

# OJC



## **TWENTY-SECOND ANNUAL REPORT**

**2016-2017**

---

**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

November 28, 2017

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

Dear Minister:

It is our pleasure to submit the Annual Report of the Ontario Judicial Council concerning its twenty-second 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, 2016 to March 31, 2017.

Respectfully submitted,

George R. Strathy  
*Chief Justice of Ontario*  
*President of the Court of Appeal for Ontario*

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 .....	9
6) Communications .....	9
7) Principles of Judicial Office .....	10
8) Judicial Appointments Advisory Committee .....	10
9) The Complaints Procedure .....	11
10) Notification of Disposition .....	16
11) Legislation .....	16
12) Compensation for Legal Costs Incurred .....	17
13) Summary of Complaints .....	17
Appendix A – Case Summaries .....	A - 23
Appendix B – <i>Principles of Judicial Office</i> .....	B - 83

---





---


## **INTRODUCTION**

The period of time covered by this Annual Report is from April 1, 2016 to March 31, 2017.

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 352 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 2016, the population was approximately 13,982,984. 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 110 new complaints in its twenty-second year of operation, as well as carrying forward 18 complaint files from previous years. Of these 128 complaints, 28 files were completed and closed before March 31, 2016. Information about the 28 files that were completed and closed is included in this Report. Of the new complaints received, 81 complaints were about one incident. Those complaints and 19 other complaint files were carried over into the twenty-third year of operation to be addressed.



---

We invite you to find out more about the Council by reading this Annual Report, and by visiting the Council’s website at [www.ontariocourts.ca/ocj/ojc/](http://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, 2016 to March 31, 2017) 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*

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

The Honourable Peter J. DeFreitas ..... (Oshawa)

#### **REGIONAL SENIOR JUSTICE**

The Honourable Sharon Nicklas ..... (Hamilton)



---

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

The Honourable Justice Howard Borenstein ..... (Toronto)

The Honourable Justice Martin Lambert ..... (Sudbury)  
(Until June 30, 2016)

The Honourable Justice Lise S. Parent..... (Brampton)  
(Effective July 27, 2016)

***Lawyer Members:***

**DESIGNATED BY THE TREASURER**

Mr. Christopher D. Bredt..... (Toronto)  
Borden Ladner Gervais LLP  
(Effective July 20, 2016)

Ms. Barbara Murchie ..... (Toronto)  
Bennett Jones LLP  
(Effective January 6, 2017 until March 15, 2017)

**LAWYER MEMBER APPOINTED BY THE LAW SOCIETY OF UPPER CANADA:**

Mr. David M. Porter ..... (Toronto)  
McCarthy Tetrault

***Community Members:***

Mr. James Dubroy ..... (Ottawa)  
JAMES R. DUBROY LTD

Ms. Sylvie Powell ..... (Ottawa)  
President/Senior Consultant, MediaLane Communications Inc.  
(Until October 2, 2016)

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

Ms. Judith LaRocque..... (Hawkesbury)  
Vice-Chair of Broadcasting, Canadian Radio-television and Telecommunications  
Commission (CRTC)  
(Effective November 2, 2016)

**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 the 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 Philip Downes ..... (Toronto)  
(Effective December 1, 2016)

---

The Honourable Justice Leslie Pringle ..... (Toronto)  
(Effective March 8, 2017)

### **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-second 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 as follows:

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

Ms. Isfahan Merali, LL.B. – *Counsel and Deputy Registrar*  
(Effective November 14, 2016)

Ms. Ana M. Brigido – *Assistant Registrar*

Ms. Michelle M. Boudreau – *Assistant Registrar*  
(until September 9, 2016)

Ms. Kayla Babin – *Administrative Assistant*  
(Effective April 11, 2016)

---

## 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/](http://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/](http://www.ontariocourts.ca/ocj/ojc/confidentiality/) under the menu item “Confidentiality”.

The Toronto Star and the Criminal Lawyers’ Association filed an application for judicial review of the decision. On January 9, 2016, the application was dismissed by the Divisional Court on the consent of the parties.

The members of the Council considered whether to establish a code of conduct for Council members. The following policy was approved: The members of the Council are expected to avoid circumstances that could rise to a reasonable apprehension of bias or an actual or perceived conflict of interest.

The Council approved of amendments to provisions in the Procedural Code for Hearings contained in the OJC Procedures that apply for hearings and the role of Presenting Counsel. The amendments clarified that the Registrar is delegated by the Council to retain legal counsel to act as Presenting Counsel when a hearing is ordered and that Presenting Counsel operates independently, including independently of the Hearing Panel.

An amendment was made to reflect the Council’s practice that a lawyer or law firm who has been retained to act as Investigating Counsel to assist a subcommittee investigating a complaint may not be retained as Presenting Counsel for any hearing ordered for that same complaint.



---

An amendment was made to reflect that after Presenting Counsel prepares the Notice of Hearing, the review panel that referred the complaint for a hearing reviews it.

An amendment was made to explain that the Hearing Panel’s mandate is to inquire into the facts to decide whether there has been judicial misconduct, and if so, determine the appropriate disposition(s) to preserve or restore public confidence in the judiciary.


The Council approved an amendment permitting meetings of the Ontario Judicial Council, including review panels, to be held in person or through electronic means, including telephone conferencing and video conferencing. The amendment provides increased flexibility, efficiency and reduced costs in appropriate circumstances.

## **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 section on computer education are included. There is an intermediate level focused on legal research. A new preamble incorporates the important principle of judicial independence, which is the fundamental principle underlying the judicial system recognized in the *Constitution*. A section incorporates the requirement for new judges to attend judicial 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/](http://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/](http://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/](http://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 Martin Lambert was appointed by the Judicial Council to act as its representative on the Judicial Appointments Advisory Committee until June 30, 2016. The Honourable Justice Sharon Nicklas, Regional Senior Justice of the Central West Region, was appointed to act as the Judicial Council's representative effective August 11, 2016.



---

## **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/](http://www.ontariocourts.ca/ocj/ojc/policies-and-procedures/procedures-document/).

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

The complaint is assigned to a two-person complaint subcommittee for review and investigation. The complaint subcommittee, 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 court proceedings. The subcommittee may also order and listen to the audio recording. In some cases, the subcommittee may decide to conduct further investigation, such as interviewing witnesses. Under section 51.4(5), the subcommittee may retain external persons, including counsel, to assist it in the investigation by conducting interviews with witnesses.

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

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. There, 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 exercises his or her judicial discretion (the proper way to proceed in such cases is through other legal remedies in the courts);
- ◆ it does not include an allegation of judicial misconduct;
- ◆ the allegation is not 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](http://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 110 complaints in its twenty-second year of operation, as well as carrying forward 18 complaint files from previous years. Eighty-one of the complaints were about the conduct of the Honourable Justice Zabel arising from one incident. Twenty-eight files were closed before March 31, 2017. The 81 complaints about the conduct of Justice Zabel were ordered to a hearing to take place in August of 2017. Nineteen other complaint files remained open at the end of the reporting period and were carried over to the next reporting year (2017-2018) to be addressed.

Thirteen of the 28 files closed during 2016-2017 were opened in that year and 11 were opened in the twenty-first year (2015-2016). One file was from year twenty (2014-2015); the complainant had initiated legal action against the Council and, to avoid a conflict of interest or a perception of a conflict of interest, the file was held in abeyance pending the conclusion of the litigation. Three of the 28 closed files were received in the nineteenth year (2013-2014). The Council learned that the court case that gave rise to the complaints was still before the courts. In accordance with the Council's Procedures, 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 three files were held in abeyance pending the conclusion of the court proceedings and they were then investigated and considered.

Of the 28 files that were closed during the period covered by this Report, 19 arose from proceedings under the *Criminal Code*, five arose from family court proceedings, two related to allegations about a judge's conduct outside of court, and two arose from provincial offences appeals.

Nine 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.

Fifteen 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.

Two complaints were referred to the Chief Justice. A review panel will refer a complaint to a Chief Justice where the majority of the panel is 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 two 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 is 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. A hearing was ordered in relation to the 81 complaints about Justice Zabel. Information about hearings is available on the Council's website under the link Public Hearings.

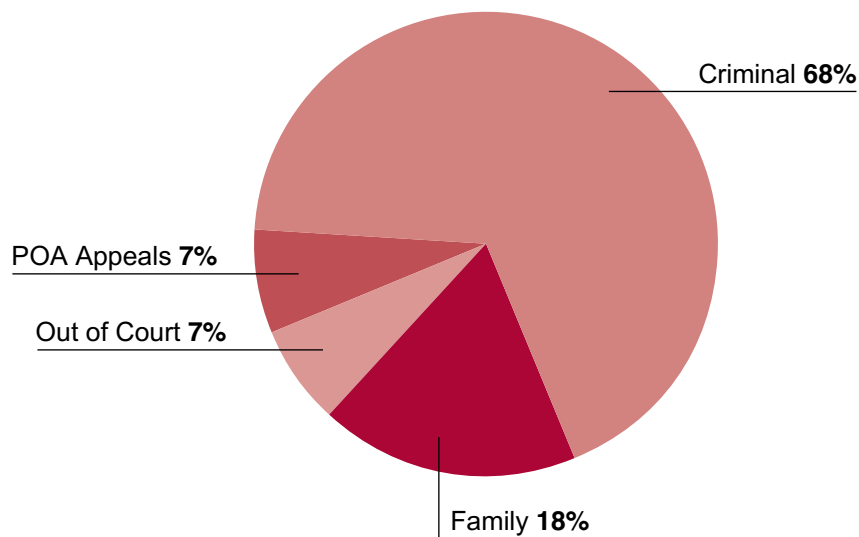
Nineteen complaint files remained open to be carried over into 2017-2018, in addition to the 81 complaints about the conduct of Justice Zabel that, at the time of the preparation of this report, were scheduled for a hearing in 2017. Of those 19 files, one was from 2014-2015, two were from 2015-2016 and 16 were from 2016-2017. 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 ON FILES CLOSED IN 2016-2017***

<b>DISPOSITION</b>	<b>NUMBER OF CASES</b>
Dismissed – Out of Jurisdiction	9
Dismissed – unfounded, not judicial misconduct, etc.	15
Referred to Chief Justice	2
Loss of jurisdiction	2
Hearing	0
<b>TOTAL</b>	<b>28</b>

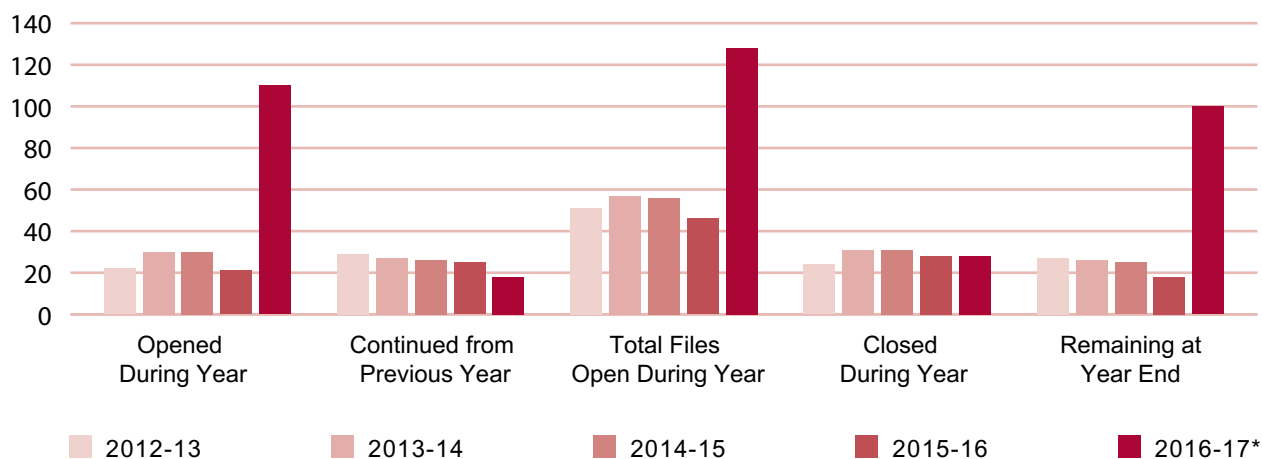
## TYPES OF CASES CLOSED IN 2016-2017

TYPES OF CASES CLOSED IN 2016-2017	
Criminal Court	19
Family Court	5
Other – Outside of Court	2
Small Claims Court	0
Provincial Offences Appeal	2
<b>TOTAL</b>	<b>28</b>



## CASELOAD IN FISCAL YEARS

FISCAL YEAR	2012-13	2013-14	2014-15	2015-16	2016-17*
Opened During Year	22	30	30	21	110 (81 about one judge and 29 other complaints)
Continued from Previous Year	29	27	26	25	18
Total Files Open During Year	51	57	56	46	128
Closed During Year	24	31	31	28	28
Remaining at Year End	27	26	25	18	100 (81 about one judge and 19 other complaints)



\* In 2016, 81 complaints received about the conduct of one judge arising from one incident were ordered to a hearing scheduled to take place in 2017. Information about the hearing can be found on the Council's website at <http://www.ontariocourts.ca/ocj/ojc/public-hearings/>



---

**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 (e.g., file no. 22-001/16 was the first file opened in the twenty-second year of operation and was opened in calendar year 2016).

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

### ***CASE NO. 19-014/13 AND 19-015/13***

The complainant filed complaints against two judges - one who presided over his pre-trial application, and the judge who heard this complainant's trial. He wrote to the Council about both judges while his criminal court case was on-going, seeking to have them removed from hearing his case. Council staff informed him of the Judicial Council's jurisdiction and the policy that 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. The complaints were held in abeyance until the court case concluded. After the court proceedings were completed, the investigations into each complaint proceeded.

The complaint subcommittee read the correspondence received from the complainant, affidavits that he filed, hundreds of pages of various materials that he filed, transcripts of the proceedings before each of the judges, rulings made by the judges, including a ruling following an assessment to determine whether the complainant was fit to stand trial. After the investigations of each of the complaints were completed, the subcommittee provided a report to a review panel.

The review panel read the complainant's letters of complaint, affidavits that he filed and the ruling on fitness, the transcript of the application judge's reasons for dismissing the application, the transcript of the trial judge's reasons for judgment, and the report from the subcommittee on its investigation.

## APPENDIX A

# Case Summaries

### **CASE NO. 19-014/13**

The panel noted that the complainant appeared before the application judge to challenge the validity of the Information (the document containing the charges against him). In reasons released in August of 2012, the application was dismissed. The complainant alleged that the application judge:

1. Failed to disqualify the Crown Attorney when told the complainant had filed a complaint against her with the Law Society of Upper Canada;
2. Failed “to act” when notified that there were two Informations before the court; and
3. Came to the wrong conclusion in dismissing his application to quash the Informations.

The review panel dismissed the complaint on the basis that all three allegations were directed at the legal correctness of the decisions made by the application judge, rather than 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. If a person disagrees with a decision made by a judge and seeks to try to change it, the proper way to proceed is through remedies in the courts, such as an appeal.

### **CASE NO. 19-015/13**

The complainant had 40 scheduled appearances before the trial judge between August of 2012 and January 2015. During that time, the trial judge made a number of pre-trial and mid-trial rulings. The complainant filed letters of complaint in response to two of those rulings.

The panel observed that the first letter of complaint, filed in response to the trial judge’s ruling on an application for state-funded counsel, alleges that the trial judge:

1. Coerced the complainant into pleading guilty;
2. Made false claims about the charges listed in the information; and
3. Was guilty of “conduct so abhorrently biased that it is tantamount to be [sic] involved in a kangaroo court proceeding.”

## APPENDIX A

### Case Summaries

---

In his supporting material, the complainant argued that the trial judge was wrong in her interpretation of the law and that she committed *Charter* violations. The second letter of complaint was sent in response to the trial judge’s fitness ruling. The complainant alleged that the “trial judge failed to uphold her duties under the *Criminal Rules of the Ontario Court of Justice*. Her conduct amounts to an obstruction of justice.”

He also disagreed with the trial judge’s decision to appoint *amicus curiae* (a friend of the court) to assist the court in determining his fitness to stand trial.

The review panel noted that the complainant filed lengthy affidavits and other materials in support of his allegations about the trial judge. The panel reviewed the affidavits and accepted the findings of the subcommittee that nothing in the court record, the correspondence from the complainant, or the material filed supported a finding of judicial misconduct. The panel noted, by way of example that the subcommittee found that the allegation that the trial judge “coerced” the complainant into pleading guilty was factually inaccurate. The subcommittee found that its review of the transcript and the information demonstrated that the trial judge had the charges read to the complainant and, when he refused to enter pleas, directed that not guilty pleas be recorded on his behalf.

The panel accepted the findings of the subcommittee that the trial record showed that throughout this long trial the trial judge treated the complainant with dignity and respect. She carefully explained each step in the process and did her utmost to ensure that the complainant received a fair trial. There was no evidence of bias or that this was “a kangaroo court proceeding”. Ultimately, the complainant contested the result of the trial judge’s rulings and argued strenuously that the trial judge committed legal errors.

The review panel dismissed the complaint against the trial judge on the basis that there was no evidence to support the allegations of judicial misconduct made against the trial judge and the allegations about judicial decision-making were outside the Council’s jurisdiction.

#### **CASE NO. 19-018/13**

The complainant was a self-represented litigant who appeared before the subject judge on a charge of assault for a matter set for a two hour trial. The trial lasted more than two days and the complainant was found guilty.



## APPENDIX A

# Case Summaries

After the complaint was filed, the complainant initiated legal action against the Judicial Council. The complainant was informed that the complaint would be held in abeyance pending the completion of the ongoing litigation. This was done to ensure that the investigation by the Council was not perceived to be interfering with the on-going court matter. After the litigation concluded, the complaint was investigated by the subcommittee.

The complainant took issue with many decisions that the judge made during the course of the trial and with her final judgment. As well, his allegations included the following:

1. The judge conducted the proceeding in an unfair manner;
2. During the complainant's cross-examination of witnesses, the judge frequently interrupted giving witnesses a chance to think of an answer;
3. The judge dissected many of his questions, questioned relevance and generally interfered with the conduct of his case;
4. The judge was continuously putting pressure on him to hurry up and wind up his questions while she was wasting time repeating things;
5. When he advised the judge that the trial was being conducted in an unfair manner, she started yelling and screaming at him therefore preventing what he was saying from being recorded;
6. The judge had prejudged the case, does not know how to conduct a trial and made decisions contrary to the evidence;
7. When he gave his evidence, the judge kept asking him questions in a threatening tone which was her way to make him contradict himself;
8. The judge curtailed the cross-examination of the complainant;
9. The judge made many errors in law;
10. The judge kept saying that when she was speaking, he kept interrupting her. She was repeating this over and over to increase the cost of the transcript;
11. On the last day of the trial, the judge ordered a big court security person to sit next to him to threaten and intimidate him;

## APPENDIX A

### Case Summaries

---

12. The judge may have instructed the court reporter to type the transcript in such a manner that would double or triple the cost so it could not be possible for him to afford the transcript and thus she could escape with wrongfully convicting him; and,
13. The judge took money from opposite parties and wrongfully convicts poor people.

As part of their investigation, the subcommittee reviewed the complete transcripts of the proceedings, as well as the decision of the Summary Conviction Appeal Court judge who dismissed the complainant's appeal of the finding of guilt. The subcommittee noted that in his appeal, the complainant alleged that the verdict should be set aside on the ground that the trial was not fair because the conduct of the trial judge created a reasonable apprehension of bias. After concluding their investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed the complainant's letter and the subcommittee's report to them.

The review panel noted that a number of the allegations related to matters of law and judicial decision-making. The review panel concluded that these allegations were outside of the jurisdiction of the Council. The Council's jurisdiction is limited to allegations of judicial misconduct. A higher level of court is the body with the authority to consider whether a judge has made errors in applying the law or in making the decisions.

The review panel considered each of the allegations raised in the letter about the conduct of the judge.

The review panel noted from the subcommittee's report that the subject judge interrupted the complainant quite often during the presentation of the evidence. The panel accepted the findings of the subcommittee that this was done by the judge to ensure that the complainant remained focused on the issues at hand. The subcommittee explained in its report that the trial had significantly exceeded the allotted court time because of the complainant's intransigence and refusal to listen. The review panel accepted the findings of the subcommittee that the trial judge's conduct was not inappropriate; rather, she exhibited a lot of patience in dealing with the complainant and in her attempts at controlling the trial process. A judge has the authority to determine what is relevant, and a duty to dispose of matters before them efficiently.

## APPENDIX A

# Case Summaries

---

The panel noted that the subcommittee shared the view of the appeal judge that: "... a reasonable and fair-minded observer would conclude that the trial judge conducted the trial impartially and that the Appellant had a fair trial." The panel accepted the findings of the subcommittee that the transcripts of the proceedings indicated no evidence that the trial was conducted in an unfair or impartial manner or that the judge prejudged the case.

The panel noted that the complainant alleged that the judge yelled or screamed at him preventing a proper record from being made. The panel noted that the subcommittee found that the transcript appeared to be complete and comprehensive. The transcript showed that the judge remained polite and calm. Nor did the subcommittee find any evidence that the judge instructed the court reporter to type the transcript in such a manner that would double or triple the cost for the complainant.

The panel noted that the allegation that the judge took money from opposite parties and wrongfully convicts poor people appeared to be an allegation based upon unfounded suspicion. He provided no evidence in support of this general allegation.

With respect to the allegation that the judge ordered a big court security person to sit next to the complainant and to threaten and intimidate him, the panel noted that the subcommittee found a reference related to this allegation in the transcript. On the last date of the trial, the complainant told the judge that a police officer had sat next to him and threatened and intimidated him. He said that the court security person gave him threatening looks. He asked whether this was part of the courtroom. The judge responded that there was no security officer sitting next to him. The Crown Attorney explained that there had been a court officer in the courtroom earlier because there had been people in custody. The panel accepted the findings of the subcommittee that there was no evidence the judge had ordered a security person to sit next to the complainant or to threaten or intimidate him.

The review panel dismissed this complaint on the basis that the allegations of misconduct were not supported by the evidence and the allegations related to judicial decision-making were outside the jurisdiction of the Council.

## APPENDIX A

# Case Summaries

### **CASE NO. 20-024/15**

The complainant, a court reporter, raised several allegations in her complaint. They included:

1. Allegations in relation to the length of time taken by the judge to approve draft court transcripts.

The complainant enclosed copies of her transcript requests and memos to the judge. She raised concerns that the judge insisted on listening to audio recordings of the proceedings and made numerous notes on the draft transcripts.

2. Allegations related to the complainant not being scheduled in the judge's courtroom.
3. Allegations about the judge's demeanour and manner towards court staff and lawyers, and comments made to/about them.
4. Other allegations about the judge's conduct inside and outside of the courtroom.
5. Allegations that the judge kept irregular court hours and kept staff in court late.
6. Allegations related to judicial decision-making.

The complaint subcommittee reviewed all of the materials provided by the complainant, including a number of memos, excerpts from transcripts and correspondence between the judge and the reporter about the transcripts sent for the judge's review and approval. The subcommittee reviewed materials related to 74 criminal cases. The subcommittee also had a letter sent to the complainant requesting further details about the information she had provided. The complainant wrote a further letter in which she provided names of possible witnesses and some further details about some alleged events. The subcommittee ordered and reviewed the entire transcripts of the two proceedings related to allegations of inappropriate comments by the judge and his conduct in the courtroom.

The subcommittee retained independent counsel to interview the complainant and other persons with knowledge of the events related to the allegations, including court staff, lawyers, police and court managers. Counsel provided the subcommittee with a certified transcript of each of the witnesses who was interviewed.

## APPENDIX A

# Case Summaries

The subcommittee wanted to ensure that it reviewed all of the transcripts that the complainant wanted the Council to consider. The subcommittee had a further letter sent to the complainant asking her whether there were any additional transcripts that she wished to provide. No further transcripts were received.

The subcommittee invited the judge to respond to the complaint and reviewed his response. After completing its investigation, the subcommittee reported to the review panel.

The review panel reviewed the correspondence to and from the complainant, the response from the judge, the subcommittee's report and excerpts of court transcripts included with the subcommittee's report. The review panel accepted the findings of the subcommittee and concluded as follows:

1. Conduct towards court staff and inappropriate comments in the courtroom

There was evidence that showed that the judge was upset about an administrative procedural matter and he became emotional in chambers when speaking to one court staff person.

A transcript showed that the judge was upset about the procedural matter in the courtroom and that he made inappropriate comments in the courtroom that showed his frustration.

2. Conduct towards lawyers

There was some evidence that at least one lawyer perceived the judge to become "worked up" at counsel during proceedings in the courtroom and that lawyer found it stressful to appear before him.

The review panel observed that the judge may not have realized how his conduct was being perceived by others, and the impact of his conduct on others. The review panel noted that all persons in a courtroom and who work with a judge are observers of the comments and behaviour of a judge. Each and every comment made by a judge, and his or her tone and manner in the courtroom are all important elements of how a judge is perceived by members of the public. A judge has a unique role as exemplar and guardian of dignity in the court.

A judge must always strive to be patient, dignified and courteous in performing the duties of judicial office. A judge must have a heightened sense of awareness of the

## APPENDIX A

# Case Summaries

appearance to others as to how his or her conduct or comments are perceived. A judge has a duty to maintain a high standard of conduct and professionalism so as to preserve the integrity of the judicial office and the faith and trust of society in the persons who hold that judicial office.

### 3. Allegations about the length of time taken to approve of draft transcripts

The review panel observed that court services managers who were interviewed confirmed that there were no set guidelines for judicial review of transcripts (with the exception of appeal transcripts which were required within 90 days).

The review panel observed that the report from the subcommittee showed that court administration was aware of concerns about the quality of the complainant's work. The judge appeared to want to carefully review the transcripts before approving them. The review panel noted that to ensure accuracy, the judge listened to the recording of the court record to ensure that the transcript was accurate which is entirely reasonable in these circumstances. The notes to the complainant written by the judge on the memos when the transcripts were returned were relevant and professional. The transcripts provided to the Council by the complainant showed minor editing of punctuation and grammar and the review of quotes.

The review panel observed that through the complaints process, the judge was reminded of the need to return transcripts in a timely manner in order for the ordering party to resolve the issue about which the transcript was required.

The review panel concluded that there was no judicial misconduct on the part of the judge in relation to his review and approval of the transcripts or the length of time taken to return them to the reporter.

### 4. Allegations about the complainant not being scheduled in the judge's courtroom

The review panel agreed with the subcommittee that ultimately the actual decision as to assignment of the complainant was within the authority of senior management, not a member of the judiciary. The subcommittee noted that it is not judicial misconduct for a judge who has concerns about the quality of work of a court reporter to speak to a manager about that in the absence of the staff person. A judge is not required to have a union representative present if he or she speaks with management about court staff in chambers.

## APPENDIX A

# Case Summaries

The complainant referred to a private discussion between the Regional Senior Judge and the judge about assignment. The review panel noted that judicial assignment is not within the jurisdiction of the Council; assignment is a component of judicial independence within the jurisdiction of the judiciary.

### 5. Other Allegations about Conduct Inside and Outside of the Courtroom

The complainant raised allegations about the judge's behaviour in the courtroom including that the judge was rude and acted like a "bully", that he "shunned" staff in the courtroom, that he ridiculed the Crown and counsel, and that he belittled people in the courtroom, that he threatened to issue warrants for lawyers who were not present in the courtroom. She also alleged that on a certain date, the judge yelled at a police officer and a Crown Attorney in chambers.

The review panel found that there were inconsistencies in the evidence gathered during the investigation. These allegations were not established on the balance of probabilities.

The review panel observed that the complainant suggested that the Council should order court proceedings before the judge over a period of years. The review panel agreed with the view of the New Brunswick Court of Appeal expressed in *Mackin v. Judicial Council*, 1987 CanLII 138 that allegations of judicial misconduct must be expressed in clear terms with precision in the allegations. A suggestion that all of the court proceedings from a certain date onwards should be ordered was, as the Court said in that case, "more in the nature of a request for the Council to search and see if it can uncover misconduct".

The review panel concluded that engaging in a broad review of all proceedings before a judge would be tantamount to embarking on a "fishing expedition" and contrary to the principles of natural justice. The transcripts provided by the complainant and those requested by the subcommittee did not contain evidence of any concerning behaviour, other than that which is referred to in #1 and #2 above.

### 6. Irregular Court Hours and Keeping Staff in Court Late

The complainant alleged that the judge kept court going until into the evening and did not provide breaks. The review panel noted that instances arise where a judge determines it to be best to complete a court proceeding that is underway before

## APPENDIX A

# Case Summaries

him or her, even though it may require sitting past normal court hours. Generally, this would be a matter of judicial decision-making outside of the jurisdiction of the Council.

There was an allegation that on a particular date, the judge did not arrive until 10:25 a.m., shut down court after ten minutes and then court started up again at 2:00 p.m. Then court remained in session until 6:20 p.m. It was alleged that the judge ignored the impact of sitting late on prisoners and disregarded a childcare issue raised by a Crown Attorney, as well as overtime concerns and the employment rights of staff. After a review of the transcript, the review panel found that these allegations were not borne out by the transcript. The transcript showed that the matter was being heard on a Friday and the following Monday was a holiday. In the context of considering that the accused was in custody, the judge expressed concern that it may not be fair to staff to stay late and noted that he would not normally ask them to. He asked staff whether they had any commitments or family commitments and they indicated they could stay. The Crown Attorney said he could make a telephone call to make other arrangements and the judge provided a recess for him to do so.

### 7. Allegations related to Judicial Decision-Making

The review panel observed that there were several allegations related to judicial decision-making that were outside of the jurisdiction of the Council including, for example, insisting on pre-trials being held even though counsel have advised that they are waiting for further disclosure or there may be a resolution in the matter; standing court down while he went to the library to research a question about the law; and, starting court when he was ready to go in.

The review panel observed that a judge must always strive to be patient, dignified and courteous in performing the duties of judicial office. A judge must have a heightened sense of awareness of the appearance to others as to how his or her conduct or comments are perceived. A judge has a duty to maintain a high standard of conduct and professionalism so as to preserve the integrity of the judicial office and the faith and trust of society in the persons who hold that judicial office.

The review panel was concerned by the judge's emotional comments related to the administrative matter that he made in the courtroom and in chambers. The review panel noted that in His Honour's response, he acknowledged that his course of conduct in relation



## APPENDIX A

# Case Summaries

---

to that matter was not appropriate. He expressed his regret for his choice of words, and recognized that he should have pursued his concerns through appropriate channels and not through a public discussion. He apologized for treating the issue in that way.

The complaints process is remedial in nature. The review panel decided to refer the complaint to the Chief Justice for discussion as its disposition of the complaint, pursuant to section 51.4(17)(c) of the *Courts of Justice Act*. After her meeting with the judge, the Chief Justice provided a report to the review panel.

After reviewing the report from the Chief Justice, the review panel noted that the complaints process appeared to have significantly increased His Honour's awareness of how the conduct of each judge affects not only the reputation of that judge; it impacts upon public confidence in the judiciary in general and in the judicial system. He was very remorseful.

His Honour regretted his comments toward and manner in his interactions in chambers with court staff. He expressed his apology to the court staff person who was in chambers, to the Chief Justice and to the Court.

The review panel observed that through the complaints process and his discussion with the Chief Justice, the judge fully understood how the public expects his conduct to be at the high standard expected of the judiciary to preserve the trust of the public. The review panel could see that the judge now realized that in the future he must be more mindful of, and careful with, his words. It appeared to the review panel that the complaints process had a positive remedial effect on His Honour. The complaints process was completed and the file was closed.

### **CASE NO. 21-006/15**

The complaint arose from family court proceedings. The complainant alleged that the subject judge was racist and that he demonstrated racism by denying the complainant access to his son and imposing a restraining order vis-à-vis all members of his family. He alleged that the subject judge's decision "was purely instigated by racial connotations and the fact that I am a black man". He alleged that the judge denied him access because the lawyer from the Office of the Children's Lawyer assigned to represent his son was white and the complainant was black.

## APPENDIX A

### Case Summaries

---

The complainant alleged that the judge erred in making findings that the complainant's behaviour scared the children and he disagreed with the subject judge's view about the status of the complainant's mental health. The complainant said that he wanted to see the judge punished for denying him access to his children based on the colour of his skin.

The complaint subcommittee read the letters sent by the complainant, as well as medical reports and court documents that he provided. The subcommittee read the transcript of the court appearance referred to in the letter of complaint, as well as the judge's endorsement. After completing its investigation, the subcommittee provided a report to the review panel.

The review panel read the letters from the complainant, excerpts of the transcript of the court appearance, the endorsement of the judge, and the report from the subcommittee.

The review panel noted the findings of the subcommittee which were that the complainant had been involved in family court proceedings with his former spouse for a number of years in relation to custody and access to his children. A final order had been made granting custody of the youngest child to the mother. No custody order had been made for the other children as they had become adults. The panel observed that the subcommittee had found that a factor in the judge's decision was evidence about the complainant's mental health. The order stated that the complainant was to have no access to the youngest child without a further order from the court. As well, the complainant was not to communicate with his former spouse and children.

The panel observed that the subcommittee's investigation showed that subsequently, the complainant brought a motion to change and a lawyer and clinical assistant were assigned to the child by the Office of the Children's Lawyer. As a result of the father providing medical evidence about his own improved mental health, a consent temporary order was made granting supervised access to the youngest child as arranged by the Office of the Children's Lawyer. Initially, there was evidence before the judge that the visits went well but the supervisors then no longer wished to supervise the visits as a result of the father's behaviour.

The panel noted that the motion to change was heard by the judge and he dismissed the father's motion and restored the earlier order with terms that the father was to have no contact with the mother and the children and not be within 500 meters of them. In addition,

## APPENDIX A

# Case Summaries

---

the judge made an order that the father could not bring any further court proceedings without prior leave of the court.

Approximately six months later, the complainant brought a motion seeking leave to bring a further motion to change based on a material change in circumstances. This motion was dismissed. The judge held that there was no material change in circumstances shown, even on a prima facie basis, and that the father's affidavit revealed that he continued to lack insight into the situation.

The review panel accepted the findings of the subcommittee that there was absolutely no evidence that the judge exhibited racist behaviour or that he based his decision on race. The panel observed that the transcript showed that the judge considered the evidence, the submissions of the parties and the safety and best interests of the child. The panel noted that the complainant was dissatisfied with the judge's ruling on both the motion to change and the motion seeking leave. The panel noted that the decisions made by the judge were part of judicial decision-making. The Judicial Council does not have the jurisdiction to review a judge's decision to assess whether it was made correctly or to change a judge's decision. The Judicial Council's jurisdiction is limited to the review of judicial misconduct.

The review panel dismissed the complaint on the basis that there was no evidence of racism and the concerns raised by the complainant about the judge's findings and his decisions were matters that were outside the jurisdiction of the Council.

### ***CASE NO. 21-010/15***

The complainant alleged that during a social event with other individuals, including members of the judiciary, the subject judge inappropriately touched another judge.

Before the complaints process was completed, the Council was informed that the subject judge had retired from judicial office. As a result, the Council lost jurisdiction and this file was closed.

## APPENDIX A

# Case Summaries

---

### ***CASE NO. 21-013/15***

The complainant was a female defence lawyer who appeared before the subject judge in two separate criminal court matters. She alleged that in appearances during the first court case, she was the subject of “pregnancy discrimination”. She alleged that the judge lacked the pregnancy sensitivity that she would expect of a jurist and that in front of an open court, she was made to discuss her pregnancy and state of mind at different points in her pregnancy. She alleged that the questioning by the judge was unnecessary and unfair and that his tone was flippant and callous. She said during the next court appearance, the judge could not remember the gist of those conversations and sought to re-interrogate her about the first time the trial was adjourned.

She alleged that in the second court case, the judge came dangerously close to issuing a bench warrant for no good reason for her client who was not present in court. She alleged that the judge treated her with a lack of professionalism that she believed to be unfair and unwarranted. She alleged that he was rude and inappropriate towards her.

When the complainant first contacted the Judicial Council, one of the court matters was still before the courts. In accordance with the Council’s procedures, an investigation did not commence at that time. 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.

When the court case was concluded, the complaint subcommittee reviewed the complainant’s correspondence and the transcripts and audio recordings of the court appearances. The subcommittee provided a report on its investigation to the review panel.

The review panel reviewed the correspondence from the complainant, the transcripts of the court appearances before the judge, the audio recording of the court appearances and the report from the subcommittee.

The panel was concerned by the tone and manner of the judge’s interactions with the lawyer. The panel noted that a judge has a unique role as exemplar and guardian of the dignity of the court. The conduct and comments of a judge set the tone for the environment in the courtroom. It is always important for a judge to be aware of how his or

## APPENDIX A

# Case Summaries

her comments and conduct are viewed and understood by those appearing before him or her. The manner in which a judge responds to a party appearing before him can set the tone in the courtroom. Responding in an intemperate manner can set a tone for conflict.

The panel noted that judges have a duty to maintain high standards of conduct so as to preserve the integrity of the court and public confidence in the judiciary. Patience and civility are expected of a judge. The *Principles of Judicial Office* state in the preamble:

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

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

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

The panel decided to invite the judge to respond to the complaint. The panel observed that in the judge's response, he explained why, in the context of case management, he had made his comments. He demonstrated that he had reflected on his interactions with the complainant and he showed some appreciation for how his conduct was inappropriate. He also extended an apology for his conduct.

The panel observed that, while it is appropriate and important for judges to understand the reasons why court matters may be delayed, a judge must also be mindful of his or her conduct in the process of making such inquiries, and how that conduct may be perceived, particularly given the power imbalance between the judge and those who appear before him or her. The panel noted that it was important to ensure that the judge was fully aware of the importance of judges being sensitive to and respectful of the personal circumstances of persons appearing before him, particularly pregnancy and gender. A judge has a duty to maintain a high standard of conduct and professionalism so as to preserve the integrity of the judicial office and the faith and trust of society in the persons who hold that judicial office.

## APPENDIX A

### Case Summaries

---

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 may refer a complaint to the Chief Justice under section 54.1(18) of the *Courts of Justice Act* if a majority of the review panel is of the view that the alleged conduct does not amount to misconduct, there is some merit to the complaint and the disposition is a suitable means of informing the judge that his course of conduct was not appropriate in the circumstances that led to the complaint.

The Chief Justice met with the judge and discussed with him all of the concerns arising from his conduct. After her meeting, the Chief Justice provided a report to the review panel. The panel could see from the report that His Honour deeply regretted his conduct and that he had taken the complaint very seriously. The panel could see that he had reflected very carefully upon the events that gave rise to the complaint and upon the importance of being mindful of the perceptions that might arise from comments such as those that he made. He showed his remorse for his comments. The panel observed that since becoming aware of the complaint, the judge was mindful of what he had learned through the complaints process.

Pursuant to the legislation, the complaints process was completed and the file was closed.

#### **CASE NO. 21-014/15**

The Council received a letter of complaint from the relative of a woman who was the alleged victim in a sexual assault trial. The accused was acquitted of the charge. The complaint to the Council alleged that the judge made a comment in his reasons for judgment that the complainant had "contaminated" the evidence of her relative. She disagreed with that statement and was concerned that the judge made this finding when she had been excluded from the court as a potential witness and never gave testimony.

The investigating subcommittee reviewed the letters from the complainant. The subcommittee obtained and read the transcripts of the submissions and the judge's Oral Reasons for Judgment.

The review panel read the letters from the complainant, the transcript of the judge's Oral Reasons for Judgment and the report from the subcommittee.

## APPENDIX A

# Case Summaries

The panel noted that it is generally the case in a criminal trial that all prospective witnesses are excluded from the courtroom. The panel also noted that the lawyers decide who will or may be called to give evidence. If the complainant was initially going to be called as a witness and then was not called, that would have been a decision made by the Crown Attorney or the defence lawyer, not the judge.

The panel observed that the transcript of the reasons for judgment indicated that the judge's comments about the complainant were based upon evidence that he heard from other witnesses during the trial even though the complainant did not testify. The panel concluded that the judge's assessment of the credibility of the alleged victim and his findings related to the complainant were matters of judicial decision-making, 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 act on allegations 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 Council's jurisdiction. If a person who was a party to the proceeding is of the view that a judge made an error in his assessment of the evidence of his decisions in a case, 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 there was no judicial misconduct. The complaint was dismissed as being outside the jurisdiction of the Council and the file was closed.

### **CASE NO. 21-015/15**

The complainant was a self-represented accused in a criminal trial before the subject judge. He was found guilty after the trial and sentenced. He appealed the decision and the appeal was dismissed.

He alleged that the judge made orders twice during the proceedings without giving reasons, and when asked for written reasons, they were not provided. The complainant also alleged that his witnesses were removed from the courtroom, he was denied his right to counsel of his choice and his right to an interpreter. He further alleged that the judge

## APPENDIX A

# Case Summaries

---

denied his ability to be fully informed of the nature and cause of the proceedings so as to make full answer and defence. He said he wondered whether the courts are the people's court or a private company.

The complainant also alleged that the judge “did claim to be God”. He alleged that the judge shouted at people and lawyers to sit down and shut up.

The subcommittee read his letter and ordered and reviewed the transcript. A member of the subcommittee also ordered and listened to the audio recording of the proceeding. The subcommittee provided a report on its investigation to a review panel.

The review panel read the complainant's letter, the transcript of the first court date and the report from the subcommittee.

The panel noted that the judge's decisions in the case, including any decision on recusals, the right to counsel, his reasons, the right to an interpreter and his decision to find the complainant guilty and to impose the sentence were matters related to the exercise of judicial discretion made in the course of a judge's duties outside the Council's jurisdiction, not allegations of judicial misconduct. 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 allegations that do not fall within its jurisdiction.

The review panel observed that the subcommittee found that the court record showed that the complainant was a litigant who challenged the authority and procedures of the court. He would not respond to being called “Mr. [his surname]” insisting on being called by his first name. The panel accepted the subcommittee's findings that the court record showed that:

1. The judge had to be stern with the complainant to get him to come forward at the beginning of the proceeding, but the judge otherwise was relatively calm, despite the fact that the complainant spoke over the judge and the Crown Attorney for almost the entire proceedings. There was an arraignment and the complainant would not enter a plea, so he was deemed to plead not guilty. The defence counsel who had been appointed to cross-examine the alleged victim under section 486 of the *Criminal Code* was ill so the matter was adjourned to a new date.



## APPENDIX A

# Case Summaries

The transcript showed that at one point, the complainant asked the judge if he was claiming to be God. The judge said the words “yes sir”, but the judge immediately clarified that his response was in response to the Crown Attorney standing up and the judge thought the Crown Attorney wanted to speak. In the end, the complainant was quiet, as the judge had indicated several times that he would be arrested and put into custody for contempt of court if he did not stop his outbursts. The judge stated that he would not put up with the incivility, discourtesy and lack of respect for the court proceedings.

2. The court record showed that after the trial commenced, the complainant was disruptive, so he was removed from the courtroom to then observe and hear the proceedings over closed circuit television. The judge ordered the transcript for the complainant to review so that he could determine for the next date, after consulting with counsel, whether or not he wished to testify. At the end, when the complainant was brought in for the adjournment of the trial, he said to the judge that he hoped that he would “burn in hell” and that he was “evil”.
3. On the following court date, the judge ensured that the complainant received the transcript of the earlier proceeding and held the matter down so that the complainant could determine if he was going to testify. The complainant referred to the Crown Attorney by his first name and was disruptive again to the point of being escorted from the courtroom. After that, the complainant apologized for his emotional outburst that morning and sought an adjournment to prepare to call a defence. There was no indication in the transcript of any improper conduct by the judge.
4. On the subsequent date, the transcript of the previous proceedings was reviewed by Duty Counsel with the complainant outside of the courtroom. The judge wanted to ensure that the complainant made an informed decision about whether or not to testify. The complainant said that he would proceed under protest and duress. In the end, he did not testify and the judge gave his decision.

In listening to the audio recording of this date, the subcommittee member observed that judge was patient, although stern at times in an effort to have the complainant be quiet, as the complainant continued to ramble at times. The judge did exclude two persons from the courtroom who were whispering instructions to the complainant from the body of the court, but the judge did not shout, nor did he tell lawyers to “sit

A

## APPENDIX A

# Case Summaries

---

down and shut up”. The panel noted that the judge has a duty to maintain order in the courtroom and his decision to order the persons from the courtroom was a matter of judicial decision-making outside of the Council’s jurisdiction.

The review panel accepted the findings of the subcommittee that throughout the entire proceedings, the judge was courteous and as patient as he could be with a litigant who constantly rambled and interrupted the judge repeatedly. The subcommittee found no basis in the court record for concern about the conduct of this judge in these proceedings. The panel dismissed the complaint on the basis that the allegations related to judicial decision-making were outside the jurisdiction of the Council and the allegations related to conduct were without merit.

### **CASE NO. 21-016/16**

The complainant appeared before the subject judge on an appeal of a conviction under the *Highway Traffic Act*.

In a letter that he sent to the Council, the complainant indicated that he had been required by the appeal judge to order the transcript of the trial. The complainant thought that the transcript of the reasons for judgment which he had provided was sufficient. He raised concerns arising from the fact that the judge interpreted the relevant Regulation relating to ordering of transcripts differently than he did. The complainant disagreed with the judge’s interpretation that the complainant was required to order the transcript of the full proceedings, including the hearing date. The complainant was of the view that the judge was “strong arming” him to comply with a law that the judge could not prove.

The complainant also alleged that the judge had a reasonable apprehension of bias while in court, because the “Judge became a law maker right before the presiding member of the court”.

The complainant also alleged that the tone in the court was quite upsetting and that the judge’s abilities were off the scale of proper discipline. He alleged that the judge acted like a “supreme being”.

The complainant subcommittee reviewed the letter of complaint, and ordered and reviewed the transcripts and the audio recordings of the proceedings before the judge.

## APPENDIX A

# Case Summaries

---

After completing the investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed the letter of complaint, the transcripts of the appearances before the judge and the subcommittee's report.

The panel accepted the findings of the subcommittee that the judge listened patiently to the arguments of the complainant. The review panel noted that the transcript showed that during the ruling by the judge on the first date that the full transcript was required, the complainant tried to interrupt the judge and the judge stated that a ruling had been made and that it was not going to be debated. The judge said that as the complainant wanted to pursue the appeal, the matter was going to be adjourned for the transcript to be ordered. At that stage, the complainant raised the concern of a reasonable apprehension of bias. The judge then very calmly indicated that he disagreed with the complainant's interpretation of the Regulation, and cautioned the complainant that they could not speak at the same time on the record. The judge evenly stated that the complainant was entitled to his opinion, but that the judge was of the view that there was not a reasonable apprehension of bias. The matter was then adjourned for the complainant to obtain copies of the necessary transcript.

The review panel observed that the allegation related to the judge's interpretation of the Regulation was a matter of judicial decision-making outside of the jurisdiction of the Council. The jurisdiction of the Judicial Council is limited to the conduct of the judicial officer. If the complainant disagreed with the decision, the proper way to proceed was through a higher court.

The panel noted that the transcript indicated no evidence of bias, and on the second court date, the complainant expressly apologized for and withdrew his argument that there was a reasonable apprehension of bias. The panel noted that an argument that there was an allegation of a reasonable apprehension of bias was a legal issue about which a remedy could be sought in an appeal court.

The review panel accepted the findings of the subcommittee that there was nothing in the audio recording that would indicate the judge used an inappropriate tone, he acted like a "Supreme being", or the judge was showing anything other than respect for the complainant's arguments. The judge was respectful towards the complainant and listened patiently.

A

## APPENDIX A

### Case Summaries

---

The panel dismissed the allegations related to judicial decision-making and matters of law on the basis that they were outside the jurisdiction of the Council. The panel dismissed the allegations of misconduct on the basis that they were not supported by the court record. The file was closed.

#### ***CASE NO. 21-017/16 AND 21-018/16***

The complainant was a self-represented litigant who was charged criminally. He was acquitted of the charges. The complainant submitted a complaint about the pre-trial judge and another judge before whom he briefly appeared.

He alleged “lack of interest and abuses” during his court appearances. He also alleged that the judges were complicit with the Crown Attorney in not making full disclosure and that they allowed the matter to proceed to trial even though disclosure was not complete. He believed that some videotape evidence was not disclosed. He alleged that the judges helped a corporate entity to destroy evidence.

He stated that the Crown Attorney should be fined and held in contempt of court for not making disclosure.

#### ***CASE NO. 21-017/16***

This complaint was in relation to the judge who completed the judicial pre-trial and managed the issue of disclosure. The complainant appeared before the subject judge on four dates for pre-trial purposes.

The subcommittee reviewed the complainant’s letter and the transcripts of each of the appearances before the pre-trial judge. After concluding the investigation, the subcommittee provided a report to the review panel.

The review panel reviewed the letter from the complainant, the transcripts and the report from the subcommittee.

The review panel noted that at the first pre-trial appearance, there were resolution discussions, as well as discussions about disclosure. It was indicated by the Crown Attorney that there was either a video or audio statement for one of the witnesses that had

## APPENDIX A

# Case Summaries

---

not been disclosed to the complainant. The matter was then adjourned for the disclosure to be made and to set a date for trial.

The transcript showed that on the next court date, the matter was initially before the other judge complained of (see Case No. 21-018/16) who did not know anything about the disclosure issue so the matter was traversed to the court of the subject judge on the same day. Once the matter was before the subject judge, the complainant indicated that he still had not received audiotapes and the videotapes. The Crown Attorney who was present had no knowledge about the disclosure issue. The matter was therefore adjourned to come back before the subject judge for the issue of the missing disclosure. A date was also set for trial.

On the next date, the Crown Attorney with carriage of the file attended and advised the judge that full disclosure had been made. There was only one audio statement taken from a witness and that had been disclosed to the complainant on a CD; all other statements were typewritten and had been disclosed. The complainant then indicated that he was looking for a videotape recording created by his former employer where the incident was alleged to have occurred. The Crown Attorney indicated that she had no such video but she was prepared to ask the investigating officer to make some inquiries of the company and report back to the subject judge. The matter was therefore adjourned for that purpose. On the next court date, the judge was informed that inquiries had been made and there was no video because the main interaction occurred in a closed-door meeting. The trial date was then confirmed.

The panel noted that the judge was thorough in ensuring that full disclosure had been made before the trial date was confirmed. The panel observed that the judge case-managed the matter as he was required to do. On occasion, he was firm but fair with the complainant who was insisting on receiving disclosure which did not appear to exist.

The panel noted that the determination of the judge that disclosure appeared to be complete and his decision to schedule the matter for trial were matters of judicial decision-making outside the jurisdiction of the Council. The Council's jurisdiction is limited to conduct. If an error occurred with those decisions, the proper way to proceed was through remedies in the courts.

The panel noted that the complainant queried whether there was a conflict of interest because a manager in the company where the complainant had worked had the same

A

## APPENDIX A

### Case Summaries

---

last name as the judge. The panel noted that the transcript showed that the complainant did not raise this concern before the judge. The panel observed that the subcommittee reported that the last name of the manager and the judge was a common name and there was no direct basis from which to infer a possible conflict of interest.

The review panel dismissed this complaint as the allegations of misconduct were not supported by the evidence. The file was closed.

#### **CASE NO. 21-018/16**

As part of their investigation of the complaint about this judge, the complaint subcommittee ordered and reviewed the transcript of the one appearance before this judge. When they concluded their investigation, they submitted a report to a review panel.

The review panel reviewed the letter of complaint, the transcript of the appearance before the judge and the subcommittee's report.

The panel observed that the transcript showed that when the issue of disclosure was raised before the judge, as he was not familiar with what had transpired at the judicial pre-trial with respect to disclosure, he had the matter transferred to the court in which the pre-trial judge was sitting. The subject judge had no further dealings with this matter.

The panel dismissed the complaint as the allegations were not supported by the court record and closed the file.

#### **CASE NO. 21-019/16**

The complainant appeared before the judge on a charge of criminal harassment. He was found guilty after the trial. As required by the *Criminal Code*, the judge imposed a 10 year firearms prohibition order but he did not order that the accused provide a DNA sample and he waived the victim fine surcharge.

The complainant alleged that he was not treated fairly in court because he could not find employment after this case as a result of potential employers doing background checks which revealed the firearms prohibition order. He alleged that the judge was biased in his decision and that the judge did not believe his evidence because of the age difference

## APPENDIX A

# Case Summaries

---

between him and the victim of the criminal harassment. He also alleged that the judge said: “I am not taking your statement in court because of the age difference”. He further alleged that the entire process and decision were unethical.

He requested that his case be reviewed so that the charge could be dismissed and his criminal record cleared.

Finally, he alleged that the police officers deceived the court. He said he had complained to their governing body and he also complained against the Crown Attorney who, he alleged, withheld some relevant evidence.

The complaint subcommittee reviewed the complaint letter, and ordered and reviewed the transcript of the submissions and the judge’s Reasons for Decision and Reasons for Sentence. After the subcommittee concluded the investigation, it submitted a report to a review panel.

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

The review panel accepted the findings of the subcommittee that the allegations of bias were not supported by the court record. The panel noted that in order to look at the allegations of bias in terms of age difference, the subcommittee had reviewed all of the facts as found by the trial judge. The panel observed that both the complainant and the victim were attending university in the same program, and the judge found that the complainant had contact with the victim notwithstanding that he was warned by the campus police to stay away from the victim and not to communicate with her.

The review panel noted that there was only one reference to age in the Reasons for Judgment and it was only one fact among many that was considered by the judge. The panel accepted the findings of the subcommittee that there was no bias exhibited by the judge because of the complainant’s age.

The panel considered its jurisdiction and concluded that the concerns raised by the complainant in his letter related to his disagreement with the judge’s decision to find him guilty and the firearms prohibition order that resulted. The panel noted that the decision of the judge was a matter of judicial decision-making, not 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

## APPENDIX A

# Case Summaries

---

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.

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

### **CASE NO. 21-020/16**

The complainant was convicted by the judge of one count of assault and acquitted of two other charges. The complainant filed a wide-ranging complaint including allegations that her trial was unfair, that she was discriminated against due to her disabilities, and that she was wrongfully convicted. Ultimately, the complainant wanted "...a new, fair, just and lawful trial."

Her allegations included the following:

1. The court refused to accommodate the complainant's disabilities when requested to do so;
2. The judge prevented the complainant from defending herself by refusing to allow her to address one of the charges, to present evidence, and to make closing submissions; and
3. The judge appeared to fall asleep during the trial.

The complaint subcommittee read the letter from the complainant and ordered and read the transcript of the proceeding. After the investigation was completed, the subcommittee provided a report to a review panel.

The review panel reviewed the complainant's letter, the subcommittee's report and excerpts of the transcript from the trial. The panel made the following determinations.

1. Discrimination based on disability

The review panel accepted the findings of the complaint subcommittee that the transcript did not support the allegations that the court refused to accommodate her physical disabilities and that her disabilities left her unable to properly defend



## APPENDIX A

# Case Summaries

---

herself. The panel observed from the excerpts of the transcript that at the start of the trial the court clerk notified the trial judge that the complainant had special needs and had asked to have the court provide a number of items including an easel, a television, and had asked permission to wear her sunglasses and hat during the trial. When the trial judge raised the issue with the complainant, she asked only for permission to wear her sunglasses. The trial judge gave her permission to do so.

The review panel observed that the excerpts of the transcript demonstrated that the judge was alive to the complainant's disabilities and did his best to accommodate her needs at trial. When the complainant mentioned that she had difficulty standing, the trial judge allowed her to sit at counsel table when examining witnesses and addressing the court. As the trial unfolded, the judge asked the Crown Attorney to assist the complainant in showing documents to witnesses and dealing with exhibits in order to allow her to remain seated.

Similarly, the review panel noted that the subcommittee reported that the transcript demonstrated that the complainant understood the trial process, questioned witnesses, interjected to clarify points of evidence, and responded to issues raised by the court and Crown counsel. The review panel accepted the findings of the subcommittee that there was no support for the complainant's allegation that her disabilities left her unable to properly defend herself.

### 2. The judge's management of the trial

The complainant alleged that the trial judge prevented her from defending herself by, amongst other things, refusing to allow her to enter exhibits, to make closing arguments, and, to defend the assault charge by telling her "it's too late" as he had "made up his mind already".

The review panel observed that the subcommittee found that none of these allegations was borne out by the transcript. The subcommittee found that the transcript showed that the judge invited the complainant to make closing submissions and she did so.

When the complainant asked whether a surveillance video that had been provided in disclosure and discussed at trial should be filed as an exhibit, the trial judge said no. The panel noted that the judge's decision on the admissibility of evidence was

## APPENDIX A

### Case Summaries

a matter of judicial decision-making outside of the jurisdiction of the Council, not a matter of 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 allegations that do not fall within its jurisdiction.

The panel found that the transcript showed that while the judge spoke the words “it’s too late”, he did so when the complainant interrupted him during reasons for judgment and asked for permission to address the fail to appear charge. After explaining it was “too late” to address the issue, the trial judge explained he was acquitting the complainant of that charge. The panel noted that the subcommittee found no evidence in the transcript to support the allegation that the judge said, “I have made up my mind already”; nor did the subcommittee find any evidence to support the allegation that he appeared to do so before giving his reasons for judgment.

#### 3. The allegation that the judge was “resting or napping during the trial”

The review panel noted that the subcommittee found that the transcript indicated that the trial judge was engaged throughout this trial, ruled on objections as appropriate, and interjected on a number of occasions to describe the actions of witnesses and the complainant for the record. The review panel agreed with the findings of the subcommittee that there was nothing to suggest that trial judge was anything other than alert and attentive during this short trial.

The review panel dismissed the complaint as the allegations of judicial misconduct were unsupported by the evidence and the allegations with respect to the violation of the complainant’s legal rights, the assessment of the evidence, the correctness of the decisions made by the judge, and the outcome in the case were outside the jurisdiction of the Council.

### **CASE NO. 21-021/16**

The complainant appeared before the subject judge for a tax evasion trial under the *Income Tax Act*. A trial book of exhibits was filed on consent, as was an agreed statement of facts. The complainant’s “tax preparer” testified against the complainant as did a Canada

## APPENDIX A

# Case Summaries

Revenue Agency (CRA) investigator. The complainant testified in his own defence. He was found guilty and was sentenced to a fine equal to 100% of the tax evaded.

The complainant alleged in his letter that he was falsely accused of tax evasion. In essence, he alleged he did not commit any offence but his tax preparer was dishonest. He also alleged that the judge was biased on every point and thereby brought about a miscarriage of justice. He further alleged that the judge's findings were contrary to some of the evidence, his lawyer acted without his instructions when agreeing to certain facts, and CRA withheld evidence. He said that new evidence showed that some of the witnesses colluded.

The complainant alleged that:

- 1) The case had been abandoned when the judge “decided” to preside over the case. He claimed that his lawyer told him there would be no trial. His lawyer and the CRA resolved everything and he was just going before the judge as the judge wanted to hear his side of the story. The complainant alleged that his lawyer told him it was not a trial;
- 2) The judge suggested that the lawyers came up with an agreed statement of facts which was then prepared and sent to the judge without the complainant's knowledge or consent. Further, he alleged that his lawyer falsified the statement of facts. He said that he only learned about the statement of facts at a later date;
- 3) The judge was “biased, without conscience, care or facts” in making numerous findings of fact in this case and the complainant said that his trial lawyer was in possession of evidence to refute those findings. He also stated that some of those findings were contrary to some of the evidence called;
- 4) He also alleged that the judge suggested to the Crown Attorney that the complainant should go to jail. The complainant alleged that the judge's suggestion of jail was vexatious and showed the judge's malice of thought in misapprehending some of the evidence, and
- 5) When the Crown Attorney submitted that the complainant made more money than anyone in the courtroom, the judge became infuriated and that was reflected in the way he decided the case and the way he delivered his judgment.

## APPENDIX A

# Case Summaries

---

The complainant requested a thorough investigation of the actions of the subject judge because he believed he was denied justice and sought a reversal of the conviction, finding out the identity of the tax preparer, a thorough investigation by the RCMP, immediate payment of all taxes back to the complainant, the processing of tax returns, abandonment of all charges, and the “prosecution of all the perpetrators and participants and Tax scammers for perjury.”

The subcommittee reviewed the correspondence from the complainant and ordered and reviewed the trial transcripts. One subcommittee member listened to portions of the audio recordings of the proceedings. When the subcommittee concluded its investigation, it submitted a report to a review panel.

The review panel reviewed the complainant’s letter, the subcommittee’s report and excerpts of some of the transcripts. The panel noted that the Council has no jurisdiction to grant the remedies requested by the complainant, including his requests for a reversal of the conviction or granting a new trial, investigation of the facts, and granting him a pardon or prosecution of persons. The Council’s jurisdiction is limited to complaints about the conduct of a judge.

The panel accepted the finding of the subcommittee that the judge was polite throughout the entire proceedings. There was no evidence to support the allegation that at one point he became infuriated.

The subcommittee found that the allegations that the complainant did not know that he was going to trial, that he was forced into a trial, that the judge took over an abandoned case or that he did not know of agreed facts were being presented to the Court were not supported by the court record. The subcommittee reported that at the outset of the matter, the Crown Attorney stated, “Your Honour, in respect to this matter I’m not sure if it’s noted in the information, the Crown’s proceeding summarily and this will be a trial.” The Crown Attorney went on to state that he and defence counsel had agreed to certain facts, that there was no issue regarding the amount of tax not paid, that they had agreed to use trial books and provide them to the Court and, given their agreements, they would not need four days for trial. The complainant was present during all of these comments.

With respect to the allegation that the facts were sent by counsel to the judge without the complainant’s knowledge, the transcript showed that on the first day of trial in the presence of the complainant, the judge indicated: “Just before the next witness, I just

## APPENDIX A

# Case Summaries

ask – I assume that the agreed statement of facts on somebody’s computer and since I store a lot of my notes and some documents electronically, I wonder if somebody would be kind enough to send it to me electronically at that address. Any objection?”. There was no objection.

The complaint subcommittee reported to the review panel that they found nothing in the transcripts or audio recordings that supported the allegations that the judge was biased, or without conscience or care with respect to findings of facts. The review panel accepted the subcommittee’s findings that the transcripts and the reasons for judgment showed that the judge was attentive to the evidence. The subcommittee reported that the findings that he made were made based on the evidence and the agreed facts which the judge reviewed and analyzed and upon which he made findings of credibility and of fact. The review panel noted that the allegation that the judge erred in the findings that were made was a matter of judicial decision-making, 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 discretion to change a judge’s decision or to act on allegations that do not fall within its jurisdiction.

The panel observed that the allegations that the complainant’s counsel did not call certain evidence, or that new evidence had emerged were matters outside of the scope of Council’s jurisdiction.

With respect to the allegation that the judge made a comment about jail that demonstrated the judge was vexatious and revealed “malice of thought”, the review panel noted that the transcript showed that, upon finding the complainant guilty, the judge asked counsel to advise of him of their sentencing positions in order to be aware of the range being proposed. The judge then indicated that, since the prosecution was seeking a fine and not jail, the Court should be aware of the complainant’s financial position and that materials be presented to the Court. The panel found nothing in the transcript of the sentencing submissions to support the allegation that the judge suggested that the Crown Attorney seek jail in this case. The transcript indicated that in imposing sentence, the judge commented strongly on the complainant’s conduct which the judge considered, among other things, unconscionable, wilful and devious. The panel observed that these were remarks made by the judge in the context of his reasons for deciding to impose a fine equivalent to 100% of the tax evaded. The panel noted that this was a matter of judicial decision-making outside the jurisdiction of the Council.

## APPENDIX A

# Case Summaries

---

As indicated above, the review panel concluded that the allegations of misconduct were unfounded. The other allegations and remedies sought were outside of the Council's jurisdiction. The file was closed.

### **CASE NO. 22-001/16**

The residence of the complainant was searched for controlled substances and proceeds of crime pursuant to s.11 of the *Controlled Drugs and Substances Act* by virtue of a search warrant that was signed by the subject judge. The complainant stated that the search proved to be futile.

In his letter of complaint to the Council, the complainant alleged that the granting of the search warrant by the judge amounted to judicial misconduct. He alleged that the warrant was granted without proper and sufficient verification to establish the overall credibility of the Information to Obtain the warrant. He also alleged that the judge failed in his due diligence in relation to ensuring that the reasonable and probable grounds to search were established. He alleged that the information provided by the police to obtain the warrant was neither credible nor corroborated.

The complainant also expressed concerns as to how the search warrant was executed by the police. He said that the execution of the search warrant traumatized his children and caused damage to his personal property that he had to pay for, all of which has lead him to lose confidence in the justice system.

Finally, he alleged that the subject judge issued a search warrant for a second property and the complainant believed that there was a discrepancy in the two signatures on the warrants.

The complaint subcommittee read the letter from the complainant and the supporting materials that the complainant enclosed with his complaint. After completing its investigation, the subcommittee reported to the review panel.

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

The panel noted that the allegations about the manner in which the police executed the warrant were outside the jurisdiction of the Council. The Council's legal authority is limited to complaints about the conduct of judges. The complainant was informed that the Office of

## APPENDIX A

# Case Summaries

the Independent Police Review Director (OIPRD) is an arms-length agency of the Ontario Ministry of the Attorney General that can investigate complaints against Ontario's police.

With respect to the allegations about the warrants, the review panel observed that when a judge reviews an Information to Obtain signed by the affiant (the person who swore the Affidavit), he or she decides whether reasonable and probable grounds are present to justify the granting of the search warrant. The panel noted that in doing so, a judge is exercising his or her judicial discretion in deciding to issue the search warrant. Judicial decision-making does not fall within the jurisdiction of the Ontario Judicial Council. 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. If a person seeks to challenge the validity or legality of a search warrant, the proper way to proceed is through remedies in the courts.

The panel accepted the findings of the subcommittee that the signatures on the warrant appeared to be made by the same person. The panel was of the view that if the complainant sought to challenge the legality of the warrant on the basis of the appearance of the signatures, he would need to pursue his remedies, if any, through the courts.

The review panel concluded that this complaint was outside the jurisdiction of the Council, dismissed the complaint and closed the file.

### **CASE NO. 22-003/16**

The complainant wrote a letter of complaint to the Council arising from comments made in the decision rendered by a judge acquitting an accused of criminal charges that included charges of sexual assault.

The complainant expressed her view that the judge's decision had a harmful impact on the public's faith and trust in the judicial system. She alleged that the comments revealed significant bias on the part of the judge and an utter failure to enhance equality and a sense of inclusiveness in the justice system.

The complainant also said that the comments by the judge were contrary to the fundamental objectives of the *Criminal Rules of the Ontario Court of Justice*. She referred

## APPENDIX A

### Case Summaries

---

to particular comments that the judge made about the female witnesses. She alleged that the judge overstepped his role when adjudicating the credibility of the complainants as witnesses. She alleged that the judge imputed malicious purposes to the complainants to explain their inconsistencies.

She alleged that the judge sent a harmful message to sexual assault survivors. She alleged that the judge's statements would likely have the effect of deterring other sexual assault survivors from coming forward and filing charges with the police.

She also alleged that the judge ignored social evidence about sexual assault victims. She concluded that the judge breached the public's trust in the impartiality of the legal system by releasing a biased judgment informed by harmful stereotypes about victims of sexual assault.

The subcommittee reviewed the letter of complaint and the decision issued by the judge. When the subcommittee completed its investigation, it provided a report to a review panel.

The review panel reviewed the correspondence received from the complainant, the Reasons for Judgment issued by the judge, and the report from the subcommittee.

The review panel observed the particular passages referred to by the complainant were taken out of their context. When the passages were read in the full context, it could be seen that there was no bias on the part of the judge.

With respect to findings made by the judge in relation to the witnesses, the review panel concluded that the comments were made by the judge in the course of assessing the truthfulness of witnesses who gave evidence before him and in making his decision in the case.

The panel noted that the preamble of the *Principles of Judicial Office* state that: "Judges must be free to perform their judicial duties without fear of reprisal or influence from any person, group, institution, or level of government". The *Commentaries on Judicial Conduct* (Canadian Judicial Council, 1991) state: "Judicial duty often requires a judge to make critical findings about the credibility or past conduct of a litigant or witness in a case before the court. Findings of that sort are an unfortunate but essential part of the trial process."

With respect to the allegation that the judge ignored social evidence about sexual assault victims, the panel noted that the judge had a duty to base his decision upon the evidence



## APPENDIX A

# Case Summaries

presented before him. There was no evidence put before him about social reality and sexual assault victims. The commentaries in the *Principles of Judicial Office* state:

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”.

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

The complainant alleged that the judge’s statements would likely have the effect of deterring other sexual assault survivors from coming forward and filing charges with the police. The review panel noted that a judge has a duty to make his or her decision based upon his or her assessment of the facts and interpretation and application of the law. If a party to a case is of the view that a decision made by a judge establishes a legal precedent that is incorrect, the way to proceed would be through an appeal.

The review panel concluded that in this case the allegations related to matters of judicial decision-making in the course of the judge’s duties, not judicial misconduct. Matters of judicial decision-making are outside of the jurisdiction of the Council. The Council has no discretion to act on complaints that do not fall within its jurisdiction. The *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 review panel dismissed the complaint on the basis that the complaint was outside of the jurisdiction of the Judicial Council and the allegations relating to the conduct of the judge were not supported by the evidence. As a result, the file was closed.

### **CASE NO. 22-004/16**

This complaint arose from a family court proceeding. The complainant was not a party but was a family member. She wrote expressing concerns about another family member who was a special needs adult. At issue in the litigation was whether their mother should be paying child support to the father for a child. There were three areas of concern within the letter of complaint:

1. There was an allegation that the special needs adult was discriminated against, and that there was a breach of privacy because the judge required that person’s income to be disclosed within the mother’s financial statement, as the person lived

## APPENDIX A

# Case Summaries

with her mother. The concern was that the person's personal information was inappropriately collected, disclosed, and used in a proceeding that did not involve/concern that person.

2. Another aspect of the complaint was that the judge was rude and impatient, particularly during one of the dates of the proceedings.
3. Also, it was alleged that the special needs adult was not acknowledged as an adult with a right to counsel. It was alleged that the person was not able to get the assistance of Duty Counsel on one of the proceedings dates, as Duty Counsel indicated that there was a conflict of interest. It was asserted that the person was denied legal advice.

The complaints subcommittee reviewed the letter of complaint and ordered and reviewed the relevant transcripts. A member of the subcommittee listened to the audio recording of the proceeding on the date when the complainant alleged the judge was rude. Following the investigation the subcommittee provided a report to a review panel.

The review panel reviewed the complainant's correspondence, and the subcommittee's report.

The subcommittee reported that the proceedings were before the subject judge over a total of four days. With respect to the concerns as listed above, the review panel accepted the findings of the subcommittee set out below and made the following determinations:

1. The transcript of the first appearance date showed that the judge asked the mother for an updated financial statement which was to include the special needs person's income if the mother was going to include that income as someone whose household expenses were covered by the mother. There were some exchanges between the mother and the judge about whether that information needed to be provided and ultimately the judge determined that it should be.

The transcript showed that at the second court appearance, the mother was not present but the income amount of the special needs adult was provided to the other party in the mother's financial statement. There was also mention that the special needs adult had some employment and it was unclear to the judge if that was included in the financial statement. An order was made for that income amount from employment to be included by the mother in her financial statement.

## APPENDIX A

# Case Summaries

The mother appeared on the third scheduled court appearance, as did the author of this complaint. The transcript showed that the complainant was permitted to sit in the courtroom at the Trial Management Conference in support of her mother. The court record showed that the complainant spoke up saying that she was there on behalf of the special needs adult and wondered why that person's income was relevant. The judge advised that it was because the mother was paying child support for a child and that dealing with extraordinary expenses required an understanding of her total income.

The review panel concluded that the issues related to disclosure of the employment and income of the special needs adult were matters of fact and law. The judge did not discriminate against the special needs adult but, rather, felt these inquiries were necessary to further the proceedings based on the judge's legal interpretation and application of the law. As these issues related to her interpretation of and application of the law, they were outside of the jurisdiction of the Council and this allegation was dismissed.

2. The transcript showed that there were a number of occasions where the complainant and her mother were told to sit down. The audio recording of the date was reviewed by the complaint subcommittee to assess the tone and context of these interactions. It was also noted that:
  - a. When the mother and the complainant arrived in court, along with members of the family, the judge stated "anyone who is not associated with this will wait outside... you can have one person in if you wish but we're not having an entire group". When the mother stated that she preferred the complainant to stay, the judge stated that the complainant could have a seat in the back or in the front row. The family was not all told to "get out" as alleged by the complainant. At another juncture of the proceeding, the judge stated to the mother "if you want your daughter to sit next to you, if that makes you feel better, that's fine, she can do that". The allegation that the complainant and the others were "kicked out" of the courtroom was dismissed by the review panel as unsupported by the evidence.
  - b. The transcript showed that the mother was told twice, early in the proceedings, in a stern tone, to sit down, and told by the judge that when the judge was finished speaking, the mother could then speak. The review panel accepted the

## APPENDIX A

# Case Summaries

---

subcommittee's report that this was not done in a fashion that raised any concern of misconduct. The subcommittee observed that the judge was going over the facts as the judge understood them to be and was merely trying to finish the summary without being interrupted before having the parties speak to the court. This review panel dismissed this allegation as unsupported by the evidence.

- c. The complaint subcommittee also reported to the review panel that at one juncture, the mother began to cry, and the complainant was allowed to speak up for her mother concerning the issue of child support and the judge then addressed the issue.
- d. As well, at a later point, there was a discussion about child support arrears and the mother was going to start talking about the apartment lease of the special needs adult. The judge told the mother to "stop". The subcommittee reported that she did so in a stern voice and went back to dealing with the issue of child support. In the review panel's view, this did not amount to misconduct and this allegation was dismissed.
- e. The complainant stated in her letter that she told the judge that the special needs adult's "personal information is being dragged through this case and that we would like to be present because we want to know if we need to hire a lawyer to protect [the special needs adult's name]'s interests." She alleged in her letter "we were still kicked out of the court." The review panel noted that the decision of the judge as to who should have legal representation was a matter of judicial decision-making outside the jurisdiction of the Council. As indicated above, the transcript showed that when the mother stated that she preferred to have the complainant stay in the courtroom, the judge stated that she could have a seat in the back or in the front row.
- f. Related to that point, the subcommittee reported that the transcript showed that near the end of the proceeding, the complainant indicated in court: "Yeah, I'm here on behalf of [the special needs adult's name] as a legal adult and somebody needs to speak for her, actually". The judge interrupted and stated "no, no, no, no, no". The complainant went on "Yes, she's a legal adult." The judge stated, "No, you have no status as an agent here under the Rules". The complainant went on to argue why the income of the special needs adult should not be

## APPENDIX A

### Case Summaries

considered. During the course of this discussion, the judge told the complainant to “sit down please” three times. The subcommittee reported that the judge said all of this in a very moderate tone and was measured in doing so. The review panel concluded that there was no misconduct and noted that the judge’s decision that the complainant could not appear as the legal agent was a matter of judicial decision-making outside of the jurisdiction of the Council.

- g. The subcommittee reported to the review panel that the court record showed that near the conclusion of the proceedings, the complainant sought to ask a question three times. The first two times, the judge calmly stated “please sit down”, and “would you please sit down”, respectively. On the third occasion, the judge entertained the question which was “do I need to get a lawyer for my disabled sister to be represented for her – on her behalf?” The transcript showed that the proceeding had been completed and the judge replied, “We’re finished. It’s done”. The complainant asked “so everything is like done... everything like financial is written out in the order?” The judge replied “everything is done”. The complainant then indicated “okay, fine”. All of this was done in a very even tone. The review panel found that there was no judicial misconduct within this exchange and dismissed this allegation. The review panel noted that the question of whether the daughter could have legal representation was a matter of decision-making, which is outside the jurisdiction of the Council. This allegation was dismissed by the review panel.
3. The subcommittee reported that the court record indicated that the self-represented parties were very unfocused in terms of their requests. The transcript of the date referred to by the complainant indicated that at one point, the judge stated that there was going to be a trial date set as “this is nonsense. This has gone on so long” but the judge then continued on in a patient tone and manner to assist the parties to resolve their issues, such that no trial was necessary. The subcommittee found no indication in the transcript or the audio recording that there was any judicial misconduct.

For the reasons noted, the review panel dismissed this complaint on the basis that there was no evidence of judicial misconduct and the allegations related to judicial decision-making were outside of the jurisdiction of the Council. The file was closed.

## APPENDIX A

### Case Summaries

---

#### **CASE NO. 22-006/16 AND 22-007/16**

This complaint arose from a *Provincial Offences Act* appeal. The complainant received a ticket for a red light camera infraction. The complainant's daughter, acting as his agent, attended court and entered a guilty plea on his behalf. The court imposed a fine.

The complainant, a retired lawyer, represented himself on an appeal. The appeal was dismissed. The complainant filed complaints against a judge who adjourned his appeal and a second judge, the one who heard and dismissed his appeal.

The complaints against both judges were primarily directed at the judges' decision-making. The complainant provided extensive background material, much of it unrelated to his case at hand, and was widely critical of the administration of justice in general and the court system and its participants in particular.

#### **CASE NO. 22-006/16**

The complainant appeared for his appeal and argued that he should receive a new trial because his daughter was pressured into entering a guilty plea on his behalf. The judge adjourned the appeal to allow the complainant to provide an affidavit from his daughter in support of that allegation. That brief court appearance gave rise to a number of allegations including the following:

- ◆ The judge had “caused disrepute and ridicule to the Court” and demonstrated a “get lost aide de camp” attitude during the hearing;
- ◆ The judge was biased in favour of the prosecution and allowed the prosecutor to control the proceedings;
- ◆ The judge and the prosecutor agreed that any plea induced by foul play is valid;
- ◆ The judge had not read the file, and did not know what the hearing was about, or understand the concept of due process; and
- ◆ The judge warned him that he could not succeed on appeal as he had entered a guilty plea in the trial court.

## APPENDIX A

# Case Summaries

The subcommittee read the correspondence and materials submitted by the complainant. The subcommittee ordered and reviewed the transcript of the appearance before the judge. After its investigation, the subcommittee provided a report to a review panel.

The review panel read the letters and materials submitted by the complainant, the transcript of the appearance before the judge and the report from the subcommittee.

The panel observed that the transcript showed that the judge treated the complainant fairly and with respect. After hearing from both parties, she concluded that in order for the complainant to fully advance his argument on appeal he would need to provide evidence from his daughter. She granted him an adjournment to obtain that evidence. The panel found nothing in the transcript to suggest that the judge showed a bias in favour of the prosecution or misunderstood the issues on appeal. The transcript showed that at no point did she tell the complainant that he could not succeed on appeal because he had entered a guilty plea in the trial court.

The panel noted that the judge's decision to adjourn the case and her assessment that an affidavit from the daughter would assist the complainant in putting forward his argument were matters of judicial decision-making, not matters 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 of the Judicial Council's jurisdiction.

The review panel dismissed this complaint on the basis that there was no evidence of judicial misconduct and the matters of judicial decision-making were outside the jurisdiction of the Council. The file was closed.

### **CASE NO. 22-007/16**

The complainant made a number of comments about the justice system, the prosecutors involved in his case, and alleged that the appeal judge had misrepresented the content of a transcript. He also alleged that he was denied due process, the appeal judge had "covered up" for the judge who adjourned the appeal, and both judges were "clearly unlearned in the law" and made "bogus corrupt decisions."

## APPENDIX A

### Case Summaries

---

The subcommittee read the correspondence and materials submitted by the complainant. The subcommittee ordered and reviewed the transcript of the appearance before the judge. After its investigation, the subcommittee provided a report to a review panel.

The review panel read the letters and materials submitted by the complainant, the transcript of the appearance before the judge and the report from the subcommittee.

The panel observed that the transcript showed that the appeal judge explained to the complainant that without evidence to support his allegation that the plea was entered under duress, his appeal could not succeed. He offered to adjourn the appeal a second time to allow the complainant to bring his daughter to court to testify as to whether she had acted under duress. The complainant refused the adjournment. The appeal was dismissed.

The panel observed that neither of the allegations about the appeal judge was supported by the record. During the hearing, the judge reviewed a transcript relied on by the complainant to suggest that the prosecution had failed to comply with a disclosure order. The judge rejected the complainant's interpretation of the transcript. He was entitled to do so. The panel noted that the judge's decision-making was outside the jurisdiction of the Council. 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 panel observed that the allegations of cover up, corrupt decision-making, and denial of due process were not supported by any evidence. As well, there was nothing to suggest that the appeal judge treated the complainant improperly or unfairly.

The panel concluded that there was no evidence to support the allegations of judicial misconduct against the appeal judge. The allegations directed at judicial decision-making were outside the Council's jurisdiction. The complaint was dismissed and the file was closed.

#### **CASE NO. 22-009/16 AND 22-010/16**

The complainant was a self-represented Respondent in a family court matter relating to the custody of his two children. Following a hearing some years prior to the complaint being filed, a week about time-sharing schedule was ordered.



## APPENDIX A

# Case Summaries

About three years later, one of the children stopped going with the complainant on the schedule as ordered. As a result, the complainant brought a contempt motion to compel compliance with the custody order. The first return of the contempt motion was before Justice B. Justice B preserved the shared custody arrangement and provided for counselling.

Subsequently, the contempt motion returned before Justice B for a case conference. Access to the father to one of the children was varied to two times per week.

The complainant brought a second contempt motion on the basis that the child was not attending at the reduced access schedule. The first return of this contempt motion was before Justice A. Justice A further modified the access schedule for the child and adjourned the second contempt motion to a date when it would be heard before Justice B, who had been the case management judge. On that day Justice B, in part, dismissed the complainant's contempt motion.

The complainant filed complaints about both judges. The subcommittee reviewed his correspondence and the transcripts of the proceedings before both judges.

### **CASE NO. 22-009/16**

The subcommittee reviewed the complainant's correspondence and the transcript of the proceeding before Justice A. One member of the subcommittee listened to the audio recording of the proceedings before the judge. After completing its investigation, the subcommittee provided a report to a review panel.

The review panel reviewed the correspondence from the complainant and the report from the subcommittee.

The allegations made by the complainant about Justice A are set out below:

1. *Justice A insisted that the complainant speak to Duty Counsel.*

The review panel noted that the judge's decision that the complainant should speak to Duty Counsel was a matter of judicial decision-making outside of the jurisdiction of the Council. The panel observed that after reviewing the transcript, the subcommittee found that the judge's request was appropriate given the complexity

## APPENDIX A

### Case Summaries

---

and seriousness of contempt proceedings. The subcommittee reported that the transcript showed that the judge was aware that access was an issue and wanted “to see what we can do to get this case back on track” until it could be placed before the case management judge, Justice B.

2. *The judge ignored the contempt motion and admonished the complainant about outstanding money he owed the Applicant arising from a cost order made previously.*

The panel observed that it is not judicial misconduct for a judge to find out from a person requesting court enforcement of an order whether that person is in compliance with a court order. The judge stated that day that “in order to utilize the system it means that you have to respect orders that are made.”

3. *The complainant stated that the judge’s behaviour toward him was discriminatory and that he was racially profiled by the judge on the basis that the judge appeared to be irritated that the complainant had brought the motion. The judge implied that taxpayer’s money was being wasted. The complainant believed that the judge viewed him in a stereotypical manner due to his ethnicity. The complainant described the stereotype as “generally associated with being abusive towards females.”*

The review panel accepted the subcommittee’s finding that a review of the transcript did not show any evidence to support the allegation that the judge’s behaviour toward the complainant was discriminatory or that the complainant was racially profiled.

4. *The complainant alleged that he was “scolded” by the judge for writing while the Applicant’s lawyer was speaking.*

The panel observed that the subcommittee found that the transcript showed that the judge stated: “... I’d like you to, actually, actively be listening, not simply preparing your response.” The panel concluded that this request by the judge did not amount to judicial misconduct. The subcommittee reported that it appeared from a review of the transcript that the judge noted that the other party respectfully listened to the complainant’s comments, and the judge was expressing the view that the complainant in turn should do the same, given the seriousness of the case and the involvement of their two children.

## APPENDIX A

### Case Summaries

---

5. *The complainant alleged that the judge believed every allegation made by the Applicant in the face of evidence to discredit these allegations.*

The panel noted that it is part of a judge's responsibility to consider and weigh evidence before the court. The panel observed that a judge's decisions in relation to credibility of witnesses and findings of fact relate to the exercise of judicial discretion made in the course of a judge's duties, not allegations of judicial misconduct. 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 of 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.

6. *The judge appeared to be disorganized from the outset.*

The panel observed that the subcommittee reported that its review of the transcript disclosed that initially the judge thought that there were competing contempt motions before the court. Within a few moments of the case being called, the matter was recessed, and upon resuming the judge stated that all of the materials that had been filed were reviewed. The subcommittee found no evidence of disorganization on the part of the judge that would amount to judicial misconduct.

7. *Many times the complainant felt the judge was talking down in a very condescending tone.*

The panel noted that the subcommittee reported that the transcript did not contain language consistent with the judge speaking to the complainant in a condescending manner. A subcommittee member listened to the audio tape of the proceeding. The panel accepted the finding of the subcommittee member that the audio recording did not support the allegation that the complainant was spoken to in a condescending manner by the judge. The member reported that the judge managed the case before the court in a firm and focused manner. The subcommittee observed that the transcript showed this case concerned a long-standing and high conflict

## APPENDIX A

### Case Summaries

---

custody dispute. The court record showed that the judge was concerned about the effect ongoing conflict was having on the children. The subcommittee member reported that the audio also revealed that the complainant and the other party were frustrated by all of the court processes they had been part of over a number of years. The subcommittee found that the judge demonstrated no improper conduct in addressing the issues before the court and attempting to prevent the parties from re-litigating the entire history of the case. The judge sought submissions to help fashion a plan that would protect the children from further conflict pending the return of the matter before the case management judge.

8. *The complainant alleged that he was a victim of gender bias.*

The panel accepted the subcommittee's finding that the review of the transcript did not in any way support this allegation.

9. *The complainant stated that the judge had already formulated a biased opinion of him and chose to adjourn the case to the case management judge on a later date.*

The panel observed that the subcommittee reported that the transcript did not reveal any evidence of bias on the part of the judge. The panel noted that the judge's decision to adjourn the case to the case management judge was a matter of judicial decision-making outside the jurisdiction of the Council. The panel observed that it was not unusual for a judge to adjourn a case to the case management judge in circumstances where that judge had been managing a difficult family law file on an ongoing basis.

10. *The complainant asserted that the judge gave preferential treatment to the Applicant because he observed the judge having a casual conversation with the Applicant's lawyer approximately two months after the proceeding had concluded.*

The panel noted that a casual conversation between the judge and the lawyer two-and-a-half months after the court proceeding did not support a finding that the judge gave preferential treatment to the Applicant; nor did having the conversation amount to judicial misconduct. The subcommittee found no evidence in the court record to support the allegation of preferential treatment of the Applicant or the Applicant's lawyer.

## APPENDIX A

### Case Summaries

---

11. *The judge was biased against him because before being appointed to the bench, the judge was counsel at a Children’s Aid Society. The complainant had filed complaints with the senior management at the Children’s Aid Society and the Human Rights Tribunal regarding numerous incidents of alleged discrimination and gender bias by Society workers. The complainant stated that as a result of those complaints, the legal department at the Children’s Aid Society was involved with the case and that CAS workers had to communicate with the complainant and that all communications with the complainant had to be vetted by their legal department. The complainant alleged that the judge was part of that legal department and that this may have created a conflict of interest. The complainant further believed that the judge “willfully neglected to disclose relevant and important information and [the judge’s] behaviour should therefore be assessed as ‘judicial misconduct’”.*

The panel observed that during the investigation, the subcommittee found no evidence or suggestion that the judge had any prior direct involvement with the complainant or knowledge of the complainant. The subcommittee reported that there was no indication that the complainant brought a motion before the judge seeking a recusal from the case.

The panel noted that a judge’s decision to sit on a case is a matter of judicial decision-making that is generally outside of the jurisdiction of the Council. 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 panel observed that there was no evidence that the judge’s decision involved abuse of office, bad faith, improper motive or analogous conduct that brought the decision within the Council’s jurisdiction.

The review panel concluded that there was no judicial misconduct. The panel observed that the subcommittee found from its review of the transcript that the judge appeared respectful, firm and appropriate throughout. The matters related to judicial decision-making were outside of the Council’s jurisdiction. For these reasons, the panel dismissed the complaint.

## APPENDIX A

# Case Summaries

### **CASE NO. 22-010/16**

When the complainant appeared before this judge, the judge dismissed the complainant's contempt motion. The complainant alleged that the decision rendered by the judge was illogical, discriminatory and sexist. He alleged:

1. The judge allowed the Applicant to file an affidavit that had been served late. The judge allowed the complainant to file his affidavit in response.
2. The judge ignored all of the "pejorative evidence" against the Applicant and instead chose to chastise the complainant for bringing the matter to court.
3. The judge, Justice B, was unduly influenced by and relied upon the decision of Justice A, who presided over the case earlier, multiple times during his oral decision, which the complainant described as a "rambling monologue justifying his decision."
4. His suspicions about the relationship between judges and lawyers were confirmed because the judge's tone during the court attendance changed from the tone of previous appearances. It was similar to the treatment he received from Justice A. He described that during prior appearances, the judge acted in an impartial manner, was sympathetic to the situation, very caring and genuinely made an attempt to resolve the issues with the best interests of the children in mind and was neutral in his approach.

The subcommittee reviewed the correspondence from the complainant and the transcript of proceedings before Justice B. After its investigation, the subcommittee provided a report to the review panel.

The review panel reviewed the correspondence from the complainant and the subcommittee's report.

The panel observed that the subcommittee reported that the transcript showed that in the context of giving his reasons for his decision, Justice B referred to the court attendance before Justice A. In his reasons, Justice B said "the motion returnable [before Justice A] is a perfect example of the [Respondent's] inflexibility and ... need to win."

The panel accepted the finding of the subcommittee that the transcript did not show any evidence that Justice B acted in a discriminatory or sexist manner. Justice B's reference

## APPENDIX A

# Case Summaries

---

to previous appearances, including the one before Justice A, was a consideration that he viewed to be relevant in forming his reasons for his decision. His reasons were part of his judicial-decision-making, which was a matter outside the jurisdiction of the Council.

The panel observed that the complainant requested that a Children’s Aid Society file pertaining to the family be reviewed to demonstrate how “ill-informed” the judge was in assessing the case. The panel noted that the manner in which the judge assessed the evidence before the court was a matter of judicial decision-making outside the jurisdiction of the Council.

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

### **CASE NO. 22-011/16**

The complainant wrote several letters to the Council with respect to a criminal court case. He indicated that he had been charged with various criminal offences. The complainant indicated that he had been found guilty of some charges and was acquitted of others. The complainant then appealed his conviction and sentence to the Court of Appeal of Ontario which dismissed his appeal. The complainant maintained his innocence throughout.

In his letters, the complainant alleged that a witness lied, and he disagreed with the judge’s decision to admit certain evidence, how he weighed the evidence, his decision that the case was proven beyond a reasonable doubt and the sentence. He asked for a further review of his court case. The Registrar wrote back to the complainant explaining that there appeared to be no allegations about judicial misconduct. He was referred to the Law Society Referral Service where he could obtain a half hour legal advice about his case. The complainant then wrote again and alleged that the judge was unfair, biased, not honourable and highly prejudicial. He provided no particulars to support those allegations. He repeated his disagreement with how the judge weighed the evidence. He alleged that the lawyer in his criminal case should have tried to stay the proceedings under the *Charter*.

## APPENDIX A

### Case Summaries

---

The subcommittee read the complainant's letters, and ordered and reviewed the reasons for judgment for the trial and appeal proceedings. After the investigation was completed, the subcommittee provided a report to a review panel.

The review panel reviewed the complainant's letters, the subcommittee's report and the reasons for judgment for the trial and appeal proceedings.

The review panel observed that the substance of the complaint, including the allegations of unfairness or bias, essentially related to the decision-making of the judge in this criminal court case. The panel determined that the allegations relating to the judge's decisions in the case, including the weighing of evidence, admission or exclusion of evidence and sentencing, were matters of judicial decision-making, rather than 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. If a person disagrees with a decision made by a judge and seeks to try to change it, the proper way to proceed is through remedies in the courts, such as an appeal. The panel noted that the Court of Appeal addressed these alleged errors and dismissed the appeal.

The review panel noted that complaints about how a lawyer conducts a case are not within Council's jurisdiction. The jurisdiction of the Council is limited to complaints about the conduct of judges.

The review panel dismissed this complaint on the basis that it was essentially a complaint about the decision-making of the judge which was outside the jurisdiction of the Council and in any event unsupported by the evidence. The file was closed.

#### **CASE NO. 22-012/16**

A complaint was received and assigned to a complaint subcommittee for investigation. The complainant raised allegations about the judge who presided over a criminal trial where the accused was found guilty of offences against her daughter. Before the investigation was completed, the Council was informed that the subject judge had retired from judicial office. As a result, the Council lost jurisdiction and this file was closed.



## APPENDIX A

# Case Summaries

### **CASE NO. 22-013/16**

The complainant wrote letters to Council with respect to a criminal court case relating to her deceased daughter. She indicated that her daughter was the victim of sexual offences. She indicated that a male person was criminally charged and found guilty by a different judge.

Her allegations included the following:

1. The judge, who was the subject of this complaint, altered the court transcript to remove the comments made in court as to why she recused herself as the trial judge for the court case. The complainant alleged that the judge's reasons for recusal were that she overheard a conversation that was taking place around her kitchen table with respect to the accused and the death of the complainant's daughter.
2. The judge, who was the subject of this complaint, recused herself from the court case.

The subcommittee read the letters from the complainant and ordered and reviewed the transcript of the proceeding. It further received confirmation from the Court Services manager that the judge was not provided with the transcript by the certified transcriber and that the judge made no edits to the transcript. After the investigation was completed, the subcommittee provided a report to a review panel.

The review panel reviewed the complainant's letters, the subcommittee's report and the transcript of the proceeding. The panel made the following determinations.

1. Allegation relating to the altering or redaction of court transcripts

The review panel accepted the findings of the complaint subcommittee that the evidence did not indicate that the judge altered, or redacted information from, the court transcript relating to the reasons for her recusal from the court proceeding. The review panel observed that the complaint subcommittee received confirmation from the Court Services manager that the judge was not provided with the transcript by the certified transcriber and that the judge made no edits to the transcript.

The panel observed from the transcript that while the list of cases on the docket was being discussed, the judge indicated on the record that she wanted to speak to the defence counsel and the Crown Attorney in chambers about the case referred

## APPENDIX A

# Case Summaries

---

to by the complainant, before starting the case referred to by the complainant in her letter. The judge said on the record that the case was a matter from which she would need to recuse herself.

The review panel observed that the transcripts showed that after a recess occurred, when the accused (who was in custody) was brought into the courtroom, defence counsel said that she had briefly told him what was going on. The judge thanked counsel for meeting her in chambers and said that she did not realize until the matter was in the courtroom that she realized that she could not hear the matter. The panel observed that the judge provided no other reasons for her recusal from the court proceeding.

The panel observed that the transcript showed that the judge then recused herself from hearing it and the matter was traversed to another courtroom to be heard by a different judge.

The review panel dismissed the complaint that the transcript was altered or redacted by the judge, as this allegation was unsupported by the evidence.

2. The review panel dismissed the complaint relating to the judge's decision to recuse herself from the court proceeding as it is not within the jurisdiction of the Council. The panel concluded that the allegation that the judge recused herself is directed at the legal correctness of the decision made by her, rather than 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. If a person disagrees with a decision made by a judge and seeks to try to change it, the proper way to proceed is through remedies in the courts, such as an appeal.

The judge's decision to refrain from stating the reasons for her decision to recuse herself from the case on the record was a decision made in the exercise of her judicial discretion and was also outside the jurisdiction of the Council.

The review panel dismissed this complaint. The file was closed.

## APPENDIX A

# Case Summaries

### **CASE NO. 22-014/16**

The complainant wrote to the Council with respect to his appearance before the judge for a case conference on a motion to terminate a child support order and to fix the amount of arrears owed for child support. At the case conference, the judge determined that the support order had been terminated on an earlier court appearance. With respect to the motion to fix the amount of arrears, the judge concluded that the complainant's application materials did not set out the information needed to decide that issue. As a result, the judge struck the complainant's motion without awarding costs.

The complainant alleged that the judge treated him unfairly by rushing through the hearing, giving him only a limited opportunity to speak, by misapprehending the materials filed and then dismissing his motion without properly reviewing the facts of the case.

The subcommittee reviewed the complainant's letter, and ordered and reviewed the transcript and one member listened to the audio recording for the case conference proceedings. After the investigation was completed, the subcommittee provided a report to a review panel.

The review panel reviewed the complainant's letter, the subcommittee's report and the transcript for the case conference proceedings. The panel made the following determinations:

1. The panel determined that the judge dealt with the complainant's motion fairly. It noted that the judge began by explaining the process to both parties and gave them both an opportunity to consult with Duty Counsel. After hearing from the complainant and Duty Counsel, the judge recognized that the only outstanding issue was the complainant's request to fix his outstanding child support arrears at \$5,000.00. The panel noted that the judge explained to the complainant that in order to ask for a retroactive variation of the support order he would have to provide information regarding the time period of the variation and details of his income during that time period. The judge found that information was not properly before the court and, as a result, struck the motion. The panel determined that the allegation relating to the judge's decision to strike the motion was directed at the legal correctness of the decision made by the judge, rather than judicial conduct. The panel concluded that this was a decision made in the exercise of her judicial

## APPENDIX A

### Case Summaries

---

discretion and is outside the jurisdiction of the Council, and therefore dismissed this allegation. 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. If a person disagrees with a decision made by a judge and seeks to try to change it, the proper way to proceed is through remedies in the courts.

2. With respect to the allegations regarding the judge's conduct during the hearing, the panel noted that the review of the transcript and the audio recording showed that the judge was patient but firm with the complainant, directing him to address issues relevant on the case conference. Further, the panel noted that the judge allowed the complainant to explain his position after offering him the opportunity to consult with Duty Counsel. The panel determined that there was nothing in the record to support the allegation that the judge had predetermined the outcome of the hearing.
3. With respect to the complainant's allegation that, at the outset of the case conference, the trial judge inaccurately described the amount of contact he had with his children and was not aware that the complainant had received a termination of his support order on an earlier court appearance, the panel noted that the complainant brought both of these issues to the judge's attention during the case conference. The panel noted that this allegation related to how the judge assessed the facts before her. This was a matter of judicial decision-making outside the jurisdiction of the Council.

The review panel dismissed this complaint as the allegations about the conduct of the judge were unsupported by the court record and the allegations related to the judge's decision-making and how she assessed the evidence or applied the law were outside the jurisdiction of the Council. The file was closed.

#### **CASE NO. 22-015/16**

The complainant appeared before the judge on a criminal matter. He alleged that afterwards, the judge reviewed the transcript of the court proceedings and directed the transcriptionist to alter the written transcript of the sentencing hearing. The complainant

## APPENDIX A

# Case Summaries

alleged that the justice engaged in this behaviour to cover up his involvement in assisting the victim in this matter. He also alleged that the judge was hiding his behaviour from the Judicial Council.

The subcommittee read the letters received from the complainant and reviewed and compared the audiotape and transcript of the proceedings in question. The subcommittee members requested and received the form used by court staff to obtain the judge's approval to release the transcript. The subcommittee also asked Council staff to contact the supervisor of Court Services for further information about whether the judge had made any edits to the transcript. When the subcommittee finished its investigation, it provided a report to the review panel.

The review panel reviewed the letters from the complainant, the form used by court staff to obtain a judge's approval to release a transcript, the email communications from the supervisor of Court Services, and the report from the subcommittee.

The panel agreed with the findings of the subcommittee that the evidence did not support the allegation that the judge edited the transcript. The evidence showed that the judge signed the form, approving release of the transcript, without making any edits.

The review panel dismissed the complaint on the basis that it was not supported by the evidence. The file was closed.

### ***CASE NO. 22-027/17***

The complainant wrote a letter of complaint arising from comments made by a judge in his decision in a criminal law case that included charges of sexual assault. The accused was acquitted.

The complainant alleged that the judge made unnecessary didactic comments that served to perpetuate misogyny. He provided quotes from the decision in support of his allegation. He alleged that the judge had "some unfounded agenda" to protect the courts from false claims of sexual assault.

He questioned why the judge spent the overwhelming majority of his decision discussing the alleged deceitfulness of the complainants, yet nearly no time discussing the actions of the defendant. He also alleged that the judge's condescending treatment of the

## APPENDIX A

# Case Summaries

---

complainants would prevent more women from pursuing legal action following their own sexual assaults.

He also referred to an earlier decision in which the same judge acquitted an accused charged with sexual assault in which the judge referred to the credibility of the alleged victims.

He alleged that the judge had no firm understanding of behaviour following a sexual assault. The complainant expressed the view that until the judge demonstrates that he does, he should not preside over cases involving sexual crimes.

The subcommittee reviewed the letter of complaint and the two decisions of the judge referred to by the complainant. The subcommittee submitted a report to the review panel.

The review panel reviewed the letter from the complainant, the two decisions and the report from the subcommittee.

The panel noted that the passages that were quoted and referenced in the letter were taken out of their context. The panel's view was that the comments of the judge were made by him in the course of assessing the truthfulness of witnesses who gave evidence before him and in making his decision in the case. The decision indicated that the judge was calm, rational and dispassionate in his analysis of the evidence and drew his conclusions, in a thoughtful factual way, based upon the evidence before him.

The panel observed that there was didacticism in the judgment to the degree that it was instructional and informative. This was to be expected when a judge thoughtfully outlines his reasoning for his decision. The panel saw no indication whatsoever of misogyny. The comments of the judge did not reflect prejudice, hatred or contempt towards women.

The panel noted that the preamble of the *Principles of Judicial Office* state that: "Judges must be free to perform their judicial duties without fear of reprisal or influence from any person, group, institution, or level of government".

The *Commentaries on Judicial Conduct* (Canadian Judicial Council, 1991) state: "Judicial duty often requires a judge to make critical findings about the credibility or past conduct of a litigant or witness in a case before the court. Findings of that sort are an unfortunate but essential part of the trial process." The panel concluded that the comments made by the judge did not cross the threshold from decision-making into the realm of judicial

## APPENDIX A

# Case Summaries

---

misconduct. If a person is of the view that a judge has made errors in his or her reasons, the proper body to consider such arguments is an appellate court.

The panel observed that the complainant submitted no evidence in support of his allegation of an “unfounded agenda”. After reviewing the reasons issued by the judge, the panel found this allegation to be without merit.

The panel found no indication that the judge was using the case to warn the public of the danger of false sexual assault claims. His comments were focused on the evidence, witnesses and charges before him.

With respect to the allegation that the judge spent the majority of his decision on discussing the witnesses, the panel noted that the only evidence the judge had before him was the testimony of those witnesses. The panel observed that in the context of the evidence presented during this trial, it was understandable that the judge’s explanation would focus upon the testimony of the witnesses and the veracity of that testimony. Further, the panel noted that if a person believed that a judge has not properly assessed the evidence before him or her, the proper body to consider whether there has been an error is an appeal court.

The investigating subcommittee carefully reviewed the earlier decision referred to by the complainant in support of the allegation of judicial misconduct. The panel observed that a review of the decision showed that there were issues of credibility in relation the evidence given by the alleged victims and the evidence given by the accused. In the final analysis, the judge found that the accused was “entitled to the full benefit of the reasonable doubt that lingers after a full and careful examination of all the evidence”. The panel noted that the previous case had no bearing on this case and provided no evidence in support of a finding of judicial misconduct.

With respect to the allegations that the judge had no firm understanding of behaviour following a sexual assault, the subcommittee noted that a judge must base his or her decision upon the evidence presented in the courtroom.

The investigating subcommittee found no evidence of bias on the part of the judge.

The review panel dismissed the complaint on the basis that the allegations related to conduct were not supported by evidence and the concerns related to matters of judicial decision-making were outside of the jurisdiction of the Judicial Council.

---





---

**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.

# Principles of Judicial Office

---

## **PRINCIPLES OF JUDICIAL OFFICE**

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

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

*Commentaries:*

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

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

1.2 Judges have a duty to follow the law.

*Commentaries:*

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

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

*Commentaries:*

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

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

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

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

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

## APPENDIX B

# Principles of Judicial Office

---

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.