

JPRC



EIGHTH ANNUAL REPORT

2014

**JUSTICES OF THE PEACE
REVIEW COUNCIL**

ONTARIO

ISSN 1918-3763



The Honourable Lise Maisonneuve

CHIEF JUSTICE

ONTARIO COURT OF JUSTICE

Chair, Justices of the Peace Review Council



JUSTICES OF THE PEACE REVIEW COUNCIL

November 19, 2015

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

Dear Minister:

It is my pleasure to submit the Eighth Annual Report of the Justices of the Peace Review Council concerning its operations throughout 2014, in accordance with subsection 9(7) of the *Justices of the Peace Act*.

The period of time covered by this Annual Report is from January 1, 2014 to December 31, 2014.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lise Maisonneuve".

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.....	5
4) Functions of the Review Council	6
5) Education Plan.....	8
6) Standards of Conduct.....	9
7) Extra-Remunerative Work.....	10
– Summary of Extra-Remunerative Files Closed in 2014.....	11
8) Communications	12
9) Accommodation of Needs Arising From a Disability.....	12
10) Overview of the Complaints Process	13
11) Summary of Complaints Closed in 2014.....	21
 Appendix A: Case Summaries.....	 A – 27
Appendix B: Policy on Extra-Remunerative Work and Applications Considered.....	 B – 95
Appendix C: <i>Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice</i>	 C –107
Appendix D: Public Hearing Re: His Worship Alfred Johnston	D –111



INTRODUCTION

The period of time covered by this Annual Report is from January 1, 2014 to December 31, 2014. This report is the Eighth Annual Report on the work of the Justices of the Peace Review Council.


The Justices of the Peace Review Council is an independent body established by the Province of Ontario under the *Justices of the Peace Act* with a mandate to receive and investigate complaints about justices of the peace and to fulfill other functions as described in this report. The Review Council does not have the power to interfere with or change a decision made by a justice of the peace. Those are matters to be pursued through other legal remedies before the courts.

The *Act* provides for the Council to make an Annual Report to the Attorney General on its affairs, including case summaries about complaints. The report may not include information that identifies a justice of the peace, a complainant or a witness unless a public hearing has occurred.

This Eighth Annual Report of the Review Council provides information on its membership, its functions and the work of the Council during 2014. The Annual Report also includes information on the procedures used to address complaints. Information is also included on applications for approval to engage in extra-remunerative activities, although names of applicants are confidential.

Justices of the peace play an important role in the administration of justice in Ontario. They are appointed by the Province of Ontario and have their duties assigned by a Regional Senior Justice or a Regional Senior Justice of the Peace. They routinely conduct trials under the *Provincial Offences Act* and preside over bail hearings. They also perform a number of other judicial functions, such as issuing search warrants. Justices of the peace do difficult, important work in the justice system. A justice of the peace may be the only judicial officer that a citizen will encounter in his or her lifetime.

The Review Council had jurisdiction over approximately 412 provincially-appointed justices of the peace, full-time and part-time and *per diem*, during the period of time covered by this Annual Report. In 2014, they presided over millions of provincial offences matters, such as traffic tickets, as well as bail hearings, Intake Court and assignment courts. During 2014, the Council received 24 new complaints about justices of the




peace, and carried over 39 from previous years. Information about the 42 files where the complaint files were completed and closed in 2014 is included in this Report. Public hearings held by the Review Council are contained in the Appendices. We invite you to find out more about the Review Council by reading this Annual Report, and by visiting its website at www.ontariocourts.on.ca/jprc/en/. On the website, you will find the Council's current policies and procedures; updates about any public hearings that are in progress or that have been completed after this Report was prepared; the *Principles of Judicial Office*; the Education Plan; and links to the governing legislation.

1. COMPOSITION AND TERMS OF APPOINTMENT

The Justices of the Peace Review Council is an independent body established under the *Justices of the Peace Act*. The Review Council has a number of functions which are described in this section, including the review and investigation of complaints about the conduct of justices of the peace.

The Review Council includes judges, justices of the peace, a lawyer and four community representatives:

- ◆ the Chief Justice of the Ontario Court of Justice, or another judge of the Ontario Court of Justice designated by the Chief Justice;
- ◆ the Associate Chief Justice Co-ordinator of Justices of the Peace;
- ◆ three justices of the peace appointed by the Chief Justice of the Ontario Court of Justice;
- ◆ two judges of the Ontario Court of Justice appointed by the Chief Justice of the Ontario Court of Justice;
- ◆ one regional senior justice of the peace appointed by the Chief Justice of the Ontario Court of Justice;
- ◆ a lawyer appointed by the Attorney General from a list of three names submitted to the Attorney General by the Law Society of Upper Canada; and,
- ◆ four persons appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General.



In the appointment of community members, the importance is recognized of reflecting, in the composition of the Review Council as a whole, Ontario’s linguistic duality and the diversity of its population and ensuring overall gender balance.

The lawyer and community members who are appointed to the Council hold office for four-year terms and are eligible for reappointment. Judicial members on the Council are appointed by the Chief Justice of the Ontario Court of Justice.

2. MEMBERS

The membership of the Review Council in the year covered by this report (January 1, 2014 to December 31, 2014) was as follows:

Judicial Members:

CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

The Honourable Annemarie E. Bonkalo (Toronto)

ASSOCIATE CHIEF JUSTICE CO-ORDINATOR OF JUSTICES OF THE PEACE OF THE ONTARIO COURT OF JUSTICE

The Honourable Faith Finnestad (Toronto)

THREE JUSTICES OF THE PEACE APPOINTED BY THE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE:

His Worship Maurice Hudson (Brampton)

His Worship Warren Ralph (Toronto)
(until June 16, 2014)

Her Worship Monique Seguin (Sudbury)
(effective of January 21, 2014)



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

The Honourable Justice Esther Rosenberg(Peterborough)

The Honourable Justice Charles H. Vaillancourt..... (Toronto)

**REGIONAL SENIOR JUSTICE OF THE PEACE APPOINTED
BY THE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE:**

Regional Senior Justice of the Peace Kathleen M. Bryant (Sault Ste. Marie)
(until June 16, 2014)

Regional Senior Justice of the Peace Warren Ralph (Toronto)
(effective June 17, 2014)

Lawyer Member:

Ms. S. Margot Blight (Toronto)
Borden Ladner Gervais LLP

Community Members:

Dr. Emir Crowne..... (Windsor)
Associate Professor, Faculty of Law, University of Windsor

Ms. Cherie A. Daniel (Toronto)
Lawyer

Dr. Michael S. Phillips (Gormley)
Consultant, Mental Health and Justice

Ms. Leonore Foster
Former Councillor of the City of Kingston..... (Kingston)

Members – Temporary:


Subsection 8(10) of the *Justices of the Peace Act* permits the Chief Justice of the Ontario Court of Justice to appoint a judge or a justice of the peace to be a temporary member of the Justices of the Peace Review Council of a complaints committee or hearing panel where it is necessary in order to meet the requirements of the *Act*. During the period covered by this report, the following members were temporary members:

The Honourable Justice P.H. Marjoh Agro..... (Hamilton)
Her Worship Kathleen Bryant (Sault Ste. Marie)
The Honourable Justice Ralph Carr.....(Timmins)
His Worship Michael Cuthbertson(Guelph)
Regional Senior Justice of the Peace Bruce Leaman (Thunder Bay)
The Honourable Justice Jean Legault (L'Orignal)
The Honourable Justice Deborah K. Livingstone (London)
The Honourable Justice John Payne(Cobourg)
Her Worship Louise Rozon..... (Cornwall)

3. ADMINISTRATIVE INFORMATION

Office space in downtown Toronto is shared 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.



During the period covered by this report, the staff of the Ontario Judicial Council and the Justices of the Peace Review Council consisted of a Registrar, two Assistant Registrars and an Administrative Secretary:

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

Mr. Thomas A. Glassford – *Assistant Registrar*
(until March 4, 2014)

Ms. Michelle M. Boudreau – *Assistant Registrar*
(effective June 23, 2014)

Ms. Ana M. Brigido – *Assistant Registrar*


Ms. Janice Cheong – *Administrative Secretary*

4. FUNCTIONS OF THE REVIEW COUNCIL

The *Justices of the Peace Act* provides that the functions of the Review Council are:

- ◆ to establish complaints committees from amongst its members to receive and investigate complaints about justices of the peace, and decide upon dispositions under section 11(15);
- ◆ to hold hearings under section 11.1 when hearings are ordered by complaints committees pursuant to section 11(15);
- ◆ to review and approve standards of conduct;
- ◆ to consider applications under section 5.2 for the accommodation of needs;
- ◆ to deal with continuing education plans; and,
- ◆ to decide whether a justice of the peace who applies for approval to engage in other remunerative work may do so.

The Review Council does not have the power to interfere with or change a decision made by a justice of the peace. If a person believes that a justice of the peace made an error in assessing evidence or in making a decision on any of the issues, the proper way to proceed is through other legal remedies before the courts, such as an appeal.




Under section 10(1) of the *Justices of the Peace Act*, the Review Council may establish rules of procedure for complaints committees and for hearing panels and the Review Council must make the rules available to the public. The Review 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/jprc/policies-and-procedures/procedure/.

During 2014, the Council continued to refine and develop its Procedures and policies.

The Council made amendments to its Procedures to reflect its existing practices in relation to signing and issuing summonses. The *Justices of the Peace Act*, in conjunction with the *Statutory Powers Procedure Act*, gives the complaints committee the power to summons witnesses to give evidence under oath or affirmation and to require the production of documents and things where the complaints committee decides it is warranted. The amendments make it clear that if the complaints committee decides to summons a witness, the Registrar will issue and sign the summons on its behalf. The legislation also authorizes a hearing panel conducting a hearing under section 11.1 of the *Act* to require persons to attend to give evidence under oath or on affirmation. The amendments to the Procedures make it clear that if Presenting Counsel, a respondent or the Panel seek to have a person summonsed to be a witness, the summons will be issued and signed by the Registrar.

The Procedures provide that during an investigation, a complaints committee may invite a justice of the peace to respond to the complaint. The Council reviewed the provisions and noted that the wording in the Procedures needed clarification. An amendment was made to make it clear that when a complaints committee invites a response from the justice of the peace, the complaints committee has discretion to decide whether it wishes to specify an issue or issues raised in the complaint. The amendment also clarified that the Registrar will communicate the complaints committee’s concerns to the justice of the peace on behalf of the committee.

The Council noted that persons sometimes write to the Council about matters outside of its jurisdiction. This frequently occurs when a person disagrees with a decision that has been made in his or her court case. The Council amended the Procedures to clarify for complainants and justices of the peace what will occur if a complaint is made that is not about conduct. A new commentary was added to explain that if a complaint does not




contain allegations about the conduct of a justice of the peace, the Registrar will write to the complainant to inform him or her that the jurisdiction of the Review Council is limited to the investigation and review of complaints about conduct. The Registrar will inform the complainant that if he or she disagrees with how the justice of the peace interprets or applies the law, the proper way to proceed is by remedies through the courts. The amendment also states that the Review Council does not have the legal authority to change a decision of a justice of the peace.

The Council amended its Procedures to add a new commentary to explain that the Review Council has considered allegations about the interpretation or application by a justice of the peace of section 136 of the *Courts of Justice Act* and the *Protocol Regarding the Use of Electronic Communication Devices in Court Proceedings*, which govern when a person may make an audio recording in the courtroom. The amendments explain that the Review Council has determined that such allegations in and of themselves are not complaints about conduct.

A copy of the Council's current procedures for the complaints process that incorporates the amendments made during 2014 is posted on the Review Council's website under the link "Policies and Procedures" at www.ontariocourts.ca/ocj/jprc/policies-and-procedures/procedure/.

5. EDUCATION PLAN

The Associate Chief Justice Co-ordinator of Justices of the Peace of the Ontario Court of Justice is required, by section 14 of the *Justices of the Peace Act*, to establish, implement and make public a plan for the continuing judicial education of justices of the peace. The education plan must be approved by the Justices of the Peace Review Council. In 2007, a continuing education plan was developed by the Associate Chief Justice Co-ordinator of Justices of the Peace in conjunction with the Advisory Committee on Education. The Committee includes the Associate Chief Justice Co-ordinator of Justices of the Peace as Chair (*ex officio*) and justices of the peace nominated by the Associate Chief Justice Co-ordinator of Justices of the Peace and by the Association of Justices of the Peace of Ontario. In 2012, the Council was informed by the Associate Chief Justice Co-ordinator of Justices of the Peace that the Court had retained Ms. Susan Lightstone to do a review of justice of the peace education programs and provide the Court with a report on judicial



education. Ms. Lightstone has worked with the National Judicial Institute which provides education for federally appointed judges across the country. In 2013, the Council was informed that Ms. Susan Lightstone had been retained for a further three years, working with a team to review all education programs for justices of the peace.

In 2013, the Council was presented with the Continuing Education Plan in which seven weeks of Intensive Workshops had been expanded to nine and a half weeks under the guidance and advice of Ms. Lightstone. The Education Plan was approved by the Justices of the Peace Executive Committee (JPEC) and was approved by the Council on May 28, 2013.

A copy of the Continuing Education Plan can be found on the Council's website under the link "Education Plan" at www.ontariocourts.ca/ocj/jprc/education-plan/.

6. STANDARDS OF CONDUCT

The Associate Chief Justice Co-ordinator of Justices of the Peace may, under section 13(1) of the *Justices of the Peace Act*, establish standards of conduct for justices of the peace and a plan for bringing the standards into effect and must implement the standards and plan when they have been reviewed and approved by the Review Council.

The *Principles of Judicial Office for Justices of the Peace of the Ontario Court of Justice* were approved by the Justices of the Peace Review Council on December 7, 2007. The principles set out standards of excellence and integrity to which justices of the peace subscribe. These principles are not exhaustive. Intended to assist justices of the peace 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 justices of the peace in the performance of judicial duties and in their conduct generally. The principles are designed to be advisory in nature and are not directly related to any specific disciplinary process.

A copy of the *Principles of Judicial Office for Justices of the Peace of the Ontario Court of Justice* is included as Appendix C in this Annual Report and can be found on the Council's website under the link for "Principles of Judicial Office" at www.ontariocourts.ca/ocj/jprc/principles-of-judicial-office/.

7. EXTRA-REMUNERATIVE WORK


Under section 19 of the *Justices of the Peace Act*, all justices of the peace are required to seek the written approval of the Review Council before accepting or engaging in any extra-remunerative work. In 1997, the former Justices of the Peace Review Council approved a policy regarding extra-remunerative work in which justices of the peace may engage. On November 23, 2007, the newly constituted Review Council approved the policy regarding other remunerative work.

Applications received from justices of the peace to engage in other remunerative work are considered in accordance with the Council's policy. The policy applies to all justices of the peace, full-time and part-time and *per diem*. The policy sets out criteria that are used in assessing applications including:

- ♦ whether there is an actual, or perceived, conflict of interest between the duties as assigned and the extra-remunerative activity for which approval is sought;
- ♦ whether the nature of the activity for which the justice of the peace seeks approval will present an intrusive demand on the time, availability or energy of the justice of the peace and his or her ability to properly perform the judicial duties assigned; and,
- ♦ whether the activity for which the justice of the peace seeks approval is a seemingly or appropriate activity in which a judicial officer should engage, having regard to the public perceptions of judicial demeanour, independence and impartiality.

In 2010, the Council determined that in considering applications to engage in extra-remunerative work, it would look at two aspects in relation to remuneration associated with the work. Firstly, the Council considers whether the work gives rise to any remuneration to the applicant justice of the peace. Secondly, the Council considers that a justice of the peace is engaged in extra-remunerative work when that justice of the peace is a party to someone else's remunerative work. Once the Council has established whether there is any remuneration, the policy and criteria set out in the Council's extra-remunerative policy are considered. The *Policy of the Justices of the Peace Review Council Re Extra-Remunerative Work* was amended to reflect the Council's decision.

One criterion to be considered by the Council in considering applications is whether the activity for which the justice of the peace seeks approval is a seemingly or appropriate activity in which a judicial officer should engage, having regard to the public perceptions



of judicial demeanour, independence and impartiality (paragraph 6(c) of the *Policy Re Extra-Remunerative Work*). The Council has considered how that criterion should be applied and determined that it must be understood in the context of the public policy encapsulated in the legislative framework set out in the *Justices of the Peace Act* R.S.O. 1990, c. J.4, as amended and, in particular, in view of the amendments that resulted from the *Access to Justice Act*, 2006, S.O. 2006, c. 21. The Council noted that the legislative amendments brought about a comprehensive reform intended to strengthen public confidence in a professional bench and in the justice system.

Having carefully considered the public policy underlying the current legislative framework, the objectives of the amendments underlying the *Access to Justice Act*, 2006, and the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice*, the Review Council determined that it would in general be unseemly for full-time presiding justices of the peace to be engaged in commercial extra-remunerative work. The *Policy Re Extra-Remunerative Work* was amended to reflect the Council's decision.

The Review Council has approved some applications to extra-remunerative work by full-time presiding justices of the peace on an exceptional basis in limited circumstances where the activity was primarily non-commercial and had other intrinsic value from an educational, patriotic, religious or creative standpoint. In accordance with the Council's policy and procedure, an applicant who seeks approval to engage in commercial activity must address the issue of why the application for extra-remunerative work should be approved as an exception to the general policy that full-time presiding justices of the peace should not engage in extra-remunerative work that is commercial in nature.

The *Policy on Extra-Remunerative Work* is included as Appendix B in this Annual Report. The most recent version is posted on the Council's website under the link "Policies and Procedures" at www.ontariocourts.ca/ocj/jprc/policies-and-procedures/extra-remunerative-work/.

Summary of Extra-Remunerative Files Closed in 2014

During 2014, the Council received five applications for approval to engage in extra-remunerative work and completed its consideration of all five applications. Case summaries for the extra-remunerative files that were completed in 2014 can be found at Appendix B in this Annual Report.

8. COMMUNICATIONS

The website of the Justices of the Peace Review Council includes information about the Council, including the most current version of the policies and procedures, as well as information about hearings that are underway or that have been completed. Information on ongoing hearings is available under the link “Public Hearings” at www.ontariocourts.ca/ocj/jprc/public-hearings/. Decisions made during the hearings are posted under the link “Public Hearings Decisions” at www.ontariocourts.ca/ocj/jprc/public-hearings-decisions/. Each Annual Report of the Council is also available on the website after it has been tabled in the legislature by the Attorney General.


The address of the Council’s website is: www.ontariocourts.ca/ocj/jprc/.

A brochure to inform the public about the process to make complaints about judges and justices of the peace is available in hard copy at courthouses or by contacting the Council’s office, and electronically on the website at www.ontariocourts.ca/ocj/conduct/do-you-have-a-complaint/. The brochure, “Do You Have a Complaint?” provides information on what a justice of the peace 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.

9. ACCOMMODATION OF NEEDS ARISING FROM A DISABILITY

A justice of the peace who believes that he or she is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated may apply to the Council under section 5.2 of the *Justices of the Peace Act* for an order that such needs be accommodated.

The Council was informed that the Ministry of the Attorney General, with input from the Office of the Chief Justice, developed a process that provides a consistent means for judicial officers to request accommodation of needs arising from disabilities. The Council recognized that the Ministry has access to the expertise and resources to properly assess and address requests for accommodation of needs. In order that the Council can properly consider applications made to it, if any, the Council amended its Procedures to require the applicant justice of the peace to first exhaust the accommodation of needs process that is available for judicial officers through the Ministry of the Attorney General. When



that process has been completed, if the justice of the peace makes an application to the Council, he or she must provide a copy of all documents, medical evidence and decisions resulting from the application process.

The current procedure that governs such applications is included in the Council's Procedure which is posted on the website at www.ontariocourts.ca/ocj/jprc/accessibility-and-accommodation/. During 2014, no applications for accommodation were decided upon by the Council.


10. OVERVIEW OF THE COMPLAINTS PROCESS

What initiates a review by the Review Council?

Any person may make a complaint to the Review Council about the conduct of a justice of the peace. Complaints must be made in writing. The governing legislation and the principles of natural justice do not provide for the Review Council to act on anonymous complaints or to initiate inquiries into the conduct of a judicial officer. Rather, an investigation conducted by the Review Council must be in response to specific allegations submitted by a complainant. Most of the complaints received by the Justices of the Peace Review Council are received from members of the public.

Does the Council have the legal authority to consider the complaint?

The Review Council has a legislative mandate to review complaints about the **conduct** of justices of the peace. The Council has no authority to review **decisions** of justices of the peace to determine whether there were any errors in how the issues were determined or how conclusions were drawn. If a party involved in a court case thinks that a justice of the peace reached the wrong decision in the case, he or she has legal remedies through the courts. Only a court can change the original decision of a justice of the peace.



All correspondence is reviewed to determine whether or not a complaint is within the jurisdiction of the Review Council. In those cases where the complaint may be within the jurisdiction of the Review Council, 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 justice of the peace, the letter of acknowledgement advises the complainant that the Council has no power to change a decision made by a justice of the peace. In such cases, the complainant is advised that he or she may wish to consult legal counsel to determine what, if any, remedies may be available through the courts.

If an individual is complaining about his/her lawyer or a Crown Attorney, or another office, the complainant is generally referred to the appropriate agency or authorities.


What happens in the complaints process?

The *Justices of the Peace Act* and the procedures that have been established by the Council provide the current framework for addressing complaints about justices of the peace. If a complaint is ordered to a public hearing, certain provisions of the *Statutory Powers Procedure Act* also apply. The complaints procedure is outlined below. The current procedures are posted on the Council's website at www.ontariocourts.ca/ocj/jprc/policies-and-procedures/procedure/.

Preliminary Investigation and Review

As soon as possible after receiving a complaint about the conduct of a justice of the peace, the office of the Council will acknowledge receipt of the complaint. If the complaint raised allegations of conduct about a justice of the peace 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 ongoing court matters.

If there is no ongoing court proceeding, a complaints committee of the Council will be assigned to investigate the complaint. Members of the Council serve on complaints



committees on a rotating basis. Each complaints committee is composed of: a provincially appointed judge who acts as chair; a justice of the peace; and, either a community member or a lawyer member. Complaints are not generally assigned to members from the same region where the justice of the peace 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 Council and the justice of the peace.

Except for hearings ordered under section 11(15)(c) of the *Justices of the Peace Act* to consider complaints about specific justices of the peace, meetings and proceedings of the Review Council are not held in public. Section 11(8) of the *Act* requires that investigations by the Review Council must be conducted in private. The legislative framework recognizes the need to safeguard judicial independence while simultaneously ensuring judicial accountability and public confidence in the administration of justice.

If the complaint arose from a court proceeding, usually a transcript of the court hearing is ordered to be reviewed by the members of the complaints committee. An audio recording, if available, may also be ordered and reviewed. In some cases, the committee may find that it is necessary to conduct further investigation in the form of having witnesses interviewed. An external lawyer may be retained, pursuant to section 8(15) of the *Act*, to assist the committee by interviewing witnesses and providing transcripts of the interviews to the investigating complaints committee. Legal advice may also be provided.

The complaints committee will determine whether or not a response to the complaint should be invited from the justice of the peace in question. If a response is invited from the justice of the peace, the letter sent inviting a response will enclose a copy of the complaint, the transcript (if any) and all of the relevant materials considered by the committee. The justice of the peace may seek independent legal advice or assistance before responding. The justice of the peace will also be invited to listen to the audio recording, if it has been reviewed by the committee.

Section 11(15) of the *Justices of the Peace Act* gives the complaints committee the authority to dismiss a complaint after reviewing the complaint where, in the opinion of the committee: it is frivolous or an abuse of process; it falls outside the Council's jurisdiction (e.g. because it is a complaint about the exercise of judicial discretion); it does not include an allegation of judicial misconduct; the allegation is unproven; or, the misconduct does not rise to the level of misconduct that requires further action on the part of the Council.


Interim Recommendations

The investigating complaints committee will consider whether the allegation(s) warrants making an interim recommendation pending the final disposition of a complaint. Under section 11(11) of the *Act*, an interim recommendation for non-assignment of work or re-assignment to work at another court location may be made to the Regional Senior Justice appointed for the region to which the justice of the peace is assigned. The Regional Senior Justice may decide not to assign work to the justice of the peace until the final disposition (but he or she will continue to be paid); or, with the consent of the justice of the peace, may re-assign him or her to another location until the disposition of the complaint. It is within the discretion of the Regional Senior Justice as to whether he or she decides to act upon the recommendation from a complaints committee.

The Review Council has approved the following criteria in the procedures to guide complaints committees as to when an interim recommendation should be made:

- ◆ where the complaint arises out of a working relationship between the complainant and the justice of the peace and the complainant and the justice of the peace both work at the same court location;
- ◆ where allowing the justice of the peace to continue to preside would likely bring the administration of justice into disrepute;
- ◆ where the complaint is of sufficient seriousness that there are reasonable grounds for investigation by law enforcement agencies;
- ◆ where it is evident to the complaints committee that a justice of the peace is suffering from a mental or physical impairment that cannot be remedied or reasonably accommodated.

Where a complaints committee proposes to recommend temporarily not assigning work or re-assigning a justice of the peace to work at a different court location, it may give the justice of the peace an opportunity to be heard on that issue in writing before making its decision. Particulars of the factors upon which the complaints committee's recommendations are based are provided to the Regional Senior Judge to assist the Regional Senior Judge in making his or her decision, and to the justice of the peace to provide him or her with notice of the complaint and the complaints committee's recommendation.



Of the complaint files that were completed by the Council during 2014, one complaints committee made a recommendation that one justice of the peace be non-assigned until the final disposition of the complaint. The Regional Senior Justice agreed with the recommendation.

Dispositions of the Complaints Committee

When the investigation is completed, pursuant to section 11(15) of the *Act*, the complaints committee will do one of the following:

- a) dismiss the complaint if it is frivolous, an abuse of process or outside the jurisdiction of the complaints committee;
- b) invite the justice of the peace to attend before the complaints committee to receive advice concerning the issues raised in the complaint or send the justice of the peace a letter of advice concerning the issues raised in the complaint, or both;
- c) order that a formal hearing into the complaint be held by a hearing panel; or,
- d) refer the complaint to the Chief Justice of the Ontario Court of Justice.

The complaints committee reports to the Review Council on its decision and, except where it orders a formal hearing, does not identify the complainant or the justice of the peace who is the subject of the complaint in its report.

Notification of Disposition

After the complaints process is completed, the Review Council communicates its decision to the person who made the complaint and, in most cases, to the justice of the peace. A justice of the peace may waive notice of the complaint if it is being dismissed and no response was invited by the Council. In accordance with the Procedures of the Review Council, if the Review Council decides to dismiss the complaint, it will provide brief reasons.

Public Hearing Under section 11.1

When the complaints committee orders a public hearing, under section 11.1(1) of the *Act*, the Chief Justice of the Ontario Court of Justice, who is also the Chair of the Review Council, establishes a three-member hearing panel from among the members of the Council, composed of: a provincially appointed judge who chairs the panel; a justice of the peace; and, a lawyer or a member of the public. Complaints committee members who participated in the investigation of the complaint do not participate in its review by a hearing panel.

The legislation provides for judicial members to be appointed as temporary members of the Council to ensure that the three members of the hearing panel have not been involved in earlier stages of reviewing the complaint. The Chief Justice of the Ontario Court of Justice may appoint a judge or a justice of the peace who is not a member of the Review Council to be a temporary member of a hearing panel where necessary to form each quorum to meet the requirements of the *Act*.

By the end of the investigation and hearing process, all decisions regarding complaints made to the Justices of the Peace Council will have been considered and reviewed by a total of six members of Council – three members of the complaints committee and three members of the hearing panel.

The Review Council engages legal counsel, called Presenting Counsel, for the purposes of preparing and presenting the case about the justice of the peace. The legal counsel engaged by the Review Council operates independently of the Review Council. The duty of legal counsel engaged to act as Presenting Counsel is not to seek a particular order against a justice of the peace, but to see that the complaint about the justice of the peace is evaluated fairly and dispassionately to the end of achieving a just result.

The justice of the peace has the right to be represented by counsel, or to act on his or her own behalf in any hearing under this procedure.

The *Statutory Powers Procedure Act*, with some exceptions, applies to hearings into complaints. Persons may be required, by summons, to give evidence on oath or affirmation at the hearing and to produce in evidence at the hearing any documents or things specified by the panel which are relevant to the subject matter of the hearing and admissible at the hearing.

Public Hearing Unless Ordered Private


A section 11.1 hearing into a complaint is public unless the Review Council determines, in accordance with criteria established under the *Statutory Powers Procedure Act*, that matters involving public security may be disclosed; or, intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure of such matters, in the interests of any person affected or in the public interest, outweighs the desirability of following the principle that the hearing be open to the public.

In certain circumstances 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 who testifies to having been the victim of the conduct. If a complaint involves allegations of sexual misconduct or sexual harassment, the hearing panel will, at the request of the complainant or of a witness who testifies to having been the victim of such conduct by the justice of the peace, prohibit the publication of information that might identify the complainant or the witness, as the case may be.

Dispositions after section 11.1 Hearing

After hearing the evidence, under section 11.1(10) of the *Justices of the Peace Act*, the hearing panel of the Council may dismiss the complaint, with or without a finding that it is unfounded or, if it upholds the complaint, it may decide upon any one of the following sanctions singly or in combination:

- ◆ warn the justice of the peace;
- ◆ reprimand the justice of the peace;
- ◆ order the justice of the peace to apologize to the complainant or to any other person;
- ◆ order the justice of the peace to take specified measures such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;

- 
-
- ♦ suspend the justice of the peace with pay, for any period; or,
 - ♦ suspend the justice of the peace without pay, but with benefits, for a period up to thirty days.

Removal from Office


Following the hearing, the Review Council may make a recommendation to the Attorney General that the justice of the peace be removed from office. This sanction stands alone and cannot be combined with any other sanction. A justice of the peace may be removed from office only if a hearing panel of the Review Council, after a hearing under section 11.1, recommends to the Attorney General under section 11.2 that the justice of the peace be removed on the ground of:

- ♦ he or she has become incapacitated or disabled from the execution of his or her office by reason of inability to perform the essential duties of the office because of a disability and, in the circumstances, accommodation of his or her needs would not remedy the inability, or could not be made because it would impose undue hardship to meet those needs;
- ♦ conduct that is incompatible with the execution of the 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 justice of the peace from office.

Recommendation of Compensation for Legal Costs

When the Justices of the Peace Review Council has dealt with a complaint, section 11(16) of the *Justices of the Peace Act* makes provision for a justice of the peace to request that a complaints committee recommend to the Attorney General that he or she should be compensated for all or part of the costs of legal services incurred in connection with the investigation. 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. Similarly, section 11.1(17) allows a hearing panel to recommend compensation for part of the cost of legal services incurred in connection with a hearing.



In 2014, five recommendations for compensation were made by complaints committees to the Attorney General that the justice of the peace be compensated for all or part of the cost of legal services incurred in connection with the investigation or hearing of the complaints.

Legislation

The current legislative provisions of the *Justices of the Peace Act* concerning the Justices of the Peace Review Council are available on the government's e-laws website at **www.e-laws.gov.on.ca**. The website contains a database of Ontario's current and historical statutes and regulations.


11. SUMMARY OF COMPLAINTS CLOSED IN 2014

Overview

The Justices of the Peace Review Council carried forward 39 complaints to 2014 from previous years. During 2014, 24 new complaint files were opened with the Review Council. Including those cases carried into 2014 from previous years, the total number of files open during 2014 was 63. Of the 63 open files in 2014, 42 files were completed and closed or ordered to a hearing before December 31, 2014.

Of the 42 files that were closed or ordered to a hearing, four files were opened in 2012, 28 in 2013 and ten in 2014.

Twenty-one complaints were still ongoing at the end of 2014 and were carried over into 2015. Of the 21 files carried over into 2014, two were from 2012. Both of those complaints resulted in an order to a hearing, one in relation to the conduct of His Worship Errol Massiah and one in relation to the conduct of His Worship Santino Spadafora. The complaint about His Worship Spadafora was held in abeyance pending the completion of a criminal process. The complaints process reactivated once the criminal process concluded. The hearing before the hearing panel of the Review Council was not completed by the end of 2014. Decisions from the hearing can be found on the Review Council's website under the link for Public Hearings Decisions 2014 and 2015. The file in relation to the complaint about His Worship Massiah was held in abeyance pending the completion of a hearing



arising from a different complaint about his conduct. The second hearing was still ongoing at the end of this reporting period. Decisions from the hearing can be found on the Review Council's website under the link for Public Hearings Decisions 2014 and 2015.

Five of the files carried into 2014 were from 2013 and 14 were from 2014.

Dispositions


As indicated earlier, section 11(15) of the *Justices of the Peace Act* authorizes a complaints committee to:

- ◆ dismiss the complaint if it was frivolous, an abuse of process or outside the jurisdiction of the complaints committee;
- ◆ invite the justice of the peace to attend before the complaints committee to receive advice concerning the issues raised in the complaint or send the justice of the peace a letter of advice concerning the issues raised in the complaint, or both;
- ◆ order that a formal hearing into the complaint be held by a hearing panel; or,
- ◆ refer the complaint to the Chief Justice of the Ontario Court of Justice.

Of the 42 files addressed and closed, three complaints were dismissed by the Review Council under section 11(15)(a) on the basis that they were found to be outside of the jurisdiction of the Council. These files typically involved a complainant who expressed dissatisfaction with the result of a trial or with a justice of the peace's decision, but who made no allegation of misconduct. While the decisions made by the justice of the peace in these cases could be the subject of other legal remedies, such as an appeal, the absence of any alleged misconduct meant that the complaints were outside of the jurisdiction of the Review Council.

In five cases that were closed, the Council lost jurisdiction over the complaints. This occurs when a justice of the peace retires, resigns or dies and no longer holds the office of justice of the peace.

Complaints within the jurisdiction of the Council included allegations such as improper behaviour (rudeness, belligerence, etc.), lack of impartiality, conflict of interest or some other form of bias.




Twenty-eight complaint files were dismissed by the Review Council under section 11(15)(a) after they were investigated by a complaints committee and determined to be unsubstantiated or unfounded or the behaviour did not amount to judicial misconduct.

In four cases, the Review Council provided advice to justices of the peace under section 11(15) (b) of the *Act*. In three of those cases, the justice of the peace was sent a letter of advice concerning issues raised in the complaint, and in one case the justice of the peace attended before the complaints committee to receive advice in person concerning the issues raised in the complaint.

In 2014, no complaints were referred to the Chief Justice of the Ontario Court of Justice pursuant to section 11(15)(d) of the *Act* during 2012. A complaints committee will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the committee is of the opinion that the conduct complained of does not warrant another disposition and that there is some merit to the complaint. As well, the committee is of the view that a referral to the Chief Justice is a suitable means of informing the justice of the peace that his or her course of conduct was not appropriate in the circumstances that led to the complaint. The committee may recommend imposing conditions on its referral to the Chief Justice where the committee agrees that there is some course of action or remedial training of which the justice of the peace could take advantage and the justice of the peace agrees.

A formal hearing was ordered in relation to two complaints against His Worship Alfred Johnston. A public hearing will be ordered pursuant to section 11(15)(c) where the complaints committee is of the opinion that there has been an allegation of judicial misconduct which the majority of the members of the committee believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct. When a hearing is ongoing, updates on the status of the case are posted on the Review Council's website. At the end of a hearing, the decision can be found on the website under the link "Public Hearings Decisions" at **www.ontariocourts.on.ca/jprc/en/hearings/**.

The Hearing Panel ordered that His Worship: apologize in writing to the complainant and ordered that His Worship be suspended without pay, but with benefits, for seven (7) consecutive calendar days. A copy of the decision is included in Appendix "D" of this Annual Report.



The hearing process began in relation to a complaint about His Worship Santino Spadafora. The process was not completed during the period of time covered by this Annual Report. Decisions made in the case can be found on the Review Council's website under the links for Public Hearings Decisions 2014 and 2015.

The hearing that was ordered in 2013 in relation to a complaint about His Worship Errol Massiah continued in 2014. It was not completed during the period of time covered by this Annual Report. Decisions made in the case can be found on the Review Council's website under the link for Public Hearings Decisions 2013, 2014 and 2015.

There was an earlier hearing in 2012 which had resulted in findings of judicial misconduct on the part of His Worship Massiah. In 2014, he filed an application for judicial review of that decision and the dispositions that were ordered by the hearing panel that presided over that hearing. In June of 2014, the Divisional Court dismissed the judicial review application and the decisions were not changed.

Types of Cases

Of the 42 complaint files that were completed and closed or ordered to a hearing, 25 arose from events during provincial offences proceedings, seven arose from matters in Intake Court, and nine arose from proceedings under the *Criminal Code* (two from set-date court, four bail hearings, one pre-enquête), and one related to conduct outside of the courtroom.

Case Summaries

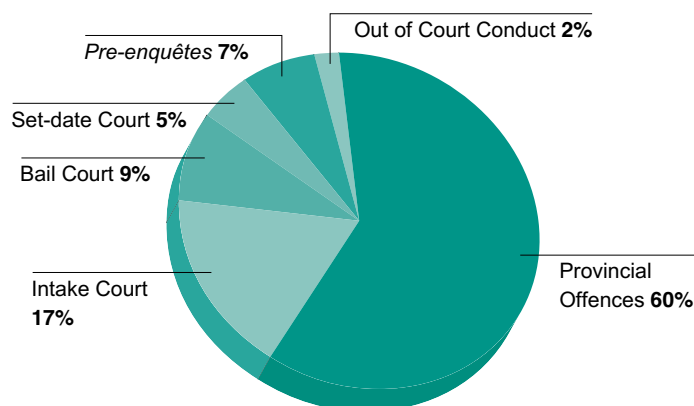
Case summaries for each complaint file closed during 2014 follow in Appendix "A" of this Report.

SUMMARY OF COMPLAINTS CLOSED IN 2014

DISPOSITIONS ON COMPLAINTS CLOSED IN 2014	
Dismissed as out of jurisdiction	3
Dismissed as not substantiated or did not amount to misconduct	28
Advice Letter	3
Advice – In-person	1
Referred to Chief Justice	0
Loss of jurisdiction	5
Public Hearing (one hearing into two complaints)	2
TOTAL CLOSED IN 2014	42

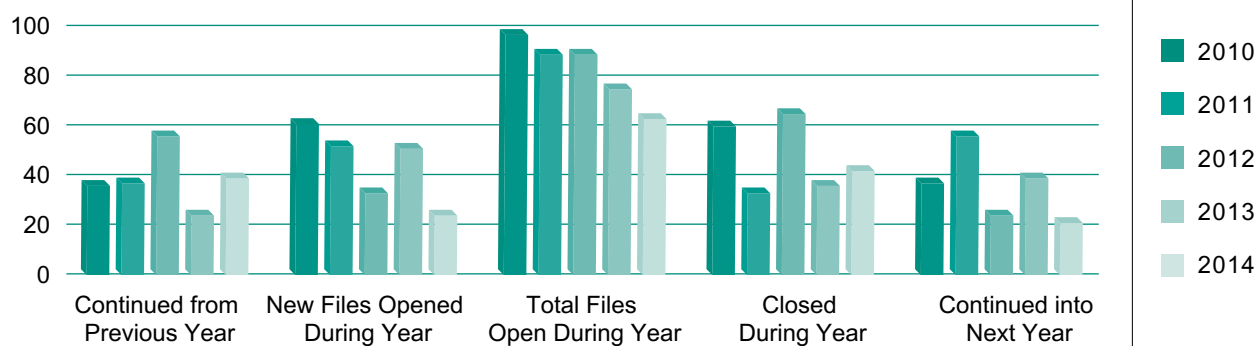
TYPES OF CASES CLOSED IN 2014

TYPES OF CASES	# OF COMPLAINTS
Provincial Offences Court	25
Intake Court	7
Bail Court	4
Set-date Court	2
<i>Pre-enquêtes</i>	3
Peace Bond Applications	0
Out of Court Conduct	1
Total	42



CASELOAD IN CALENDAR YEARS

	2010	2011	2012	2013	2014
Continued From Previous Years	36	37	56	24	39
New Files Opened During Year	61	52	33	51	24
Total Files Open During Year	97	89	89	75	63
Closed During Year	60	33	65	36	42
Continued into Next Year	37	56	24	39	21



APPENDIX A

2014 CASE SUMMARIES

APPENDIX A

Case Summaries

Complaint files are given a two-digit prefix indicating the complaint year, followed by a sequential file number and by two digits indicating the calendar year in which the file was opened (i.e., Case No. 25-001/14 was the first file opened in the 25th complaint year and opened in calendar year 2014).

Except where a public hearing was ordered, details of each complaint for which the complaints process was completed, with identifying information removed as required by the legislation, are provided below. Decisions on public hearings are provided in other appendices in this Annual Report.

CASE NO. 23-016/12

In his letter of complaint, the complainant said that he appeared before Her Worship and that he identified himself by the name of the defendant. He indicated that the justice of the peace said that if he was the named defendant, he should come to the microphone. He said he explained to her his beliefs that prevented him from standing where the microphone was located. He said that she told him to come to the microphone or leave the courtroom. He alleged that she failed to recognize him being present in court and convicted him of the offence for not attending court. He alleged that he was refused the opportunity to defend himself against the allegation because she ordered him to leave the courtroom and security ensured that he did leave. In his letter, he said that he had mental and physical reasons for not standing at the microphone.

A three-member complaints committee reviewed the correspondence from the complainant and requested a copy of the transcript of the court appearance. The committee was informed by court staff that there was an appeal of the matter pending. In accordance with the Review Council's policy, the complaint was held in abeyance pending the completion of the appeal. The policy indicates that if a complaint arises from a court proceeding, the Review Council will not generally commence an investigation until that court proceeding and any appeal or related legal proceedings have been completed. This ensures that any investigation by the Council is not interfering or perceived to be interfering with any ongoing court matters.

APPENDIX A

Case Summaries

A

After the appeal was concluded, the committee reviewed the transcript of the appearance before Her Worship. The committee found that the court record showed that when the complainant appeared in the courtroom, he said he was the administrator for the defendant. Her Worship had the name of the defendant paged to come to the courtroom and said that if he was in the courtroom, he should come to the microphone. The complainant would not go to the microphone or confirm that his name was that of the defendant. Her Worship asked an officer to have him leave the courtroom. Subsequently, the name of the defendant was again paged. No-one appeared. The defendant was deemed to not dispute and a conviction was registered based on the evidence.

The committee reviewed the transcript of the appeal and noted that the appeal had been dismissed on the basis that no proper identification was made by the defendant.

The complaints committee observed that Her Worship took steps to give the complainant the opportunity to properly identify himself as the defendant, and that it was only when he would not do so that she asked to have him removed. The committee noted that a justice of the peace has a responsibility to keep order and maintain control in the courtroom. The committee concluded that there was no evidence of judicial misconduct and dismissed the complaint.

CASE NO. 23-023/12

The complainant appeared before the justice of the peace on a Provincial Offences matter. He alleged that His Worship was harassing and belittling people who could not speak English. The complainant alleged that His Worship created an environment of fear and hostility and was behaving like a bully. The complainant indicated that His Worship was abusing his power. He alleged that His Worship tried to threaten and bully him into an adjournment, and began name calling and accused the complainant of playing games or manipulating the system. The complainant advised that the prosecutor withdrew the charge but the damage had already been done and that he had lost faith in the legal system. He also alleged that His Worship harassed him by questioning his religious headgear.

The complaint was assigned to a complaints committee for review and investigation. Before a final determination could be made on the complaint, the Review Council

APPENDIX A

Case Summaries

received confirmation that His Worship was no longer a justice of the peace. The Review Council had no jurisdiction to continue its complaints process. The complaint file was administratively closed due to a loss of jurisdiction.

CASE NO. 23-024/12

The complainant appeared before the justice of the peace for a trial on a charge of speeding. She alleged that while she was waiting in the courtroom, His Worship acted in an intimidating manner towards people which shocked her. She alleged that His Worship “reamed out” a woman who was turning off her cell phone, “kicked out a man for talking, sent a man home who had his young daughter with him, kicked out a woman for bringing in a water bottle...”, and “called out individuals for crossing their legs, slouching, leaning on their hands, etc.”. She said that he constantly yelled at people, interrupting the prosecutor, wasting time and showing no respect for the citizens attending the courtroom.

The complaint was assigned to a complaints committee for review and investigation. Before a final determination could be made on the complaint, the Review Council received confirmation that His Worship was no longer a justice of the peace. The Review Council had no jurisdiction to continue its complaints process. The complaint file was administratively closed due to a loss of jurisdiction.

CASE NO. 24-001/13

The complainant appeared in Provincial Offences court after requesting a trial. She arrived a few minutes late. She alleged that while she waited, she witnessed the justice of the peace addressing the courtroom with the threatening instruction that “if you don’t plead guilty and a trial ensues, your fines will increase dramatically and you will have to pay additional court costs...whereas if you please guilty I will reduce substantially your fine to either \$6.00 or \$9.00 and that’s it.” The complainant said she found his instructions to be wholly inappropriate. She alleged that when her matter was called, His Worship told her that she looked argumentative. His Worship allegedly told her that she could not arrive late and then plead not guilty. After she apologized for being late, he repeated his comment that because she was late she could not have a trial and he adjourned the matter. The complainant found His Worship’s behaviour to be

APPENDIX A

Case Summaries

outrageous and without reason. She expressed the view that his conduct was reckless and disgraceful.

The complaint was assigned to a complaints committee for review and investigation. Before a final determination could be made on the complaint, the Review Council received confirmation that His Worship was no longer a justice of the peace. As he was no longer a justice of the peace, the Review Council had no jurisdiction to continue its complaints process. The complaint file was administratively closed due to a loss of jurisdiction.

CASE NO. 24-010/13

The complainant, a licensed paralegal, appeared before His Worship on behalf of a colleague in relation to a charge against a defendant under the *Highway Traffic Act*. The complainant indicated that before court, a resolution was achieved with the prosecutor that was consistent with the wishes of the defendant. The complainant said that the justice of the peace declared that the complainant had no standing because he did not have a signed authorization to appear.

The complainant indicated that prior to the regulation of paralegals by the Law Society of Upper Canada, paralegals were required to have signed authorization. However, this was no longer the case after the Law Society began regulating paralegals on May 1, 2007.

The complainant alleged that His Worship's order "completely takes away all the forward steps paralegals have made. It also harms the profession when the public sees a licensed member of the Law Society not permitted to speak to a matter and anyone seeing the proceedings would not likely ever retain a paralegal." He asserted that "it is extremely unlikely a lawyer would be not permitted to speak to a matter because he did not show a Justice or Justice of the Peace a document which said they were authorized." The complainant advised that he found the experience demeaning and embarrassing.

The complainant stated "I have no faith in [the justice of the peace]. He seems to lack knowledge on some basic fundamental principles. One can only wonder how he would deal with any complex arguments or legal analysis". The complainant expressed that he realized the remedial nature of the complaint process and he was seeking a letter of apology for the embarrassment.

APPENDIX A

Case Summaries

A

The complaints committee reviewed the complainant's letter and the transcript of the proceedings. They also listened to the audio recording of the proceedings. The committee found that the transcript showed that the complainant had informed the justice of the peace that he had a Consent to Transfer File. He attempted to make submissions on the rules of the Law Society of Upper Canada and he was interrupted by His Worship. His Worship demanded proof of written authority, and when it was not available, he told the complainant that he was not properly before the court and that he was excused. His Worship struck the not guilty plea that had been entered and adjourned the matter. After listening to the audio recording, the committee found that His Worship's tone when speaking to the complainant was very rude.

The committee observed that the paralegal was an officer of the court who should have been treated with respect. As stated in *The Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice*:

Justices of the peace 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 committee also noted that a licenced paralegal has the right to represent a client in accordance with the rules established by the Law Society of Upper Canada. The committee noted that it is common for lawyers and paralegals to transfer files between firms and to appear on matters on behalf of colleagues.

The committee invited His Worship to respond to the complaint. His Worship provided a response which was reviewed and considered by the committee. The committee found that the response showed that His Worship had reflected upon his conduct and had recognized the shortcomings in his conduct towards the complainant. He acknowledged that a justice of the peace should not treat a lawyer or a paralegal in a manner such that they would feel that their submissions would not be fairly considered. The committee could see that His Worship was sorry that he had become agitated and that he had not remained as composed as he should have been.

The complaints process through the Justices of the Peace Review Council is remedial. After its investigation, the committee concluded that His Worship had learned from the complaints process. The committee was satisfied that no further action was required and the complaint was dismissed. The file was closed.

APPENDIX A

Case Summaries

CASE NO. 24-015/13

The complainant attended court for a trial on a traffic violation. She indicated that she was offered a plea by the prosecutor but refused as she wanted to present her case to the court. She alleged that the justice of the peace called her “young lady” throughout the matter. She further alleged that his comments and behaviour were patronizing and he seemed to feel that he could call any black woman in a court room ‘young lady’. She also alleged that he was insulting and said “would teach me a lesson”. She alleged that His Worship used “violently abusive language with sexual and patronizing undertones”, as well as other belittling words.

The complaint was assigned to a complaints committee for review and investigation. Before a final determination could be made on the complaint, the Review Council received confirmation that His Worship was no longer a justice of the peace. As he was no longer a justice of the peace, the Review Council had no jurisdiction to continue its complaints process. The complaint file was administratively closed due to a loss of jurisdiction.

CASE NO. 24-017/13

The complainant appeared before His Worship for a trial on a charge of parking in a fire route. He asked for an adjournment in order to have his witness present to testify. He alleged that his rights were violated by His Worship’s decision to deny his request. He said that the basic facts showed the infraction was unfair; however, he was convicted after a trial and received a fine.

The complainant alleged that His Worship showed “unqualified interferences, bad work attitude and lacking on justice, thinking and analyzing” because:

- ♦ He hadn’t any patience to hear the defendant.
- ♦ His Worship made him feel pressured.
- ♦ At one point His Worship suspected the complainant was reading a speech and denounced him, without serious checking.

APPENDIX A

Case Summaries

- ♦ The complainant believed that His Worship already had the trial result in his head from the beginning.
- ♦ His Worship interrupted him and didn't hear the evidence – he was sleeping.
- ♦ He was denounced two times when giving evidence. He alleged that the justice of the peace arbitrarily damaged his rights.
- ♦ His Worship was very unhappy and told the complainant that there were 11 times when he said “unfair”. He says that a good justice of the peace would be happy to help the defendant and encourage him to tell him what happened slowly.
- ♦ He said the justice of the peace called him stubborn.

He also alleged that His Worship was unqualified because:

- ♦ The case was filled with unqualified interferences.
- ♦ His Worship made a conclusion without any evidence to support it; he just depended on his likes and dislikes. He made the decision subjectively.
- ♦ His Worship was angry and denounced the defendant because he criticized the parking police.
- ♦ He didn't let the complainant know why the ticket was fair and reasonable.
- ♦ His Worship said the complainant was “considered a danger guy when he heard I waited for the parking police for 4 hours in 2 times.”

Further, he alleged that the fine imposed by His Worship was too high for a parking ticket, showing that “he was unmerited, had no pity and lacked independent thinking and judging abilities. It showed that he was fully controlled by his likes and dislikes.”

In a letter to the complainant acknowledging receipt of his complaint, he was informed that the Justices of the Peace Review Council has no jurisdiction to review or change decisions made by justices of the peace, including the decision that an adjournment would not be granted, the decision to find him guilty or the decision on the fine. The complainant was advised that he should obtain legal advice to determine his legal remedies in those matters.

APPENDIX A

Case Summaries

The complaints committee reviewed the correspondence received from the complainant and ordered and reviewed the transcript of the proceeding. The committee also obtained and listened to the audio recording of the appearance.

Following its review of the court record, the committee concluded that His Worship was not sleeping during the proceeding. The committee observed that His Worship provided little or no assistance to the complainant, a self-represented party, who also required an interpreter. His Worship was critical of the complainant. The committee noted that a justice of the peace has a responsibility to ensure that defendants have a fair trial and are afforded due process.

The committee found that the transcript showed there were instances where His Worship interrupted the complainant. In addition, the committee found that the audio recording showed that on one occasion, he raised his voice when he told the complainant to “be quiet”.

The committee noted that a justice of the peace is expected to be patient, dignified and courteous to litigants. The justice of the peace is expected to be the exemplar and guardian of the dignity of the court. As indicated in the commentaries in the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice*:

Commentaries:

Justices of the peace 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 committee invited His Worship to respond to the complaint. In his response, His Worship expressed his sincere apology to the complainant and he regretted his conduct. The committee could see that His Worship had genuinely reflected upon his conduct and had learned from the complaint. After reviewing the response letter, the committee noted that His Worship was experiencing personal circumstances at that time, and that his conduct was out of character.

The complaints process through the Review Council is remedial in nature and through the review of and reflection upon one’s conduct improvements are made as to how situations are handled and individuals are treated in the future. As its final disposition of the matter, the complaints committee determined that the appropriate disposition was a letter of

APPENDIX A

Case Summaries

advice, pursuant to section 11(15)(b) of the *Justices of the Peace Act*. In the letter, the committee reminded His Worship of the high standards of conduct expected of judicial officers to maintain confidence in the judiciary. To preserve public confidence in the administration of justice, it is always the case that justice must not only be done; it must be seen to be done. After providing its advice, the complaints committee closed the file.

CASE NO. 24-018/13

The complainant indicated that the justice of the peace issued a summons for him under the *Criminal Code*. He said that it was later discovered that the summons was issued with no evidence to support it and it was based strictly on the word of his ex-wife.

He said that Her Worship issued a second summons for another offence and he alleged that this showed a lack of knowledge of the *Criminal Code* and a lack of effort to ensure that private Informations which she approved were accurate. He expressed the belief that issuing a summons based solely on the word of a vindictive ex-wife was gender bias.

The complaint was assigned to a three-member complaints committee. The committee requested a copy of the transcript of the proceeding before Her Worship in Intake Court when the first summons was issued and a copy of the transcript of the pre-enquête when the second summons was issued.

In the course of requesting information from Court Services, the committee became aware of charges that were before the court that could have some relationship to the matters raised in the complaint. The complaint was held in abeyance in accordance with the Review Council's policy that if a complaint arises from a court proceeding, the Review Council will not generally commence an investigation until that court proceeding and any appeal or related legal proceedings have been completed. This ensures that any investigation by the Council is not interfering or perceived to be interfering with any ongoing court matters.

When the court proceedings were completed, the complaints committee reviewed the transcript of the proceeding in Intake Court. The committee found that the transcript showed that a police officer appeared before Her Worship on the matter. The committee also reviewed the transcript for the pre-enquête.

APPENDIX A

Case Summaries

A

The complaints committee found no evidence to support the allegation of gender bias. The committee noted that the complainant disagreed with how the justice of the peace assessed the evidence and with her decisions to issue summonses. The committee found that these were matters of judicial decision-making, not allegations of judicial misconduct. The Review Council has no discretion to act on complaints that do not fall within its jurisdiction. The *Justices of the Peace Act* states that a committee must dismiss a complaint if it falls outside of the Review Council's jurisdiction. The committee dismissed the complaint as outside of its jurisdiction and closed the file.

CASE NO. 24-019/13

The complainant appeared before the justice of the peace on a *Highway Traffic Act* matter. He filed a complaint arising from that appearance and made allegations about a bail hearing which took place a number of years earlier. He alleged that Her Worship "has no idea of what law and order is and appears to eat out of the hands of the [police]".

He alleged that during the bail hearing, Her Worship used "double talk" when she said, "I have been encouraged to believe that there is no pattern of poor driving. Certainly you do have a history of breaking the *Highway Traffic Act* and I do note the detective's comments that the fact that you have not been charged with offences does not necessarily provide conclusive evidence that in fact offences have not been committed."

He stated that this statement was utterly disgusting, as is most of the judiciary in Ontario, and he asked who Her Worship slept with before the bail hearing. He also asserted that, based on her statement, there was no conclusive evidence that Her Worship had not received secret bribes from the police. He further alleged that Her Worship failed to know what she was talking about when she referenced his outstanding *Criminal Code* charges. He disagreed with her decision that he should be denied bail when he had no criminal record.

Over three years later, when he appeared before the same justice of the peace, he was charged with a seatbelt violation. He said that he asked for a recusal and Her Worship refused. He also alleged that as he was leaving the courthouse, it appeared Her Worship was accepting something from a police officer. According to the complainant, Her Worship had her arms underneath the officer's arms, accepting cash or bequests after

APPENDIX A

Case Summaries

A court. The complainant said that he had “caught her red-handed eating from the palms of their hands” and when he saw them, they retreated.

He alleged that the judiciary is not up to the standards of independence and impartiality. He also alleged that neither Her Worship nor the police had heard of section 11(d) of the *Charter of Rights* and they had no understanding of how to conduct an independent and impartial hearing based on law and order. He also said that he was later sent disclosure which he could not read because it was not legible. He concluded that justice has no meaning in Canada and instead corruption rules the day with stupidity.

The complaints committee reviewed the complainant’s letter, as well as the transcripts and audio recordings of the bail hearing and the *Highway Traffic Act* proceeding. The committee noted that the Justices of the Peace Review Council had no jurisdiction to review the correctness of the decision made by Her Worship that she would not recuse herself from the case or her decision to detain the complainant. Nor did the Review Council have any jurisdiction over the disclosure provided by police.

With respect to the allegation that the complainant had seen the justice of the peace accepting cash or bequests from the police officer, the committee retained the services of independent counsel to interview the police officer and provide a transcript of the interview for the committee’s review. After reviewing the transcript of the interview, the committee concluded that there was no evidence of corruption or bribery. The committee noted it is often the case, particularly in a small courthouse, that police officers may be seen together with a justice of the peace in a hallway. As well, they may have contact as part of the normal routine of their work.

With respect to the allegations about bias or corruption evident in comments made by the justice of the peace during the bail hearing, the complaints committee found that the record showed that Her Worship spoke using the word, “We”. She stated, “We don’t do that.” The committee observed that in the context of the comments, the term was used to explain the process. There was no suggestion of bias, corruption or collusion.

The committee found that the transcript showed that during the bail hearing, Her Worship referred to evidence of the accused failing to comply with court orders and failing to attend court. The committee observed those were appropriate considerations during a bail hearing.

APPENDIX A

Case Summaries

A

The committee also found that the transcript showed that Her Worship commented, “I do note the Detective’s comment that the fact that you have not been charged with offences does not necessarily provide conclusive evidence that in fact offences have not been committed.” After reviewing the transcript, the committee observed that Her Worship’s reference to the Detective’s comment was unnecessary. The committee concluded that Her Worship’s decision was not based upon the Detective’s comment. However, the committee was concerned that such a comment could leave the impression with the complainant, and perhaps others in the courtroom, that the justice of the peace may be inappropriately presuming the accused to be guilty of offences where charges were not laid or proven, and relying upon such matters in making a decision to detain. The committee considered the importance that perceptions play in the public’s confidence in the judiciary and in the administration of justice. Justice must not only be done, it must be seen to be done. It is always important for a justice of the peace to be aware of how his or her comments and conduct may be viewed and understood by those appearing before him or her.

The committee decided to invite Her Worship to respond to the complaint. The complaints process through the Review Council is remedial in nature and through the review of and reflection upon one’s conduct improvements are made as to how situations are handled and individuals are treated in the future. The committee observed that in her response, Her Worship had reflected carefully upon the comment which she had made during the proceeding. After reviewing her response, the committee was satisfied that Her Worship understood how important it is that a justice of the peace must be mindful that his or her comments do not lead to a perception of bias.

The committee found that the court record did not support the allegations that Her Worship did not know what law and order is, or that she did not conduct an independent, fair and impartial hearing.

The committee concluded that there was no evidence of misconduct, dismissed the complaint and closed the file.

APPENDIX A

Case Summaries

CASE NO. 24-020/13

The complainant was a court clerk. She alleged that the conduct of a justice of the peace was unprofessional and created an atmosphere of harassment in the workplace. She referred to three specific incidents in her letter that occurred over a few months. She alleged that on one day when the court list was very heavy, she tried to inform His Worship about the heavy list prior to court. She said that he totally ignored her, and rushed in front of her, pushing the door to the courtroom open instead of waiting for her to open it and letting her announce that people should rise. She alleged that later that day, His Worship asked about a kleenex box and implied that she had taken it.

In addition, she said that His Worship ordered a bench summons and rather than leaving the courtroom, he stayed and asked the complainant to prepare it right away while the officer waited. She said that rather than following the existing protocol, His Worship ordered the police officer to serve the summons himself. She alleged that His Worship used some colourful language to infer that she was not fast enough. He allegedly told the police officer that he should not have to wait and that he was not paid to wait. His Worship also reminded her of a pending probation order.

The complainant stated that His Worship made his own rules and stepped beyond a divisional boundary directing how court orders are to be prepared. She alleged that he laughed and joked with the prosecutor who was eating an apple during a break, even though food and drinks were not allowed in the courtroom.

Additionally, the complainant advised that His Worship was aware that court staff were entitled to breaks. She said she was told by her supervisor that the court orders could wait and she could take her break. She advised that when she informed His Worship that she was going on break and someone might be down to do the orders, he was shocked and upset. She said that he told her he did not like the tone of her voice and asked her to apologize. She stated that she apologized but felt abused at an inferior level of the hierarchy.

The complainant indicated that there was another date when the court tiers were overloaded and His Worship wasn't happy about this and made a comment on the record when he got seated. He then asked about the case adjourned from the previous day, and then started openly blaming her for not being able to provide him with the information he needed. She indicated that she was embarrassed by the incident and by her supervisor's explanation to

APPENDIX A

Case Summaries

His Worship that the clerk did not have access to the information which he had requested. She indicated that the supervisor addressed the issue in front of His Worship and told him that that clerk simply had no access to the ICON printout he required.

She described a third incident when she spoke in court, and His Worship allegedly said, “When does the clerk have the turn to talk?” The complainant advised that she was embarrassed and buried her head without looking up. She advised that after court, defence counsel and the prosecutor separately told her that it was not right for him to make such a comment. The complainant did not provide a court date for this incident.

The complainant summarized that she was greatly disturbed and distracted in recent months by the way she was treated by His Worship both during and outside of court proceedings.

The complaint was assigned to a three-member complaints committee. The committee reviewed the complainant’s letter and reviewed the transcripts of the court proceedings for the two dates which had been provided by the complainant. One member of the committee reviewed the full audio recording of both of the dates very carefully.

The committee noted that the court record would not capture discussions between His Worship and the clerk before they entered the courtroom. However, the committee found that if His Worship rushed into the courtroom on a busy day without waiting for the clerk to hold the door and announce that people should rise, that would not constitute judicial misconduct.

The committee found that the transcript showed that His Worship asked where the tissues were. The review of the audio recording by a member of the committee showed that when he asked the question, his tone was polite and respectful. There was no indication of an accusatory tone. The committee found that there was no evidence to support the allegation that His Worship had blamed the clerk or anyone else.

The committee found that the transcripts and the review of the audio recordings by a member of the committee also showed that His Worship’s manner was respectful and polite toward the clerk throughout both days. On one of the days referenced by the clerk, His Worship’s comments demonstrated empathy for the heavy workload of the clerk on that day. He noted, “I’m feeling bad for Madam Clerk.” With respect to the allegation that His Worship used colourful language, the committee found that the court record showed that His Worship said, “I’m waiting for Madam Light Fingers here.” He then chuckled

APPENDIX A

Case Summaries

A and said, “Lightening fingers.” The review of the audio recording by one member of the committee showed that the comments were not said in a derogatory or mean way. Rather, it appeared that His Worship was remarking upon how quickly the clerk was typing and it was intended more in the nature of a compliment to her.

The committee noted that the audio recording showed that the audio recording continued to record when court was not in session. This should not have occurred and could result in recording discussions about cases that should be confidential. The committee noted that a decision by His Worship to permit the prosecutor to eat her apple during a break on a very busy day would not be misconduct.

The committee noted that the clerk expressed disagreement with procedural matters addressed by His Worship on each of the dates. The committee observed that the procedural matters were not matters of judicial conduct. With respect to the two dates for which the committee was able to obtain the court record, the committee found that the review of the transcripts and the review of the audio recording by one of its members showed that His Worship addressed matters politely and respectfully. There was no evidence of harassing or blaming behaviour by him towards the clerk.

With respect to the allegation that His Worship was shocked and upset when the clerk took a break before court orders were completed, and that he asked her to apologize, the committee found no evidence to support this allegation on the court record. The committee noted that there would be no court record available for conversations that took place outside of the courtroom. The committee concluded that without independent objective evidence of the words spoken or the tone used by both parties, it could make no findings on a balance of probabilities of what had occurred.

After its investigation, the committee could see that the workload on the particular days was heavy. The committee could understand how the demands on both the justice of the peace and the clerk on such days could be stressful. The investigation showed that His Worship was sensitive to her circumstances and that he made a few comments with mild humour that were respectful. The committee concluded that there was no evidence of harassment or of comments intended to embarrass the clerk. There was no evidence of judicial misconduct. The committee dismissed the complaint.

APPENDIX A

Case Summaries

CASE NO. 24-022/13

The complainant attended before a justice of the peace in Intake Court to lay informations under sections 504 and 507 of the *Criminal Code of Canada*. He alleged that Her Worship “gives the appearance she is there to protect the criminals and obstruct freedom of speech and disobeys a statute”. He also alleged that Her Worship “refused to do the job she is paid for by taxpayers and therefore should be fired.” He expressed the view that criminal charges should probably be laid against Her Worship and said that her corrupt behaviour in protecting alleged criminals shows that she has accepted a bribe of cash, gifts and bequest. He said that there is no conclusive evidence that she has not accepted a bribe. The complainant also alleged that she refused to do her duties and “made a racist comment about my Jewish Religion which is another reason she refused to serve me”.

The complainant did not provide a date or time of the court appearance. The investigating complaints committee had the Registrar send a letter to the complainant to get further details about the court appearance to enable the committee to order and review the court transcript of his attendance before the justice of the peace. After no response from the complainant was received, a further letter was sent by courier to the address provided by the complainant. Both letters were ultimately returned as undelivered, with information from the courier that the address provided was not a valid address for the complainant. An additional step was taken as a last attempt to contact the complainant; however, no response was received.

The complaints committee found that reasonable efforts were made to obtain further information from the complainant. The committee dismissed the complaint on the basis that there was a lack of information and particulars to support the allegations. The file was closed.

CASE NO. 24-025/13

A French-speaking complainant filed a complaint about the justice of the peace who dealt with his application for a private Information. The complainant had previously requested a French-speaking justice of the peace. He indicated that he was told when one would be on duty at the court, and he attended twice without being able to appear before a French-speaking justice of the peace and without the benefit of a qualified interpreter.

APPENDIX A

Case Summaries

A

On the date in question, he alleged that he attended Intake Court a third time and the justice of the peace rejected his complaint out of hand, without even considering the summary he had, and disregarding his reasons for making a private criminal complaint. The complainant also alleged that His Worship tried to discourage him from pursuing the matter, saying that “I was wasting my time in lodging a complaint against [the accused] about which he was definite.”

He alleged that His Worship:

- ◆ Showed contempt for learning, knowledge and critical thinking;
- ◆ Strayed from the principle of equal rights; and,
- ◆ Had an obligation incumbent on a justice of a peace, failing which his authority is undermined.

The complainant said that individuals become the subject of bias on the sole grounds of their appearance. He felt that those practices shy away from the principle of equal treatment before the law.

He stated that he objected to the decision of His Worship to not issue process and he asked to have the decision dismissed and his matter heard on its merits. The complainant was informed that the Review Council had no jurisdiction to review or change His Worship’s decision.

The complaint was assigned to a complaints committee for review. The complaints committee reviewed the complainant’s letter and reviewed the transcript and audio recording of the complainant’s appearance before His Worship.

Following its review of the court record, the committee was concerned that it appeared that His Worship may not have properly identified and qualified the interpreter on the record. As well, it appeared to the committee that His Worship engaged in a dialogue directly with the interpreter about the complainant’s matter, rather than insisting on verbatim translation. It also appeared that His Worship continued to hear and decide the matter, rather than taking steps to try to have the matter heard by a French-speaking justice of the peace.

APPENDIX A

Case Summaries

A

The committee invited His Worship to respond to the complaint. After reviewing his response, the committee could see that His Worship had reflected upon the events, and recognized that he had not properly identified and qualified the interpreter. He explained that the interpreter had appeared before him on many occasions and that he had accepted him as a qualified interpreter. As well, he was concerned that the complainant had already been inconvenienced and the interpreter had time limits on his availability. After reflecting on this case, he appreciated that a defendant should have the opportunity to challenge the interpreter. He had since taken steps to ensure that he has a proper understanding of qualification proceedings for interpreters.

With respect to the committee's concern that His Worship communicated with the interpreter as if he were an agent for the complainant, rather than insisting on verbatim translation for the defendant, His Worship understood the concern. He explained that this had occurred because there were complex issues and he wanted to clarify and be sure that he understood what was being said. The committee could see that His Worship understood that he should direct his remarks directly to a defendant and insist on verbatim translation.

His Worship also explained that in circumstances where a French-speaking justice of the peace was not available, he had been concerned about the inconvenience to the complainant who had attended twice previously to have his application heard. His Worship wanted to avoid requiring him to re-attend from out the province a further time and proceeded with the matter with the assistance of a French interpreter. His Worship believed that the complainant had understood that if he wished to re-attend on a different day, efforts would be made to provide a French-speaking justice of the peace. He expressed regret that the complainant felt he had not been properly treated.

The complaints process through the Justices of the Peace Review Council is remedial in nature and through the review of one's conduct, improvements are made as to how situations are handled and individuals are treated in the future. After its investigation, the committee concluded that there was no judicial misconduct. As well, His Worship had fully understood and appreciated the concerns raised by the complaint. The complaint was dismissed and the file was closed.

APPENDIX A

Case Summaries

CASE NO. 24-026/13

The complainant filed a complaint about the justice of the peace who presided over his trial on a speeding charge. He indicated in his letter that he requested to record the proceedings under s. 136(2)(b) of the *Courts of Justice Act* and before he could finish, Her Worship interrupted him and said that recordings are not allowed in the courtroom. He said that he asked to bring an oral motion on the matter, and Her Worship nodded her head negatively. She then asked the prosecutor and then took a break for about ten minutes. He said that after she returned, he again requested that he be permitted to record the proceedings and Her Worship interrupted his request to say that permission to record inside the courtroom could only be granted a judge and therefore it was beyond her jurisdiction. The complainant also advised that when Her Worship returned from the break, a security officer had been brought into the court to intimidate him. He again indicated that he wished to bring the motion and again Her Worship denied it.

The complainant's trial proceeded before Her Worship. The complainant alleged that during the trial, Her Worship refused to hear his objection during the officer's evidence. He further indicated that the fine amount was wrong and when he brought it to her attention, Her Worship refused to hear from him.

The complainant alleged that his rights were violated and that Her Worship breached her duty.

The complaints committee reviewed the letter from the complainant. With respect to the decision by the justice of the peace that the complainant could not record the proceedings and her decision on the fine, the complaints committee noted that these related to decisions made in the course of the justice of the peace's duties, rather than allegations of judicial misconduct. Matters of judicial decision-making are outside of the jurisdiction of the Review Council.

The complaints committee requested and reviewed the transcript of the proceeding. The members also requested and listened to the audio recording of the matter. The committee found no evidence that the justice of the peace had security brought into the courtroom to intimidate the complainant. The committee also observed that it is not inappropriate for a judicial officer to take a recess to consider his or her decision on a matter in a case.

APPENDIX A

Case Summaries

A

After its review, the committee had concerns about the manner in which Her Worship responded to the complainant's request to record. When the complainant, a self-represented defendant, indicated that he was requesting permission to record the trial, Her Worship immediately told him that he could not do that and he must ask for a transcript. He stated that he wanted to bring a motion and the record showed that he was not permitted to argue his motion. The prosecutor was invited to provide comments. The committee observed that he tried again to be permitted to bring his motion. It appeared to the committee that he did not fully understand what was happening or that a decision had been made on the motion. Rather, he was left feeling that he did not have an opportunity to fully put forward his submissions on his motion and have them considered.

The committee noted that the transcript showed that when Her Worship provided a brief introductory explanation of the trial process, she told the defendant that he "might" be permitted to cross-examine the officer on what he said about the case. The committee observed that this could have been interpreted by the defendant that he did not have the right to cross-examine the witness.

The committee observed that the court record showed that when the defendant tried to make a motion that the charges should not proceed, it appeared that he was not familiar with the proper terminology or procedures. He tried to request that the charges should be withdrawn on the basis of unfairness to him, and Her Worship interrupted without permitting him to fully put forward his arguments to support his request. The committee noted that rather than permitting submissions to be made by both parties, she told the defendant to listen to what the officer had to say and directed that the evidence proceed. As well, the committee found that the record showed that when the defendant tried to raise an objection to the evidence of the police officer, he was not permitted to indicate what the nature of his objection was so that it could be determined whether it was a matter that could properly form the basis for an objection. Instead, he was told that he was not to speak and that he, a defendant, could not raise an objection. The committee noted that a defendant has a right to raise objections about the admissibility or relevance of evidence and have those objections heard and considered by the Court. The committee observed that there was no explanation to the defendant when the prosecutor qualified the police officer's notes. Subsequently, the defendant tried to raise concerns about the officer "reading" his notes and no explanation was provided by Her Worship at that time about the way a witness may use notes to refresh one's memory.

APPENDIX A

Case Summaries

A

The committee recognized that Provincial Offences court is very busy, with many defendants. While the committee appreciated the demands upon a justice of the peace, the committee was of the view that regardless of how busy a court is, there is an obligation on every justice of the peace to take the requisite time to listen to individuals before him or her, and to explain what the proceeding is about so that they can properly understand the process and the decisions of the justice of the peace. This is particularly important if the individual is not represented by legal counsel. As well, the committee noted that a justice of the peace has a duty, in every proceeding, to ensure that a self-represented defendant receives a fair trial, and has the full opportunity to put forward his or her defence.

The committee noted that justices of the peace must strive to be patient and courteous in performing the duties of office. The committee found that the court record showed that Her Worship was sometimes abrupt. Also, when the defendant was attempting to ask questions during cross-examination, Her Worship appeared to be impatient and interrupted him on more than one occasion in the middle of his questions. In fact, she told him to “Hurry up.” As well, when the defendant was asking questions about matters of evidence, Her Worship stopped the cross-examination, and did not permit him an opportunity to explain what his additional questions might be.

The committee invited Her Worship to respond to the allegations. After reviewing her response, the committee could see that Her Worship had thoughtfully reflected upon the events and her conduct. She recognized that she had shown impatience and that she had interrupted the complainant. She acknowledged that she should not have told the complainant to “hurry up”. The committee found that Her Worship’s response showed that she had learned from reviewing the transcript of the proceeding and that she appreciated the importance of the axiom that justice must not only be done in every case, it must be seen to be done. A litigant must feel that he or she is being heard. From its review of the response, the committee could see that Her Worship intends to modify her approach in the future.

The complaints process through the Justices of the Peace Review Council is remedial in nature and through the review of one’s conduct, improvements are made as to how situations and individuals are treated in the future. After its investigation, the committee concluded that there was no judicial misconduct and no further action was needed. The complaint was dismissed and the file was closed.

APPENDIX A

Case Summaries

CASE NO. 24-028/13

The complainant attended before the justice of the peace for a trial on a parking ticket that had been issued to his spouse. He said he had appeared on behalf of his spouse, and he gave evidence that he was the driver at the time of the alleged offence. He informed Her Worship that he was also a licensed paralegal. The defendant was ultimately found guilty.

The complainant alleged that Her Worship's conduct was reproachable. He alleged that in her decision, she made highly inappropriate and unacceptable remarks, comments and accusations, which he believed were made out of prejudice, bias and want of competence. He provided a summary of the evidence and said that Her Worship did not believe his testimony. He objected that her comments meant that he had lied. He said that Her Worship acted in a prejudicial and biased manner when rendering her decision and when she assessed the evidence. He alleged that she was intellectually incapable of assessing the evidence, went beyond her jurisdiction, and used the evidence to make serious, damaging and insulting accusations of intent in a clear violation of a defendant's constitutional rights. He said she was incapable of assessing who was telling the truth. He alleged that she effectively encouraged prosecution witnesses to lie in court and supported and broadened the existence of an unjust and oppressive government. He alleged that he was publicly humiliated and abused.

The complainant provided a further letter, in which he indicated that his appeal would be granted on the grounds of perjury by the parking officer. He also submitted a copy of his notice of appeal. The transcript of the appeal showed that the appeal was granted on the basis that he had evidence for the appeal judge that had not been presented at the trial.

The complaints committee reviewed the complainant's letters and the transcript of the trial before Her Worship. As well, they reviewed the transcript of the appeal.

The committee noted that the allegations about how Her Worship assessed the evidence and decided the case related to decisions made in the course of a justice of the peace's duties, not allegations of judicial misconduct. The committee concluded that these were matters of judicial decision-making which were outside of the jurisdiction of the Council. The Council has no discretion to act on matters that do not fall within its jurisdiction.

Following its investigation, the committee found that the court record did not support the other allegations. The record showed that Her Worship made her decision based

APPENDIX A

Case Summaries

A upon the evidence before her, and there was no evidence to support the allegations of bias, prejudice or incompetence. The committee found no evidence to support the allegations that Her Worship made serious, damaging or insulting accusations about the complainant. There was no evidence that she encouraged witnesses to lie or that she supported an unjust or oppressive government. Her Worship conducted the matter in a professional and appropriate manner.

The committee observed that the appeal was granted after the complainant brought forward new evidence that was not provided at the trial. Her Worship's conduct was not a basis for the appeal being granted.

For all of those reasons, the committee dismissed the complaint and closed the file.

CASE NO. 24-029/13

The complainant, a paralegal, represented his client on a trial before a justice of a peace. He alleged that the proceedings tarnished the administration of justice and that there were irrelevant, inappropriate and harmful findings. He alleged that the proceedings trivialized the *Charter* and deprived the defendant any semblance of justice.

The complainant said that before the trial, there had been disclosure requests in writing and when the matter was called in court the prosecutor provided additional disclosure and advised that there was a change of witnesses for the prosecution. The complainant addressed the court at the outset with a history of the issues and the history of the case. He alleged that the manner in which Her Worship responded to him that was condescending and unprofessional. He alleged that the language which she used took him aback.

He also alleged that Her Worship continued to address him in an unprofessional manner, questioned his status with the Law Society of Upper Canada and made personal remarks towards him. He said that during the trial Her Worship made a number of comments that were humiliating, condescending and demeaning. He said Her Worship conducted herself in a manner that "patently demonstrated an actual bias against me and the defendant, or, at the very least, gave rise to a reasonable apprehension of bias". He also stated that the matter was set for 9:00 a.m., and Her Worship held it down for "other teas, lunch break and [her] personal appointment". He said that Her Worship also made a demand for his office retainer agreement with the defendant.

APPENDIX A

Case Summaries

A

The complaint was assigned to a complaints committee for review and investigation. The committee ordered and reviewed the transcript. The committee also requested the audio recording of the proceedings. The committee listened to the portion where the complainant provided the history of the disclosure requests and Her Worship's reasons for her decision. The committee found that the court record did not support the allegations that Her Worship was disrespectful, condescending or demeaning. Although she said that the complainant was being long-winded, it was in the context of his description of the history of the matter and Her Worship trying to understand what disclosure he sought in order to proceed with the trial. Her Worship sought clarification and summarized what he said to get a better understanding of the complainant's concern. The committee found that Her Worship's tone and voice as she gave her reasons for her decision in the trial were not condescending or humiliating. The committee found that the evidence did not support the allegation of bias or a perception of bias.

The committee noted that Her Worship's assessment of the evidence, her findings in the case, and her decisions on disclosure and on the issue of an adjournment were matters of judicial decision-making outside of the jurisdiction of the Review Council. Similarly, her decision to satisfy herself on the matter of the retainer and to accept the word of the complainant on that issue were matters within Her Worship's discretion and not matters of conduct. The reasons which Her Worship gave were part of her judicial discretion and decision-making, and a matter of law outside of the jurisdiction of the Review Council.

With respect to the time when the case was called, the committee observed that the court was busy on the day in question. The prosecutor tried to get assistance from another court to help with the number of matters. The committee noted that the prosecutor called the case earlier in the day and it was held down to give the complainant time to review the additional disclosure. There was also a lunch break. The committee found that there was nothing inappropriate about the time when the case was called or completed.

After its investigation, the committee concluded that there was no evidence of judicial misconduct. The complaint was dismissed and the file was closed.

APPENDIX A

Case Summaries

CASE NO. 24-030/13

The police applied to the court for a firearms prohibition order against the complainant and served him with an affidavit sworn by a police officer. The complainant wrote to the Council about information contained in the affidavit. He said the affidavit showed that a justice of the peace claimed that several years ago, the complainant had tried to reach for her throat during a court attendance, he tried to lay criminal charges against some judges, he had an altercation with a justice of the peace, and police had to remove him from the courthouse as a result of his dealings with another justice of the peace. The complainant denied attacking Her Worship and said he was arrested several times for doing nothing. He stated that “her testimony is only another twisted and corrupted attack” on him to put him in jail or a mental health institution. The complainant said he believed that Her Worship needed mental health treatment and was probably schizophrenic. He requested that the Council investigate Her Worship and said that he believed “she is losing her mind completely!”

The complaints committee reviewed the complainant’s letter, the police affidavit and the transcript of the complainant’s appearance in court dealing with the firearms prohibition application. The committee noted that the application for the firearms prohibition was dismissed as abandoned by the Crown Attorney. The committee found that the affidavit provided evidence in a sworn statement from a police officer of numerous incidents where the complainant had to be removed by the police or court security from the courthouse because of aggressive, emotional and inappropriate conduct towards police and judicial officers. The affidavit also showed that the complainant had been arrested on charges of breach of court orders and threatening.

The committee observed that there were no findings by the court that the events described in the affidavit of the police officer were untrue. After completing its investigation, the committee concluded that there was no evidence to support the allegations that Her Worship had provided untruthful information, that she had acted in a corrupt manner or that she was losing her mind or she should be assessed for treatment in a mental health institution. The committee dismissed the complaint and closed the file.

APPENDIX A

Case Summaries

CASE NO. 24-033/14

The complainant attended before the subject justice of the peace in relation to his *Highway Traffic Act* trial. The complainant said that he believed that he has been the subject of racial profiling by police and had installed a dashboard video camera in his vehicles, a security camera at his home and carries a video camera with him at all times to protect himself.

At the trial before His Worship, the complainant alleged that His Worship refused to allow him to present a video recording showing that the officer had committed perjury in court. The complainant also alleged that His Worship refused to allow him to present reports showing racial profiling and harassment by various police officers. The complainant indicated that His Worship ruled in his favour but ordered him to stand up and lectured him. The complainant said that His Worship praised the police force and accused him of being a trouble maker. The complainant also alleged that His Worship told him that “the officer could pull me over as many times as he likes”.

The complaint was assigned to a three-member complaints committee. The committee reviewed the complainant’s letter and reviewed the transcript of his trial before His Worship.

The committee noted that His Worship’s rulings to not allow the complainant to present his video recording evidence or documents about racial profiling and harassment were matters relating to judicial decision-making. 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.

With respect to the allegations relating to His Worship’s comments about the complainant at the end of the trial, the complaints committee noted that the court record reflected that His Worship made remarks recognizing the difficult work that the police perform and suggesting that they have better things to do than harass or racially profile people. The committee observed that the court record showed that His Worship had referred to the defendant as “a bit of a prickly person to deal with” and said that he had “a certain amount of paranoia when dealing with authority”. While the committee noted that it may have been preferable to avoid making such remarks to a defendant, the committee found that in the context in which they were said, His Worship’s comments did not amount to misconduct.

For the aforementioned reasons, the committee dismissed the complaint and closed its file.

APPENDIX A

Case Summaries

CASE NO. 24-035/13

The complainant was involved in acrimonious marital dispute and litigation with his ex-wife. He appeared before a justice of the peace in Intake Court seeking to have private charges laid against his ex-wife and her lawyer under the *Criminal Code*. He alleged that His Worship issued only one charge, and a judge later found that the charge issued was incorrect. The complainant believed that His Worship acted intentionally to stop him from laying charges against his ex-wife and her lawyer. The complainant also said that he suspected that His Worship or someone in the Crown Attorney's office informed his ex-wife's lawyer about the charges he was seeking to lay because his wife later brought a charge against him.

The complainant alleged that on a later date, His Worship issued a summons against him in a criminal case brought by his ex-wife. He said that he had to hire a lawyer and ultimately the criminal charge against him was stayed. He alleged that His Worship acted in the interest of the ex-wife and her lawyer. He stated that the charge brought against him cited an offence date that was after she appeared before him. He questioned whether it was standard practice to fabricate criminal cases in Ontario. He questioned whether His Worship had a monetary interest in this situation or whether there was discrimination or negligence.

The complaint was assigned to a three-member complaints committee. The committee reviewed the complainant's letter and copies of the court documents which he provided. The committee requested and reviewed the transcript of his appearance before His Worship.

The complainant was informed that the Council had no jurisdiction over the conduct of Crown Attorneys. He was provided with information where he could pursue those concerns.

The committee noted that the determination by a justice of the peace of whether process should be issued and what charges are appropriate in the circumstance are matters of judicial decision-making outside of the jurisdiction of the Council. The *Justices of the Peace Act* requires that matters outside of its jurisdiction must be dismissed. Only a higher level of court can review the correctness of decisions made by a justice of the peace.

The committee observed that the transcript and audio showed that His Worship took time to ensure that he understood the facts, the circumstances and what the complainant was seeking before he made a determination on whether process should be issued and what

APPENDIX A

Case Summaries

the appropriate charge(s) should be in the circumstances. He also provided explanations to the complainant in relation to the civil matter and process. After examining the court documents, the committee noted that when the Information sworn by his ex-wife in her application for a peace bond was prepared by court staff, there was a typographical error which resulted in the wrong date being stated for the events that were alleged. The error was not the fault of the justice of the peace. There was no evidence that it was the result of any discrimination or negligence by His Worship. The committee also reviewed the transcript of the court appearance of the complainant's ex-wife before His Worship during which she requested a peace bond against the complainant.

The committee observed that the transcripts and audio disclosed that there was an acrimonious family situation between the complainant and his ex-wife. After its review of both transcripts and the court documents, the committee concluded that His Worship was professional and fair to both parties. The transcripts showed that he made his decisions based on the evidence provided to him. There was no evidence to support the allegations of collusion, or that he acted in the interest of either of the parties or the ex-wife's lawyer. The committee concluded that there was no evidence of judicial misconduct and closed the file.

CASE NO. 24-036/13

The complainant wrote a letter to the Council arising from a Provincial Offences matter involving tragic consequences. The complainant alleged that the justice of the peace had chastised a person after he gave a Victim Impact Statement, and that he stepped out of his authority as a justice of the peace. He alleged that His Worship made comments that showed a complete disregard for the feelings of the victim's family and the purpose of a Victim Impact Statement. He alleged that His Worship demonstrated poor professional conduct.

The complaints committee reviewed the correspondence from the complainant and ordered and reviewed the transcript. The committee also ordered and listened to the audio recording of the proceeding. After its review, the committee invited the justice of the peace to respond to the allegations. He provided two responses. He explained that it was not his intention to chastise the son of the deceased but to show that words used by him had a technical legal meaning and that they were used incorrectly. He assured the committee that he would not make similar comments in the future.

APPENDIX A

Case Summaries

A The committee noted that perceptions of a judicial officer and the comments that they make in the courtroom play a vital role in the confidence of the public in that judicial officer, in the judiciary in general and in the administration of justice. Judicial officers must always be mindful of how much their conduct and comments impact on the level of confidence which the public has in the judiciary. It is always important for a justice of the peace to be aware of how his or her comments and conduct may be viewed and understood by those appearing before him or her. Many litigants and witnesses are unlikely to be familiar with the justice system or with the technical use of terminology that is familiar to those who work in courtrooms regularly.

The committee also observed that a justice of the peace must be mindful that the purpose of Victim Impact Statements is to allow the victim, during the decision-making process on sentencing, to describe to the court in his or her own words the impact of the crime on them. A member of the public may not be familiar with the technical legal meaning of words.

The complaints process through the Review Council is remedial in nature and through the review of and reflection upon one's conduct improvements are made as to how situations are handled and individuals are treated in the future. After its investigation, the committee determined that the appropriate disposition was to provide the justice of the peace with a letter of advice pursuant to section 11(15)(b) of the *Justices of the Peace Act*. In accordance with the Procedures of the Council, a committee will provide advice in circumstances where the misconduct complained of does not warrant another disposition, there is some merit to the complaint and the disposition is, in the opinion of the committee, a suitable means of informing the justice of the peace that his conduct is not appropriate.

The committee reminded the justice of the peace that perceptions of a judicial officer and the comments that they make in the courtroom play a vital role in the confidence of the public in that judicial officer, in the judiciary in general and in the administration of justice. Judicial officers must always be mindful of how much their conduct and comments impact on the level of confidence which the public has in the judiciary. It is always important for a justice of the peace to be aware of how his or her comments and conduct may be viewed and understood by those appearing before him or her.

The committee reminded the justice of the peace of the importance of respecting the purpose of Victim Impact Statements. As well, he was reminded that it must be remembered that it may be difficult and emotional for a victim to express this publicly.

APPENDIX A

Case Summaries

A

The committee reminded His Worship that every comment and the tone in which it is delivered has a role in the overall impression that is left with a member of the public about how justice is administered and in ensuring impartiality and fairness. At the same time, a justice of the peace needs to understand that a litigant may not use the correct terminology, or know the technical meaning of a legal term. As well, a judicial officer is the person who sets the tone for the atmosphere in the courtroom.

The committee noted that a judicial officer must be mindful that if a witness perceives that the process is fair and that his comments have been heard, he is more likely to be satisfied with the outcome. Before making comments, a justice of the peace needs to first consider how his comments may be perceived. Sensitivity and compassion can make a significant difference in the impression left with those affected, and others, of the judicial officer and of the administration of justice in general.

Having provided its advice, the committee closed the file.

CASE NO. 24-038/13

The complainant attended court with her young child to request a fine reduction for a traffic ticket. She appeared before His Worship in an early resolution court. The complainant alleged that His Worship commented on her attire and suggested that the next time she comes to court, she should dress more appropriately. According to the complainant, His Worship “then in an intimidating way, asked me to say that I understood”. The complainant had no idea why he commented on her attire. She felt offended and stated, “I believe that the judge took one look at me and formed an inappropriate opinion about my body before ‘seeing’ the facts.” The complainant was also “very disturbed” by His Worship’s comment as her young child was sitting there listening to his every word. She stated that “I’m very upset that this comment was made and I am requesting an apology.”

The complaints committee reviewed the complainant’s letter and reviewed the transcript and audio recording of the complainant’s appearance before His Worship. The committee found from the court record that His Worship did ask the complainant to consider in the future how she dressed when attending court and he asked if she understood. The committee noted that following His Worship’s comments, he did not provide her with an opportunity to speak and specifically asked her not to comment.

APPENDIX A

Case Summaries

The committee observed that although it is generally advisable to avoid making comments about the appearance of individuals attending before the court, the court record showed that His Worship's tone was not intimidating or demeaning towards the complainant, as alleged. In fact, the committee found His Worship's manner to be polite, respectful and encouraging of proper court decorum. He was helpful throughout the remainder of the process. The complaints committee noted that the remarks by His Worship must be considered in the overall context, and concluded that there was no judicial misconduct.

For the aforementioned reasons, the committee dismissed the complaint.

CASE NO. 24-039/13

The complainant wrote a letter to the Council alleging that Her Worship provided advice to a relative who was a co-director of a company that resulted in the manipulation of business practice and impacted negatively on the interests of the complainant's relative, Mr. X, who was also a co-director in the company. The complainant alleged that Her Worship gave legal advice to her own relative and used her knowledge to manipulate fraudulent intentions regarding the operation of the company. Further, she also alleged that Her Worship was aware of and part of possible illegal activity. The complainant said that a potential lawsuit was pending.

The complaints committee reviewed the complainant's letter in which she said that she had proof to substantiate her concerns, which she could present upon request. The committee instructed the Registrar to write to her for additional information. The Registrar wrote to her and asked her to provide the proof she relied upon in support of the allegations, including proof in support of an allegation that Her Worship was receiving remuneration for her work in relation to the company.

The complainant provided correspondence that contained incomplete excerpts from emails between Her Worship and her relative. The complainant said the emails were taken from internal email servers within the company. She also said that proof in the form of bank transactions would be available after the bank granted Mr. X access to the company's bank account.

The committee reviewed the additional correspondence and observed that the complainant had not provided the full email exchange involving Her Worship. On behalf of

APPENDIX A

Case Summaries

the committee, the Registrar wrote a letter to her asking for information about the litigation that she had referenced and asking for the full series of emails to show the complete exchange of emails and the total conversations between Her Worship and the parties. The Registrar sent a letter to follow-up on the request for the additional information.

The complainant requested additional time to provide the information, indicating that she was still working through the bank to obtain documents and that she was waiting for those documents before commencing legal action.

The complainant then sent a letter that said Mr. X was not able financially to hire a lawyer and that he was seeking to have his complaint heard through the Justices of the Peace Review Council. She also indicated that a law suit would commence against Her Worship and her relative based upon a claim of fraud, conspiracy, misconduct by authority, theft, forgery, etc. She provided excerpts of some additional emails and informed the committee that the emails had were taken out of the “sent” email box of the company.

In accordance with the Procedures of the Review Council, the committee decided to invite Her Worship to respond to the allegations set out in the complaint. Her Worship provided a comprehensive response supported by evidence. Her Worship’s response and all of the included information were carefully reviewed by the committee.

The response showed that Her Worship retained counsel to assist her in providing a response. Counsel conducted interviews of persons with direct knowledge of the financial affairs of the company and the events referenced in the complaint. As well, relevant documentary evidence was provided to the committee.

The committee saw that Her Worship’s response supported the allegation that Her Worship had been an executrix of her mother’s estate. Her Worship’s role as executrix was to ensure that the monies owing to the estate and its beneficiaries were appropriately addressed.

After its review of the response and the enclosed information, the committee concluded that the evidence showed that Her Worship did not receive remuneration from the company, as alleged.

The committee noted that the evidence gathered through Her Worship’s response and from persons with knowledge of the financial affairs of the company and the actions of the directors revealed that the complainant had not provided an accurate description of the parties involved in the company. The committee noted that there was evidence to support

A

APPENDIX A

Case Summaries

A conclusion that her motive in filing the complaint with the Review Council may have been to try to achieve an outcome in the civil dispute that could benefit her financially directly or indirectly.

The committee noted that the evidence also suggested that the emails that were provided by the complainant were incomplete, without preceding or following emails, and that they may have been placed in an order that changed their context and meaning. Further, the committee observed that it was concerning that information provided by witnesses indicated that the emails she provided were obtained through removal of company computers and computer servers from the premises when the doors had been secured and no access was granted.

The committee concluded that emails which the complainant provided were unreliable and incomplete. Her Worship provided emails which were properly sequenced and the dates showed that emails in which Her Worship provided legal advice pre-dated her appointment to the office of justice of the peace. The committee was of the view that the evidence supported a conclusion that after she was appointed as a justice of the peace, Her Worship made it clear to her relative that she was not prepared to provide legal advice to him and that any legal action would have to be taken by a lawyer. A lawyer who was interviewed by counsel for Her Worship confirmed that he had provided advice to him.

The committee noted that interviews with witnesses showed that Her Worship was not involved in meetings with the directors about the break-up of the company.

The complaints committee concluded that the evidence supported a finding that there was no judicial misconduct by Her Worship arising from her interactions with her relative about the company.

The evidence did support a finding that she acted as executrix in her mother's estate. The committee noted that the *Commentaries on Judicial Conduct* published by the Canadian Judicial Council provide some guidance to judicial officers on the question of whether a judicial officer should act as an executor or executrix of an estate. It recognized that many judges were named as executor or executrix in wills of relatives or close friends. The committee agreed with the commentary that it is permissible in the case of a relative or close friend to act where the estate is simple and non-contentious and there is no likelihood that there will be disputes leading to litigation. The complaint filed in this

APPENDIX A

Case Summaries

instance showed that difficulties that can arise when a judicial officer acts as an executor or executrix where issues may become contentious.

The complaints process through the Review Council is remedial in nature and through the review of one's conduct, improvements are made to how situations and individuals are treated and handled in the future. The committee observed that Her Worship's response and the additional step taken of retaining counsel to interview witnesses with knowledge of the relevant matters demonstrated that she had taken the complaint very seriously. As well, the committee noted that upon reflection, Her Worship acknowledged in her response that despite her close relationship with her relative, it would have been better if she had not discussed matters with him that might be perceived as a mix of legal and strategic content. She now clearly understood that it is preferable not to even express an informal view on such matters, even when the other person is a close relative. The committee noted that the evidence reviewed during the investigation showed that she suggested to him that he speak with a lawyer to get legal advice to guide his actions, and he did so.

The committee concluded that there was no evidence of judicial misconduct, dismissed the complaint and closed the file.

CASE NO. 24-041/13

The complainant appeared before the subject justice of the peace during a two-day bail hearing. The complainant filed numerous letters with the Council and included excerpts from the transcripts. He wanted to avoid having Her Worship assigned to his matters. As his court case was ongoing before the courts, in accordance with the Council's policy, his complaint was held in abeyance pending confirmation that his matter had concluded. The complainant advised months later that "all of my charges in relation to this matter have been removed" and provided an excerpt from the court's ruling. The full transcript of the decision showed that a number of serious criminal charges against the complainant were stayed on the basis of a breach of his rights under s. 11(b) of the *Charter of Rights and Freedoms*.

The complainant alleged that Her Worship misstated facts and misled the court on the record, including making statements that he had been found guilty of assault and uttering threats toward Crown counsel and members of the police. He alleged that this

APPENDIX A

Case Summaries

A was evidence of collusion between Her Worship and the Crown Attorney's office which he believed had resulted in him being denied reasonable bail contrary to his legal rights under s. 11(e) of the *Charter of Rights*.

The complainant alleged that Her Worship's statements showed numerous attacks of slander, defamation and injurious falsehoods in a public courtroom forum. He said that Her Worship incorrectly surmised that he had fled the country due to the pending criminal charges. She said that in the course of his employment, he was reprimanded several times for his actions and she said that he had been convicted of obstructing justice.

In the initial acknowledgment letter to the complainant, it was clarified that the Council's mandate was to review the conduct of justices of the peace. Its authority did not extend to determining the correctness of how a justice of the peace assessed the evidence. It was also confirmed that the Council has no jurisdiction over the assignment of judicial officers. If the complainant did not want to have Her Worship assigned to preside over his court matters, he could seek legal advice to determine what remedies may be available to him through the courts.

The committee reviewed the complainant's letters and the transcripts of the bail hearing before Her Worship. The committee found that when Her Worship's comments were considered in the full context of the proceeding, there was no evidence that suggested collusion with the Crown Attorney's office, and no evidence to support the allegations of slander, defamation or injurious falsehoods. The committee concluded that there was no misconduct. For those reasons, the committee dismissed the complaint and closed its file.

CASE NO. 24-044/13

A husband and wife appeared before the subject justice of the peace to have representatives of the Children's Aid Society summonsed to court to answer to criminal allegations. The complainants had filed eight applications containing "very serious allegations for abduction, perjury, conspiracy and accessory after the fact".

They alleged that during the testimony of the husband, His Worship started to defend the abductors, interrupted his evidence and demonstrated an obvious unwillingness to listen. According to the complainants, His Worship acted in a biased manner and would not let the husband give his testimony about the perjury claims they had made. The

APPENDIX A

Case Summaries

complainants stated that His Worship left the courtroom without listening to the matter. They alleged that His Worship made his decision in bad faith because it was based on the evidence heard about only one of the accused and would not allow a second witness to testify.

The complainants alleged His Worship became aware of the criminal offences and protected the offenders, which made His Worship an accessory after the fact.

The complaints committee reviewed the complaint letter and reviewed the transcript and audio recording of the court appearance before His Worship.

After careful review of the court record, the complaints committee found no evidence to support the allegations of bias or bad faith on the part of His Worship in hearing the matter. In fact, the committee found that His Worship was attentive and patient in considering the matter and hearing from the informant husband. It was noted that His Worship took the time to clarify several points with him. Further, the committee found that the transcript and audio recording did not support the complainants' assertions that His Worship interrupted the husband's testimony or that he demonstrated an unwillingness to listen. The court record reflected that His Worship left the bench after rendering his decision and the matter was completed. The committee did not find that His Worship's exit from the courtroom was a refusal to listen to the matter, as alleged.

For the aforementioned reasons, the committee dismissed the complaint as not supported by the court record.

CASE NO. 24-045/13

The complainant originally wrote to the Review Council while the court case was ongoing before the courts. If a complaint raises allegations of conduct about a justice of the peace who is presiding over a court proceeding, the Review Council will not generally commence an investigation until that court proceeding and any appeal or other related legal proceedings have been completed. This ensures that any investigation by the Council is not interfering or perceived to be interfering with any ongoing court matters. When the court case concluded, the complainant notified the Review Council.

APPENDIX A

Case Summaries

A

The complainant indicated that he attended court to assist a relative in relation to traffic matters. He alleged that when he appeared before the justice of the peace, His Worship put limitations on him arguing on behalf of his relative. He alleged that while he was arguing a motion, His Worship objected to a line of argument he was trying to put forward and ordered him out of the courtroom. The complainant indicated that this was a stressful and embarrassing situation that caused duress to the defendant and required extra work and a further court appearance. He said that His Worship was neither impartial nor capable in the execution of his duties resulting in very harsh and unfair treatment of the defendant, denying him basic rights afforded to him under the *Provincial Offences Act* of having an unpaid agent represent him and creating a fear in him that was severely prejudicial.

The complainant also expressed concerns about His Worship's conduct during a different court appearance. The defendant was before the court where he was in attendance regarding a parking offence. He alleged that His Worship addressed the court in a manner that was shocking and disturbing, with a speech that resulted in each defendant pleading guilty. The complainant said that His Worship told the body of the court that if they plead guilty, he would give them every advantage but that if they chose a trial and were found guilty that the penalty would be increased substantially.

The complaint was assigned to a complaints committee for review and investigation. Before a final determination could be made on the complaint, the Review Council received confirmation that His Worship was no longer a justice of the peace. As he was no longer a justice of the peace, the Review Council lost jurisdiction to continue its complaints process. The complaint file was administratively closed due to a loss of jurisdiction.

CASE NO. 24-046/13

The complainant wrote to complain about Justice of the Peace A's conduct during a court appearance. The court case was still ongoing. Staff sent him a letter explaining the Council's policy that if a complaint raises allegations of conduct about a justice of the peace who is presiding over a court proceeding, the Review Council will not generally commence an investigation until that court proceeding and any appeal or other related legal proceedings have been completed. This ensures that any investigation by the Council is not interfering or perceived to be interfering with any ongoing court matters.

APPENDIX A

Case Summaries

The complaint notified the Council when the appeal was completed. He advised that an acquittal was entered following an appeal.

In his complaint, the complainant said that he was assisting his cousin, whose first language was not English, in relation to two traffic matters. He appeared before Justice of the Peace A on two occasions. He alleged that during the first appearance, he asked for type-written notes from the investigating police officer on behalf of his cousin so that he could properly defend his cousin. He alleged that His Worship interfered with the proceedings by suggesting to the prosecutor that a bench warrant be issued for the defendant (the complainant's cousin). He told the Council that the bench warrant was not sought by the prosecution; His Worship proposed and "pushed it" of his own motion. The complainant believed that His Worship went far beyond reasonable measures to demonstrate his powers and fell far short of his responsibilities as a justice of the peace.

He alleged that His Worship's actions caused shock and embarrassment to the defendant, and brought the administration of justice into disrepute. The result of the bench summons being issued was that his cousin was stopped by police outside his home for the purpose of sending him to court, losing a day's pay, so that he could be given another court date.

On the next appearance, the matter was before a different justice of the peace, Justice of the Peace B, and the prosecutor requested that the complainant be disqualified as an agent for his cousin, and he was removed from the courtroom.

The matter was adjourned to a third day and Justice of the Peace A was again presiding. The complainant noted that instead of the matter being put before another justice of the peace, as ordered on the first date, it was dealt with by Justice of the Peace A. He alleged that His Worship was not bound by the decision made by Justice of the Peace B with respect to his representation of his cousin, and said that His Worship "freaked out" at his representation of his cousin. He states that there was such an absence of fact and law that it brought the administration of justice into disrepute and proved that Justice of the Peace A was not fit to sit as a justice of the peace. He alleged that he did not raise his voice or make wild or unsubstantiated comments but he was removed from the courtroom.

The complainant alleged that Justice of the Peace A damaged the reputation of justice as a whole. The complainant advised that the *ex parte* conviction of his cousin by His Worship was successfully appealed. He said that the appeal judge recommended an acquittal be entered and the prosecutor did not disagree.

A

APPENDIX A

Case Summaries

The complaints committee read the correspondence from the complainant. The committee requested additional details from him and he provided the details in further correspondence. The committee ordered and reviewed the transcripts of both of the appearances before Justice of the Peace A, the transcript of the appearance before Justice of the Peace B and the transcript of the appeal proceeding. The committee also ordered and listened to the audio recordings of the proceedings before Justice of the Peace A.

From their review of the court record, it appeared to the committee that early in the proceeding, His Worship became hostile towards the complainant and expressed the view that he may be misleading the Court. Although the complainant indicated that he was there to represent the defendant who was a relative, he was not given the opportunity to explain whether he had a right to represent him. He was not permitted to respond to the allegation by His Worship that he was misleading the Court. When the complainant sought to comment, he was not permitted to do so. The matter was adjourned without permitting him any opportunity to make any submissions on the selection of the next appearance date.

- 1.1 The committee noted that a justice of the peace has a responsibility to remain impartial and objective in the discharge of his or her duties. The *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* state:

Justices of the peace must be impartial and objective in the discharge of their judicial duties.

Commentaries:

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

The committee also observed that the opportunity to be heard is an essential component of a fair and impartial system of justice. A justice of the peace must also be mindful of how his or her actions and comments can affect the appearance of their objectivity and impartiality.

The committee was concerned that His Worship's actions and comments during the appearance were perceived to be inconsistent with those of an impartial and objective adjudicator. The committee observed that His Worship encouraged the prosecutor to have the matter investigated and he expressed the view that there could be criminal charges.

APPENDIX A

Case Summaries

A

The complaints committee observed that the transcript of the first appearance showed that His Worship took the view that he was not seized of the matter but that he should recuse himself from it. Yet, when the same case was before him on the third date when the case was before the Court, he proceeded to deal with the matter. He did not take steps to have his decision to recuse himself from the case noted on the Information, nor did he recuse himself when it became clear that he remembered having dealt with the matter on the earlier occasion.

The committee found that the transcript of the third appearance showed that after the prosecutor said that the complainant was barred from appearing on behalf of the defendant, His Worship immediately accepted the information. His Worship suggested that the complainant may have been barred from the Court and when it was still unclear whether he was barred from representing the defendant or from the court, rather than making enquiries to obtain more information that could confirm the nature of the order that was made and without permitting the complainant to be heard, His Worship quickly ordered him removed from the Court.

The committee invited His Worship to respond to the allegations. He provided a response and the committee reviewed and considered it in determining the appropriate disposition of the complaint. The committee could see from His Worship's response that he had reflected upon his conduct and that he regretted the manner in which he dealt with the complainant on the two dates. The committee observed that His Worship also regretted the inconvenience to the defendant and to the complainant. The committee noted that His Worship undertook to the committee to endeavor to avoid such reactions in the future. He recognized that a justice of the peace should be mindful of the importance of the appearance of impartiality and objectivity required of a justice of the peace. He undertook to ensure that these principles remain paramount in all proceedings over which he presides.

The Review Council, and by extension, every complaints committee, has the role of maintaining and preserving the public's confidence in judicial officials and in the administration of justice through its review of complaints. The approach is remedial. In this case, the committee observed that there was inappropriate conduct on two different days and that it left the complainant, and perhaps others in the courtroom on those days, with negative perceptions about how justice was administered.

APPENDIX A

Case Summaries

A

The committee decided that the appropriate disposition of the complaint was inviting His Worship to attend before the complaints committee to receive advice, pursuant to section 11(15)(b) of the *Justices of the Peace Act*. A complaints committee will provide advice to a justice of the peace in circumstances where the misconduct complained of does not warrant another disposition, there is some merit to the complaint and the disposition is, in the opinion of the complaints committee, a suitable means of informing the justice of the peace that his/her course of conduct was not appropriate in the circumstances that led to the complaint. Through the review of one's conduct, improvements are made with respect to how situations and individuals are treated and handled in the future.

During the advice meeting, the committee reminded His Worship of the high expectations the public places on the conduct of all judicial officers. The committee reviewed portions of the court record with His Worship and discussed the concerns arising from the complaint and how the complainant left the courtroom feeling that he was being ignored, and that his rights and those of the defendant were violated. The committee emphasized the complainant's impression that the Court had failed to remain objective or impartial.

The committee reminded His Worship that judicial officers must be aware of the appearance created by their conduct. They must not only be impartial – but they must also give the appearance of being an example of impartiality, independence and integrity. A justice of the peace has a responsibility to ensure that defendants have a fair hearing and are afforded due process. A justice of the peace should take the requisite time to listen to individuals before him or her, and to ensure that it is clear that the justice of the peace is willing to hear both sides and to consider all of the relevant facts before making a decision. The duty of a justice of the peace is to make decisions based on law and evidence.

The committee also reminded His Worship that a justice of the peace is expected to be patient, dignified and courteous to the litigants. The justice of the peace is the exemplar and guardian of the dignity of the court. Justices of the peace are subject to the same standards of conduct as judges. The case law makes no apparent distinction.

The committee also discussed the importance of having a decision to recuse oneself from a case noted on the Information.

The committee advised His Worship that regardless of how busy a court is, there is an obligation on every justice of the peace to fulfill the responsibilities of a justice of the peace and to uphold the high standards of conduct that apply to justices of the peace.

APPENDIX A

Case Summaries

As noted above, the complaints process through the Review Council is remedial in nature and through the review of one's conduct, improvements are made with respect to how situations and individuals are treated and handled in the future. After providing its advice to His Worship, the file was closed.

CASE NO. 24-047/13

The complainant attended before the justice of the peace in Intake Court. He alleged that His Worship ordered him to remove his religious head-dress on the basis that he was in front of the Queen. The complainant alleged that his *Charter* rights were violated. He was seeking an explanation and an apology.

The complaint was assigned to a three-member complaints committee. The committee read the complainant's letter. They ordered and reviewed the transcript. They requested and listened to the audio recording of the appearance. The committee found no reference on the record of comments about the removal of the complainant's head-dress or about it being religious head-wear. From its review of the record, it appeared to the committee that there may have been preliminary introductory comments that were not recorded when the complainant first stepped into the Intake Court, such as the explanation by him about why he was there.

As part of a full investigation of the allegations, the committee invited His Worship to respond to the allegations. His Worship provided a different version of the events, indicating that the head-dress did not appear to be for a religious purpose and he had asked the complainant to remove it in the interest of safety. He indicated that the complainant never mentioned that it was worn for a religious purpose and he removed it.

In the circumstances, without a complete audio recording or transcript of all dialogue, including the preliminary introductory comments when the complainant entered the Intake Court, the committee could not determine with certainty what was said by His Worship or by the complainant when he first entered the court.

The committee noted the case of *R. v. Billingham* and the requirement that a justice of the peace ensure a comprehensive record of all proceedings, including Intake Court appearances. Within the complaint review process, the court record is often the best and most objective evidence available to inform the committee as to what happened in court.

APPENDIX A

Case Summaries

The absence of a full and complete record can, such as in this case, prevent the complaints committee from making findings and hinder its ability to fully assess a complaint.

The complaints process through the Review Council is remedial in nature and through the review of one's conduct, improvements are made as to how situations and individuals are treated and handled in the future. The committee decided that the appropriate disposition was to provide His Worship with written advice as its disposition of the matter pursuant to section 11(15)(b) of the *Justices of the Peace Act*. The committee advised His Worship of the importance of having a complete record, including all dialogue that occurs in the courtroom from the moment a person enters the Intake Court.

Having provided its advice, the committee closed the file.

CASE NO. 24-048/13

The complainant attended before the subject justice of the peace and identified himself to the court through the filing of a document he described as a Statement of Birth. The complainant expressed his disagreement with His Worship describing the Statement of Birth submitted as a Birth Certificate. He alleged that following receipt and review of this document, His Worship asked him questions about the identity of his mother and father, as well as his date of birth and other information. He indicated that His Worship stated on the record that, "Let the record show [the defendant/complainant] has submitted a Birth Certificate". The complainant alleged that His Worship, in full knowledge of the document he submitted committed offences by stating into the record that he had submitted a Birth Certificate. He then suggested that His Worship, through these actions, breached the *Oath of Office for Justice of the Peace* and the *Criminal Code of Canada*.

The complainant provided a further letter stating that His Worship "committed fraud upon the court by falsely submitting documentation verbally into the court record", "furthered the injustice by returning the document via the court clerk to myself, thereby leaving no record of his fraud", and, in so doing, His Worship "subverted a jurisdictional question posed to the statutory court".

The complaint was assigned to a three-member complaints committee. The committee reviewed the complainant's correspondence and reviewed the transcript of his appearance before His Worship.

APPENDIX A

Case Summaries

A

After careful review of the court record, the committee found no evidence of fraud or subversion of a jurisdictional issue by His Worship. Nor was there any support for the allegations that His Worship breached the *Oath of Office for Justices of the Peace* or violated the *Criminal Code*. His Worship's comments and questions relating to the Birth Certificate related to confirmation of the identity of the complainant and appeared to be made to ensure a full court record. The committee noted His Worship was patient and professional in managing the complainant and his matter within the context of a very busy docket. The committee found His Worship's conduct towards the complainant and in ordering the assistance of court security to be appropriate in the circumstances.

For the aforementioned reasons, the committee concluded there was no evidence of misconduct, dismissed the complaint as unsupported and closed the file.

CASE NO. 24-049/13

The complainant appeared before the justice of the peace in criminal set-date court. He alleged that during his court appearance, he asked Her Worship to dismiss the charge based upon the Crown Attorney's inability to provide items which were requested as part of disclosure. He alleged that Her Worship would not allow him to speak at all and that when he attempted to put forward a question to her, Her Worship ordered court security to escort him out of the court. He said he was forced to return on another date and given no opportunity to request a dismissal. He indicated that it seemed like all of his basic rights had been removed, even his ability to speak in court. He advised that he was contesting the jurisdiction of the court. He alleged that Her Worship was rude, yelling and utterly impartial to the proceedings.

The complaint was assigned to a three-member complaints committee. The committee reviewed the complainant's correspondence and reviewed the transcript of his appearance before Her Worship. The committee requested and listened to the audio recording of the matter.

The committee found that it appeared that during the proceeding, the Crown Attorney handed the complainant additional disclosure and he was attempting to ask for a moment to review it. Her Worship abruptly interrupted him and told him to sit down. Her Worship asked that he be escorted to take a seat. From its review of the audio recording, it

APPENDIX A

Case Summaries

A appeared to the committee that Her Worship was impatient and abrupt, and her tone was sharp. After reviewing the court record, the committee could understand why the complainant felt that he did not have an opportunity to speak and why he perceived her to be rude and impartial.

The committee noted all parties have a right to be heard according to the law. Confidence in the administration of justice may be undermined if the impression left with a defendant is that a judicial officer may not accord them the right to be heard. Regardless of how busy a court is, a justice of the peace should take the requisite time to listen to individuals before him or her, and to explain what is occurring so that they can properly understand the proceeding. This is particularly important if the individual before them is self-represented.

The committee observed that a justice is expected to be patient, dignified and courteous in performing the duties of office.

The committee decided to invite Her Worship to respond to the complaint. The committee received and reviewed a response from Her Worship.

The committee was satisfied that the justice of the peace acknowledged that her conduct might have been seen as impatient and observed that Her Worship offered her apologies to the complainant and the committee for her conduct. The complaints process through the Review Council is remedial in nature and through the review of and reflection upon one's conduct improvements are made as to how situations are handled and individuals are treated in the future. The committee concluded that under the circumstances, no further action was required in this matter and the file was closed.

CASE NO. 24-050/13

The complainant appeared in Intake Court and wanted to lay a private Information. He wanted to record the proceedings and the justice of the peace objected. He indicated in his letter that he gave her reasons why he was allowed to record. He said that the justice of the peace told him that she would not permit it, or she would adjourn the matter. He said that he objected to the adjournment but she adjourned the matter. He alleged that she violated his rights, breached her duty and gave him an extra-judicial punishment for recording by adjourning the date.

APPENDIX A

Case Summaries

He provided his view of the law on recording in the courtroom and asked that this be made clear to judges and justices of the peace.

A three-member complaints committee reviewed the correspondence and reviewed the transcript of the appearance before Her Worship.

The committee noted that the complaint was about the complainant's disagreement with how the justice of the peace interpreted and applied the law that governs whether a person can make an audio recording in the courtroom. The committee observed that the complainant also disagreed with the decision by the justice of the peace to adjourn the case.

The committee noted that decisions made by a justice of the peace, and a justice of the peace's interpretation and application of the law governing whether a person may make an audio recording in the courtroom are matters of judicial decision-making which are outside of the jurisdiction of the Council. The Justices of the Peace Review Council has no discretion to act on complaints that do not fall within its jurisdiction. The *Justices of the Peace Act* states that a complaints committee must dismiss a complaint if it falls outside of the Council's jurisdiction. The Council dismissed the complaint as outside of its jurisdiction and closed the file.

CASE NO. 24-051/13

The complainant filed a complaint against a justice of the peace arising from an appearance in bail court. He alleged that during his court appearance, His Worship forced him into recognition as a person before the law and to be recognized as a registered legal name. He claimed that this was a violation of the *Criminal Code* as well as the *Vital Statistics Act*. The complainant stated in regards to his registered legal name that he does not "hold the legal title (rights) in that name, Her Majesty in Right of Ontario and/ or Province of Ontario does." He claimed that "What the 'JP' did is extremely prejudicial to my interests that will have far reaching negative implications for me in all areas of my life and purpose if not corrected." He said that he had the right as to whether or not he chooses to be recognized as a person before the law and to be recognized by the name appearing on birth documents. He asked for a review of the matter as he feels he was treated unjustly and his rights were violated.

APPENDIX A

Case Summaries

The complaint was assigned to a three-member complaints committee. The committee read the complainant's letter. They ordered and reviewed the transcript of the proceeding. The committee found that the transcript showed that the justice of the peace explained to the complainant that in order to release him from custody, he had to be certain of the identity of the person before him. After the complainant confirmed his name, His Worship made an order releasing him.

The committee noted that the questions which the justice of the peace asked about the name of the complainant were appropriate questions in order to confirm his identity so that his release could be ordered. The committee concluded that there was no judicial misconduct and dismissed the complaint.

CASE NO. 25-001/14

The complainant appeared before the justice of the peace for a Provincial Offence trial. He alleged that the matter turned out to be "the single most confusing, demoralizing and humiliating ordeals that I have ever experienced." Before court, he told the prosecutor that he wanted an adjournment as it was a religious holiday. His matter was the last to be called. The complainant noted that only one of the two officers involved in his matter were present. He decided to proceed with his trial anyway.

The complainant indicated that when his matter was called, the prosecutor told the court that the complainant wanted to adjourn the matter. The complainant asked to proceed with the trial and he alleged that he was coerced by Her Worship into a new trial date. He said that even though he explained to the court that he was prepared for trial, Her Worship did not want to hear it and belittled him, insulted him about his knowledge of the law, spoke down to him as if he was a child and labelled him as a liar.

The complainant alleged that Her Worship was borderline yelling at him, physically flabbergasted and distraught. He alleged that the justice of the peace continued to push for another trial date, which he declined, and she accused him of being "difficult" for not accepting a trial date seven days later. He indicated that her demeanour, tone of voice and choice of words demoralized and humiliated him. He alleged that as a result of Her Worship's conduct, he was still feeling the effects of the abuse, and it affected his ability to focus and concentrate at work and at home. He sought a written apology and for his court matter to be dismissed.

APPENDIX A

Case Summaries

A

With respect to the complainant's request that his court matter be dismissed, the Review Council has no jurisdiction to change a decision made by a justice of the peace. The jurisdiction of the Review Council is limited to complaints about the conduct of justices of a peace. This was explained to him in a letter that acknowledged receipt of his complaint. He was provided with information about the Law Society Referral Service where he could obtain advice on his legal remedies.

The complaint was assigned to a complaints committee for review and investigation. The committee reviewed his letter and ordered and reviewed the transcript. The members ordered and listened to the audio recording of the proceeding.

After reviewing the court record, the committee observed that originally the complainant wanted an adjournment and then he indicated that he would like to proceed with his trial. The prosecutor did not ask for an adjournment. The committee found that that initially Her Worship tried to be helpful to the complainant. She explained that the prosecutor would be seeking to amend the charge to reflect a higher speed, and that the complainant would be at a disadvantage if he proceeded without the benefit of legal advice or representation and disclosure.

It appeared to the committee that after the complainant persisted in wanting to proceed with the trial, Her Worship's manner and tone changed. The audio recording showed that the volume of Her Worship's voice escalated. She appeared to become frustrated by his insistence at proceeding. The dialogue between her and the complainant appeared to become argumentative. The committee noted that on more than one occasion, she described his insistence on proceeding with the trial as "ridiculous". She also described his attendance at court without having disclosure as "wasting the court's time today because the complainant came unprepared". When the complainant said a proposed court date was on too short notice, Her Worship indicated that the complainant was trying to be difficult and uncooperative.

The committee observed that the record showed that Her Worship had mistakenly believed that the complainant had said earlier that he had not been in court before, and in that context, after he said he had trials before, she said that he was lying. She apologized when she realized her mistake.

The committee understands the demands of a busy court upon a justice of the peace. However, regardless of how busy a court is, there is an obligation on every justice of the

APPENDIX A

Case Summaries

A

peace to take the requisite time to listen to individuals before him or her, to explain what is occurring so that they can properly understand the proceeding and to permit him or her the opportunity to be heard. The committee noted that a justice of the peace should avoid making comments that may be perceived as disparaging or gratuitous. A justice is expected to be patient, dignified and courteous to litigants. The justice of the peace is expected to be the exemplar and guardian of the dignity of the court. The justice of the peace sets the tone for the environment in the courtroom. The public's perceptions of the administration of justice are greatly impacted by the demeanour and comments of a justice of the peace.

The committee decided to invite Her Worship to respond to the complaint. The members of the committee reviewed and considered her response. The committee observed that Her Worship's response showed that she had listened to the audio recording of the proceeding to fully understand the concerns which the complainant raised and the concerns of the committee. She agreed that her comments were not appropriate, and was aware that she should avoid such reactions in the future. The committee could see that Her Worship had taken the complaint seriously, genuinely reflected on her conduct and had learned from the experience.

The complaints process through the Review Council is remedial in nature and through the review of one's conduct, improvements are made as to how situations and individuals are treated and handled in the future. The committee determined that no further action was required on the part of the Review Council, dismissed the complaint and closed the file.

CASE NO. 25-002/14

The complainant was a court interpreter who was in court to translate for a defendant on a matter that was before the justice of the peace. In his letter to the Review Council, he alleged that His Worship made derogatory remarks about his attire and banned him from attending in his courtroom as an interpreter. He indicated this resulted in him being deprived of rightful employment. He said that the incident caused a great deal of humiliation and embarrassment, as well as feelings of insecurity and anxiety.

The complainant explained that the incident began with His Worship warning him about not wearing a tie. The complainant responded that as far as he knew, wearing a tie was not mandatory. The complainant alleged that His Worship became very loud and replied

APPENDIX A

Case Summaries

“in my court room, it is mandatory and you will not be allowed in this court room next time if you do not follow the rules”.

He asserted that His Worship was “pre-occupied with my tie” and rejected a resolution agreed to by the defendant and the prosecutor, when he immediately increased the fine without explanation. The complainant said that despite efforts of the prosecutor pointing out that the case was similar to previous cases and a similar lower fine was justified, His Worship ignored the Crown Attorney’s position completely without any explanation to the defendant.

The complainant advised that while he was interpreting the conversation between the prosecutor and His Worship, His Worship stated “Mr. Interpreter, I have observed you! I sensed your unacceptable behaviour and therefore you are banned from attending this court ever again!”

The complainant advised that he brought His Worship’s comments that a tie was mandatory to the attention of management. He said that he had not heard back and he wanted the Council to look into the matter and rectify the status quo.

A complaints committee reviewed the complainant’s letter and ordered the transcript and the audio recording. Before the investigation was completed, the complainant wrote a second letter informing the Review Council that management had confirmed that wearing a tie was not mandatory for the interpreters and that His Worship could not ban him from his courtroom, as there is no specific courtroom allocated to him.

The complainant also indicated that on a subsequent date, he went to a courtroom to translate and His Worship was presiding. His Worship stopped him and asked whether he was the individual whom he had told to never come to his courtroom. When the complainant confirmed that he was, His Worship asked why he was there. The complainant said he told His Worship that he had been told His Worship did not have a specific courtroom in the courthouse. He alleged that His Worship told him to go back to the person who told him that, and then proceeded to deal with the defendant. He said the defendant’s matter was adjourned despite his objections that he wanted to proceed.

The complainant said that he felt violated, distressed and shocked when he left the courtroom. He indicated that this was harassment and abuse of power. He requested that the Council consider the fitness of His Worship to dispense justice in Ontario.

APPENDIX A

Case Summaries

The committee reviewed the second letter from the complainant and ordered the transcript and audio recording of the second proceeding. The committee read the transcripts for both court appearances and listened to both audio recordings.

The committee found that the transcript of the first court proceeding showed that His Worship said to the complainant that he must maintain a certain decorum of apparel and he must wear a tie and shirt. However, he would be excused on this morning. The complainant interpreter then said that a tie was not mandatory. His Worship said that it is in his court, and that if he saw the complainant again attired in a casual manner, he would be excused from the court. The matter proceeded with a guilty plea and the complainant translating. His Worship imposed the set fine for the offence. The prosecutor said he thought His Worship had imposed the same lower fine for this defendant as he had for others charged with the same offence. His Worship confirmed that he was imposing the amount of the set fine for such offences. The audio recording showed that after His Worship said he would give the defendant time to pay and asked how much time he needed, the complainant mentioned how many years he had been in the courts and he started to make further comments. His Worship interrupted and told him to tell the defendant what he had said. The interpreter said he had not finished. His Worship told the interpreter to tell the defendant that he would give him time to pay. It appeared that the interpreter said how much time was needed without speaking to the defendant. His Worship told the interpreter that he had observed his behaviour and it would not be tolerated. He said he would not have the interpreter in his court again.

The committee found that the court record showed that on the subsequent court date, when the complainant interpreter appeared, His Worship asked whether he was the gentleman whom he had said should not appear in his court. The complainant confirmed that he was the person. His Worship said that he could not appear “in my court”. The complainant responded that he was told “it’s not your court”. His Worship told him to talk to the person who said that and told him to leave the court. The complainant asked if he could assist the defendant or not. The prosecutor told him that His Worship had asked him to leave. His Worship told the complainant that it was on the record that he should not appear in His Worship’s court, and he should not appear in his court.

The committee found that the record showed that His Worship initially thought an interpreter was not needed for the particular defendant. The defendant clarified the dialect that he spoke. There was no indication on the record that the defendant objected

APPENDIX A

Case Summaries

to an adjournment. The record showed that the complainant remained in the courtroom and His Worship told him to leave the court. The matter was adjourned for an interpreter.

The committee noted that His Worship's decisions on the amount of a fine and to adjourn a matter were judicial decisions outside of the jurisdiction of the Review Council. Similarly, the decision made by His Worship that the complainant could not appear in his courtroom was a matter of judicial decision-making outside of the jurisdiction of the Review Council. In accordance with the Review Council's jurisdiction over the conduct of justices of the peace, the committee considered His Worship's conduct in the matter.

The committee found that the audio recordings showed that His Worship was not angry or abusive. His tone was not insulting or hostile. He did not yell at the complainant. He remained calm.

The committee noted that a justice of the peace who presides over the courtroom directs and controls the courtroom. The committee observed that His Worship's decision that the complainant could not appear in his courtroom appeared to be made in response to the complainant's behaviour in the courtroom. The court record showed that his behaviour appeared to be argumentative and lacking in respect for the presiding judicial officer. At the same time, a justice of the peace is expected by the public to uphold high standards of personal conduct and professionalism. A commentary in the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* states that justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office.

The committee found that His Worship could have been more courteous with the complainant on both occasions. As well, it may have been helpful and his decision may have appeared to be more reasoned if he had taken a brief recess to speak with the Local Administrative Justice of the Peace to obtain further information about the dress code applicable to interpreters so that the information could have been provided in the courtroom. For example, the committee observed that Ministry of the Attorney General court interpreters are bound by the *Rules of Professional Conduct for Court Interpreters*. Those rules state: Court interpreters shall dress and conduct themselves in a manner consistent with the dignity of the court.

After considering all of the circumstances, the committee concluded that there was no judicial misconduct. The complaints were dismissed and the file was closed.

APPENDIX A

Case Summaries

CASE NO. 25-003/14

The complainant appeared before a justice of the peace arising from a court attendance in Provincial Offences court. He was representing his wife, who was not in attendance. The complainant alleged that His Worship's attitude and demeanour with everyone in the courtroom was grumpy, rude and impatient. He alleged that His Worship became very short with people when they did not answer questions he asked or they did not answer in the way he expected.

The complainant alleged that His Worship rudely snapped at him. He expressed the view that His Worship came across as a dictator rather than impartial.

The complainant also alleged that His Worship "seemed to always side with the Officer". He felt like His Worship was saying, "Whatever the officer says, I will believe." He indicated that, as a result, there was an appearance that justice was not being done. He alleged that His Worship commented to him to "stop flogging a dead horse" and then sided with the police officer's opinion that the procedure is the same in the manual that was not disclosed.

Additionally, the complainant alleged that His Worship obstructed justice and violated *Charter* rights and the law. He indicated that he made a request to record to proceedings pursuant to section 136 of the *Courts of Justice Act*, the Ontario Court of Justice's *Protocol Regarding the Use of Electronic Communication Devices*, and a practice directive about unobtrusively recording. The complainant indicated that His Worship denied him the ability to record and refused to provide a written ruling when asked, and His Worship was very rude and impatient in how he handled it.

The complaint was assigned to a three-member complaints committee. The committee reviewed the letter of complaint and ordered and reviewed the transcript. The committee listened to excerpts of the audio recording. The committee found that the record did not support the allegations that His Worship was rude, grumpy and impatient. Nor did the evidence support the allegation that he came across as a dictator rather than impartial.

The committee noted that the transcript showed that His Worship pointed out that the only evidence given by a witness under oath was that from the police officer. The committee concluded that his comments were an explanation of the laws of evidence, not an indication of bias towards a police officer.

APPENDIX A

Case Summaries

A

From its review of the transcript, the committee found that His Worship said, “Well, you’ve made your point. Okay? You’re flogging a dead horse.” The committee found that the transcript showed that the comment was made in circumstances where the complainant had made a point, and was attempting to repeat it. It appeared to the committee that His Worship was of the view the complainant already argued the point sufficiently and he was trying to keep the case moving along. The committee concluded that there was no evidence of judicial misconduct.

The committee noted that decisions made by a justice of the peace, the assessment of evidence, and the application of the law governing whether a person may make an audio recording in the courtroom are matters of judicial decision-making which are outside of the jurisdiction of the Council. The Justices of the Peace Review Council has no discretion to act on allegations that do not fall within its jurisdiction.

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

CASE NO. 25-005/14

The complainant appeared before His Worship for a trial on a parking violation. In her letter, she set out the facts that gave rise to the charge and described how she provided photographs during the trial. She included copies of the photographs with her letter. She said that the justice of the peace found her guilty and set the fine at \$100. She said that he then asked if she had anything to say but cut her off, said that the fine would be \$200 and announced to the courtroom, “This woman has absolutely no respect for the law.” She indicated that she felt that the announcement slandered her character and that the prosecutor and justice of the peace chose to ignore the important details of what happened.

The complaint was assigned to a three-member complaints committee. The committee reviewed the complainant’s correspondence. The committee ordered and reviewed the transcript of the court appearance. They also ordered the audio recording of the proceeding and listened to excerpts.

The committee found that the transcript and the audio recording showed His Worship interrupting the complainant during her testimony. However, the committee found that this occurred as His Worship was explaining the legal requirements of making reference

APPENDIX A

Case Summaries

A

to photographs introduced in evidence. At the same time, he was seeking to understand the points that she was trying to make by submitting the photographs in evidence. The committee found that this was not judicial misconduct.

The transcript also showed that at the end of the evidence, upon a finding of guilt, His Worship said that the prosecutor was asking for the set fine of \$100 and he asked whether the complainant wanted to say anything in terms of her ability to pay the fine. When the complainant started to express her view of the law, His Worship interrupted her and said he was not asking her to interpret his decision and that if she didn't like the decision, she had the legal right to appeal. He again said that he was asking her about her ability to pay. The complainant made remarks about why she was in the location where she got the ticket and commented that this was the thanks she got for volunteering on that day. His Worship said, "In your case – in your case, I'm not going to accept what the prosecutor is saying. I have a defendant in front of me who totally avoids her responsibility under the law, and I'm going to increase it to \$200." The committee observed that the concerns raised by the complainant related to how the justice of the peace assessed the evidence and how he applied the law and decided the matter. The comment made by His Worship as to why he was increasing the fine above the set amount was made as part of his reasons for the sentence. The committee found that the allegations related to matters of judicial decision-making, not allegations of judicial misconduct. The Review Council has no discretion to act on complaints that do not fall within its jurisdiction. The *Justices of the Peace Act* states that a committee must dismiss a complaint if it falls outside of the Review Council's jurisdiction. The committee dismissed the complaint as outside of its jurisdiction and closed the file.

CASE NO. 25-008/14

The complainant appeared in Provincial Offences court for a trial on a charge of speeding. He alleged that "I felt like I was being set up & bullied into trial by the prosecutor and the justice of the peace without my representative. I had to represent myself. That is one of the reason why I felt I was bullied". He stated that the prosecutor offered to let him plead guilty to the original charge and then the prosecutor and the justice of the peace confused him saying they already revised the speed at the beginning of the trial when an amendment was brought before the court.

APPENDIX A

Case Summaries

A

He said that he again asked to postpone the trial and the justice of the peace said he should have asked that before the trial, and she denied that he had done so. He said that he was given fifteen minutes for his representative to arrive and Her Worship denied his request and said that “the court is now going to bully me”.

He alleged that the justice of the peace took on the role of the prosecutor during the trial and controlled the questioning from him, protecting the officer on what he should/should not answer. He said that she told the complainant he was making statements and took on the role of the prosecutor without one word of objection from the prosecutor. He alleged that the prosecutor didn’t speak during the cross-examination and most of the trial, and the justice of the peace told the officer to step down while the complainant was cross-examining him – she would not let him finish his cross-examination, nor would she let the officer answer any more questions.

He also alleged that when he was cross-examining the officer, the justice of the peace threatened to stop the trial. He agreed and said that he was not feeling well and he was dehydrated. She then stated that the only way this trial was going to stop was with a guilty verdict. He states that she had already convicted him before the trial ended and she accused him of trying to stop the trial and of trying to accuse the officer of perjury to get a new date for the trial.

He said that Her Worship made him feel that she was not impartial but was in fact very biased.

The complaints committee reviewed the complainant’s letter and ordered and reviewed the transcript and audio recording of the court appearance before Her Worship. As well, the committee ordered and reviewed the transcript of the appeal.

The committee noted that Her Worship’s assessment of the evidence and her decisions in the case, including her decision not to grant the complainant’s request to adjourn the matter to have a legal representative, related to judicial decision-making. Justices of the Peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council’s legislated jurisdiction is limited to the conduct of justices of the peace. The Council has no discretion to change a justice of the peace’s decision or to act on complaints that do not fall within its jurisdiction. The proper way to proceed, if a person believes that there have been errors in law, is through an appeal.

APPENDIX A

Case Summaries

A

In its investigation, the committee found that the transcript showed that the complainant told the court that he had planned to have a legal representative who was more familiar with the court's procedures. The committee observed that he expressed confusion with respect to the charge and fine. From its review of the transcript, it appeared to the committee that he was under the impression that the prosecutor had offered him a plea bargain. It also appeared that, throughout the proceeding, the complainant did not fully understand the process or that if he had a trial, he might be convicted of a higher speed.

The committee found that the transcript showed that Her Worship did not provide a preliminary explanation of the trial process or of how the prosecutor could apply to amend the certificate. When the complainant was cross-examining the police officer, he did not appear to understand that the defendant must ask the witness questions and that he would have a turn afterwards when he could provide his version of the events. The committee observed that, perhaps as a result of that, there were frequent interruptions and exchanges between Her Worship and the complainant as he attempted to conduct his cross-examination.

From its review of the transcript, the committee could understand why the complainant thought the comments made by Her Worship could be seen as suggesting that Her Worship had already made a finding of credibility in favour of the police officer and how the totality of Her Worship's comments during the trial may have left him with the impression that Her Worship was not objective and impartial.

The committee decided to invite Her Worship to respond to the allegations. Her Worship provided a response and it was reviewed by the committee. The committee found that the response showed that Her Worship had taken the complaint seriously and she had carefully reviewed how she had conducted herself during the proceeding. The committee observed that, upon reflection, Her Worship acknowledged that her conduct was below the high standard of conduct expected of a justice of the peace. With respect to the complainant's discussions with the prosecutor, Her Worship explained that she had not explored exactly what had been discussed as she was concerned that could appear like she was part of a plea bargain and she thought she should not be aware of the context of such discussions when she was about to preside over the trial.

Her Worship disclosed that difficult personal circumstances were affecting her at the time of the complainant's trial. She explained that she often did explain to a defendant

APPENDIX A

Case Summaries

A

that he or she would be allowed to make their own statements at a later stage in the trial process, and the committee could see that Her Worship regretted that she had not done so in this case. As well, the committee observed that Her Worship acknowledged that she should not have allowed concerns about a busy court, or her frustration at how the case was progressing to impact on her conduct or comments in the courtroom. She regretted her comments and the impression left with the complainant about the administration of justice. She expressed a sincere apology to the complainant. She also affirmed her obligation to the public to not let this type of situation happen again.

The complaints committee concluded that Her Worship's conduct did not amount to the level of judicial misconduct. The complaints process through the Review Council is remedial in nature and through the review of one's conduct, improvements are made to how situations and individuals are treated and handled in the future. The committee noted that Her Worship had taken the complaint seriously, had demonstrated a commitment to avoiding a repeat of such conduct, and, through the Council, had extended an apology to the complainant. The committee determined that no further action was required and dismissed the complaint. The file was closed.

CASE NO. 25-009/14

The complainant appeared before a justice of the peace for a trial on a speeding charge. He alleged that when he tried to explain why he should be permitted to record the proceedings, the justice of the peace interrupted him and said that it was not permitted and told him to switch it off. He said that His Worship kept interrupting and telling him to switch it off. He alleged that His Worship raised his voice and yelled at him, asking whether he had complied with the orders of the court. The complainant says he told the justice of the peace that he did not have the powers to forbid him from recording and the justice of the peace again told him to switch it off. The complainant was again speaking and the justice of the peace interrupted and again asked him to switch it off. He also said that until such time as it was turned off, he was taking a break and he could not continue with the trial that day. The complainant says that he then said he was bringing an oral motion, and the justice of the peace without replying stormed out of the room in a fit of fury.

The complainant said that the clerk called the police and the police arrested him. He objected that this was contempt of court.

APPENDIX A

Case Summaries

A

The complaint was assigned to a three-member complaints committee. The committee reviewed the complainant's letter and ordered and reviewed the transcript. The committee requested and listened to the audio recording of the proceeding. The committee found that the record showed that the justice of the peace did not yell at the complainant or storm out in a fit of fury. He spoke firmly to the complainant and then left the courtroom because the complainant refused to comply with the order to turn off the audio recording. His Worship said he was going to take a recess before he left the courtroom. The committee found that there was no support for these allegations.

The committee noted that a justice of the peace has the jurisdiction to maintain decorum in the courtroom and to decide whether to grant a request to audio record in the courtroom. The committee concluded that these allegations and the decision to adjourn the case were allegations of judicial decision-making, not allegations of judicial misconduct. The Review Council has no discretion to act on allegations that do not fall within its jurisdiction. The *Justices of the Peace Act* states that a committee must dismiss a complaint if it falls outside of the Review Council's jurisdiction.

The committee dismissed the complaint and closed the file.

CASE NO. 25-010/14

The complainant indicated that he sought to lay criminal charges against a police officer arising from events a number of years ago. He said that there were a number of pre-enquêtes held. (A pre-enquête is a proceeding before a justice of the peace to determine if process should issue.) He said that the justice of the peace declined to issue an Information. In his letter to the Review Council, the complainant said it is not the place of the justice of the peace on the pre-enquete to pass judgment on the case or to question the mens rea of the police officer, and as a result, His Worship overstepped his jurisdiction and obstructed justice. He objected that His Worship said that the police officer's actions were within the realm of acceptable behaviour and the requirements of necessary force. The complainant alleged that His Worship's determination was a misrepresentation of the facts, contrary to the *Charter of Rights and Freedoms* and was beyond the responsibilities of a justice of the peace in a pre-enquête. He further stated that His Worship disregarded the evidence that was presented by his sworn witness and himself. He also objected that His Worship said that the complainant was confusing criminal court with civil court.

APPENDIX A

Case Summaries

A

The complaint was assigned to a three-member complaints committee. The committee reviewed the complainant's letter. The committee noted that he disagreed with how the justice of the peace assessed the evidence and with how he decided the matter. He was also of the view that His Worship exceeded his legal authority. The committee found that the allegations related to matters of judicial decision-making, not allegations of judicial misconduct. The Review Council has no discretion to act on complaints that do not fall within its jurisdiction. The *Justices of the Peace Act* states that a committee must dismiss a complaint if it falls outside of the Review Council's jurisdiction.

The committee dismissed the complaint as outside of its jurisdiction and closed the file. The committee observed that if the complainant wished to pursue his concerns, the proper way to proceed was through legal remedies in the courts.

CASE NO. 25-012/14

The complainant was convicted by the justice of the peace after a trial on a speeding charge under *Highway Traffic Act*. He filed a complaint against the justice of the peace who presided over the trial. The complainant appealed his conviction but the decision of the justice of the peace was upheld by a judge of the Ontario Court of Justice.

The complainant alleged that the justice of the peace obstructed justice and violated the *Criminal Code* by altering the transcript from his trial before her. He alleged that during the trial, she ignored evidence that showed the police officer was testifying falsely and fabricating evidence. He alleged that Her Worship refused to advise him, as a self-represented defendant, that he had a right to call a witness. He disagreed with her decision that she would not grant an adjournment. Further, he alleged that she openly demonstrated bias and obstructed justice.

He alleged that the transcript which he ordered for his appeal was provided by the court reporter to Her Worship for editing and approval, and that a comment made by her was removed from the transcript that provided that the police officer displayed misconduct and violated the *Criminal Code*. He alleged that while the complainant was cross-examining the police officer, Her Worship interrupted him, stating, "the trust is not on your side" and this comment was removed from the transcript.

APPENDIX A

Case Summaries

The complaint was assigned to a complaints committee for review and investigation. The committee reviewed the complainant's letters and ordered and reviewed the transcript and audio in question of the proceedings before Her Worship.

The committee noted that when a transcript is ordered for an appeal, a presiding justice of the peace is permitted to correct grammatical/spelling mistakes and/or make changes that do not affect the meaning of what was said. However, when carrying out an investigation, the Review Council obtains the unedited version of the transcript to ensure that it is a full and complete version of what was said during the court proceeding. As well, in the investigation of the complaint, a member of the complaints committee reviewed the full audio recording of the proceeding and confirmed that the transcript reviewed by the committee was an accurate record of what was said during the trial. In addition, court staff confirmed that there were no edits by Her Worship in the transcript used on the appeal of any comments made during the trial, including cross-examination.

With respect to the complainant's allegation that Her Worship said "the trust is not shifting on you" or something similar, the committee found that the unedited transcript and audio recording show that Her Worship actually said, "If you have evidence to the contrary then it shifts to you to show that it's other than working properly. Now the whole onus is not shifting to you, but if you have evidence, that it's not functioning properly you have that opportunity to show later that it's not." The committee concluded those remarks were a statement of the law, and they did not demonstrate bias or evidence of obstruction of justice.

With respect to the allegation that Her Worship ignored evidence that the police officer was falsely testifying and fabricated evidence, and that she refused the complainant's request for an adjournment to permit him time to call a witness, the committee noted that the assessment of evidence and the credibility of witnesses, and the decisions made by a justice of the peace are matters of judicial discretion made in the course of duties of a justice of the peace, not allegations of judicial misconduct. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council's legislated jurisdiction is limited to the conduct of justices of the peace. The Council has no discretion to change a decision of a justice of the peace or to act on complaints that do not fall within its jurisdiction.

APPENDIX A

Case Summaries

After careful review of the court transcript and audio, the committee found no evidence to support the allegations of bias or obstructing justice on the part of Her Worship in hearing the matter. The complaints committee agreed with the findings of the appeal judge that there was no merit to the allegation that Her Worship was prejudicial or biased.

The complainant alleged that Her Worship refused to advise him as a self-represented person that he had a right to call a witness, and he said that she went further and explained why she would not adjourn the proceedings and why she would not accept the evidence. The committee found that Her Worship's explanations to him were appropriate to ensure that the complainant, a self-represented person, understood the process. After its review of the record of proceedings, the committee also agreed with the findings of the appeal judge that there was no merit to his allegation that Her Worship did not provide guidance to him during the trial. The committee observed that Her Worship gave extensive instructions to him during his arraignment and attempted to guide him through the relevant legislation. The transcript reflected that Her Worship took the time to clarify several points. For example, at the outset of the trial, Her Worship explained, in detail, the manner in which the trial would be conducted. The complainant confirmed that he understood.

Following its investigation, the committee concluded that there was no judicial misconduct. The complaint was dismissed and the file was closed.

CASE NO. 25-013/14

The complainant attended before Her Worship for a pre-enquête in relation to his efforts to lay criminal charges against persons working in the justice system. (A pre-enquête is a proceeding before a justice of the peace to determine whether an Information should be laid against a person at the private complaint of another person.) He alleged that Her Worship "acted as an agent of the Attorney General's office". As well, he alleged that she conducted the hearing in the most unfair manner. He alleged that knowing that the idea was to allow the accused from the Attorney General's office to escape, without asking him for any clarifications, she picked on points that had no relevance and told him that he could not discuss the matter anymore. Further, he alleged that a week prior to this date, Her Worship had the police right behind her and used intimidation tactics.

APPENDIX A

Case Summaries

He also alleged that Her Worship asked him if he knew how much it cost to have a hearing there and this showed that she prejudged the case. He alleged that it was her intention to dismiss all of the charges according to instructions she received from the Attorney General.

The complaints committee read the complainant's letter and ordered and reviewed the transcript of the pre-enquête proceedings.

The committee found that the court record showed that Her Worship conducted the proceedings appropriately, professionally and fairly. The transcript showed that before the proceeding began, the complainant said he wanted a judge to hear the case and he said he was going to record the proceedings. The Crown Attorney objected and referred to a previous court ruling. Her Worship asked the complainant if he understood that he had to follow the rules in court. The Crown Attorney made submissions and referred to section 136 of the *Courts of Justice Act*. The complainant said that the Crown Attorney was misleading the court. After hearing submissions, Her Worship permitted the complainant to make a recording only for the purposes of supplementing his notes. Her Worship also ruled that his request that she not hear the case was denied.

The committee observed that the transcript showed that during the pre-enquête, Her Worship asked questions and made comments to clarify the purpose or relevance of questions and evidence. Her Worship also made decisions on the relevance of some questions. The committee noted that determination of relevance is a matter within the exercise of judicial discretion made in the course of a justice of the peace's duties, not an allegation of judicial misconduct within the jurisdiction of the Council. There was no evidence of judicial misconduct.

The committee observed that the complainant requested that Her Worship direct a police officer to investigate a particular matter. Her Worship explained her role as a justice of the peace to adjudicate and that it would be improper for her to make orders to direct police to investigate matters.

With respect to the allegation by the complainant that Her Worship asked him if he knew how much it cost to have a hearing there and this showed that she prejudged the case, the committee found that the transcript showed that after evidence had been called, the complainant then said he wanted the matter adjourned. He asserted that he had not received disclosure and Her Worship observed that a person seeking to lay a criminal charge through a private information does not receive disclosure. In that context, Her

APPENDIX A

Case Summaries

A

Worship said, “Mr. [name redacted], are you here to tell me that you have had...this is the fourth appearance now, that you have caused the public to pay for a court and you are not prepared to proceed?” After a second ruling that there was insufficient evidence to proceed with charges against four people, the complainant again sought an adjournment. The transcript showed that Her Worship declined to grant the adjournment for reasons stated by the Crown Attorney and because one of the Informations showed that there had been five previous appearances before the Court. She said that, “We simply cannot use the justice system in this manner...It is a tremendous expense to have court staff here, a justice, a prosecutor at your request.” The committee concluded that her comments were an expression of concern about an unnecessary adjournment and public funds, and not judicial misconduct.

The committee observed that transcript also showed that during Her Worship’s ruling that there was not sufficient evidence to support the first charge, the complainant interrupted and spoke to the clerk. Her Worship asked him not to address the clerk. When Her Worship continued in her ruling, he again interrupted her a number of times. She told him that he needed to listen to her. He continued to interrupt her and she explained what contempt of court was. He then told her he was not getting a fair deal and he said he had asked that his case be heard by an out-of-province judge. The transcript showed that Her Worship was an out-of-town justice of the peace.

The committee observed that the transcript showed that during another ruling by Her Worship, the complainant again interrupted. He also challenged her and made disrespectful comments to her, saying that it looked like she prejudged that matter, she wanted to ambush him and that she should argue on the matter. The committee observed that considering and despite the complainant’s conduct and comments, Her Worship remained professional and continued to manage the case so that it would proceed to a conclusion.

After its investigation, the committee concluded that the full transcript showed that Her Worship made her decisions based on the evidence called before her. There was no support for the allegation that she had pre-judged the case or acted as an agent of the Attorney General’s office. There was no support for the allegation that she conducted the hearing in an unfair manner. Rather, she was polite, helpful, patient and fair.

APPENDIX A

Case Summaries

A

With respect to the allegation that a week prior to this appearance, Her Worship had the police right behind her and used intimidation tactics, the committee noted that the transcript showed that at the outset of the pre-enquete proceedings, the complainant did not raise any concerns that Her Worship had used intimidation tactics a week earlier. Nor did he make a request at the outset that Her Worship recuse herself because of events the week prior. He only raised the prior appearance after a ruling was made against him. It appeared to the committee that he tried to use his meeting with Her Worship on the prior occasion to get an adjournment after the pre-enquete were underway. The committee dismissed the allegation.

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

CASE NO. 25-015/14

The complainant filed a complaint against two justices of the peace arising from his appearances before them in relation to his trial for a traffic violation. He said it took the system thirteen months to process a simple traffic violation, long past one year and any reasonable statute of limitations, and he was required to take three trips at some distance to have his matter heard. His complaint was about the first justice of the peace who was scheduled to hear the complainant's matter.

The complainant alleged that not one single trial started on the day he appeared before the subject justice of the peace due to the continuum of breaks called by His Worship and "very extended bickering between the judge and the prosecutor". He stated that everyone took time from work, travelled long distances and was seriously inconvenienced by that performance.

The complaints committee reviewed the complainant's letter and ordered and reviewed the transcript in question of the proceedings before His Worship.

The committee found that the record did not reveal an excessive number of breaks during the proceedings that unduly delayed the process. There was only one break, which was the subject of an intemperate interchange between His Worship and the prosecutor because the prosecutor objected to the break. However, His Worship neither instigated nor prolonged the discussion. His Worship explained that he had an obligation to give the

APPENDIX A

Case Summaries

clerk a break. The committee found that while the nature of the discussion between the prosecutor and His Worship was perhaps regrettable, it was not judicial misconduct.

The committee also found that His Worship dealt with at least sixteen cases that were scheduled before him. Many matters involved, for example, cases where witnesses appeared and the defendants did not, or cases where the defendants appeared and the witnesses did not. Those matters were dealt with. The record indicated that after dealing with those cases, His Worship felt he did not have sufficient time to deal with the trial matters before the end of the morning tier and so he adjourned the remaining matters to another date.

The committee noted that a justice of the peace who presides in court is responsible for directing and controlling the courtroom. They observed that His Worship's decision to adjourn the trial list because he did not have the time to deal with them was a matter of judicial decision-making done in the course of his duties as a judicial officer, and not a matter of judicial conduct. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council's legislated jurisdiction is limited to the conduct of justices of the peace.

After considering all of the circumstances, the committee concluded that there was no judicial misconduct. The complaint was dismissed and the file was closed.

APPENDIX B

POLICY ON EXTRA-REMUNERATIVE WORK AND APPLICATIONS CONSIDERED

Note:

This version of the procedures reflects decisions of
the Review Council up to December, 2014.

For current procedures, please see the Review Council's website at:
www.ontariocourts.ca/ocj/jprc/policies-and-procedures/extra-remunerative-work/

Policy on Extra-Remunerative Work and Applications Considered

POLICY OF THE JUSTICES OF THE PEACE REVIEW COUNCIL RE: EXTRA-REMUNERATIVE WORK

CRITERIA & PROCEDURE FOR APPROVAL

- 1) Effective January 1, 2007, all justices of the peace, whether presiding or non-presiding, are required to seek the written approval of the existing Justices of the Peace Review Council before accepting or engaging in any extra-remunerative work, in accordance with section 19 of the *Justices of the Peace Act*, as amended January 1, 2007.

s. 19; subs. 8(2)(e)

- 2) All such applications to the Justices of the Peace Review Council will be considered by the Review Council at the earliest possible opportunity and the justice of the peace will be advised of its decision, in writing.

Application Procedure

- 3) An application for such approval must be made by the justice of the peace to the Justices of the Peace Review Council, in writing, prior to accepting or engaging in other extra-remunerative work and must set out a detailed explanation of the activity for which approval is sought, an estimate of the time commitment required and the amount of the remuneration. The applicant must also address in his or her letter each of the criteria indicated below that will be considered by the Review Council.
- 4) This application must be accompanied by a letter from the relevant Regional Senior Justice of the Peace providing his or her opinion with respect to any concerns about potential impacts related to scheduling and the applicant's assignment of duties.

Policy on Extra-Remunerative Work and Applications Considered

- 5) The Council looks at two aspects in relation to remuneration associated with the work. Firstly, the Council considers whether the work gives rise to any remuneration to the applicant justice of the peace. Secondly, the Council considers that a justice of the peace is engaged in extra-remunerative work when that justice of the peace is a party to someone else's remunerative work. Once the Council has established whether there is any remuneration, the policy and criteria set out in the Council's Extra-Remunerative Policy are considered.
- 6) The following are some of the criteria which should be addressed by the applicant in the letter of application and which will be considered by the Review Council in assessing whether or not approval will be granted:
 - a) whether there is an actual, or perceived, conflict of interest between the duties as assigned and the extra-remunerative activity for which approval is sought; (*examples of potential conflict of interest include: employment by government in any capacity related to the administration of justice, the courts or corrections, engagement in the practice of law, employment in a legal clinic or a law firm, etc.*)
 - b) whether the nature of the activity for which the justice of the peace seeks approval will present an intrusive demand on the time, availability or energy of the justice of the peace and his or her ability to properly perform the judicial duties assigned;
 - c) whether the activity for which the justice of the peace seeks approval is a seemingly or appropriate activity in which a judicial officer should engage, having regard to the public perceptions of judicial demeanour, independence and impartiality.

The Council has noted that the criterion in paragraph c) above must be understood in the context of the public policy encapsulated in the legislative framework set out in the *Justices of the Peace Act* R.S.O. 1990, c. J.4, as amended and, in particular, in view of the amendments that resulted from the *Access to Justice Act*, 2006, S.O. 2006, c. 21. The amendments brought about a comprehensive reform intended to strengthen public confidence in a professional bench and in the justice system.

Policy on Extra-Remunerative Work and Applications Considered

Having carefully considered the public policy underlying the current legislative framework, the objectives of the amendments underlying the *Access to Justice Act*, 2006, and the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice*, the Review Council has determined that it would in general be unseemly for full-time presiding justices of the peace to be engaged in commercial extra-remunerative work.

The Review Council has approved some applications to extra-remunerative work by full-time presiding justices of the peace on an exceptional basis in limited circumstances where the activity was primarily non-commercial and had other intrinsic value from an educational, patriotic, religious or creative standpoint. In accordance with the Council's procedures, an applicant who seeks approval to engage in commercial activity should address the issue of why the application for extra-remunerative work should be approved as an exception to the general policy that full-time presiding justices of the peace should not engage in extra-remunerative work that is commercial in nature.

Additional Information

- 7) If upon its review of the application, the Review Council is not satisfied that there is sufficient information, the Review Council may request such additional information as the Review Council may deem necessary and relevant, including information from the justice of the peace, the Regional Senior Justice of the Peace or any other person.

Approval of Application without Conditions

- 8) If, upon its review of the application and any additional material, the Review Council is satisfied that there is sufficient information to approve the application, without conditions, the Review Council will approve the application. The applicant justice of the peace will be advised in writing of the decision of the Review Council, including brief reasons for the decision.

Policy on Extra-Remunerative Work and Applications Considered

Opportunity to Respond to Concerns

- 9) If, upon its review of the application and any additional information, the Review Council has concerns about granting the application, the Review Council will provide a letter to the applicant justice of the peace setting out its concerns. The Review Council may also suggest conditions of approval to address those concerns.
- 10) The justice of the peace will be given an opportunity to respond to the concerns of the Review Council and to respond to any suggested conditions by sending submissions in writing to the Review Council. If the justice of the peace agrees with the conditions, he or she should respond to the Review Council confirming his or her agreement with the approval being contingent upon the conditions.
- 11) The justice of the peace will be given thirty calendar days to respond from the date of the letter from the Review Council expressing its concerns. If a response is not received from the applicant justice of the peace within that time, the Review Council members considering the request will be notified and a reminder letter will be sent to the justice of the peace. If no response is received within ten calendar days from the date of the reminder letter, the Review Council will proceed in the absence of a response.

Decision

- 12) The Review Council will consider the response of the justice of the peace, if any, in making its decision. The justice of the peace will be advised in writing of the Review Council's approval of the application and of the conditions, if any, upon which the approval is contingent. In the alternative, the justice of the peace will be advised in writing that the request has not been approved. Brief reasons will be provided for the decision.

No Authority to Order Compensation for Legal Costs

- 13) The Review Council does not have legislative authority to recommend or order compensation for costs of legal services incurred as a result of an application for extra-remunerative work.

Policy on Extra-Remunerative Work and Applications Considered

Application Process in Private

- 14) Any meeting of the Review Council regarding applications for extra-remunerative work shall be conducted in private. Pursuant to section 8(18) of the *Justices of the Peace Act*, the Review Council has ordered that any information or documents relating to any meeting of the Review Council to consider an application to engage in extra-remunerative work are confidential and shall not be disclosed or made public.

subs. 8(18)

Quorum of Review Council

- 15) The usual rules for composition and quorum apply to meetings for the purposes of considering applications for extra-remunerative work. The Chief Justice of the Ontario Court of Justice, or in his or her absence, the Associate Chief Justice Co-ordinator of Justices of the Peace, shall chair meetings held for the purposes of considering applications for extra-remunerative work. Six members of the Review Council, including the chair, constitute a quorum for the purposes of dealing with an application for approval of extra-remunerative work. At least half of the members present must be judges or justices of the peace. The chair is entitled to vote, and may cast a second deciding vote if there is a tie.

subs. 8(7),(8) and (11)

Annual report

- 16) After the end of each year, the Review Council shall make an annual report to the Attorney General on its affairs including a summary of each application for approval of extra-remunerative work received or dealt with during the year and the decision of the Review Council, but the report shall not include information that might identify the justice of the peace or the Region in which he or she presides.

subs. 9(7)

Amended at Toronto, June 4, 2010.

Policy on Extra-Remunerative Work and Applications Considered

APPLICATIONS FOR APPROVAL OF EXTRA-REMUNERATIVE WORK IN 2014

Applications for approval of extra-remunerative work are given File names starting with ER indicating the nature of the application, followed by a sequential file number and by two digits indicating the calendar year in which the file was opened (i.e., File No. ER-25-001/14 was the first application for approval in calendar year 2014).

Names of applicants are not included in the case summaries.

CASE NO. ER-25-001/14

The Justices of the Peace Review Council approved an application for approval to engage in extra-remunerative work consisting of the publication of a children's picture book. The approval was granted subject to the following conditions:

- 1) The publication of the book and any related book activities must not impact on scheduling and the justice of the peace's assignment of duties.
- 2) If the justice of the peace becomes involved in the sales or promotion of the book in any way, she must maintain distance with respect to from her role and responsibilities as a judicial officer, particularly in relation to avoiding any reference to her judicial position in advertising, promotional or informational materials or activities related to the book.
- 3) Her Worship must refrain from knowingly conducting any sales or transactions with anyone directly involved with the justice system. She must demonstrate sensitivity in transactions related to her book, to ensure the avoidance of any real or perceived conflict of interest or bias. Of particular concern to Council was the occurrence of any sales to known members of the justice community such as Crown Attorneys, police, agents, paralegals, lawyers, or others who may have the opportunity to appear before the justice of the peace in her decision-making capacity, or persons with whom justices of the peace have a relationship in the course of their duties, including court administration and court security staff.

Policy on Extra-Remunerative Work and Applications Considered

- 4) Sales to justices of the peace or to judges were exempt from the provisions of the first condition. Her Worship may conduct sales with justices of the peace or judges. She must refrain from using the Court's email network to promote, advertise, or sell the book. She must refrain from conducting personal business in relation to her book on the Court's resources, which are provided for purposes associated with her official responsibilities.
- 5) She may accept remuneration for the publication of the book, but such remuneration must be established without reference to her position as a justice of the peace.
- 6) Her Worship indicated that 99% of children's book authors find the income to be minimal. If there is any indication that the income to her could be more than minimal, or should any other change in circumstances arise that affects the status outlined in her correspondence, she must advise the Review Council in writing.
- 7) The Review Council reserved the right to revisit the request and its decision should the Council become aware of any new information or any relevant circumstances change.

ER 25-002/14

The Justices of the Peace Review Council approved a request from a *per diem* justice (who only works part-time as a justice of the peace) of the peace to engage in extra-remunerative work as a Hearing Officer in a city as part of the city's move to the Administrative Monetary Penalty System process for the purpose of by-law enforcement under Part II of the *Provincial Offences Act*. The Regional Senior Justice of the Peace had confirmed that the extra-remunerative work would not impact on His Worship's assignments to duties.

The approval of the application was granted for a period of three years from the date of award of the contract, with the optional two additional years, subject to the following conditions:

- 1) The Council's approval of the request must present no difficulties in fulfilling judicial assignments as a *per diem* justice of the peace during the period when the justice of the peace held the position of Hearing Officer.

APPENDIX B

Policy on Extra-Remunerative Work and Applications Considered

- 2) His availability to perform responsibilities as a Hearing Officer must be subject to his responsibilities as a *per diem* justice of the peace and as such must be undertaken at times when he is not otherwise assigned to judicial duties.
- 3) In his role as a justice of the peace, he must not accept any assignments to Provincial Offences Court matters in the city where he would be a Hearing Office and he must not sit in Intake Court in that city on matters where the moving party is the City.
- 4) His Worship must maintain distance in the completion of his responsibilities as a Hearing Review Officer from his role and responsibilities as a judicial officer, particularly in relation to avoiding any reference to his judicial position or title in his extra-remunerative work activities.
- 5) His Worship may accept remuneration for these services, but such remuneration must be the same as that paid to other Hearing Officers and be without regard to his position as a justice of the peace.
- 6) The Review Council reserved the right to revisit the request and its decision should the Council become aware of any new information or any relevant circumstances change.

ER 25-003/14

The Justices of the Peace Review Council approved a request from a justice of the peace to teach at a community college. While the request was approved by the Council, it was the view and preference of Council that educational teachings by justices of the peace be engaged in during the evenings rather than during weekdays, so as not to present any potential impact on judicial responsibilities or pose issues relating to fulfilling scheduling obligations at a base court location. In this instance, approval was granted on the basis that the Regional Senior Justice of the Peace had confirmed the teaching would not impact on the scheduling of the applicant justice of the peace. As well, the college had confirmed that the courses were not offered in the evenings. The Council noted that His Worship confirmed that he would be using vacation to teach the courses, and that he had sufficient vacation days available to do so. As well, he had assured the Council that the teaching activities would not affect his ability to fulfill his duties as a justice of the peace.

Policy on Extra-Remunerative Work and Applications Considered

The approval was subject to the following conditions:

- 1) Any remuneration accepted for these services be the same as that paid to other instructors without regard to the position as a justice of the peace.
- 2) His Worship's availability to instruct must not impact upon his availability to fulfill his primary responsibilities as a justice of the peace during assigned hours. As such, his availability to instruct must be undertaken at times when he is not otherwise assigned to judicial duties and where he has requested either vacation or compensating time off. The Council was of the view that non-presiding days should not be used for such purposes.
- 3) The Review Council reserved the right to revisit the request and its decision should any relevant circumstances change.

ER 25-004/14

The Justices of the Peace Review Council approved a request to engage in extra-remunerative work in relation to the publication of a history book for which he wrote the manuscript.

The application was approved contingent upon the conditions set out below and based on the members' understanding that the book was a historical recounting of history, rather than a political commentary:

- 1) The publication of the book and any related book activities must not impact on scheduling and His Worship's assignment of duties. The Regional Senior Justice of the Peace had reviewed the Review Council's policy on extra-remunerative work and indicated that she has no concerns with His Worship engaging in this extra-remunerative work.
- 2) His Worship indicated that he would not be involved in the sales of the book through promotions, websites or public appearances. However, he stated that he wanted to do a book signing. The Council required that if he became involved in the sales or promotion of the book in any way, and at the book signing, he must maintain distance from his role and responsibilities as a judicial officer, particularly in relation to avoiding any reference to the judicial position in advertising, promotional or informational materials or activities related to the book.

Policy on Extra-Remunerative Work and Applications Considered

- 3) His Worship must refrain from knowingly conducting any sales or transactions with anyone directly involved with the justice system. He must demonstrate sensitivity in transactions related to the book, to ensure the avoidance of any real or perceived conflict of interest or bias. Of particular concern to Council was the occurrence of any sales to known members of the justice community such as Crown Attorneys, police, agents, paralegals, lawyers, or others who may have the opportunity to appear before him in his decision-making capacity, or persons with whom justices of the peace have a relationship in the course of their duties, including court administration and court security staff.
- 4) Sales to justices of the peace or to judges would be exempt from the provisions of the first condition. His Worship was permitted to conduct sales with justices of the peace or judges. However, he must refrain from using the Court's email network to promote, advertise, or sell the book. He must also refrain from conducting personal business in relation to the book on the Court's resources, which are provided for purposes associated with his official responsibilities.
- 5) His Worship may accept remuneration for the publication of the book, but such remuneration must be established without reference to the position as a justice of the peace.
- 6) His Worship had indicated that any potential royalty would be minimal. If there is any indication that the income to him could be more than minimal, or should any other change in circumstances arise that affects the status outlined in his correspondence, he must advise the Review Council in writing.
- 7) The Council reserved the right to revisit the request and its decision should the Council become aware of any new information or any relevant circumstances change.

ER 25-005/14

The Justices of the Peace Review Council approved an application to engage in extra-remunerative work in relation to the publication of a book by the justice of the peace contingent upon the conditions set out below and based on the members' understanding that the book was not critical of the justice system:

Policy on Extra-Remunerative Work and Applications Considered

- 1) The publication of the book and any related book activities must not impact on scheduling and Her Worship's assignment of duties. The Regional Senior Justice of the Peace had reviewed the Review Council's policy on extra-remunerative work and has indicated that he had no concerns about impacts related to scheduling and Her Worship's assignment of duties.
 - 2) Her Worship indicated that she would not be directly involved in the sales of the book through promotions, websites or public appearances. However, she may be asked to make appearances at conferences and meetings. If she were to become involved in the sales or promotion of the book in any way, and at events related to the book, she must maintain distance with respect to from her role and responsibilities as a judicial officer, particularly in relation to avoiding any reference to the judicial position in advertising, interviews, promotional or informational materials or activities related to the book.
 - 3) Her Worship must refrain from knowingly conducting any sales or transactions with anyone directly involved with the justice system. She must demonstrate sensitivity in transactions related to the book, to ensure the avoidance of any real or perceived conflict of interest or bias. Of particular concern to Council was the occurrence of any sales to known members of the justice community such as Crown Attorneys, police, agents, paralegals, lawyers, or others who may have the opportunity to appear before her in her decision-making capacity, or persons with whom justices of the peace have a relationship in the course of their duties, including court administration and court security staff.
 - 4) Sales to justices of the peace or to judges are exempt from the provisions of the first condition. Her Worship may conduct sales with justices of the peace or judges. However, she must refrain from using the Court's email network to promote, advertise, or sell the book. She must also refrain from conducting personal business in relation to the book on the Court's resources, which are provided for purposes associated with her official responsibilities.
 - 5) Her Worship may accept remuneration for the publication of the book, but such remuneration must be established without reference to the position as a justice of the peace.
 - 6) The Council reserved the right to revisit the request and its decision should the Council become aware of any new information or any relevant circumstances change.
-

APPENDIX C

**PRINCIPLES
OF JUDICIAL OFFICE OF
JUSTICES OF THE PEACE
OF THE ONTARIO
COURT OF JUSTICE**

Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice

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

PRINCIPLES OF JUDICIAL OFFICE OF JUSTICES OF THE PEACE OF THE ONTARIO COURT OF JUSTICE

PREAMBLE

A strong and independent judiciary is indispensable to the proper administration of justice in our society. Justices of the peace 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 justices of the peace to be honourable and worthy of its trust and confidence.

The justices of the peace 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 justices of the peace of the Ontario Court of Justice and set out standards of excellence and integrity to which all justices of the peace 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 justices of the peace 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 justices of the peace in the performance of judicial duties and in the conduct of their personal lives.

Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice

1. THE JUSTICE OF THE PEACE IN COURT

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

Commentaries:

Justices of the peace should not be influenced by partisan interests, public pressure or fear of criticism.

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

- 1.2 Justices of the peace have a duty to follow the law.

Commentaries:

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

- 1.3 Justices of the peace will endeavour to maintain order and decorum in court.

Commentaries:

Justices of the peace 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 JUSTICE OF THE PEACE AND THE COURT

- 2.1 Justices of the peace should approach their judicial duties in a spirit of collegiality, cooperation and mutual assistance.
- 2.2 Justices of the peace should conduct court business with due diligence and dispose of all matters before them promptly and efficiently having regard, at all times, to the interests of justice and the rights of the parties before the court.
- 2.3 Reasons for judgment should be delivered in a timely manner.
- 2.4 Justices of the peace have a duty to maintain their professional competence in the law.

Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice

Commentaries:

Justices of the peace should attend and participate in continuing legal and general education programs.

- 2.5 The primary responsibility of justices of the peace is the discharge of their judicial duties.

Commentaries:

Subject to applicable legislation, justices of the peace 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 their primary duty to the court.

3. THE JUSTICE OF THE PEACE IN THE COMMUNITY

- 3.1 Justices of the peace should maintain their personal conduct at a level which will ensure the public's trust and confidence.
- 3.2 Justices of the peace must avoid any conflict of interest, or the appearance of any conflict of interest, in the performance of their judicial duties.

Commentaries:

Justices of the peace must not participate in any partisan political activity.

Justices of the peace must not contribute financially to any political party.

- 3.3 Justices of the peace must not abuse the power of their judicial office or use it inappropriately.
- 3.4 Justices of the peace are encouraged to be involved in community activities provided such involvement is not incompatible with their judicial office.

Commentaries:

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

APPENDIX D

**HEARING RE
JUSTICE OF THE PEACE
ALFRED JOHNSTON**

APPENDIX D

Hearing Re Justice of the Peace Alfred Johnston

JUSTICES OF THE PEACE REVIEW COUNCIL

IN THE MATTER OF A HEARING UNDER SECTION 11.1 OF THE JUSTICES OF THE PEACE ACT, R.S.O. 1990, C. J.4, AS AMENDED

Concerning Two Complaints about the Conduct of Justice of the Peace Alfred Johnston

Before: The Honourable Justice P. H. Marjoh Agro, Chair
His Worship Maurice Hudson, Justice of the Peace
Dr. Emir Crowne, Community Member

Hearing Panel of the Justices of the Peace Review Council

REASONS FOR DECISION

Counsel:

Ms. Marie Henein
Henein Hutchison LLP

Presenting Counsel

Mr. Peter Brauti
Brauti Thorning Zibarras LLP

Counsel for His Worship Alfred Johnston

Hearing Re Justice of the Peace Alfred Johnston

INTRODUCTION

Two unrelated complaints were received by the Justices of the Peace Review Council (the “Review Council”) concerning the conduct of Justice of the Peace Alfred Johnston. The Review Council established a complaints committee pursuant to sub-section 11(1) of the *Justices of the Peace Act*, R.S.O. 1990, C.J. 4, as amended (the “Act”). The complaints committee investigated each matter and ordered that a formal hearing into each complaint be held, pursuant to sub-section 11(15) of the *Act*.

The Chief Justice of the Ontario Court of Justice, the Chair of the Review Council, established a Hearing Panel pursuant to sub-section 11(1) of the *Act*¹ and, as a result, a hearing into both complaints commenced, the particulars of which are set out below. For convenience, the first complaint is entitled the “Leaf Matter”, and the second complaint is entitled the “Docket Dismissal”.

LEAF MATTER

The complaint alleges that on November 22nd, 2012 His Worship breached his duty to assist a self-represented defendant² and/or failed to ensure a fair trial.

A self-represented defendant, Mr. Alexander Leaf, was charged with “Drive Hand-Held Communication Device” contrary to sub-section 78.1(1) of the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended (the “HTA”). It is alleged that His Worship ridiculed the defendant’s pronunciation of *R v Askov*, [1990] 2 S.C.R. 1199 (“Askov”) and even feigned ignorance of the case at times. These actions allegedly persuaded the defendant to abandon his motion relating to sub-section 11(b) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (the “11(b) motion”).

1 The Notice of Hearing was tendered was Exhibit 1, and is attached to these reasons as Appendix A.

2 The duty to provide assistance to unrepresented defendants was reinforced in *R v Rijal*, 2010 ONCJ 329 at para. 66: “To repeat the words of Laskin J.A. in *Winlow*, at para. 71, a case involving the trial of a party who conducted his own defence under Part I of the *Provincial Offences Act*, “Special care must be taken to ensure that POA proceedings are fair to defendants.” (citations omitted).

APPENDIX D

Hearing Re Justice of the Peace Alfred Johnston

It is also alleged that His Worship refused to give Mr. Leaf an opportunity to retrieve from his car a copy of the relevant legislation that was essential to his defence, in breach of his right to make full answer and defence.

- a) Upon review of the audio recording and written transcript of November 22nd, 2012, the Panel finds that the record supports the following findings, namely:
- b) His Worship Johnston failed in his role as a judicial officer to provide a self-represented defendant with the requisite minimum assistance in applying, and even pronouncing, *Askov*.
- c) In feigning ignorance of *Askov*, His Worship used a mocking tone that led the defendant to abandon the 11(b) motion.

His Worship Johnston failed to ensure that any applicable exemption(s) from sub-section 78.1(1) of the *HTA* was researched and considered, before concluding (as he did) that no such exemption existed.³

The Panel, however, finds no support for the allegation that His Worship denied Mr. Leaf an appropriate opportunity to obtain a copy of the legislation from his car. Mr. Leaf made the request during the delivery of His Worship's reasons for judgment when it became abundantly clear His Worship was about to find Mr. Leaf guilty. In dealing with the interruption, His Worship was both courteous and patient with Mr. Leaf. Furthermore, before rendering his decision, His Worship asked Mr. Leaf if he wished to call any further evidence or make any additional submissions, to which Mr. Leaf replied in the negative.

It is our view that characterizing the facts set out in paragraph 7(c) of the Agreed Statement of Facts⁴ as misconduct, whether as a single act or part of a continuum of events in the course of the trial, would set an unacceptable precedent for the trial process and appropriate courtroom decorum.

3 Here the Panel is wary of its jurisdiction. We are not holding His Worship culpable for any legal error, rather, his tone and comportment in relation to such.

4 The Agreed Statement of Facts was tendered as Exhibit 7, and is attached to these reasons as Appendix B.

Hearing Re Justice of the Peace Alfred Johnston

DOCKET DISMISSAL

On December 4th, 2012, His Worship presided in Courtroom “F” of Provincial Offences Court at 60 Queen Street West, in Toronto. His Worship’s decision to dismiss the 1:30 p.m. tier at approximately 1:33:37 p.m. for want of prosecution forms the basis of the second complaint.

Transcripts of those proceedings confirm that His Worship entered the courtroom at 1:32:46 p.m. No prosecutor was present. At 1:33:57 p.m., and after attempting to page the prosecution once, His Worship dismissed the entire docket purportedly pursuant to sub-section 53(1) of the *Provincial Offences Act*, R.S.O. 1990, c. P.33 (the “POA”), which states that:

“Where the defendant appears for a hearing and the prosecutor, having had due notice, does not appear, the court may dismiss the charge or may adjourn the hearing to another time upon such terms as it considers proper.”⁵

In our view, the conduct of His Worship in dismissing the entire docket fell short of the behaviour expected of a judicial officer. His Worship’s actions were hasty, intemperate and lacked proportionality. It struck at the very core of the public’s confidence in the administration of justice.

DISPOSITIONS & THE JUDICIAL DISCIPLINARY PROCESS

Sub-section 11.1(10) of the *Justices of the Peace Act* sets out the dispositions available to this Panel, namely:

“After completing the hearing, the panel may dismiss the complaint, with or without a finding that it is unfounded or, if it upholds the complaint, it may,

- (a) warn the justice of the peace;
- (b) reprimand the justice of the peace;
- (c) order the justice of the peace to apologize to the complainant or to any other person;

5 *Ibid.* (As with the law surrounding the Leaf matter, the Panel is mindful of its jurisdiction. We are not dealing with the legality per se of His Worship’s actions, rather the manner in which they were performed and the impact on the public’s confidence in the administration of justice).

Hearing Re Justice of the Peace Alfred Johnston

- (d) order that the justice of the peace take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;
- (e) suspend the justice of the peace with pay, for any period;
- (f) suspend the justice of the peace without pay, but with benefits, for a period up to 30 days; or
- (g) recommend to the Attorney General that the justice of the peace be removed from office in accordance with section 11.2.”

The dispositions are therefore arranged from the least serious (i.e., a warning) to the most serious (i.e., a recommendation to the Attorney General to remove the Justice of the Peace from office). Pursuant to sub-section 11.1(11), most dispositions may also be combined (“The panel may adopt any combination of the dispositions set out in clauses (10) (a) to (f)”).

The philosophy behind the judicial disciplinary process is the restoration of public confidence in the judiciary and in the administration of justice. The entire range of dispositions, from dismissal through to a recommendation of removal from office, all serve that overriding objective. Disciplinary panels are neither pre-disposed to punish, or protect, judicial officers.

In this regard, the remarks of the Supreme Court of Canada in *Re: Therrien*, 2001 SCC 35 are particularly relevant, namely:

110. ... the personal qualities, conduct and image that a judge projects affect those of the judicial system as a whole and, therefore, the confidence that the public places in it. Maintaining confidence on the part of the public in its justice system ensures its effectiveness and proper functioning. But beyond that, public confidence promotes the general welfare and social peace by maintaining the rule of law. In a paper written for its members, the Canadian Judicial Council explains:

Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. Many factors, including unfair or

Hearing Re Justice of the Peace Alfred Johnston

uninformed criticism, or simple misunderstanding of the judicial role, can adversely influence public confidence in and respect for the judiciary. Another factor which is capable of undermining public respect and confidence is any conduct of judges, in and out of court, demonstrating a lack of integrity. Judges should, therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality, and good judgment.

(Canadian Judicial Council, *Ethical Principles for Judges* (1998), p. 14)

111. The public will therefore demand virtually irreproachable conduct from anyone performing a judicial function. It will at least demand that they give the appearance of that kind of conduct. They must be and must give the appearance of being an example of impartiality, independence and integrity. What is demanded of them is something far above what is demanded of their fellow citizens.

The misconduct in this instance was serious. It struck at the heart of the administration of justice, and in the public confidence attached to it. Warnings, reprimands, education or treatment are simply insufficient or inapplicable to remedy the misconduct.

Suspensions (with or without pay), or a recommendation of removal from office, are left. We deal with removal first. A recommendation that a judicial officer be removed from office is a severe sanction. In our view, it should only be ordered where no other combination of sanctions could reasonably achieve the overriding objective.

To that end, a suspension without pay, but with benefits, for a period of seven (7) consecutive calendar days is warranted in this instance, as is a letter of apology. In arriving at this sanction, we were mindful of the need to restore public confidence in the judiciary and in the administration of justice while ensuring His Worship's sanction is in accordance with growing jurisprudence in this area and the particularized facts of this case, in particular:

1. The lack of remorse or self-reflection prior to the public hearing. Indeed, there is no evidence that His Worship expressed regret

Hearing Re Justice of the Peace Alfred Johnston

or apologized for any of his actions in his responses to the complaints or prior to June 9th, 2014⁶ (when Mr. Brauti filed with the Review Council's office his submissions containing an apology letter, dated June 6th, 2014); and

2. The non-isolated nature of the misconduct. There were two (2) separate events in question, both of which had a damaging and public impact on the administration of justice; and
3. The public resources expended by the City of Toronto in appealing four (4) of the dismissals.

These, and other, aggravating factors are also addressed in our analysis with respect to costs. In light of the factors set out in *Re: Foulds*, 2013 (JPRC) with respect to costs, the overlap is inevitable.

Indeed, we may have opted for a lengthier suspension, had the following mitigating factors not come to bear:

1. His Worship has had no previous findings of misconduct;
2. Five (5) letters of support tendered from various stakeholders involved in the administration of justice;
3. His Worship has since admitted to the allegations by way of a letter of apology and the Agreed Statement of Facts;
4. His Worship's verbal acknowledgment before this Panel that his comments, actions and demeanour were inappropriate and amounted to judicial misconduct;
5. There is some evidence before us that at the relevant time His Worship was suffering episodes of hypoglycemia, related to a diabetic condition, as well as stress and depression due to matrimonial issues; and,
6. His Worship has undergone counselling.⁷

6 Quite unlike the situation in *Re: Chisvin*, 2012 (OJC), where Justice Chisvin also dismissed an entire docket for want of prosecution, yet recognized his error that very day and reported the mistake to his Regional Senior Justice (*ibid.*, para. 43).

7 Due to policy restrictions in His Worship's Employee Assistance Plan, the reasons for and the nature of the counseling was not disclosed by the service provider. Only the dates of counseling sessions were provided.

Hearing Re Justice of the Peace Alfred Johnston

COSTS

The Panel in *Re: Foulds*, 2013 (JPRC) set out some guidelines with respect to the awarding of costs (*ibid.*, para 62) (the “*Foulds* factors”). We adopt those guidelines, with the caveat that each case is to be measured against its own facts and surrounding circumstances, namely:

“Some factors that might be weighed are these:

- a) the severity of the misconduct;
- b) the complexity of the hearing;
- c) the conduct of the justice of the peace in the course of the hearing, including whether the justice of the peace prolonged or expedited the process;
- d) the nature of the disposition(s);
- e) whether public funds were lost as a result of the misconduct;
- f) whether there had been previous findings of misconduct made against the justice of the peace; and
- g) whether the conduct in question relates to a judicial function or impacts judicial independence.”

The case before this Panel falls within the extremes of the spectrum of cases that come before the Review Council. In other words, the allegations against His Worship were not such that they failed to meet the threshold of judicial misconduct and ought to be dismissed, nor was they so egregious and damaging to the public’s confidence in him, the judiciary in general and the administration of justice, that dismissal from office is recommended by this Panel.

Hearing Re Justice of the Peace Alfred Johnston

Turning now to the *Foulds* factors:

a) the severity of the misconduct:

i) The Leaf Matter

During the course of the trial on November 22nd, 2012, His Worship demonstrated an arrogant and sarcastic attitude that falls short of the conduct expected of a judicial officer in dealing with a self-represented defendant and offends the Principles of Judicial Office for Justices of the Peace.

The disrespect shown to Mr. Leaf not only compromised that defendant's right to make full answer and defence but also compromised the dignity of the court and the trial process.

ii) The Docket Dismissal

The dismissal of an entire list of charges under the POA (68 charges against 62 defendants) three (3) minutes and fifty six (56) seconds after court was set to commence and a mere one (1) minute and ten (10) seconds after he himself entered the courtroom was an abuse of the authority granted a justice of the peace under sub-section 53(1) of the POA. It required a review of those charges that were dismissed and an appeal of a selected number, all at public expense.

We consider these to be serious instances of misconduct that undermine the public's confidence in this justice of the peace, his colleagues, the process by which they are appointed, and in the administration of justice as a whole.

Hearing Re Justice of the Peace Alfred Johnston

b) the complexity of the hearing:

The hearing itself has not been particularly complex or prolonged.

The evidence relied upon by Presenting Counsel consisted of the court records of November 22nd, 2012 and December 4th, 2012. Those records speak for themselves. Even in the absence of an Agreed Statement of Facts, it is unlikely that other witnesses would have been required.

c) the conduct of the justice of the peace in the course of the hearing, including whether the justice of the peace prolonged or expedited the process:

There are factors that bear on the conduct of the hearing that we do take into account. The first appearance before the Panel was on March 25th, 2014. On that occasion the Notice of Hearing setting out the nature of the complaint was filed.

The Chair offered a pre-hearing before another judicial officer to assist in narrowing the issues or moving toward resolution. That offer was left open to counsel should they wish to avail themselves.

The Chair also explored the feasibility of an Agreed Statement of Facts given the nature of the allegation.

Neither counsel made a definitive commitment respecting these inquiries, although Mr. Niman, who appeared on behalf of Mr. Brauti for His Worship, expressed confidence the matter would resolve before the next return date: Re Johnston, transcript, March 25th, 2014, p.8, l.15-16.

Hearing Re Justice of the Peace Alfred Johnston

On the return date of May 20th, 2014, it became clear to the Panel that little or no discussion of the issues had taken place and that a multi-day hearing could not be arranged until March 2015 (given other responsibilities of both counsel, the lack of communication between them in the intervening months, and the collective availability of Panel members).

In the view of this Panel, it is incumbent on both counsel to communicate in a timely and cost effective manner once a hearing is required.

At a minimum, counsel should explore without undue delay which facts might be admitted and which might require formal proof; whether witnesses might be required to further that proof or whether the record in any proceeding that is the subject matter of an allegation of judicial misconduct is sufficient to establish that proof; and which might be the range of dispositions sought by Presenting Counsel.

By exploring the issues in this fashion the necessity of a lengthy hearing may be obviated. The Panel is aware of the demands on counsels' time and the importance of other matters where the liberty of their clients may be in jeopardy. However, it must not be forgotten that an allegation of judicial misconduct not only has an impact on the justice of the peace before the Hearing Panel but also on the public's confidence in the bench and the administration of justice at large. It is incumbent on counsel to expedite, and not prolong, matters whenever and however possible.

d) the nature of the dispositions:

The Panel's decision on disposition will, no doubt, have a deterrent effect on His Worship's conduct going forward. It comes with some financial consequence to him as well.

Hearing Re Justice of the Peace Alfred Johnston

- e) whether public funds were lost as a result of the misconduct:

The wholesale dismissal of an entire list of charges had far reaching consequences to the public purse.

An entire afternoon of court time was squandered. Defendants and witnesses, both law enforcement and civilian, were inconvenienced. A review of those matters was required and appeals of a selected number were successful. The financial cost, while not quantified, is obvious.

- f) whether there had been previous findings of misconduct made against the justice of the peace:

There have not been any prior findings of misconduct against His Worship that form part of our considerations on the cost issue.

- g) whether the conduct in question relates to a judicial function or impacts judicial independence:

The misconduct in the course of both the Leaf Matter and the Docket Dismissal relates to the performance of a judicial function.

However, it is not the judicial function *per se* that is the focus of this hearing, as was the case in *Reilly v Alberta*⁸ (which made the case for a recommendation for costs).

Errors in law made by judicial officers are reversible on appeal. Any legal error made by His Worship might have been remedied with that process, as was done in the case of the docket dismissal. It is therefore, His Worship's manner of performance of his judicial functions that is the subject of this review.

8 1999 ABQB 252, aff'd by 2000 ABCA 241.

Hearing Re Justice of the Peace Alfred Johnston

Costs Summary

Given the gravity of the misconduct, and in particular that the misconduct occurred while in the performance of judicial duties with significant effect on the administration of justice, members of the public and the public purse, we are of the view that this is not an appropriate case for a recommendation for costs.

In deciding not to award costs we emphasize that our decision is not intended to be punitive. It is merely a reflection of the unique features of the matters before us, and the discretionary nature of any recommendation.

CONCLUSION

The Panel orders that His Worship:

1. apologize in writing to Mr. Leaf. The letter of apology tendered to the Panel on July 22nd, 2014, labelled as Exhibit 10 and attached hereto as Appendix C shall be deemed to satisfy this disposition; and
2. be suspended without pay, but with benefits, for seven (7) consecutive calendar days commencing the 8th day of September 2014.⁹

DATED at the City of Toronto in the Province of Ontario this 19th day of August, 2014.

HEARING PANEL:

The Honourable Justice P. H. Marjoh Agro, Chair

His Worship Maurice Hudson, Justice of the Peace

Dr. Emir Crowne, Community Member

⁹ The date was chosen to provide sufficient opportunity for the Court's administration to cover His Worship's dockets for the period of suspension.