

ONTARIO JUDICIAL COUNCIL

CITATION: *Re Currie J*, 2026 OJC 1
DATE: 20260109

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

Concerning a Complaint about the Conduct of Justice Paul Currie (formerly Regional Senior Justice Paul Currie¹)

Before:

Justice Paul Rouleau, Chair
Court of Appeal for Ontario

Justice Christine Pirraglia,
Ontario Court of Justice

Ena Chadha,
Lawyer Member

Peter Woolstencroft,²
Community Member

Hearing Panel of the Ontario Judicial Council

¹ Justice Currie's term as Regional Senior Judge of the Central West Region of the Ontario Court of Justice ended on August 31, 2025.

² Peter Woolstencroft was appointed to the Hearing Panel by Chief Justice Nicklas to replace Jovica Palashevski, who resigned from the Ontario Judicial Council effective July 1, 2025.

Parties and Counsel

Justice Paul Currie, Self-represented

Erin Dann, Counsel Appointed by the Hearing Panel to Conduct the Cross-Examination of the Primary Witness

Gerald Chan and Alexandra Heine, Presenting Counsel

Daniel Goldbloom and Alexa Klein, Counsel for the Primary Witness

RULING REGARDING MATERIALS IN POSSESSION OF JUSTICE CURRIE

[1] In our interim ruling released on March 17, 2025, the hearing panel provided direction to Justice Currie and his former counsel, Mr. Brennan Smart, on the process to be followed should Justice Currie's counsel wish to cross-examine the primary witness on other sexual activity or to introduce into evidence private records relating to the primary witness. Mr. Smart subsequently advised that he would not be cross-examining the witness on this subject or adducing any such records.

[2] The week before the hearing was scheduled to commence, counsel appointed to cross-examine the primary witness, Erin Dann ("appointed counsel"), wrote to the Registrar seeking the hearing panel's direction regarding certain materials in Justice Currie's possession, which were given to her for purposes of using them in cross-examination of the primary witness. In appointed counsel's view, it was possible that these materials could be "records" for the purpose of s.

278.92 of the *Criminal Code*. However, one of the terms of the order appointing Ms. Dann specified that appointed counsel would not adduce or apply to adduce such records, further to the commitment made by Mr. Smart. Appointed counsel explained her understanding that Mr. Smart's commitment was based on the position that these materials were not "records". In light of the term of the order, and to avoid complications arising mid-hearing, appointed counsel sought the panel's direction on the appropriate process and procedure to be followed.

[3] Appointed counsel subsequently clarified that the materials in issue were twelve screenshots of text messages between Justice Currie and the primary witness.

[4] The hearing panel received submissions from appointed counsel, Justice Currie and presenting counsel on the issues of how to proceed and whether any of the screenshots should be considered "records" in which the primary witness has a reasonable expectation of privacy, as contemplated in s. 278.92 of the *Criminal Code*. By letter dated November 17, 2025, the hearing panel provided its ruling on these issues.

[5] Having determined that the majority of the screenshots should be considered private records, the hearing panel confirmed that an admissibility hearing should be held before the screenshots could be used in the cross-examination of the primary witness, in accordance with the hearing panel's interim

ruling of March 17, 2025. The hearing panel also provided direction on the process and timing for the admissibility hearing.

[6] On November 19, 2025, following an *in camera* admissibility hearing, the hearing panel rendered an oral decision allowing the use of all the text messages for the purposes of cross-examination of the primary witness, as supplemented by seven additional screenshots of text messages filed by counsel for the primary witness and excluding certain messages appointed counsel withdrew from the panel's consideration.

[7] The above rulings were rendered with reasons to follow. These are those reasons.

[8] We observe that, ultimately, appointed counsel relied on only three of the twelve screenshots in Justice Currie's possession during the cross-examination of the primary witness. Presenting counsel did not enter into evidence any of the text messages provided by Justice Currie or counsel for the primary witness during the hearing. Nevertheless, we consider it important to set out the detailed procedural history preceding our rulings, as well as the positions advanced by the parties and by counsel for the primary witness, in order to ensure a complete and accurate record.

[9] We further note that in preparing these reasons, we have balanced the public interest in transparency in the judicial complaints process with the primary witness's privacy interest in the text messages at issue. As stated above, the

hearing panel ruled that most of the text messages are records in which the primary witness has a reasonable expectation of privacy. Most of these messages were not introduced into evidence and therefore do not form part of the public record. Accordingly, to protect the primary witness's legitimate privacy interest in the messages that were not introduced into evidence, while preserving the public's interest in access to the hearing panel's reasons on this issue, we have not described the text messages in detail in these reasons.

I. BACKGROUND

1. Interim Ruling of March 17, 2025

[10] As discussed in our interim ruling of March 17, 2025, on February 10, 2025, presenting counsel filed a motion for directions on the proper procedure for pre-screening any evidence of other sexual activity or private records of the primary witness that Justice Currie may wish to lead in these proceedings. In seeking these directions, presenting counsel acknowledged that the *Criminal Code* regimes in ss. 276, 278.92, 278.93 and 278.94 for pre-screening of such evidence do not strictly apply to this proceeding. However, presenting counsel submitted that these procedures should apply in substance, though not in exact form.

[11] In taking this position, presenting counsel observed that the procedures that have been codified in the *Criminal Code* are in large part rooted in the common law, and that some form of pre-screening is consistent with the common law requirement of ensuring that evidence of "other sexual activity" does not engage

the “twin myths”, namely that a complainant: (i) is more likely to have consented to the sexual activity in question because the complainant had consented to other sexual activity; and (ii) is less worthy of belief because the complainant consented to other sexual activity: *R. v. Barton*, 2019 SCC 33, [2019] 2 S.C.R. 579, at paras. 59-60, 80; *R. v. J.J.*, 2022 SCC 28, [2022] 2 S.C.R. 3, at para. 74; *R. v. Seaboyer*, [1991] 2 S.C.R. 577.

[12] Similarly, presenting counsel submitted that some pre-screening of private records over which the primary witness has a reasonable expectation of privacy is necessary.

[13] In proposing a process for determining the admissibility of other sexual activity evidence, presenting counsel suggested that Justice Currie be required to bring a pre-hearing motion supported by an affidavit containing the particulars of any proposed cross-examination on prior sexual history. The matter would be heard *in camera* to determine admissibility and the primary witness would be entitled to appear and make submissions. The hearing panel would be guided by the provisions of s. 276 of the *Criminal Code* in determining admissibility.

[14] As for the admissibility of private records, presenting counsel proposed that Justice Currie be required to bring a mid-hearing motion and provide particulars of the proposed evidence in an *in-camera voir dire*, with the primary witness being entitled to appear and make submissions. The hearing panel would be guided by

the criteria set out in s. 278.92(2) and (3) of the *Criminal Code* in deciding the question of admissibility.

[15] Through his former counsel, Mr. Smart, Justice Currie did not object to the procedures being proposed by presenting counsel, though Mr. Smart commented that adopting such procedures could prolong matters and that the issues could be dealt with under the common law regime.

[16] At that stage, we did not know if counsel for Justice Currie intended to cross-examine the primary witness on other sexual activity, nor did we know if counsel for Justice Currie intended to introduce private records relating to the primary witness.

[17] In our ruling of March 17, 2025, we agreed with presenting counsel that some vetting of any proposed cross-examination on prior sexual history would be appropriate having regard to the substantive purposes underlying the regime in s. 276 of the *Criminal Code*. We also agreed that issues of relevance and probative value may arise if counsel for Justice Currie intended to introduce private records relating to the primary witness into evidence. However, in our view, any required vetting could be done in a somewhat less formalized manner than that proposed by presenting counsel.

[18] In our interim ruling of March 17, 2025, we gave the following direction to counsel for Justice Currie (at para. 77):

[T]o the extent that counsel for RSJ Currie proposes to cross-examine the primary witness on other sexual activity or proposes to introduce records in relation to which the primary witness has a reasonable expectation of privacy, counsel must give reasonable notice of the particulars of such proposed evidence in writing to presenting counsel and counsel for the primary witness. This notice is required so that any concerns about admissibility may be addressed by the panel in advance of such evidence being called or tendered at the hearing.

We further directed that any ruling could be revisited if circumstances were to change in the course of the primary witness's testimony.

[19] Also in our interim ruling, hearing dates were confirmed for April 14, 15, 24, 25 and June 4, 5, 6 and 27, 2025.

2. Position of Former Counsel for the Judge re ss. 276/278 Type Evidence

[20] Subsequently, Mr. Smart brought a motion to adjourn the hearing as a result of health issues affecting Justice Currie that prevented him from being able to effectively participate. The motion was heard on April 9, 2025. Presenting counsel did not oppose the adjournment request. The hearing panel agreed to adjourn the hearing and sought input from the parties on finding new hearing dates.

[21] In providing input on new dates, Mr. Smart advised the hearing panel that his assessment of how much time was required for the hearing had changed: he now expected that only six hearing days in total would be required. Mr. Smart explained that he had previously considered calling evidence that would "border on section 276/278 types of evidence", but he informed the hearing panel that he was "not going to introduce that".

[22] In correspondence from Mr. Smart to the hearing panel of June 13, 2025, Mr. Smart wrote: "RSJ Currie will not adduce s. 276/s.278 type evidence during the OJC Hearing in November so it is our position that the November 18-20, 22-26 [2025] dates set aside are adequate to complete the process."

[23] At a case management conference with the parties on June 27, 2025, the chair of the panel asked the parties if their expectation was still that the hearing would require six regular hearing days. The following exchange occurred:

MR. CHAN: It is from my perspective, and that is based in part on my friend's position that the defence is not going to adduce any 276 type or private-records type of evidence.

MR. SMART: Yes, and that is correct, Your Honour. It's a situation where I will not be calling that evidence on behalf of RSJ Currie. I believe six days is adequate. We've received some new disclosure, but none of that has changed my estimate with respect to the timing.

3. Appointment of Counsel to Conduct the Cross-examination of the Primary Witness

[24] Mr. Smart wrote to the Registrar on October 9, 2025, advising that Justice Currie had discharged him as legal counsel for the hearing scheduled to commence on November 18, 2025. Mr. Smart requested an appearance before the panel to confirm the above and to get off the record.

[25] A case management conference was accordingly arranged before the hearing panel on October 15, 2025. At this appearance, the hearing panel permitted Mr. Smart to be removed from the record upon Justice Currie confirming that he had discharged Mr. Smart as his counsel. At that time, Justice Currie

informed the hearing panel that he intended to appear on a self-represented basis in these proceedings.

[26] At the case management conference, the chair of the hearing panel raised the issue of appointing counsel to conduct the cross-examination of the primary witness, having regard to the nature of the allegations in the Notice of Hearing and Justice Currie's self-represented status. Having only learned at the case management conference that Justice Currie intended to proceed without counsel, presenting counsel sought an opportunity to consider their position on this issue.

[27] In correspondence to the Registrar dated October 21, 2025, presenting counsel advised that their position was that the hearing panel should appoint counsel to cross-examine the primary witness.

[28] In correspondence of the same date, Justice Currie advised that he did not oppose the appointment. He also confirmed that the existing time estimate for the hearing was appropriate.

[29] In correspondence to the parties on October 23, 2025, the hearing panel ordered that counsel be appointed to cross-examine the primary witness at the hearing and advised of the process for selecting counsel to be appointed. Justice Currie was asked to advise the Registrar if he had any counsel to propose for this purpose. Justice Currie did not propose any counsel.

[30] In further correspondence to the parties on October 27, 2025, the hearing panel set out proposed terms of the order appointing counsel, subject to receiving

any objections from Justice Currie or presenting counsel. The letter also included a list of experienced counsel who were available on the relevant hearing dates. Justice Currie was invited to indicate his preference of counsel from this list.

[31] Neither presenting counsel nor Justice Currie expressed any objection or concern about the terms of the order appointing counsel. By email dated October 29, 2025, Justice Currie advised that his preference for appointed counsel was Erin Dann.

[32] By order dated October 30, 2025, the hearing panel appointed Erin Dann to assist the hearing panel by conducting the cross-examination of the primary witness. One of the terms of the order of appointment states:

As committed to by Justice Currie's former counsel, appointed counsel will not adduce or apply to adduce any evidence that would be covered by ss. 276/278.92 of the *Criminal Code*.

4. Evidentiary Issue Raised by Appointed Counsel

[33] On November 11, 2025, appointed counsel wrote to the Registrar to advise that Justice Currie had in his possession material that he wished to rely on in cross-examination which, in her view, could constitute "records" for the purpose of s. 278.92 of the *Criminal Code*. According to appointed counsel, Justice Currie's former counsel had taken the view that these materials were not "records"; this was the basis for his commitment not to adduce any evidence that would be covered by s. 278.92.

[34] Appointed counsel requested the panel's direction on the appropriate procedure to follow, given the term of her appointment noted above, and her view that the materials were relevant and their probative value was not substantially outweighed by any prejudicial effects.

[35] In a responding letter of the same date, presenting counsel took the position that appointed counsel should provide detailed particulars of the materials to presenting counsel and counsel for the primary witness, to allow appointed counsel, presenting counsel and counsel for the primary witness to provide their position on the issue of relevance, probative value and prejudice in advance of the hearing. Presenting counsel proposed a schedule for exchanging written submissions and proposed that any outstanding issues be addressed *in camera* on the morning of the first day of the hearing.

[36] On November 11, the hearing panel approved the process proposed by presenting counsel,³ and invited Justice Currie and counsel for the primary witness to raise any concerns they might have about this process as soon as possible.

[37] On November 12, Justice Currie advised of his position that the issue should be addressed following the examination in-chief of the primary witness, so as not to undermine the effectiveness of the proposed cross-examination. Appointed counsel clarified that Justice Currie was not conceding that the

³ Subject to a minor variation related to the timing of submissions requested by appointed counsel.

materials constitute “records” as defined in the *Criminal Code*; in his view, given the content of the text messages, the primary witness has no reasonable expectation of privacy in them.

[38] On November 13, the hearing panel provided further directions in light of the concerns raised by Justice Currie. These directions included that the particulars of the materials and submissions about their nature and admissibility would only be exchanged among presenting counsel, appointed counsel and Justice Currie (*i.e.*, counsel for the primary witness and the primary witness would not be included in the exchange of particulars and submissions). The panel would rule as soon as possible on the preliminary question of whether the materials constitute “records” in which the primary witness has a reasonable expectation of privacy. The panel clarified that if any of the materials were found not to be private records, they could be referenced in cross-examination without the need for further screening. The panel directed that if any of the materials were determined to be private records, further directions would be provided on the process for determining admissibility, which would include receiving submissions from counsel for the primary witness.

[39] On November 13, appointed counsel filed particulars and submissions in respect of the materials in Justice Currie’s possession under seal. Consistent with the panel’s direction, the particulars and submissions were initially shared only with Justice Currie, presenting counsel and the hearing panel.

[40] On November 14, presenting counsel filed responding submissions. Appointed counsel filed reply submissions on the same date, and proposed that a copy of the materials at issue be provided to the hearing panel to assist in their determination of the threshold issue of whether the materials constitute “records”. Justice Currie subsequently agreed that presenting counsel could also be provided with a copy of the materials.⁴

[41] The materials originally in issue consisted of 12 screenshots of 48 distinct text messages⁵ exchanged between Justice Currie and the primary witness between April 7, 2023 and July 2025. These 12 screenshots were provided to presenting counsel on November 15.⁶

[42] In further submissions filed on November 16, presenting counsel took the position that the majority of these text messages are private records, and that an admissibility hearing should take place – with the primary witness’s participation –

⁴ On November 14, appointed counsel filed reply submissions, which were initially shared only with presenting counsel and the hearing panel. In those submissions, appointed counsel proposed to provide the hearing panel with a copy of the screenshots of the text messages in Justice Currie’s possession, noting that Justice Currie was not opposed to the hearing panel receiving a copy of the screenshots. Appointed counsel subsequently advised that should the hearing panel consider it appropriate, Justice Currie would not be opposed to presenting counsel receiving a copy of the screenshots on the undertaking not to share the screenshots or any information about them with the primary witness or her counsel, subject to any further orders of the panel.

⁵ Some messages appear in multiple screenshots. Duplicate messages have been excluded from the above total.

⁶ As confirmed in correspondence of November 14, presenting counsel undertook not to share the text messages or information about them with the primary witness or counsel for the primary witness, subject to any further order by the hearing panel. The text messages in issue were filed under seal on November 14, subject to further order of the hearing panel, and were provided to presenting counsel pursuant to their undertaking and the panel’s direction on November 15.

prior to her evidence-in-chief. Presenting counsel submitted that the primary witness should receive detailed particulars and be entitled to make submissions before the admissibility determination is made, in keeping with the hearing panel's interim ruling of March 17, 2025 and the Supreme Court's decision in *J.J.*

[43] Appointed counsel and Justice Currie were given an opportunity to respond to presenting counsel's position prior to the panel issuing a ruling on the preliminary issue of whether any of the text messages are "records" and on the timing and procedure to be followed for the admissibility hearing. Appointed counsel did not file additional submissions.

[44] In additional submissions provided by Justice Currie on November 16, he took the position that the only method the primary witness used to communicate with him was email [*sic* – texts]. According to Justice Currie, the messages therefore amount to an ongoing, though one-sided conversation, similar to face-to-face communications or live telephone communications, which are not "records" for the purpose of s. 278.92 of the *Criminal Code*.

[45] Justice Currie advised that if the panel were to find some text messages were "records" for the purpose of s. 278.92, he was not opposed to counsel for the primary witness and the primary witness receiving a copy of such text messages in anticipation of an admissibility hearing.

5. Hearing Panel's Rulings of November 17, 2025

[46] On November 17, we ruled on the following issues: which text messages are private records; the timing of the admissibility hearing (*i.e.*, before or after the primary witness's testimony in chief); and the procedures that would apply at the hearing, including the participation rights of the primary witness and her counsel. The panel gave its ruling with reasons to follow.

(a) Private records issue

[47] We ruled that screenshots 1, 2, 3, 5, 6, 8, 9, 10, 11 and 12 (using the numbering of the screenshots in the materials filed by appointed counsel) should be treated as private records for the purposes of the panel's interim ruling of March 17, 2025. These ten screenshots consist of a total of 42 distinct text messages exchanged between the primary witness and Justice Currie between April 7, 2023 and July 2025.

[48] We further ruled that screenshots 4 and 7 are not records in which the primary witness has a reasonable expectation of privacy, and thus they could be used in cross-examination without being the subject of the admissibility hearing. Accordingly, screenshots 4 and 7 were not disclosed to the primary witness in advance of her testimony.

(b) Timing and Procedure for the Admissibility Hearing

[49] We directed that the hearing into the admissibility of the materials in question would take place at the outset of the hearing on November 18, before

opening submissions. We further directed that the admissibility hearing would take place *in camera*, having regard to r. 19.1 of the OJC Procedures Document.

[50] We confirmed that presenting counsel, appointed counsel, and Justice Currie would be provided with an opportunity to make oral submissions, if any, to supplement the written submissions already received. The panel requested that presenting counsel, appointed counsel and Justice Currie be prepared to address any additional content and/or context missing from the various screenshots that might be relevant to their admissibility, including any translation issues. This direction reflected that two text messages in two of the screenshots were cut off or not fully visible, while one text message in another screenshot was in another language.

[51] We also gave directions concerning the participation rights of the primary witness at the admissibility hearing. The hearing panel directed presenting counsel to promptly provide counsel for the primary witness with the text messages determined to be records.⁷ In addition, counsel for the primary witness was provided with the written submissions filed by presenting and appointed counsel, with references to the content of screenshots 4 and 7 redacted. We directed that submissions from counsel for the primary witness could be provided orally and/or

⁷ As indicated above, at para. 45, Justice Currie was not opposed to counsel for the primary witness and the primary witness receiving copies of any text messages that were found by the hearing panel to be “records”.

in writing, with any written submissions to be provided by 9:00 a.m. on November 18.

6. Position of Counsel for the Primary Witness

[52] In accordance with our ruling of November 17, counsel for the primary witness filed written submissions on November 18. Counsel agreed that four of the 42 text messages in Justice Currie's possession were properly the subject of cross-examination but submitted that the hearing panel should not allow the remaining text messages to be put to the primary witness in cross-examination as the relevance and probative value of the balance of the text messages had not been established.

7. Hearing Panel Allows Primary Witness's Examination-in-Chief to Commence Prior to Conducting the Admissibility Hearing

[53] On the morning of November 18, rather than conducting an admissibility hearing, we directed the parties and counsel for the primary witness to discuss whether they could come to an agreement on the admissibility of any of the text messages in question, with a view to limiting the scope of argument required on this issue.

[54] Counsel for the primary witness requested that they and their client have the balance of the day to review the text messages that had been disclosed to them the day prior and to determine if there were other materials in the primary witness's possession that may be relevant to the issues in question. Counsel

asked for the opportunity to conduct this review prior to the primary witness commencing her evidence-in-chief.

[55] Having regard to scheduling considerations and the limited impact that the text messages could be expected to have on the primary witness's evidence-in-chief, we directed that the examination in-chief of the primary witness should commence, anticipating that the examination in-chief would not be completed before the end of the day.

8. Additional Text Messages Filed by the Primary Witness

[56] On the evening of November 18, counsel for the primary witness filed under seal seven screenshots of 33 distinct text messages between Justice Currie and the primary witness between February 14 and July 27, 2025. Counsel advised that these represented all of the additional text messages in the primary witness's possession, up to the final text message of July 27, 2025 that had been tendered by Justice Currie.

[57] Counsel for the primary witness noted that several of these text messages had not been included in the screenshots filed by Justice Currie, despite being part of the same message threads in the February 14 and July 27, 2025 time frame. As submitted by counsel for the primary witness, omitting these messages created a misleading impression of the exchanges between Justice Currie and the primary witness.

9. Admissibility Hearing

[58] At the outset of the second day of the hearing on November 19, the panel held an admissibility hearing. The admissibility hearing was conducted *in camera*. Justice Currie requested that the primary witness be excluded, given that she was in the midst of her examination in-chief, relying on the risk that the witness would tailor her evidence based on what she heard at the admissibility hearing.

[59] Counsel for the primary witness and presenting counsel both objected to the proposed exclusion of the primary witness, noting that it would be inconsistent with the screening regime described by the Supreme Court in *J.J.* to exclude the person with the asserted privacy interest in the records from the admissibility hearing. Presenting counsel pointed out that the primary witness had already received the text messages in issue, on consent of the parties.

[60] We ruled that the primary witness could remain during the admissibility hearing, relying on the analogy to the stage two process set out in s. 278.94 of the *Criminal Code* and described in *J.J.*, where the complainant is permitted to be present and make submissions.

[61] To identify which text messages the admissibility of which were in dispute, the hearing panel implemented a numbering system that corresponded to the screenshot number assigned by appointed counsel, with a sequential number for each message within the screenshot in chronological order (e.g., screenshot 1-1, 1-2, 1-3, etc.).

[62] There was agreement amongst presenting counsel, Justice Currie and counsel for the primary witness that the following text messages were admissible:

- screenshot 1-1 (text of April 7, 2023 at 2:29 p.m.)
- screenshot 2-3 and 2-4 (texts of December 15, 2023 at 12:18 p.m.)
- screenshot 3-4 (text of December 19, 2023 at 4:55 p.m.)⁸

[63] Appointed counsel confirmed that Justice Currie was no longer seeking to admit or rely on the following text messages:

- screenshot 3-5⁹ (text of December 20, 2023 at 7:49 a.m.)
- screenshot 6.1 and 6.2 (texts of May 18, 2024 at 7:05 p.m. and “Tuesday” at 9:31 p.m.)
- screenshot 12 (all messages on that screenshot)

[64] Appointed counsel confirmed that Justice Currie did not take any issue with the accuracy or authenticity of the additional messages provided by counsel for the primary witness, nor did he take any issue that they were in fact the full messages. Justice Currie did not oppose admitting these additional messages if the messages he sought to rely on were admitted.

[65] In explaining the proposed relevance of the text messages from 2023 and January 2024, appointed counsel clarified that Justice Currie is not alleging recent

⁸ Note: In oral argument at the hearing, this text was inadvertently misnumbered as screenshot 3-3 instead of 3-4.

⁹ Note: In oral argument at the hearing, this text was inadvertently misnumbered as screenshot 3-4 instead of 3-5.

fabrication in relation to the sexual assault allegation. Rather, Justice Currie's position is that the primary witness had a motive to repeat an earlier fabrication of sexual assault, which motive arose in January 2024 in the context of anticipated litigation between them. Justice Currie's position is that the change in tone between the text messages sent by the primary witness to Justice Currie in December 2023 and those sent in January 2024 is relevant for the purpose of challenging the primary witness's explanation in her evidence-in-chief for why, after initially declining to participate in the Judicial Council investigation, she agreed to do so.

[66] Appointed counsel also explained that the 2025 messages were relevant to rebut or impeach the primary witness in relation to statements she made to the Judicial Council and in filings made in an ongoing Superior Court proceeding to the effect that she remains terrified of Justice Currie, and that she has ongoing fear as a result of his threatening behaviour.

[67] Counsel for the primary witness took the position that, apart from the messages noted at para. 62 above, the admissibility of which was not in dispute, Justice Currie had not met the burden of showing that these "deeply personal communications have significant probative value that substantially outweighs their prejudice."

[68] Counsel for the primary witness submitted that there were significant gaps in the materials that Justice Currie had provided, which created a misleading

picture of the overall conversations between him and the primary witness. The additional screenshots of text messages in the primary witness's possession included the primary witness's continued expressions of care and concern for Justice Currie after January 2024, as well as references to the conduct underlying the allegations in the Notice of Hearing. Counsel for the primary witness also noted that part of the text message in screenshot 1-3 is cut off, which makes it difficult to assess its probative value.

[69] With respect to the balance of the messages, counsel for the primary witness acknowledged that challenging the primary witness on why she came forward with the allegations was the proper subject of cross-examination, but submitted that the alleged motive to fabricate was not logically coherent and the alleged motive to repeat an earlier fabrication was not a relevant basis for cross-examination. Counsel further noted that the notion that the primary witness would want to have some communication with Justice Currie, whether she was terrified of him or not, had no impeachment value without invoking myths and stereotypes about how complainants of sexual assault are supposed to respond.

[70] Presenting counsel adopted a similar position to that advanced by counsel for the primary witness. Presenting counsel further submitted that, insofar as the 2025 text messages were tendered to impeach statements made by the primary witness in court filings submitted in October 2024 or during her April 2024 interview with the Judicial Council regarding her alleged ongoing fear of Justice Currie, the

messages were not relevant or admissible for that purpose given the temporal gap. The 2024 statements concerning the primary witness's fear reflected her state of mind at the time, and the 2025 text messages did not address or refer to her state of mind in 2024.

[71] With respect to the additional text messages provided by counsel for the primary witness, counsel for the primary witness and presenting counsel agreed that if the hearing panel ruled that the 2025 texts relied on by Justice Currie were admissible, the additional text messages could be admitted as well, subject to any redactions that might be agreed upon.

[72] After considering the submissions of counsel, we gave the following ruling on admissibility, with reasons to follow:

The Panel has carefully considered the submissions of the parties, and we have decided to allow the use of all of the texts for purposes of cross-examination, other than those that have been withdrawn by Ms. Dann in her submissions, subject, of course, to weight - and that can be addressed in final submissions - and on the understanding that, in any use, Counsel remains cautious and mindful throughout the process that they are not to be used for the purpose of advancing or reinforcing stereotypical myths about how victims ... are expected to react or to act.

[73] We further confirmed that the texts relied upon by Justice Currie would be supplemented, as agreed by the parties, by the additional texts provided by counsel for the primary witness.

II. REASONS FOR OUR RULINGS

1. Analytical Framework

[74] In determining whether the materials in issue constitute private records, and if so, their admissibility at the hearing, the panel saw fit to approach this issue having regard to the context of this proceeding. Unlike a criminal trial, where the accused's liberty interest and the protections of ss. 7 and 11(d) of the *Charter* are engaged, this hearing concerns allegations of judicial misconduct. The objective of this proceeding is not to adjudicate criminal liability. Rather, it is to assess whether Justice Currie conducted himself in a manner consistent with the high standards of integrity expected of a member of the judiciary, as described by the Supreme Court of Canada in *Therrien (Re)*, 2001 SCC 35, [2001] 2 S.C.R. 3, at paras. 108-112.

[75] Accordingly, while the statutory framework governing the admissibility of private records in a criminal trial provides useful guidance in respecting the legitimate privacy interest of a complainant while protecting the rights of an accused, its application in this proceeding must reflect the nature and purpose of the judicial complaints process, that is, to maintain public confidence in the judiciary and the administration of justice.

[76] In explaining this distinction with a criminal trial, the panel recognizes that findings of judicial misconduct based on the serious allegations in the Notice of Hearing in the present case could have a profound impact on Justice Currie's

career and reputation. Accordingly, the hearing panel has proceeded throughout on the basis that these proceedings require a very high standard of procedural fairness.

[77] At the same time, the hearing panel considers it consistent with its mandate to preserve public confidence to safeguard the privacy and dignity of a witness in the context of an allegation of sexual assault.¹⁰

[78] As a result, we determined that it would not be appropriate to incorporate in their entirety the process and evidentiary thresholds applicable in criminal trials.¹¹ This hearing is not meant to replicate a criminal trial; its purpose is to ensure judicial accountability in a manner that is fair, proportionate, and ensures public confidence in the judge, the judiciary, and the administration of justice generally. For this reason, while the panel has drawn guidance from the *Criminal Code* regime and relevant jurisprudence, we have applied those principles more flexibly, with due regard to the objectives and serious context of these proceedings as well as for the privacy interests of the primary witness.

¹⁰ The primary witness did not file the complaint to the Council; the complaint was filed by Justice Currie's former Chief Justice pursuant to s. 51.3(2) of the *Courts of Justice Act*.

¹¹ Neither Justice Currie, nor his former counsel, Mr. Smart, advanced the position that the procedural and evidentiary requirements applicable in criminal trials should be adopted in their entirety in determining these issues. To the contrary, as noted above, Mr. Smart indicated that the issues could be dealt with under the common law regime.

2. Ruling on whether the Text Messages are Private Records

[79] As explained by the Supreme Court majority in *J.J.*, at para. 71, a non-enumerated record, such as the screenshots of text messages with the primary witness that Justice Currie seeks to rely on:

...will be caught by the record screening regime if it contains information of an intimate and highly personal nature that is integral to the complainant's overall physical, psychological or emotional well-being. Such information will have implications for the complainant's dignity. This assessment considers the content and context of the record. Electronic communications are subject to this analysis like all forms of records.

[80] We considered Justice Currie's position that as the text messages were the only method the primary witness used to communicate with him, they should be considered analogous to a face-to-face or live telephone communication, which are not private records. However, the hearing panel observed that the Supreme Court majority in *J.J.*, at paras. 61-64, affirmed that electronic communications may qualify as private records and should be assessed based on their content and context to determine whether the complainant has a reasonable expectation of privacy in them.

[81] Having reviewed the screenshots that Justice Currie intends to rely on in cross-examination of the primary witness, the hearing panel accepted presenting counsel's position that two of the screenshots of text messages (labelled by

appointed counsel as 4 and 7)¹² do not constitute private records, either within the meaning of the *Criminal Code* provisions governing the screening of private records, or as contemplated in the hearing panel's ruling of March 17, 2025.

[82] In *J.J.*, at para. 139, the Supreme Court majority defined the purposes of the record screening regime in the following terms:

- (1) protecting the dignity, equality, and privacy interests of complainants;
- (2) recognizing the prevalence of sexual violence in order to promote society's interest in encouraging victims of sexual offences to come forward and seek treatment; and
- (3) promoting the truth-seeking function of trials, including by screening out prejudicial myths and stereotypes.

[83] We were satisfied that screenshots 4 and 7 do not engage any of these objectives. The content of the communications in these screenshots is not of a nature that implicates the primary witness's privacy or dignity, nor does it raise concerns about equality interests or the perpetuation of harmful stereotypes.

[84] The panel also accepted presenting counsel's submission that the remaining text communications are of a nature similar to the non-enumerated category of private records described in *J.J.*. The communications labelled by appointed counsel as screenshots 1, 2, 3, 5, 6, 8, 9, 10, 11, and 12, contain personal information including exchanges that may reveal aspects of the primary

¹² Note: these records are currently under seal, subject to having been shared with the hearing panel and presenting counsel for purposes of making this pre-hearing ruling.

witness's personal life, medical history, emotional state including in relation to the alleged assault and sexual assault, and/or interpersonal dynamics with Justice Currie.

[85] Such records engage privacy interests in a manner similar to that contemplated by the statutory regime, as they contain information of an intimate or highly personal nature that is integral to the primary witness's overall physical, psychological or emotional well-being and that has implications for her dignity: see *J.J.* at paras. 40-42 and 54-56. They were created in the context of a private, one-on-one conversation between the primary witness and Justice Currie, in circumstances that suggest that the witness expected these communications would not be shared: see *J.J.* at paras. 57-60.

[86] We acknowledge that two of the screenshots (5 and 8) on their face do not look like the type of communication that would typically engage a reasonable expectation of privacy within the meaning contemplated in *J.J.* The text messages in these screenshots are brief and lack any obvious disclosure of private or intimate information.

[87] However, we considered the direction in *J.J.*, at paras. 57-60, that courts should consider the context when assessing whether material engages a reasonable expectation of privacy. Factors such as the relationship between the parties to a communication and the purpose for which the information was shared may be relevant.

[88] We also consider that the texts that Justice Currie was seeking to adduce were presented in isolation, without any information about what other messages may have preceded or followed. In these circumstances, although the content may appear innocuous, the lack of surrounding context made it difficult to determine with certainty that the communications do not constitute a private record, particularly given the nature of the relationship between the judge and the primary witness.

[89] We further noted the guidance in *J.J.*, at para. 104, that where it is uncertain if the proposed evidence is a “record”, counsel should be instructed to bring an application; only where the judge is clearly satisfied that the proposed evidence does not amount to a “record” should the accused be directed not to do so. As we were not satisfied that screenshots 5 and 8 were clearly not “records”, we determined that these screenshots should be subject to the admissibility vetting contemplated in our ruling of March 17, 2025.¹³

3. Timing of the admissibility determination and scope of participation by the primary witness

[90] Justice Currie submitted that, if any of the text messages were considered private, the primary witness should only be permitted to make submissions about

¹³ We note that one text message at the bottom of Screenshot #4 is duplicated at the top of Screenshot #5. We also acknowledge that the first four texts on Screenshot #5 relate to a logistical issue that does not appear to engage a reasonable expectation of privacy. The last two texts in Screenshot #5 relate to the primary witness’s expression of upset or anger with Justice Currie. Given that the context for the full exchange is not clear, we directed that Screenshot #5 should be treated in its entirety as a private record for purposes of our directions given on March 17, 2025.

the admissibility of such text messages after completing her examination in-chief. Justice Currie agreed that in making those submissions, the primary witness and her counsel should receive a copy of the text messages in issue.

[91] Appointed counsel did not take a position on the issue of the timing of the admissibility determination.

[92] Presenting counsel contended that admissibility should be determined before the primary witness's examination in-chief, citing the hearing panel's interim ruling at para. 77 and the Supreme Court majority's decision in *J.J.*, at para. 85. Presenting counsel noted that the potential relevance of the messages had already crystallized, and clarified that their position leading up to the interim ruling that a mid-hearing application would be appropriate reflected the possibility that the relevance of a record might only become apparent during the primary witness's evidence.

[93] Regarding the timing of the admissibility hearing, the panel agreed with presenting counsel's submission that conducting the admissibility hearing prior to the primary witness's evidence-in-chief is consistent with our interim ruling and with the direction provided by the Supreme Court in *J.J.*, at paras. 85-86.

[94] With respect to Justice Currie's concern that conducting the admissibility hearing prior to the primary witness's evidence-in-chief would undermine the effectiveness of the cross-examination, the panel noted the following passage from *J.J.*, at para. 189: "The accused can impugn the credibility and reliability of the

complainant by suggesting that they tailored their evidence to fit what they learned in the application". In the present context, it would have been open to appointed counsel to suggest in cross-examination that the primary witness tailored her evidence after having reviewed the text messages that were deemed private. This consideration mitigates the concern raised, as it preserves the ability to challenge credibility while ensuring that the primary witness's privacy interests are addressed before her testimony begins.

[95] Regarding the panel's direction to disclose the full text messages to counsel for the primary witness prior to the admissibility hearing, the panel considered this approach was necessary to ensure fairness and to permit informed submissions on the admissibility issues. The text messages in question are short, and providing the primary witness and her counsel with only a summary risked misinterpretation of the content and the context of the messages. Full disclosure of the text messages that were deemed private would allow counsel for the primary witness to respond meaningfully to the issues of relevance, probative value and prejudice, particularly in the very compressed timeframe for receiving submissions.

[96] As noted, the admissibility hearing was not in fact conducted prior to the commencement of the primary witness's examination in-chief, given the panel's concern that the hearing proceed expeditiously and the agreement that the admissibility determination would be made prior to the completion of the primary witness's evidence-in-chief.

4. Admissibility

[97] As noted, we saw fit to allow the use of all of the text messages, other than those that appointed counsel advised were being withdrawn from the panel's consideration (see para. 63, above). We also ruled that the 2025 text messages provided by Justice Currie could be supplemented by those provided by counsel for the primary witness, as agreed by the parties.

[98] In arriving at this ruling, we considered the submissions of appointed counsel, Justice Currie, counsel for the primary witness, and presenting counsel, as well as the principles articulated by the Supreme Court of Canada in *J.J.* We also took into account that this is an administrative law proceeding rather than a criminal trial. As noted, administrative law hearings call for a more flexible approach to evidentiary rules than is applied in criminal trials.

[99] We found that the probative value lies in the capacity of the messages to illuminate credibility issues, provide context for the nature and tone of communications between Justice Currie and the primary witness over time, and to assist in assessing explanations offered by the primary witness for any such change in nature and tone. These considerations are relevant to the issues before us.

[100] Against this consideration, we weighed the potential prejudicial effect, including the risk of using the text messages for an improper myth-based purpose. In this regard, we noted that appointed counsel was clear that the messages would

not be relied upon for a myth-based purpose. We also acknowledged the concern raised by counsel for the primary witness that the 2023 and 2024 text messages may be incomplete and could create a risk of distortion. However, we concluded that this possibility could be appropriately addressed through questioning of the primary witness during her evidence.

[101] In terms of the primary witness's privacy interest in the text messages, we noted that the witness's evidence-in-chief given prior to our ruling overlapped significantly with much of the content and context for the messages.

[102] We were therefore satisfied that the potential probative value of the text messages outweighed the primary witness's privacy interest in them and any potential prejudicial effect arising from their admission.

III. DISPOSITION

[103] For these reasons, we determined that the text messages in screenshots 1, 2, 3, 5, 6, 8, 9, 10, 11 and 12 constituted private records within the meaning of the applicable framework and the hearing panel's March 17, 2025 ruling and therefore required an admissibility hearing.

[104] The admissibility hearing was conducted prior to the completion of the primary witness's evidence-in-chief, and the primary witness and her counsel were permitted to participate and make submissions.

[105] Having considered the submissions of all counsel and Justice Currie, the principles articulated in *J.J.*, and the administrative law context of this proceeding,

we ruled that all of the text messages filed by Justice Currie and the primary witness, other than those appointed counsel withdrew from the panel's consideration, could be used in the examination of the primary witness. This ruling reflects our conclusion that the probative value of the messages, particularly in clarifying credibility and providing necessary context, outweighed the potential prejudice.

[106] The hearing panel would like to thank all participants for addressing this issue professionally and expeditiously in a compressed time frame, which allowed the hearing to proceed as scheduled.

Released: 9 January 2026