observed that the complainant mentioned in his letter that he hoped he would win compensation from the Canadian Armed Forces. The Judicial Council has no authority to make any orders for a complainant to be compensated by the Canadian Armed Forces or by the Courts.

The review panel concluded that the complaint should be dismissed on the basis that there was no evidence of misconduct and the allegations related to decisions of the judge were out of jurisdiction. The file was closed.

CASE NO. 21-004/15

The complainant appeared before the judge for a trial on a charge of a criminal driving offence. She was found guilty of the offence. She wrote to the Council and included a Memorandum of Law, making numerous arguments about the evidence. Staff explained the jurisdiction of the Council. Staff in the Office of the Ontario Judicial Council wrote to the complainant explaining that the jurisdiction of the Council is limited to complaints about judicial conduct. The complainant then wrote a second letter, enclosing copies of the transcripts from the trial.

APPENDIX A

Case Summaries

In her letters to the Council, the complainant alleged:

- ◆ The judge was biased, unfair and subjective. The Crown Attorney never proved her case but the predisposed judge convicted her incorrectly.
- ◆ The judge deliberately avoided seeking inconsistencies in the evidence presented by the Crown Attorney and convicted her unlawfully. He overlooked the inconsistencies and showed clear neglect in dealing with the evidence before him.
- ◆ There was no confirmation on why the judge found no reasonable doubt in the Crown Attorney's case although His Honour mentioned that he did not believe the defence evidence.
- ◆ The subject judge "was puss around when I speak about the law". The judge interfered when she wanted to ask the police office why he did not caution her against self-incrimination. The judge kept interfering as soon as she said she was not driving the car.
- ◆ The judge responded on behalf of Crown witnesses and hindered the Crown witnesses from being properly cross-examined.
- ◆ There was no conclusive evidence that the complainant was the driver of the vehicle.
- ◆ The judge was controlling the hearing, not allowing the complainant to speak and allowed the Crown Attorney and her witnesses to speak so that he could convict the complainant.
- ◆ Because the complainant was self-represented, her case should be reconsidered.
- ◆ The complainant's first language was not English and due to the language barrier, the judge lured her from making points in the evidence.
- ◆ The judge punished and convicted her unfairly.
- ◆ The judge was being allowed to making more money by using the Canadian justice system as his private business or looting by breaking the law and regulations.

The subcommittee reviewed the complainant's letters, her Memorandum of Law, and the transcripts of the trial. As well, the subcommittee reviewed the decision of the appeal court

APPENDIX A

Case Summaries

that dismissed the complainant's appeal. Following the investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed the complainant's letters, the judgment of the appeal court and the report from the subcommittee.

The panel accepted the findings of the subcommittee that the allegations of misconduct were not supported by the evidence. The panel concluded that on the facts of this case, the allegations raised in the letter of complaint related to matters of judicial discretion and decision-making. The Council has no discretion to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint without further investigation if it falls outside the Judicial Council's jurisdiction.

The panel noted that if the complainant disagreed with the decision of the judge or how he assessed the evidence, the proper way to proceed was through remedies in the courts. The review panel noted that the complainant had filed an appeal arguing many of the same points as in the letter of complaint and it was dismissed.

The review panel dismissed this complaint on the basis that it was outside the Council's jurisdiction and closed the file.

CASE NO. 21-005/15

The complainant was a Director of Crown Operations. The complaint arose from a guilty plea and sentencing hearing. The complainant alleged that the subject judge displayed bias against a local police force. The complainant included the transcript of the court proceeding and a letter written by the Chief of Police to the complainant raising concerns about the judge's comments during the matter.

The complainant alleged the judge entered into an area that had nothing to do with the case and that had no basis in the facts or circumstances surrounding the matter before the court. He alleged that any objective reader of the comments made by the judge during the proceeding would conclude that the judge felt that the police stopped the accused because of race.

APPENDIX A

Case Summaries

He also said that an objective reader "...would be forced to the conclusion that the Honourable Court would be doing something about it if the offence had involved some form of moving violation."

Further, the complainant alleged that the judge's "sweeping comments" tainted the professionalism of the arresting officer and, by implication, the entire police force.

The letter from the Chief of Police stated that the judge's comments were inflammatory and unfairly impacted the reputation of the police force. She indicated that when the comments were made, people in the courtroom started talking and nodding in agreement. She said that the atmosphere changed dramatically, causing police officers who were present to have concerns and causing them to ask people to remain quiet.

The complaint subcommittee reviewed the material filed by the complainant and the transcript of the proceeding. One member of the subcommittee also listened carefully to the audio recording of the proceedings. The subcommittee invited the judge to respond to the complaint and a response was received. After reviewing the response, the subcommittee provided a report to the review panel.

The review panel reviewed the letter of complaint and the enclosures submitted by the complainant, the transcript and the report from the subcommittee.

The panel observed that the complainant's concerns arose from comments made by the judge in relation to the reasons why the accused, who was driving a car, was stopped by the police in circumstances where the charge against him did not relate to driving. The panel found that the transcript confirmed that Her Honour said:

Court: How do you get stopped in a parking lot? Another mystery.

As well, the panel found that the transcript confirmed that Her Honour asked:

Court: So he pulls into a plaza, everything is closed, so this is a reason to do a traffic stop in a plaza, is it?

The panel noted that the transcript showed that the Crown Attorney and defence agreed that the police stopped the accused because he was speeding and driving erratically. The judge accepted that explanation.

APPENDIX A

Case Summaries

The panel observed the transcript confirmed that Her Honour had the following exchange with defence counsel:

Defence:Your Honour’s heard the facts. I don’t have to tell Your Honour why he was pulled over in [redacted town]. I’m assuming your honour can figure that out.

Court: Okay. So none of us wants to put it on the record, it was night time, he’s black and he pulls into a parking lot.

The panel observed that the transcript indicated that Her Honour’s initial comments followed a statement made by the Crown Attorney that the police initiated a traffic stop in a parking lot. The panel noted that the transcript showed that the Crown Attorney indicated that she could not say that was the reason without the officer having an opportunity to give evidence. The panel found that the transcript also showed that judge accepted the Crown Attorney’s submission and did not pursue the matter further after the defence counsel suggested that the judge should read between the lines.

The panel noted that the judge explained in her response that she asked the question about how the accused was stopped in order to clarify the facts underlying the guilty plea, including whether the arrest of the accused was legal. The panel noted that a judge has judicial discretion to determine what facts are relevant to his or her decision to accept or reject a guilty plea and are relevant to the sentence to be imposed in the case. The panel observed that the relevance of the question related to Her Honour’s assessment of the circumstances of the arrest, and concluded that this was a matter of judicial decision-making outside of the jurisdiction of the Council.

The transcript showed that after the question, Her Honour received a response from both the Crown Attorney and defence counsel, and she then moved on.

The panel considered the importance of a judge avoiding the appearance of impropriety in his or her conduct and comments. A judge must be mindful of whether his or her comments might give rise to a perception that the judge is not impartial or has a bias. The panel noted that the judge used phrases that were inappropriate including: “none of us”; “We’re just going to have to stop this”; and, “we’re just digging ourselves into a hole”. The panel observed that such phrases could leave an impression that the judge sees himself or herself as aligned with one of the parties, rather than as a neutral objective decision-maker.

APPENDIX A

Case Summaries

The panel was of the view that all of the comments made by the judge needed to be considered in the full context. The panel observed that the transcript showed that the judge's comment that "...none of us wants to put it on the record, it was night time, he's black and he pulls into a parking lot" was made in response to a veiled submission by defence counsel that the accused was stopped because of his race. The panel could see from Her Honour's response that her intention was to address the fact that the defence lawyer appeared to be making an inference "in code" by making an ambiguous comment and she sought to make it clear on the record what defence counsel was inferring.

After considering the transcript and the judge's response, the panel found that the comments made by the judge referred to the defence counsel's submissions and were intended to clarify on the record what he was implying. The panel found that the comments did not reflect the judge's own views or bias on her part.

The panel observed that the Crown Attorney objected to the suggestion by the defence counsel and to the judge's response to defence counsel. The transcript showed that the judge accepted the objection. The panel observed that the transcript showed that when defence counsel tried to return to the issue, the judge stopped him.

After reviewing the transcript and the response from the judge, the panel found that Her Honour did not conclude that the accused was stopped by the police because of race. The panel could see that the judge didn't consider the reason for the vehicle stop in her sentencing of the accused. The panel concluded that the judge's conduct in this case did not demonstrate bias or the appearance of bias towards the police. The panel concluded that the investigation did not support the conclusion that the judge felt that the police stopped the accused because of race. Nor did the investigation support a conclusion that the judge made comments unsupported by any evidence before the Court that tainted the professionalism of the arresting officer.

The panel concluded that the evidence did not support a conclusion that Her Honour would have done something about it if the offence had involved some form of moving violation.

With respect to the allegation by the Chief of Police that the judge's comments caused a disturbance in the courtroom, the review panel accepted the findings of the subcommittee member that a careful review of the audio recording showed no raised voices or any meaningful increase in noise from the body of the court during the plea.

APPENDIX A

Case Summaries

The review panel dismissed the complaint as the evidence did not support a finding of judicial misconduct.

CASE NO. 21-008/15

The complainant was a plaintiff in Small Claims Court matter. In accordance with the practice in the jurisdiction where he filed his claim, a judge reviewed the file to see whether the matter was ready for a settlement conference and whether any Orders should be made to facilitate the settlement conference. The complainant indicated in his letter of complaint that the judge issued an Order as follows: “To settlement conference – plaintiff must appoint a representative to appear.”

At the time of the Order, the complainant was out of the country. He said that he wrote to the Small Claims Court objecting to the Order and requesting that he be permitted to represent himself but he did not receive a reply.

The complainant alleged that he consulted with two lawyers and they advised that although the Order was unusual, he must comply with the Order so he hired counsel to represent him. There was a subsequent hearing where he was permitted to represent himself via teleconference.

He alleged that the effect of the Order was to remove his right to represent himself. He stated that he would be surprised if the Order was “not an abuse of power”. He wished to claim for the monies that he paid for a lawyer and also the cost of paying a lawyer who verified his identity because he was out of the country.

A complaint subcommittee reviewed the letter and enclosures provided by the complainant, including a copy of the Order made by the judge. The subcommittee also invited the judge to respond to the complaint. The judge provided a response.

The Procedures of the Council provide for a subcommittee to refer a complaint to a review panel without a recommended disposition. The subcommittee referred this complaint to the review panel under this provision.

The review panel noted that the materials confirmed that the judge made an Order stating that the plaintiff must appoint a representative to appear. The panel observed that the response from the judge disclosed that she had intended that the plaintiff could

APPENDIX A

Case Summaries

be represented by anyone; it did not have to be a lawyer. The panel noted that the Order referred to “a representative”. It appeared to the panel that the plaintiff could have been represented, for example, by a family member or other person.

The panel concluded that the judge’s decision to make the Order was a matter of judicial decision-making outside of the jurisdiction of the Council. If the complainant disagreed with the Order, the proper way to proceed was through remedies in the higher courts to request that the Order be changed.

The panel found that there was no evidence of abuse of power or of judicial misconduct. The panel dismissed the complaint on the basis that it was outside of the Council’s jurisdiction and closed the file. With respect to the complainant’s request for reimbursement for his legal expenses, the panel noted that even if there had been misconduct, the Council has no jurisdiction to order monetary compensation to a complainant.

CASE NO. 21-011/15

The complainant sent a letter to the Council alleging actions by the judge prior to her appointment to the bench.

Prior to her appointment, the complainant was charged with assault, assault causing bodily harm and threatening, all in the context of a domestic relationship, and he was also the respondent in a family law proceeding. The subject of his complaint was at that time a Crown Attorney involved in the prosecution of the charges against him. On those charges, he had a preliminary inquiry and he was committed to stand trial. Ultimately, he pled guilty in the Superior Court of Justice to two charges.

The complainant alleged that when the judge was a Crown Attorney, she knowingly and wilfully advanced evidence that she knew to be false. He also alleged that she may have actually engaged, along with her agents, in manufacturing evidence against him. He also alleged that the manufactured evidence caused, in part, parental alienation from his children.

He alleged that his ex-spouse had since then provided evidence to support a conclusion that the evidence in her disposition, which was provided by the Crown Attorney to the court in the criminal proceedings, was manufactured. He said that the new evidence

APPENDIX A

Case Summaries

could be found in complaints made to the Law Society of Upper Canada against a number of lawyers. He asked the Council to obtain that evidence from the Law Society.

The subcommittee conducted a preliminary investigation to assess whether the Council had jurisdiction over the alleged conduct. The subcommittee carefully reviewed his letters and voluminous materials which he sent in support of his allegations. When the subcommittee completed its review and preliminary investigation, they provided a report to the review panel.

The review panel reviewed the letters from the complainant and the report from the subcommittee. The panel noted that generally, the Council's jurisdiction extends only to conduct of a person that occurs while he or she is a judge. The panel considered an exception established by the Supreme Court of Canada in *Therrien (Re)*, [2001] 2 SCR 3, 2001 SCC 35. The Court held that failure to disclose a material fact during the application process to become a judge may bring a complaint within the jurisdiction of a Judicial Council.

The panel noted that in Ontario, in the application process to become a judge, each candidate is asked:

Question 7: Please disclose any matters that you reasonably and objectively feel might adversely reflect on the Ontario Court of Justice should you be appointed.

The panel observed that the subcommittee had found no evidence that supported the complainant's position that the subject judge manufactured evidence or wilfully or knowingly made use of manufactured evidence in the prosecution against the complainant.

The panel noted that if Her Honour, when she was a prosecutor, relied on a statement by the ex-spouse, if the ex-spouse later recanted, that would not be conduct that Her Honour "should reasonably and objectively have felt could adversely reflect on the Ontario Court of Justice should she be appointed".

Further, the panel agreed with the findings of the subcommittee that even if the evidence of the ex-spouse had been fabricated, there was no evidence that Her Honour knew that when she was prosecuting the complainant. Further, the panel observed that the Information showed that the complainant was found guilty of the charges after a guilty plea and based on admitted facts.

APPENDIX A

Case Summaries

The panel agreed with the findings of the subcommittee that there was insufficient evidence to support a conclusion that Her Honour failed to disclose information during the application process which would bring the complaint within the *Therrien* exception. On the contrary, the evidence supported a conclusion that there was no jurisdiction to proceed with the complaint and a conclusion that the evidence did not support the allegations. The *Courts of Justice Act* states that a complaint must be dismissed if it falls outside of the Council's jurisdiction. The complaint was dismissed and the file was closed.

FILE NO. 21-012/15

The complainant appeared before the subject judge for a trial on criminal charges and was convicted. The complainant felt that he was unjustly sentenced because it was a first offence; he believed that Her Honour erred in law.

He alleged that Her Honour erred in judgment and that she produced a premeditated guilty verdict with prejudiced arrogance. He also alleged that Her Honour showed a blatant disregard for the defence's position; she did not accept evidence; she said she should not really allow the defendant to say something, and after she raced through the judgment and sentencing. He also alleged that she was vindictive and careless and he alleged that it was not a fair trial. He alleged that she coached the Crown Attorney to request maximum penalties.

The complaint was assigned to a two-person complaint subcommittee of the Judicial Council, comprised of a judge member and a community member for investigation.

Before the investigation was completed, the Council was informed that the judge had fully retired from judicial office. As a result, the Council lost jurisdiction to proceed and this file was administratively closed.

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.

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.

APPENDIX B

Principles of Judicial Office

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

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

Commentaries:

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

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.