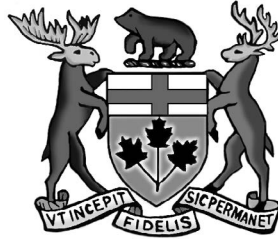


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# TENTH ANNUAL REPORT

2016

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**JUSTICES OF THE PEACE  
REVIEW COUNCIL**

ONTARIO

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ISSN 1918-3755



*The Honourable Lise Maisonneuve*

**CHIEF JUSTICE**

**ONTARIO COURT OF JUSTICE**

Chair, Justices of the Peace Review Council



JUSTICES OF THE PEACE REVIEW COUNCIL

August 18, 2017

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

Dear Minister:

It is my pleasure to submit the Tenth Annual Report of the Justices of the Peace Review Council concerning its operations throughout 2016, 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, 2016 to December 31, 2016.

Respectfully submitted,

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

Lise Maisonneuve  
Chief Justice  
Ontario Court of Justice





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## INTRODUCTION

The period of time covered by this Annual Report is from January 1, 2016 to December 31, 2016. This report is the Tenth Annual Report on the work of the Justices of the Peace Review Council.


The 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 the conduct of 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 cases before the courts or to 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 submit 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 Tenth Annual Report of the Review Council provides information on its membership, its functions and the work of the Council during 2016. 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 398 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 2016, they presided over millions of provincial offences matters, such as traffic offences, as well as bail hearings, Intake Court and assignment courts. During 2016, the Council received 47 new complaints about justices of the



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peace, and carried over 22 from previous years. Information about the 40 complaint files completed and closed in 2016 is included in this Report. 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/](http://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.





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In the appointment of community members, the importance 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, 2016 to December 31, 2016) was as follows:

### ***Judicial Members:***

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

The Honourable Lise Maisonneuve ..... (Ottawa)

#### **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 Bruce Leaman ..... (Thunder Bay)

Her Worship Liisa Ritchie ..... (Halton)

Her Worship Monique Seguin ..... (Sudbury)



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

The Honourable Justice Diane M. Lahaie.....(Ottawa)  
*(Effective June 20, 2016)*

The Honourable Justice Jean Legault ..... (L'Orignal)  
*(Until June 20, 2016)*

The Honourable Justice Esther Rosenberg .....(Peterborough)  
*(Until December 31, 2016)*

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

Regional Senior Justice of the Peace Warren Ralph ..... (Toronto)  
*(Re-appointed effective February 21, 2016)*

***Lawyer Member:***

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

***Community Members:***

Dr. Emir Crowne..... (Windsor)  
*Counsel, KPA Lawyers PC*

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

Ms. Jenny Gumbs ..... (Toronto)  
*Former Honorary Consul General to Canada for Grenada*

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



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**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:

- His Worship Michael Cuthbertson ..... (Guelph)  
Regional Senior Justice Jean Legault..... (Ottawa)  
The Honourable Justice Deborah K. Livingstone ..... (London)  
The Honourable Justice Peter Tetley..... (Newmarket)

### **3. ADMINISTRATIVE INFORMATION**


Office space 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 Assistant:

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

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



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

Ms. Ana M. Brigido – *Assistant Registrar*

Ms. Claudia Cammisa – *Administrative Assistant*  
(until March 2016)

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

#### **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 a court case or to 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.



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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/](http://www.ontariocourts.ca/ocj/jprc/policies-and-procedures/procedure/).

During 2016, the Council continued to refine and develop its procedures and policies.

The Council considered a provision that restricted a committee to knowledge of complaints within the three years prior to the complaint. The provision also stated that the history should be considered for the purpose of assessing whether the disposition should be advice. The Council was of the view that when a committee is considering the appropriate disposition of a complaint, it is relevant and helpful for the committee to be informed of the complete disciplinary history of a justice of the peace who is the subject of the complaint. The objective of preserving public confidence is better fulfilled if the public knows that each committee takes a comprehensive approach to the justice of the peace’s history of conduct when determining the appropriate disposition. An amendment was made so that when a committee is determining the appropriate disposition, the Registrar will inform the committee of any Review Council history after January 1, 2007 (when the Council was established in its current form) and make available any complaint file materials requested by the committee.

The Council considered a provision in the Procedures that said the Registrar “may” assign new complaints “of a similar nature” to the same committee as any open file. The Council was of the view that a committee should be aware of all open complaint files that relate to the same justice of the peace. The Procedures were amended so that in circumstances where there is an open file, the Registrar must assign all complaints to the same committee.

A copy of the Council’s current procedures for the complaints process that incorporates the amendments made during 2016 is posted on the Review Council’s website under the link “Policies and Procedures at [www.ontariocourts.ca/ocj/jprc/policies-and-procedures/procedure/](http://www.ontariocourts.ca/ocj/jprc/policies-and-procedures/procedure/).

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## 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 2016, the current version of the Education Plan was reviewed and approved by the Council.

A copy of the current Education Plan can be found on the Council’s website under the link “Education Plan” at [www.ontariocourts.ca/ocj/jprc/education-plan/](http://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.

Further to section 13(1), 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 advisory in nature. A breach does not automatically lead to a conclusion that there has been misconduct. However, the principles do set out a general



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framework of values and considerations that are relevant in evaluating allegations of improper conduct by a justice of the peace. 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/](http://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.

Applications received from justices of the peace to engage in other remunerative work are considered in accordance with the Council’s policy. 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.

The Council considers 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.



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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 seemly 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 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 by full-time justices of the peace to engage in extra-remunerative work 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/](http://www.ontariocourts.ca/ocj/jprc/policies-and-procedures/extra-remunerative-work/).



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## ***Summary of Extra-Remunerative Files Closed in 2016***

During 2016, the Council received four applications for approval to engage in extra-remunerative work and completed its consideration of those applications. Case summaries can be found at Appendix B in this Annual Report.

In 2016, the Council received an enquiry from a justice of the peace asking whether she should make an application for approval to engage in extra-remunerative work in relation to her ownership of a vacation property. She indicated that she had purchased a condominium with the intention of having a vacation property for her retirement years. She renovated the property and incurred expenses in so doing. To defray carrying costs and to cover some of the renovation expenses, she hired a rental agent to rent out the property. The members concluded that rental income does not qualify as income from extra-remunerative work insofar as it is strictly investment income. Simple ownership of rental property without further involvement does not constitute extra-remunerative work.

## **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/](http://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/](http://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/](http://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/](http://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.

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## 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 Ministry of the Attorney General, with input from the Office of the Chief Justice, has a process that provides a consistent means for judicial officers to request accommodation of needs arising from disabilities. The Council recognizes 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's Procedures 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/](http://www.ontariocourts.ca/ocj/jprc/accessibility-and-accommodation/).

During 2016, no applications for accommodation were received 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.



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### ***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 paralegal, 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/](http://www.ontariocourts.ca/ocj/jprc/policies-and-procedures/procedure/).



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## ***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 on-going court matters.

If there is no on-going 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, 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 obtained.



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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;

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- ◆ 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 files closed in 2016, one complaints committee recommended that a justice of the peace be non-assigned pending the final disposition of the complaints. Two complaints committees recommended to the Regional Senior Justice that a justice of the peace be temporarily reassigned to a different location pending the final disposition of the complaint.

### ***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.



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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 Review Council will have been considered and reviewed by a total of six members of the Council – three members of the complaints committee and three members of the hearing panel.



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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 Review 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.





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### ***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 Review 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.



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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 2016, five recommendations for compensation were made by complaints committees to the Attorney General that the justices of the peace be compensated for all or part of the cost of legal services incurred in connection with the investigation 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](http://www.e-laws.gov.on.ca). The website contains a database of Ontario's current and historical statutes and regulations.

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## 11. SUMMARY OF COMPLAINTS CLOSED IN 2016

### **Overview**

The Justices of the Peace Review Council carried forward 22 complaints to 2016 from previous years. During 2016, 47 new complaint files were opened with the Review Council. Including those cases carried into 2016 from previous years, the total number of files open during 2016 was 69. Of the 69 open files in 2016, 40 files were completed and closed before December 31, 2016.

Of the 40 files that were closed, 18 files were opened in 2015 and 22 files were opened in 2016.


Twenty-nine of the 69 open files were still on-going at the end of 2016 and carried over into 2017. Twenty-five of the 29 files were complaints filed in 2016. Four were complaints filed in 2015.

### **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 40 files addressed and closed, five 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



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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.

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-six complaints 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 and no further action was required.

In four cases, the Review Council provided advice in writing to justices of the peace under section 11(15)(b) of the *Act*.

In 2016, two complaints were referred to the Chief Justice of the Ontario Court of Justice pursuant to section 11(15)(d) of the *Act*. 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.

In three cases, the justice of the peace left office before the complaints process was completed. The Council lost jurisdiction and the files were administratively closed.

In 2016, a hearing commenced in relation to the conduct of one justice of the peace, His Worship Tom Foulds. The hearing was ongoing at the time when this Report was prepared. A public hearing is 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



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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/](http://www.ontariocourts.on.ca/jprc/en/hearings/).

His Worship Foulds filed an application for judicial review to challenge the decision of the committee to order a hearing. That application was still before the courts at the time when this Report was prepared. An update on the hearing and on the application for judicial review will be posted on the Council’s website.

A hearing about the conduct of Justice of the Peace Errol Massiah resulted in his removal from office in 2015. Mr. Massiah filed an application for judicial review of the decisions made by the Hearing Panel during the hearings process, including the recommendation for his removal from office and the decision that he should not be compensated for his legal costs. In 2016, the Divisional Court dismissed his application for judicial review with one exception. The decision of the Panel not to recommend compensation for legal fees was set aside and that single issue was remitted back to the Panel for reconsideration. Applications by Mr. Massiah and by the Review Council for leave to appeal to the Court of Appeal for Ontario were dismissed. The process for the Hearing Panel to reconsider whether to recommend compensation for legal costs was ongoing at the time when this Report was prepared. The Panel’s decision on its reconsideration of the compensation question will be posted on the Council’s website after the decision has been issued.

### ***Types of Cases***

Of the 40 files that were completed and closed, 28 complaints arose from events during provincial offences proceedings, three arose from matters in Intake Court, five arose from proceedings under the Criminal Code (four pre-enquêtes and one peace bond application), and four related to conduct outside of the courtroom.

### ***Case Summaries***

Case summaries for each complaint file closed during 2016 follow in Appendix “A” of this Report.

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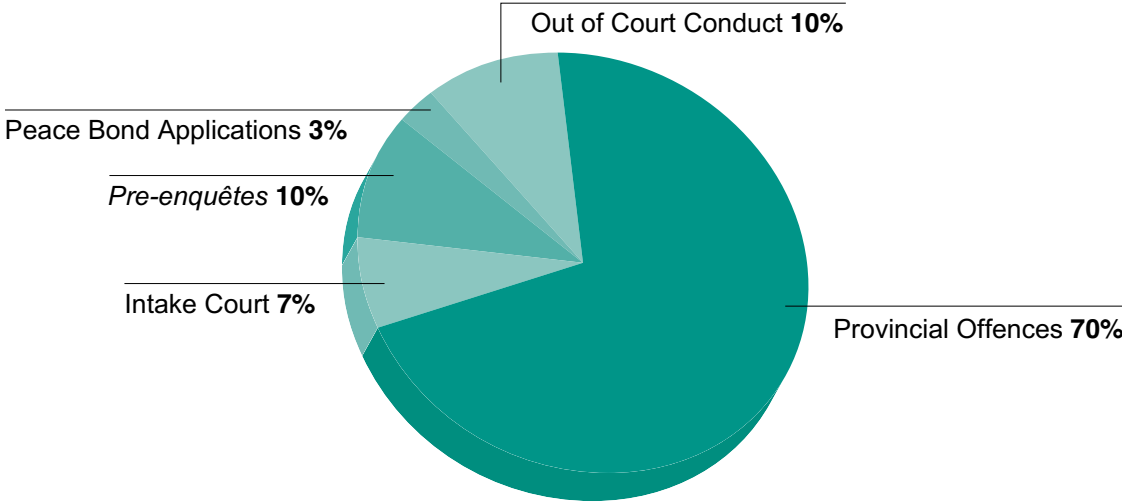
## **SUMMARY OF COMPLAINTS CLOSED IN 2016**

<b>DISPOSITIONS ON COMPLAINTS CLOSED IN 2016</b>	
Dismissed as out of jurisdiction	<b>5</b>
Dismissed as not substantiated or did not amount to misconduct	<b>26</b>
Advice Letter	<b>4</b>
Advice - In-person	<b>0</b>
Referred to Chief Justice	<b>2</b>
Loss of jurisdiction	<b>3</b>
Public Hearing	<b>0</b>
<b>TOTAL CLOSED IN 2016</b>	<b>40</b>

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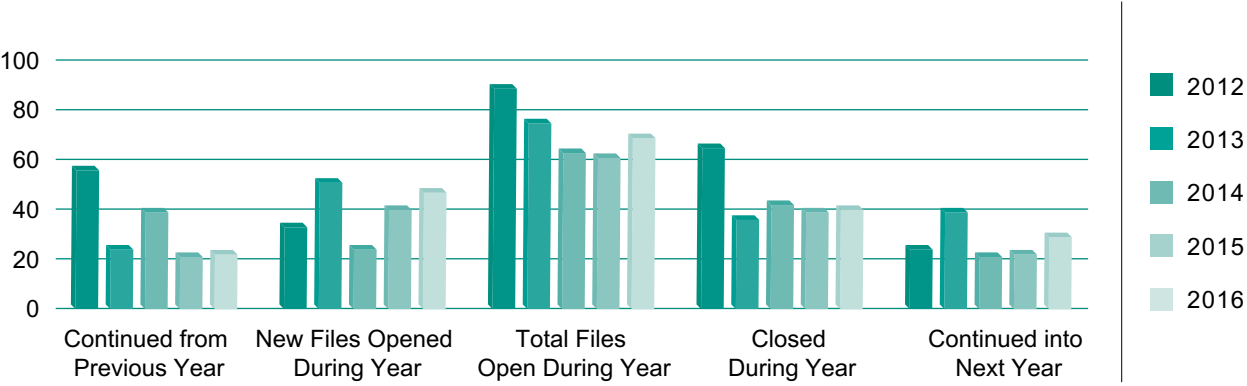
## TYPES OF CASES CLOSED IN 2016

TYPES OF CASES	# OF COMPLAINTS
Provincial Offences Court	28
Intake Court	3
Bail Court	0
Set-date Court	0
<i>Pre-enquêtes</i>	4
Peace Bond Applications	1
Out of Court Conduct	4
<b>Total</b>	<b>40</b>



## CASELOAD IN CALENDAR YEARS

	2012	2013	2014	2015	2016
Continued From Previous Years	56	24	39	21	22
New Files Opened During Year	33	51	24	40	47
Total Files Open During Year	89	75	63	61	69
Closed During Year	65	36	42	39	40
Continued into Next Year	24	39	21	22	29





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**APPENDIX A**

**2016**  
**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. 27-001/16 was the first file opened in the 27<sup>th</sup> complaint year and opened in calendar year 2016).

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. 26-008/15**

The complainant, the president of a lawyers' association, filed a complaint on behalf of the association. He alleged that the conduct of the subject justice of the peace fell well below the expected high standard expected of a justice of the peace, both in the delivery of justice and in his overall conduct. The complainant alleged that he repeatedly abused his authority as a justice of the peace and that he had not provided accused persons with fair trials. The association alleged that His Worship had been warned about his conduct by the Ontario Court of Justice sitting as an appellate court and that there was at least one previous complaint to the Review Council, yet there had not been any change in his conduct.

The complaints committee reviewed the complainant's letter and the enclosures, and obtained and reviewed the full transcripts and excerpts of the audio recordings in relation to the proceedings referred to in the letter, as well as the two appeal decisions.

The committee ordered the Registrar to provide it with documents in relation to the previous complaint that was referred to in the letter. The committee reviewed that material as well. A complaints committee previously dismissed that complaint. This committee concluded that it had no jurisdiction to reconsider that previous disposition.

The committee noted the comments of the Commissioner, the Honourable Justice David George Carr in the *Report of a Judicial Inquiry Re: His Worship Benjamin Sinai*, released on March 7, 2008 where His Honour, at page 9, considered the impact of judicial conduct on public confidence:

## APPENDIX A

# Case Summaries

It is clear that justices of the peace are very important judicial officers. Although they are not required to have formal legal training before their appointment, their decisions regarding bail, the issuance of search warrants and *Provincial Offence* matters seriously impact the liberty and privacy of those who appear before them. Indeed, for the vast majority of society who have contact with the court system, their first and only contact would be to appear before a justice of the peace.

As Justice Hogan stated in the Commission of Inquiry into the conduct of His Worship Justice of the Peace Leonard Blackburn:

“It is the justices of the peace who preside in court on matters such as parking tags, speeding tickets, by-law infractions, and *Provincial Offences*. These are the day to day type of “judicial” issues that confront most people. It is therefore quite probable that a great number of the public will form judgments of our justice system based on their experiences with a justice of the peace.”

The committee noted that the Preamble of the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* states:

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 *Principles* also state:

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.

2.4 Justices of the peace have a duty to maintain their professional competence in the law.

## APPENDIX A

# Case Summaries

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The committee invited His Worship to respond to the complaint and received and reviewed his response.

The committee noted that the allegations in the complaint letter were intricately connected to the exercise of judicial discretion. 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 made by a justice of the peace or to act on complaints that do not fall within its jurisdiction. Mindful of the need to respect the right of constitutionally-protected judicial independence, the committee carefully considered whether the allegations were within its jurisdiction and whether there was evidence that would support a finding of judicial misconduct in relation to the allegations under investigation.

The complainant alleged that the sentence in a particular case was excessive. The committee concluded that His Worship's determination of the sentence in that case was a matter of judicial decision-making outside of the Review Council's jurisdiction.

The complainant alleged that His Worship repeatedly abused his authority by imposing sentences higher than proposed by the parties and/or permitted by legislation. After reviewing the proceedings to which the complainant referred and His Worship's response, the committee was not satisfied that the evidence supported a conclusion that he wilfully abused his judicial power. For example, in a second case referred to by the complainant, as noted by the judge who presided on the appeal of His Worship's decision, counsel at trial incorrectly advised of the maximum fine as part of the joint submission.

The complainant alleged that His Worship did not provide accused persons with fair trials and that he was warned about his conduct on several occasions by the Ontario Court of Justice sitting as an appellate court; yet there did not seem to be any change in his conduct.

With respect to the complainant's allegation that His Worship did not provide persons with fair trials, the committee reviewed the comments of the judges in the two appeal decisions to which the complainant referred. The committee could understand why His Worship's conduct in the four cases referred to by the complainant may have given rise to a perception that his conduct has fallen below the high standard of conduct expected of a justice of the peace in the delivery of justice.

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# Case Summaries

Although the committee observed that the cases provided by the complainant were not recent, it is vital that parties who have put forward a joint submission be afforded the opportunity to make submissions in support of it before the court rejects it.

The complainant also alleged that in the third case, His Worship's decision to deny a young person's bail was completely arbitrary and capricious. The committee observed that the Assistant Crown Attorney informed His Worship of the applicable law.

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 considered the criteria set out in the Review Council's Procedures to guide committees in the determination of the appropriate disposition. After its investigation, the committee concluded that the evidence, if believed by a finder of fact, could not support a finding of judicial misconduct. The committee decided that the appropriate disposition was to refer the complaint to the Chief Justice of the Ontario Court of Justice, pursuant to section 11(15)(d) of the *Justices of the Peace Act*.

In accordance with the Procedures, a complaints committee will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the conduct 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. A complaints committee may impose conditions on their referral to the Chief Justice of the Ontario Court of Justice if, in their opinion, there is some course of action or remedial training of which the subject justice of the peace could take advantage. In this case, the referral was made on the condition that His Worship was prepared to take training, as recommended by the Chief Justice, which included the subjects of joint submissions and bail hearings for young persons.

The Chief Justice met with His Worship twice and provided a report to the committee. Her Honour took a comprehensive approach with the justice of the peace, including reviewing and discussing with him the high standards of conduct expected of justices of the peace, as well as the committee's concerns about how His Worship approached

## APPENDIX A

# Case Summaries

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joint submissions, how he conducted the youth bail court, and the resulting perceptions that he had not provided accused persons with fair trials. The Chief Justice arranged for focused and thorough training for His Worship in those areas of law. After the training was completed, she met with him a second time to review the matter. The Chief Justice observed that His Worship showed a better understanding of the applicable areas of law.

The committee concluded, based on the report of the Chief Justice, that His Worship sincerely regretted his conduct and the perceptions that arose from it. He recognized the importance of conducting himself appropriately with due respect for the law.

Following its receipt of the report from the Chief Justice, the complaints process was completed and the committee closed the file.

### **CASE NO. 26-009/15**

The complainant, a special constable with a public organization, wrote a letter to the Council arising from a comment made to her by a justice of the peace while she was on duty at a courthouse. She alleged that as she was leaving the courthouse, a male person exited from the doors that appeared to be designated for court employees. She alleged that he stopped beside her, looked at her uniform and said, “Special Constables [of the public organization] - you’re all criminals”. She indicated that he walked away and entered the doors leading to the offices of the justice of the peace.

She provided information that indicated that the male person was a justice of the peace and she provided his name. She advised that the comment was made in a public area where numerous people were in close proximity. She had never been charged with or convicted of a criminal offence and found the comment to be deplorable.

The complaint was assigned to a complaints committee for investigation. Before a final determination was made on the complaint, the committee received information that the justice of the peace had left judicial office. The Review Council lost jurisdiction to proceed further and the file was administratively closed due to a loss of jurisdiction.

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### CASE NO. 26-016/15

The complainant was the president of a property owners' association. He sent a letter requesting that the Review Council investigate a justice of the peace in relation to his recusal from a court case in provincial offences court and possible conflicts of interest in other cases presided over by His Worship.

In his letter of complaint, he alleged that near the outset of the trial, the defendant, a member of the property owners' association, subpoenaed a person who worked for a particular public organization to take the stand and His Worship said, "We don't need to hear this" and refused to allow the defendant to bring forward his evidence. According to the complainant, the defendant was shocked and decided to find out more about His Worship. The complainant said that it was discovered after the court appearance that His Worship had past involvement with that public organization.

He said that on the next trial date, prior to the commencement of the proceeding, the defendant told His Worship about the alleged conflict of interest that he had discovered. He said His Worship immediately recused himself. The complainant alleged that His Worship only recused himself after the defendant made the conflict of interest public.

He concluded by expressing his concern about how the proceeding might have ended if the conflict of interest had remained hidden. He also questioned whether His Worship has presided over other matters related to the public organization without disclosing his involvement.

The complaints committee reviewed the letter of complaint and obtained and reviewed the transcripts of the proceedings. The committee also obtained a copy of the news bulletin that announced His Worship's appointment as a justice of the peace which provided information about his background.

With respect to the allegation that His Worship refused to allow the defendant to bring forward evidence from the person who worked for the public organization, the committee observed that the transcript showed that His Worship ruled that it was not necessary for the defendant to have witnesses on the motion, as the facts were already accepted and the issue was whether the defendant's *Charter* rights were violated.

## APPENDIX A

# Case Summaries

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The committee noted that His Worship's ruling was a decision made by him based on his interpretation and application of the law to the facts. The Review Council's jurisdiction is limited to the review and investigation of complaints about conduct; the Review Council has no jurisdiction over judicial decision-making.

The committee noted that the transcript of one appearance showed that the defendant had read a newspaper article about His Worship's involvement with the public organization prior to his appointment, and the defendant requested that His Worship recuse himself from the case. The defendant indicated that he felt His Worship would be biased in the case. The transcript showed that His Worship provided additional information about his background, explaining that his involvement with the public organization was a number of years prior. He explained that justices of the peace have done many things prior to their appointment but that does not automatically mean they are biased in favour of one side.

The committee observed that the transcripts showed that His Worship honestly believed that he had no conflict of interest as a result of his past involvement with the public organization prior to his appointment, and he informed the parties of his belief. He did not recuse himself from the case. He then referred to evidence that had been put before him that led him to conclude that he should declare a mistrial. The committee noted that his decision to declare a mistrial was a matter of judicial decision-making outside of the jurisdiction of the Council, not a matter of conduct.

After reading the transcripts, the committee concluded that there was no evidence of bias in how His Worship dealt with the case.

The committee noted that to preserve public confidence in the judiciary and in the administration of justice, it is important not only that a justice of the peace is impartial; he or she must also be perceived as impartial. Justice must not only be done, it must be seen to be done.

The committee noted that if a justice of the peace has an actual conflict of interest, he or she may have an ethical obligation to avoid sitting on a case. In certain circumstances, there may be facts that give rise to an ethical duty to disclose facts to the parties if there are matters that could be perceived to give rise to a conflict of interest. The ethical duties exist to uphold judicial impartiality and the appearance of impartiality. The determination of whether there is an appearance of impartiality is assessed from the perspective of a reasonable, fair minded and informed person.



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# Case Summaries

As part of its investigation, the complaints committee decided to invite His Worship to respond to the complaint. After reviewing the information provided by His Worship, the committee noted that his involvement with the public organization was limited to a very short period in the relatively distant past. The committee considered the lengthy passage of time since his involvement and the minimal nature of the involvement. The committee concluded that in the circumstances, there was no inappropriate conduct on the part of His Worship in presiding over the case or in not disclosing the nature of his minor involvement many years prior with the public organization. Nor was there any evidence that supported a conclusion there was any inappropriate conduct in other cases.

The committee observed from His Worship's response that, in light of the concerns expressed by the complainant, in the future His Worship would give close attention to any past involvement with any parties involved in a court case.

The committee noted that where a justice of the peace has had past involvement with a party prior to his or her appointment to the Bench, disclosure of that history by the justice of the peace in open court at the earliest opportunity, accompanied by an invitation to the parties to make any submissions on whether they have any concerns, can help to contribute to a perception by members of the public of transparency and fairness in the court process. Through that approach, together with reasons from the judicial officer that explain why a reasonable fair-minded and informed observer would not have a perception of partiality, suspicion of an impartial process can be avoided.

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

### **CASE NO. 26-018/15**

The complainant, a lawyer, filed a complaint on behalf of an organization and two persons associated with the organization arising from a decision made by a justice of the peace following a pre-enquête. The purpose of the pre-enquête was to determine if a case was made out for criminal proceedings to commence against the two persons associated with the organization. The justice of the peace was not satisfied that process should issue. The complaint related to comments that she made in her decision on the pre-enquête.

## APPENDIX A

# Case Summaries

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The complainant alleged that during the course of her reasons, the justice of the peace made comments about one of the persons and a judge that were not fair or reasonable in the context of a pre-enquête hearing. The complainant noted that a pre-enquête hearing is *in camera* and, as such, individuals whose conduct is impugned are not provided with any opportunity to respond to the allegations raised against them. He submitted that it is important that a justice of the peace exercise caution in drawing conclusions that might affect the reputation of individuals.

The complainant alleged that Her Worship made statements that suggested unprofessional behaviour or dishonesty on the part of Ms. A. The complainant alleged that these comments were harmful to Ms. A's professional and personal reputation, not supported by any evidence and they were made without any opportunity for Ms. A to defend or explain herself and her actions. He alleged that to suggest impropriety in the circumstances was not fair.

The complainant also alleged that statements made by Her Worship suggested that a judge who had presided over previous matters involving the parties may have had a conflict of interest. He alleged that to suggest impropriety in the circumstances was not fair.

Further, he alleged that statements about participants in the justice system were not fair and reasonable in the context of a pre-enquête hearing, particularly where parties referred to in Her Worship's comments had no opportunity to respond to the allegations made about them.

As well, he noted that Her Worship did not have the full procedural legal history of the parties before her. He said that it is important that at a pre-enquête hearing caution be exercised in making statements or drawing conclusions that may be harmful to the reputations of other parties, given the lack of opportunity to respond.

The complaints committee reviewed the letter from the complainant and the enclosures submitted with it, and ordered and reviewed the transcripts of the proceeding. The committee invited Her Worship to respond to the complaint. Her response was received and the committee reviewed and considered it.

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The committee noted that when issuing decisions, it is important that justices of the peace consider that to comment on persons who are not before the court may be perceived as unfair.

The committee carefully considered the allegations and was of the view that the comments made by Her Worship needed to be considered in the full context in which they were made. The committee observed that the pre-enquête called for Her Worship to exercise her judgment at a stage in the process recognizing that all affected parties were not before the courts. She was required to administer justice based on the evidence put before her by the party seeking to lay private charges. After reviewing Her Worship's response, the committee was satisfied that Her Worship never intended to disparage or criticize anyone. In her decision, she attempted to catalogue evidence provided to her by the person seeking to lay the private charges.

The committee concluded that the comments that gave rise to the complaint were part of Her Worship's assessment of the evidence before her and her findings based on that evidence. The committee was satisfied that Her Worship articulated her reasons and made her decision in good faith based on the evidence that she heard or that was provided to her in documentary form. The committee noted that Her Worship had judicial discretion to determine what evidence before her she determined to be relevant to her decision to decide whether criminal process should issue.

The committee noted Commentary 3 in the *Ethical Principles for Judges* issued by the Canadian Judicial Council which includes the following:

...It is also a matter of independent and impartial decision-making by each and every judge. The judge's duty is to apply the law as he or she understands it without fear or favour and without regard to whether the decision is popular or not. This is a cornerstone of the rule of law..."

The committee observed that this ethical principle applies to decision-making of justices of the peace.

With respect to the allegation about a judge having a conflict of interest, the committee noted that Her Worship spoke only in hypothetical terms and she caveated her comments by saying "if" it were so. The committee concluded that Her Worship's comments did not suggest impropriety and did not amount to judicial misconduct.

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The committee concluded that in the circumstances of the case, the allegations related to matters of judicial discretion exercised in the course of Her Worship's duties, and there was no judicial misconduct. The committee dismissed the complaint as outside of the jurisdiction of the Review Council and the file was closed.

### **CASE NO. 26-024/15**

The complainant appeared before a justice of the peace during her work lunch hour for an early resolution hearing in relation to a speeding offence. She alleged that when her name was called, His Worship did not ask her whether she committed the offence as he did with everyone else. Instead, His Worship said to her, "Can you promise me that you will never attend a court dressed like this again?" She alleged that His Worship also said, "This is not a laughing matter. If you do not earn the respect of your country's court, you will not be respected anywhere else in the world."

The complainant indicated that she did not respond to His Worship's comment, accepted the dismissal of her ticket and left the court politely. She said that she acted with respect.

The complainant felt that His Worship's comments were disrespectful, humiliating, and sexist, and asking her to promise not to dress in a certain way was infantilizing. The complainant was unaware of any dress code that would have applied, except a prohibition against headwear. She alleged that His Worship's tone was similar to that of chastising a child and that it was offensive and sexist.

She also alleged that prior to her appearance, His Worship was respectful toward a gentleman who appeared before the court wearing shorts and flip flops, and His Worship did not comment on his attire. She perceived this as His Worship exercising a sexist double standard.

The committee read the complainant's letter and reviewed the transcript and the audio recording of the court proceeding. The committee was concerned by the abrupt, inappropriate nature of His Worship's conduct and comments towards the complainant in the following exchange:

The Court: Good afternoon, madam.

Complainant: Good afternoon, Your Honour.

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The Court: Do you promise me that this is the last time you're going to ever come to a court dressed like that?

Complainant: I promise.

The Court: It's not funny.

Complainant: I'm sorry, I just...

The Court: You lose respect for the last bastion of justice. You don't do that. If you have no justice you have nothing in any country. All right, the crown's position?

The committee observed that court record showed that when the complainant attempted to respond to His Worship's second comment, he interrupted her and did not permit her an opportunity to speak. He appeared dismissive and rude towards her.

The committee noted that there is no dress code for persons attending court other than information on the website of the Ministry of the Attorney General which states that people should be properly dressed to show respect for the Court; hats and sunglasses are not allowed in the courtroom, unless needed for medical or religious reasons. The complainant advised that she attended court in the attire she wore to work (a sleeveless top, a skirt and dress shoes), as she was on her lunch break. She noticed that the man who appeared before her was wearing shorts and flip flops. It appeared to the committee that His Worship singled out the complainant and treated her in an insulting, discourteous manner.

The committee noted the Ontario Human Rights Commission has made it clear that the imposition of a dress code that reinforces stereotypical notions about how women should look may violate *Ontario's Human Rights Code*. Whether in formal policy or informal practice, such positions can contribute to an unwelcome and discriminatory environment for women.

The committee observed that the public's perceptions of the administration of justice are greatly impacted by the demeanour and comments of a justice of the peace in the courtroom. A justice of the peace's courtroom conduct symbolizes the law in action. A justice of the peace has a unique role as exemplar and guardian of the dignity of the court. He or she has a responsibility to conduct himself or herself in a manner that promotes public confidence in the integrity, impartiality and fairness of the judiciary.

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Further, the committee was concerned that when the complainant appeared before His Worship, he accorded her no right to speak. In accordance with the principles of fairness and natural justice, a defendant should be accorded the opportunity to respond, particularly when a justice of the peace speaks to him or her in the abrupt and critical manner that His Worship did.

The committee invited His Worship to respond to the complaint. The committee reviewed and considered his response. The committee was concerned that in his response, His Worship did not appear to appreciate how his conduct impacted on a member of the public and her confidence in the administration of justice.

The committee was also concerned that in his response to the committee His Worship mistakenly suggested that a by-law about the attire of taxi drivers, that had no relevance to attire in the courtroom, might provide some justification for his comments towards the complainant. Further, the committee was concerned that it appeared that during the investigation phase of the complaints process, which should be kept confidential in accordance with section 11(8) of the *Justices of the Peace Act*, His Worship disclosed to a paralegal that a complaint was made about his conduct. The paralegal sent a letter to the committee in support of His Worship. The committee was of the view that a reasonable person would be concerned that His Worship may be perceived to have indebted himself to this paralegal, and in the future his impartiality could be questioned in any proceeding where that paralegal appears before him. The committee was concerned that His Worship may not appreciate why in the future he would need to recuse himself in any case where that paralegal appeared before him.

The committee concluded that His Worship's conduct did not constitute judicial misconduct so as to warrant a public hearing. However, the committee was concerned that His Worship did not appear to understand why there was some merit to the complaint, nor why his course of conduct was not appropriate.

The committee referred the complaint to the Chief Justice of the Ontario Court of Justice pursuant to section 11(15)(d) of the *Justices of the Peace Act*. Under the Procedures of the Review Council, a complaints committee may refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the conduct complained of does not warrant another disposition, there is some merit to the complaint and the disposition is, in

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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.

After the Chief Justice met with His Worship, she provided a report to the committee. The committee could see that the Chief Justice had discussed with the justice of the peace all of the concerns arising from his conduct. The committee observed that His Worship had reflected upon his conduct. He regretted that the complainant left the courtroom feeling that she had not been heard. His Worship now understands that there is no specific legal requirement for the dress code in the courtroom, and he must be mindful that he does not make remarks that could be seen to be discriminatory.

Further, the committee observed that His Worship recognized the importance of justices of the peace to perform their duties impartially and being perceived to do so. His Worship understood why his impartiality could be questioned if the paralegal who had sent the letter appeared before him in court, and why a recusal from any such proceeding would be necessary.

The committee observed that as a result of the complaint, His Worship recognized the importance of maintaining his conduct at the level where it will preserve confidence in the members of the public. After the committee reviewed the report from the Chief Justice, the file was closed.

### **CASE NO. 26-025/15**

The complainant was the owner of a company that was charged with an offence under the *Provincial Offences Act* for not keeping the sidewalk clean during a construction project. He appeared before His Worship for trial.

The complainant said that a different justice of the peace had recused herself from hearing the case because she recognized the complainant from his earlier career working for the city. The complainant said that twice the matter did not proceed due to his own misunderstanding of the court date and his error. On the fourth date, he appeared before His Worship.

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The complainant said that His Worship did not see the need for an out-of-town justice of the peace and that he had no previous dealings with the complainant. The complainant stated that he agreed to proceed because His Worship was very convincing and there had been several delays that occurred earlier.

He alleged that after the proceeding began, His Worship was sarcastic and made mocking comments. He alleged that instead of assisting him, His Worship made it clear that in his opinion, the complainant did not understand what he was doing. He alleged that His Worship was so bad and so mean-spirited that the complainant felt it was necessary to retain counsel on a very simple matter.

Further, he alleged that His Worship deliberately delayed the hearing, causing the complainant to return again to finish.

He also alleged that His Worship was arrogant and sarcastic in comments made toward counsel. He stated that His Worship then delayed the hearing again, delivering his decision on a subsequent date. He alleged that His Worship found the company guilty and increased the fine to the amount requested by the prosecutor. He also alleged that His Worship said that he wanted to increase the fine further because he knew that the complainant had worked for the city for many years and therefore he ought to have known better. The complainant alleged that the comment was opposite to assurances that His Worship gave before the complainant agreed to proceed with the matter.

He requested that the committee review the case and that the case be reopened and assigned to a justice of the peace who had no knowledge of him or his past career.

The complaints committee reviewed the letter from the complainant, and ordered and reviewed the transcripts and audio recordings of the proceedings.

With respect to the complainant's request that the court matter be reopened and assigned to a different justice of the peace, the committee noted that the Council has no jurisdiction to order a new trial or to make decisions on the assignment of justices of the peace. The Council's legal authority is limited to the investigation and review of complaints about conduct. If a person disagrees with a decision made by a justice of the peace, or with how the law is applied, the proper way to proceed is by remedies through the courts, such as an appeal. Only a higher level of court has the legal authority to determine whether there were errors of law, and if so, to decide whether to change any decision made in the case.



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With respect to the allegation that His Worship did not see the need for an out-of-town justice of the peace, the committee observed that the court record showed that after the prosecutor told His Worship of the complainant's former career with the city in which His Worship presided, His Worship said he recognized him but had never had any dealings with him. His Worship asked the complainant whether he was comfortable proceeding and the complainant responded that he was. The committee noted that His Worship's decision to proceed was an exercise of his judicial discretion in the course of carrying out his judicial duties, not a matter of conduct. The decision was outside of the jurisdiction of the Council.

The committee found no evidence in the court record to support the allegation that His Worship was sarcastic and mocking in his demeanor. Nor was there support for the allegation that his manner was bad or mean-spirited, or that he was arrogant. Rather, the committee found that court record showed that His Worship was professional, polite and helpful throughout the proceedings. For example, the committee observed that after the prosecutor objected that the complainant was consistently cutting a witness off, His Worship asked the complainant a few times to let the witness finish and to stop interrupting. His Worship then explained to him that refraining from interrupting made it easier for the court recording and for those who wanted to take notes and hear and follow what was happening. After an objection by the prosecutor, His Worship explained to the complainant that he would have an opportunity to give evidence and make submissions later in the proceeding. His Worship provided an explanation relating to the rules of hearsay evidence.

The committee observed that His Worship adjourned the proceeding to a subsequent date because the end of the tier was being reached, and there was another tier of cases scheduled to proceed. A full day was reserved on a subsequent date so that the evidence and submissions could be completed. The record showed that before the return date, the complainant's counsel brought a motion that resulted in the matter being rescheduled to a date three months later. The record showed that on that date, after the evidence and submissions were completed, His Worship adjourned the matter, stating that in light of the submissions, he wished to review the evidence before preparing his ruling. The committee concluded that the decisions by His Worship to adjourn the case were matters of judicial decision-making outside of the jurisdiction of the Council, not matters of conduct.

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With respect to the allegations about the amount of the fine imposed by His Worship, the committee observed that the record showed that His Worship accepted the submission of the prosecutor that an aggravating circumstance was the defendant was warned about the problem that led to the charge and the problem persisted for an extended period of time for a number of days. The committee noted that His Worship's comment that the complainant, the owner of the company, had worked for the city was made in the context of his finding that the complainant would have knowledge of the municipal laws that applied. His Worship said that the fine should be higher as a deterrent but he was accepting the prosecutor's recommendation. The committee noted that the comments were made in the context of His Worship's assessment of the facts, his application of the laws of sentencing and his decision on the appropriate sentence. The committee concluded these were matters of judicial decision-making outside of the jurisdiction of the Council.

The committee found no evidence of judicial misconduct and dismissed the complaint. The file was closed.

### **CASE NO. 26-028/15**

The complainant, a police officer, wrote a letter to the Council. He said that on a particular date, there were three matters before the Court with the same investigating officer, and requests had been made in advance through the prosecutor's office for adjournments on the basis that the officer was not available. He alleged that the justice of the peace was clearly not interested in entertaining the requests for adjournments by the prosecutor, even though in one case, the defence had previously been granted several adjournments. The complainant alleged that His Worship's attitude clearly showed bias in the defendant's interest from the beginning, and that he had no interest in even considering the prosecutor's motions.

He alleged that on another matter, the defendant was going to seek an adjournment but the prosecutor went first and sought an adjournment as necessary documents were not there. The complainant alleged that His Worship, knowing that the defendant could not be convicted, acted totally inappropriately and pressured or bullied the defendant into not consenting to an adjournment without the defendant understanding what was going on. The complainant alleged that the defendant started to explain that he wanted an adjournment but His Worship cut him off, not wanting to listen. As a result, he alleged, the

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defendant was forced into a trial on one matter and entered an uninformed guilty plea to a second charge. The first charge, a more serious charge, had to be withdrawn.

He also alleged that His Worship inappropriately referred to the prosecutor as “the lady” instead of “the Prosecutor”. He alleged that the most troubling part to him was that after His Worship accepted the guilty plea and reduced the fine, His Worship winked at the defendant. He stated that this was totally unacceptable and had no place in the courtroom.

The complainant said the entire docket was dealt with in approximately 15 minutes; his was the last item on the docket. He also alleged that when dealing with *ex parte* matters, His Worship reduced every penalty suggested by the prosecutor.

He concluded by saying that the behaviours of His Worship went beyond just showing bias.

The complaints committee reviewed the letter from the complainant and ordered and reviewed the transcript of the proceedings in the courtroom referred to by the complainant. The committee also ordered the audio recording of the proceedings and listened to excerpts.

The committee observed that the transcript showed that in making his decisions on the requests for adjournments, His Worship considered that the matters were scheduled for trial and that the defendants were present and ready to proceed. The committee noted that His Worship had judicial discretion to decide whether or not to grant the requests for adjournments. The committee concluded that his decisions on the adjournments were matters of judicial decision-making outside of the jurisdiction of the Review Council, and there was no evidence of bias.

The committee observed that the transcript did not support the allegation that His Worship bullied or pressured a defendant into not consenting to an adjournment. The committee noted that His Worship interjected to ask the defendant whether he had spoken to anyone, and the conversation was back and forth in nature. After the defendant said that he had not spoken to anyone, His Worship explained what was happening, and that he had a choice to consent or not consent to the adjournment. The committee noted that a justice of the peace has a responsibility to explain the process to a self-represented defendant. The committee concluded that His Worship’s explanations did not constitute bullying or pressuring the defendant, or an indication of bias.

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After reviewing the transcript, the committee concluded that there was no evidence of bias in His Worship's decisions on sentence, and further that they were matters of judicial decision-making outside of the jurisdiction of the Review Council.

The committee observed that the transcript showed that His Worship did refer to the prosecutor as "the lady". The committee noted that while it was preferable to use the term "prosecutor", it was not judicial misconduct in the circumstances to refer to her as "the lady".

With respect to the allegation that His Worship winked at one of the defendants, the committee observed that a wink is not always intentional and interpretation of its meaning is subjective. After its review of the transcript and the excerpts of the audio recording, the committee was satisfied that the evidence did not support a finding that a wink, if it occurred, would have been intentional or an indication of bias.

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

### **CASE NO. 26-029/15**

The complainant was in the courtroom to assist a paralegal who was representing a defendant on a trial in a provincial offences matter. She alleged that while she was waiting for the trial to be called, she was reading an email on her cell phone/data device and the justice of the peace began to yell at her. She alleged that he asked her who she was and then began to berate her about being on her cell phone. She indicated that he referred to signs outside of the courtroom that said she could not be on her cell phone. She said that the paralegal then informed His Worship that she was there to assist him, and she put her phone away.

The complainant alleged that the justice of the peace treated her in a manner that was humiliating, degrading and unnecessary. She indicated that he clearly wanted to assert himself in a manner of unnecessary dominance; however, at no other point in the morning did he have an issue with any of the other dozens of people who did the same thing she was accused of doing.

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She said that once the trial matter was called, the paralegal addressed the court and, once again, apologized on her behalf. In addressing the court, he referenced the wording of the signs posted in the hallway of the courthouse regarding the use of cell phones and also made the Court aware that the signs did not say what His Worship had indicated earlier. The complainant alleged that His Worship then cut off the paralegal and “essentially punished the defence by forcing the matter on to another trial date by imposing an adjournment.” She said that they had travelled from out of town and no efforts were made to see if another court could have heard the matter.

She alleged that her complaint was one of abuse; she did nothing contrary to any rules and her action was comparable to reading a book. She felt that she was singled out and shouted at in a courtroom and humiliated in front of everyone who was there. Her perception was that the justice of the peace was a bully. She said that she was brought to tears and treated severely when she did nothing wrong.

She expressed the view that His Worship should have to attend sensitivity training, be made to apologize to her, and said if there was a pattern of behaviour he should be removed from his position of authority. With her letter, she included a copy of the transcript that showed the interactions of the justice of the peace with the complainant and the paralegal.

The committee reviewed the letter from the complainant and the transcript provided by her. The committee also ordered and reviewed the transcript of the full tier of proceedings before the justice of the peace. The committee further listened to excerpts from the audio recording of the proceedings, including the interactions referred to in the complainant’s letter.

The committee observed that the paralegal informed the justice of the peace that there were two signs in the hallway of the courthouse. One read, “Absolutely no talking or cell phone calls between these doors”. The other read: “Silence is required. Cell phones turned off for silence.”

After reading the transcript and listening to the audio recording, the committee was concerned that it appeared that the justice of the peace singled out one member of the public in the courtroom in a discourteous fashion and, in circumstances where he believed her to be a defendant, excluded her from the courtroom without providing an opportunity for her to be heard or to make submissions, and without providing proper reasons for his actions.

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The committee was concerned that when the paralegal attempted to apologize on behalf of his assistant and provide information to the Court about the signs outside of the courtroom, His Worship appeared to respond with annoyance or anger, recused himself from presiding over the trial and, without providing proper reasons, adjourned the case, rather than providing an opportunity for submissions from the parties and addressing the matter in a judicious manner.

The committee noted that the public's perceptions of the administration of justice are greatly impacted by the conduct of a justice of the peace. The committee appreciated the demands of a busy courtroom upon a justice of the peace. However, the committee noted that the pressures of the court should not interfere with ensuring that fair consideration is given to all matters. 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 accord every party the full right to be heard according to the law. In the administration of justice, it is important not only that justice is done but also that justice is seen to be done.

The committee noted that a justice of the peace must have a heightened sense of awareness of the appearance to others as to how judicial conduct or comments are perceived. A justice of the peace has a duty to maintain a high standard of conduct and professionalism so as to preserve the integrity of the judicial office and the faith and trust of society in the persons who hold that judicial office. There is a disparity of power between a justice of the peace and a person who appears before him or her that requires that a justice of the peace treat those persons with fairness, courtesy and decorum.

The panel observed that one of the Commentaries contained in the *Principles of Judicial Office for Justices of the Peace of the Ontario Court of Justice* states:

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 and received and reviewed his response.

The committee observed that His Worship had reviewed the transcript and the audio recording of the proceedings and he had genuinely reflected on his conduct. The committee observed that His Worship recalled that he had noticed the complainant

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because she was near the front of the courtroom and typing continually on her cell phone. The committee could see from his response that he now appreciated that the matter should have been handled differently. The committee observed that His Worship fully accepted responsibility for his actions and comments and he deeply regretted his treatment of the complainant and the paralegal. Through the committee, he expressed sincere apologies to the complainant and to the paralegal for the manner in which he treated them. He also acknowledged that he could have looked at other alternatives in an effort to have the trial of the paralegal's client dealt with.

With respect to the concern expressed by the complainant as to whether there was a pattern of conduct, the committee observed that the transcript of the entire tier of proceedings disclosed no information that would suggest a pattern of conduct.

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 was satisfied that His Worship had taken the complaint seriously, that he had learned from the complaint, that he regretted his conduct towards the complainant and the paralegal, and that he recognized the responsibility of a justice of the peace to treat persons in the courtroom with respect and courtesy. The committee concluded no further action was required and dismissed the complaint. The file was closed.

### **CASE NO. 26-030/15**

The complainant, a licensed paralegal, appeared on two occasions before His Worship in provincial offences court. He alleged that during the first proceeding, when he argued a *Charter* motion on behalf of his client, His Worship persistently interfered during his oral submissions, made condescending comments about the paralegal profession as a whole, raised his voice to the complainant throughout the proceeding and allowed the prosecutor to make inappropriate comments. He further alleged that His Worship said that "paralegals hijack court dockets when bringing s.11 (b) *Charter* motions before the court," and he continually referred back to this comment throughout the proceeding.

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He alleged that His Worship's behaviour was unprofessional and inconsistent with the standards expected of a judicial officer. He also alleged that His Worship showed a bias against his client before submissions were made, and a bias and lack of respect towards paralegals.

The complainant also stated that on the next court date, His Worship realized that he had overly interfered and pre-judged the defendant's position, and that he had acknowledged that his conduct had been improper. The complainant indicated that His Worship admitted that he had a hasty attitude. The complainant alleged that then His Worship lengthened the entire motion process by requesting written submissions. He suggested that His Worship's behaviour was inconsistent with the standards of conduct set out in the *Principles of Judicial Office for Justices of the Peace*.

The complaints committee read the complainant's letter and ordered and reviewed the transcripts of his appearances before His Worship. The committee also obtained and listened to excerpts of the audio recordings of the proceedings.

Following its review of the court records, the committee found that His Worship and the complainant engaged in a back-and-forth dialogue regarding the issue of disclosure which formed part of the complainant's *Charter* motion. The committee further observed that His Worship was concerned that the complainant may not have followed the rules of practice for bringing a *Charter* motion. He pointed out that the defence has a responsibility to conduct a Crown pretrial to determine the appropriate length of court time required. Acknowledging that the complainant may not have been present when His Worship previously expressed his concerns on this issue, he observed that the complainant had brought his motion in a busy traffic court at the end of the day.

After reviewing the record, the committee concluded that His Worship's comments about agents were made in the context of his concern about busy court dockets with cases that cannot be reached. The committee noted that a justice of the peace has a responsibility to conduct court business efficiently with regard to the rights of all parties before the court. The committee observed that His Worship said that agents sometimes use the busy traffic court as a mechanism to bring section 11(b) motions. He said that, in such cases, they should not be permitted to hijack all of the other defendants scheduled to be heard.



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The transcript showed that His Worship was not accusing the complainant of not having followed the rules in this case. He was merely putting him on notice that the rules needed to be followed and why.

The committee observed that the audio recording did not show that His Worship raised his voice or that his Worship made condescending comments about the paralegal profession. The committee observed that His Worship exercised patience and was helpful in providing explanations of the court procedures and case law.

The committee observed that at the outset of the second proceeding, His Worship commented that, in his haste to expedite matters on the previous date, he may have compromised or interrupted unnecessarily the complainant's train of thought. His Worship apologized and gave the complainant the opportunity to make any points that he may have missed on his motion.

The committee observed that the transcript of the second appearance showed that His Worship decided to have the parties provide written submissions in order to do justice to the issues at hand. The committee concluded that his decision to require written submissions was a matter of judicial discretion that was outside of the jurisdiction of the Council.

The committee found that the court record did not support the allegations noted in the complaint letter. The committee concluded that there was no evidence of judicial misconduct, dismissed the complaint and closed the file.

### **CASE NO. 26-031/15**

The complainant was a police officer who appeared before the justice of the peace as a witness in a provincial offences trial in which the defendant was convicted. He alleged that His Worship made remarks about the complainant's credibility that were unfounded and not sourced from any facts presented in the trial.

The complainant alleged that in his decision, His Worship focused on an issue which was not debated during the trial, which was whether the complainant maintained visual observation of the defendant. He alleged that His Worship said that he was "troubled" by the testimony of the complainant and that the testimony raised a credibility issue as

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to whether the officer was telling the truth. The complainant expressed the view that the facts did not support the conclusion that His Worship reached about what had occurred at the scene of the offence.

The complaints committee reviewed the letter of complaint and ordered and reviewed the transcript of the proceeding.

The committee observed that the transcript showed that, in giving the reasons for his decision, His Worship discussed the evidence and set out conclusions that he drew from the evidence. The committee noted that the comments made by His Worship about what the complainant/witness said during the trial, his conclusions about what occurred during the events that led to the ticket, and his assessment of credibility were matters of judicial discretion made in the course of a justice of the peace's duties in adjudicating, not matters 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.

The complaints committee dismissed this complaint on the basis that it was outside of the jurisdiction of the Council and the file was closed.

### **CASE NO. 26-032/15**

In a letter to the Council, the complainant, a lawyer, said that he was waiting inside the courtroom with other lawyers and paralegals ahead of the Bar for court to commence. He alleged that a justice of the peace who was not presiding in that courtroom 'stormed' into the courtroom from the public entrance, dressed in his waistcoat and dress pants. He alleged that His Worship stopped before crossing the Bar, pointed at the complainant and told the complainant to "come outside right now", or words to that effect, gesturing with his fingers toward the entrance.

The complainant alleged that His Worship said to him, "don't you ever disrespect this court like that again." He alleged that His Worship told him that he had sat on the clerk's chair in the courtroom and that this was a lack of respect for the Court. The complainant alleged that His Worship's tone was aggressive and angry. He said that when he tried to explain that he had not done that, His Worship accused him of lying and told him in a raised voice that if he kept lying, His Worship would "report" him, and then stormed off.

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The complainant said that he was unsettled by the experience and that when he returned to the courtroom (before a different justice of the peace), he put a short summary on the record of what had taken place. He provided a copy of the transcript. The complainant said that he felt very uncomfortable and anxious about the way he was treated by His Worship. He expressed two concerns: His Worship seemed to make his mind up without hearing anything to the contrary; and, the conduct was not civil.

The committee read the complainant's letter and the transcript that he provided. The committee observed that the transcript indicated that the complainant had expressed his concerns about His Worship's interactions with him on the record. The committee retained independent counsel to interview third party witnesses with knowledge of the alleged events. Independent counsel interviewed the witnesses and provided transcripts of the interviews to the committee.

The committee observed that the information gathered from the witnesses did not support the allegation that the justice of the peace "stormed into the courtroom". There was evidence that the justice of the peace entered the courtroom and told the complainant that he needed to speak to him outside. He may have pointed at the complainant as he spoke.

The committee also noted that the evidence from the objective witnesses did not support the allegations that His Worship was visibly angry, that his voice was raised, or that he was not civil towards the complainant. None of the witnesses had direct knowledge of the particular discussion that took place between His Worship and the complainant in the hallway. The committee concluded that there was insufficient evidence to conclude on a balance of probabilities what was said.

The committee observed that there was evidence that His Worship, who was wearing his black waistcoat and pants, was seen speaking with the complainant in the hallway. The committee noted that the public's perception of the administration of justice is greatly impacted by the conduct of a justice of the peace. This applies to conduct inside and outside of the courtroom. Interactions between a justice of the peace and a lawyer in the hallway of a courthouse outside of a courtroom can give rise to a perception that a justice of the peace is engaging in *ex parte* communications. Such a perception can result in a mistaken belief of partiality, improper influence or bias.

The committee invited His Worship to respond to the complaint. His Worship provided a response. With respect to the concern about a justice of the peace having a discussion

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outside of the courtroom with a lawyer, after reviewing His Worship's response, the committee could see that His Worship had reflected upon the importance of maintaining confidence of the public in the administration of justice. He recognized the importance of being mindful of the perceptions of bias, partiality or influence that a member of the public might have if a justice of the peace has a discussion with a lawyer in the hallway. The committee was satisfied that in the future, His Worship would be mindful of the need to maintain the decorum expected of a judicial officer inside and outside of the courtroom and that he would strive to fulfill the high standards of conduct expected of judicial officers.

The committee dismissed the complaint and closed the file.

### **CASE NO. 26-033/15**

In his letter of complaint, the complainant said that his daughter and her boyfriend were charged under the *Liquor Licence Act* and they sought the complainant's assistance as their representative for a trial.

The complainant alleged that when he appeared on the trial date, His Worship proceeded to question him as to whether he was a legal representative. The complainant advised His Worship that he was not.

He alleged that at that point, His Worship instructed him to take a seat. The complainant indicated that he objected and advised His Worship that his client was entitled to representation. He alleged that His Worship still told him to be seated.

The complainant alleged that the prosecutor requested an adjournment and when he, the complainant, stood up to oppose the adjournment, His Worship ordered him out of the courtroom. The complainant objected again and cited the section in *Provincial Offences Act* which states that a person may appear by representative. Ultimately, he was ordered out of the courtroom and the charges were withdrawn by the prosecutor because the police officer was not present to give evidence.

The complainant alleged that:

- ◆ His Worship had no legal grounds to exclude him from the proceeding.
- ◆ His Worship excluded him without just cause, undermining the justice system.

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- ◆ Excluding the complainant from the proceeding prevented the defendant from arguing legal issues that may have led to charges being either dismissed, stayed or quashed by a competent court of jurisdiction.

He alleged that His Worship should have remained open-minded and that he did not act as an impartial trier of fact for the justice system.

The complaints committee reviewed the complainant's letter. The committee requested and reviewed a copy of the transcript and listened to excerpts of the audio recording of the proceeding.

The committee observed that the transcript showed that His Worship was dismissive and abrupt in the manner in which he dealt with the complainant and in the way in which he told him to leave the courtroom. The committee observed that the court record showed that His Worship interrupted the complainant when he began to explain that he was appearing on behalf of the defendant. His Worship did not provide him with the opportunity to make submissions on his legal right to represent the defendant, nor did he invite submissions from the prosecutor. He told the complainant to sit down and ultimately ordered him out of the courtroom. The charges were withdrawn on the basis that the police officer was not present to give evidence.

The committee noted that judicial officers must be aware of the appearance created by their conduct. They must not only ensure that a defendant has a right to fair process – they must also give the appearance of fairness.

The committee noted 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. The committee observed that a commentary in the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* states:

*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 and reviewed his response. The committee could see from the response that His Worship had reflected

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upon his conduct and sincerely regretted the manner in which he interacted with the complainant. His Worship extended his apology to the complainant.

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 are handled and individuals are treated in the future. The committee decided that the appropriate disposition was to provide His Worship with written advice, pursuant to section 11(15)(b) of the *Justices of the Peace Act*. Under the Review Council's Procedures, a complaints committee provides advice to a justice of the peace in circumstances where the conduct complained of does not warrant another disposition, there is some merit to the complaint, and advice is, in the opinion of the committee, a suitable means of informing the justice of the peace that his or her conduct was not appropriate.

In its advice, the committee referenced the importance of an individual having the right to exercise his or her choice to have a family member or friend provide assistance as permitted in accordance with Section 30 of By-Law 4 of the Law Society of Upper Canada. The by-law provides an exemption for some individuals who are not licensed that permits them to perform the same acts as a licensed paralegal. Section 30 states:

### *Licencing*

#### Providing Class P1 legal services without a licence

30. (1) Subject to subsections (2) and (3), the following may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide:

#### *Acting for family, friend or neighbour*

5. An individual,
  - i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,
  - ii. who provides the legal services only occasionally,

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- iii. who provides the legal services only for and on behalf of a related person, within the meaning of the *Income Tax Act* (Canada), a friend or a neighbour, and
- iv. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.

To preserve public confidence in the administration of justice, justice must not only be done; it must be seen to be done. The committee urged His Worship to always take the requisite time and care in assessing the relationship between the defendant and anyone seeking to appear as agent for the defendant to avoid any misunderstandings about their relationship with the defendant and their right to assist.

The committee also reminded His Worship that the conduct of a justice of the peace sets the tone in the courtroom. It is always important for a justice of the peace to be aware of how his or her comments and conduct are viewed and understood by those appearing before him or her.

After the committee provided its advice to His Worship, the file was closed.

### **CASE NO. 26-034/15**

The complainant was charged with a parking offence. In her letter, the complainant said that her mother appeared on her behalf and entered a guilty plea. Her mother attempted, through an interpreter, to provide an explanation to the justice of the peace about the circumstances that led to the charge. The complainant was sitting in the courtroom. The complainant alleged that His Worship did not provide her mother with an opportunity to finish her explanation or an opportunity to make submissions on the amount of the fine. She also alleged that the translator did not translate that the fine was not reduced. Her mother did not understand that it had not been reduced until she sat down with her daughter, who explained what had occurred.

The complainant indicated that she and her mother waited in the courtroom until the end of the other proceedings for an opportunity to address the matter. She said that at that time,

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A the complainant, who spoke Mandarin and English, tried to explain the circumstances to His Worship and that the translation had not been complete. She alleged that His Worship cut her off rudely and had her escorted from the courtroom by security.

The complainant alleged that the justice of the peace was impatient and rushed to make a decision based on incomplete information. She expressed the view that he had a responsibility to hear the situation clearly and to allow submissions on their financial circumstances. She said that he was disrespectful and intolerant of their language barrier. Their perception was that he handled the matter in a manner that was reckless and unfair.

The complaints committee reviewed the letter of complaint as well as the transcript of the appearance. The audio recording of this appearance was also listened to by the committee.

The committee noted that if the complainant disagreed with the decision made by the justice of the peace on the basis that she believed it was based on incomplete information or it was unfair, the proper way to proceed was through remedies in the courts. 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. If a person is of the view that a justice of the peace erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

The committee found no evidence in the court record to support the allegation that His Worship discriminated against the complainant, her mother or their inability to speak English. The committee observed that the transcript showed that His Worship told the translator that he wanted the translator to translate word by word what he was saying. The committee noted that if the complainant was of the view that the decisions of the justice of the peace should be changed because of an issue with the translation, the proper way to proceed would be through remedies in the courts.

The committee observed that the audio recording of the proceeding showed that His Worship's tone sounded impatient and brusque when he spoke with the complainant and her mother. It appeared to the committee that after the guilty plea, His Worship did not seem to listen to what the complainant's mother was trying to say about the circumstances.

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As well, the committee noted that His Worship did not provide an opportunity for her to make submissions on her daughter's financial circumstances that could have been considered pursuant to section 59(2) of the *Provincial Offences Act*, which permits a justice of the peace to impose the set fine or suspend the passing of sentence.

The committee observed that the record showed that when the complainant tried to speak again at the end of the docket, His Worship did not permit her to speak, and she was removed from the courtroom by security.

After reviewing the complainant's letter and the court record, the committee could understand why the complainant and her mother were left with negative perceptions of His Worship's conduct and his handling of the case.

The committee noted that justices of the peace have a duty to maintain high standards of conduct so as to preserve the integrity of the court and public confidence in the judiciary. The committee noted the Preamble of the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* which states:

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 committee noted that to maintain confidence of persons in the judiciary and in the administration of justice, justice must not only be done, it must be seen to be done.

The committee noted that one of the Commentaries in the *Principles* states:

Justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office.

The committee noted that the parking offence was an "absolute liability" offence. ("Absolute liability" offences result in a finding of guilt if the defendant did the prohibited act, regardless of the person's state of mind or degree of fault.) The committee noted that the investigation indicated that His Worship may have explained the nature of absolute liability offences at the outset of court. The transcript showed that he did not explain it to

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the complainant's mother when she tried to offer an explanation about the events that led to the charge. The committee observed that His Worship told the complainant's mother that he was imposing the "statutory fine". The committee considered that a member of the public may not understand the meaning of the term "statutory fine".

The committee invited His Worship to respond to the complaint. After reviewing his response, the committee could see that His Worship had carefully reflected upon his conduct and realized that he should not have been so abrupt with the complainant and her mother.

The committee accepted His Worship's explanation that he sought the assistance of security to remove the complainant from the courtroom because he believed that she would continue to persist with her comments indefinitely and he saw that as a necessary step to manage his busy courtroom. The committee noted that his decision was a matter of judicial decision-making outside the jurisdiction of the Council.

The committee remained concerned that His Worship may not fully appreciate that his conduct left a negative impression of the administration of justice with the complainant and her mother. The committee decided that the appropriate disposition was to provide His Worship with written advice, pursuant to section 11(15)(b) of the *Justices of the Peace Act*. Under the Review Council's Procedures, a complaints committee provides advice to a justice of the peace in circumstances where the conduct complained of does not warrant another disposition, there is some merit to the complaint, and advice is, in the opinion of the committee, a suitable means of informing the justice of the peace that his or her conduct was not appropriate.

The committee reminded His Worship that despite the demands placed on a justice of the peace by the busy caseload in provincial offences court, it is important for a justice of the peace to take the requisite time to explain what is happening in the proceeding so that the person appearing can properly understand the process and the decision of the justice of the peace. This is particularly important if the individual before them does not have legal counsel and English is not their first language. Self-represented defendants or their family members may have no familiarity with the legal process or concepts such as "absolute liability" or "statutory fine". The committee advised His Worship that an explanation of these terms would be helpful in order to ensure that the process and the outcome of the proceeding are understood.

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The committee also reminded His Worship that the conduct of a justice of the peace sets the tone in the courtroom. It is always important for a justice of the peace to be aware of how his or her comments and conduct are viewed and understood by those appearing before him or her.

After the committee provided its advice to His Worship, the file was closed.

### **CASE NO. 26-035/15**

The complainant, an employee of the Attorney General, alleged that the justice of the peace told the complainant's supervisor that the complainant did not say good morning to her or speak to her as she was escorting Her Worship to or from the courtroom and that she, the complainant, was being rude. The complainant was upset because she did not feel that Her Worship's complaint to her supervisor was justified. The complainant was of the view that she had always been polite, respectful and professional.

The complainant indicated that on a subsequent date, when she was informed she would be working with the subject justice of the peace, she felt that, due to the issues Her Worship had with her on the previous occasion, it would be better if her court partner escorted Her Worship. The complainant alleged that when her court partner arrived, Her Worship was upset and irate and made an inappropriate comment about the complainant to her judicial colleagues.

The complainant said that she was deeply offended by Her Worship's comment and felt that Her Worship was labelling her as a racist. The complainant was also concerned that the comment was expressed in the presence of other justices of the peace, with whom the complainant had built a good rapport.

The complainant advised that she brought this incident to the attention of her supervisor but she had not heard anything. The complainant alleged that since the incident, the justice of the peace had been making negative comments to other members of the judiciary and staff about her and that this was a defamation of her character and tarnished her professional reputation.

The complaints committee reviewed the complainant's letter and retained independent counsel to assist the committee by conducting interviews of persons with knowledge of

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the alleged events. The committee reviewed transcripts of the interviews and information provided by the witnesses.

The committee decided to invite the justice of the peace to provide a response to the complaint. The committee received and reviewed the response.

After completing its investigation, the committee decided that the evidence did not support a conclusion that Her Worship had labelled the complainant a racist. The committee found that the comment made by Her Worship about the complainant in the justices of the peace's office on the date referenced in the complainant's letter was inappropriate. However, the committee found that the comment was the result of Her Worship's interpretation of the complainant's conduct towards her which Her Worship had perceived to be rude or disrespectful. The investigation disclosed evidence that the complainant failed to escort her to or from court when she was assigned to do so, that the complainant may have made a sarcastic comment and/or rolled her eyes in the courtroom in response to Her Worship's comments about taking a recess, and the complainant may not have always stood when Her Worship entered or left the courtroom.

The committee observed that there was evidence that Her Worship had raised her concerns about the complainant's conduct towards her with the complainant's manager. The committee noted that it would not be misconduct for a justice of the peace to bring concerns about the conduct of court staff to the attention of a Court Services manager. Senior management of Court Services Division oversee courtroom staff and are responsible for the discipline of staff if there are concerns.

The committee observed that the investigation indicated that Her Worship shared her concerns about a lack of respect from court staff with some of her colleagues on the date referred to by the complainant in the justices of the peace' office, as well as with one judge. The evidence did not indicate that Her Worship made comments to other colleagues or court staff about the complainant.

The committee could see from the response received from Her Worship that the complaints process was a significant learning experience for Her Worship. Her Worship had reflected upon the events and realized how the comment she made might have been perceived, and she regretted making the statement. She recognized that she could have handled the situation differently and undertook that she would refrain from any such comments in the future.

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The committee concluded that there was no judicial misconduct and no further action was required. The committee dismissed the complaint and closed the file.

### **CASE NO. 26-036/15**

The complainant's mother was the informant who applied for a peace bond against a man. The complainant took time off work to attend with his mother for the hearing of her application.

The complainant said that while his mother did not have a problem explaining things in English, it was not his mother's first language and she had a difficult time initially understanding the questions being asked of her. He said that his mother was faced with a multitude of difficult questions from both the Crown Attorney and His Worship. He alleged that the questions asked by His Worship were phrased in such a way that it made it difficult for his mother to comprehend what was being asked.

He said that His Worship knew that his mother was having difficulty understanding what he was saying, and His Worship knew that the complainant was there to help her but instead of asking him to help, His Worship insisted on repeating his questions, showing his unwillingness to co-operate to help his mother. He alleged that His Worship looked up at the ceiling a number of times out of what appeared to be disbelief that his mother was not able to understand what he was asking.

He alleged that a witness experienced the same treatment by the Crown Attorney and His Worship and that another witness' testimony was riddled with confusion as to what the court was asking him.

He alleged that His Worship told him and his mother that she would be able to ask questions and then they were not given that opportunity. Instead, after the Crown Attorney called his witnesses, His Worship asked the Crown Attorney for his view on whether the informant could cross-examine the witnesses. The Crown Attorney informed His Worship that in any peace bond hearing, the complainant is not given that opportunity; it is the Crown Attorney who asks questions on behalf of the complainant and in the public interest. His Worship agreed with the Crown Attorney and did not permit the complainant or his mother to ask questions.

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The complainant expressed his disagreement with His Worship's decision to dismiss the application. He said that his mother asked His Worship what she should do if she was attacked again, and His Worship said she should call the police. He said that his mother and he were shocked by that response. He alleged that His Worship was completely unprofessional. The complainant said that His Worship should have found that the grounds existed to grant the peace bond. He alleged that His Worship was negligent in failing to accommodate her or her witness, he was unaware of how a peace bond hearing takes place, and he was biased against his mother's character and her concerns. He also said that what was most surprising was that His Worship washed his hands clean by informing his mother to rely on the police if his mother were attacked again.

The complainant suggested that His Worship and other justices of the peace should be educated on the proper way to conduct peace bond hearings.

The committee reviewed the letter of complaint and requested and reviewed the transcript of the proceeding.

The committee observed that the transcript showed that the complainant's mother appeared to understand and answer the questions from the Crown Attorney. The committee noted that His Worship's questions or comments to the witness appeared to be for the purpose of focusing her on the relevant issues and to clarify information. It did not appear to the committee that His Worship was phrasing questions to make it difficult for his mother to comprehend what was being asked. The committee noted that if His Worship looked at the ceiling, there could be many reasons for doing so. The committee noted that when an informant is a witness in a peace bond hearing, he or she must be the person to give the answers to the questions. Another person sitting in the courtroom, including family members, is not permitted to intervene to explain the questions or help them in giving evidence.

The committee observed that the transcript showed that His Worship did not explain the process for a peace bond hearing to the parties at the outset of the proceeding. During the proceeding, His Worship said that the informant would have an opportunity to cross-examine witnesses called by the defendant. Later in the proceeding, His Worship asked the Crown Attorney for submissions on the process. The Crown Attorney said that when the Crown Attorney has intervened in a peace bond hearing, the matter becomes the Crown Attorney's case; it is not appropriate for the informant to ask questions. His

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Worship then ruled that since the Crown Attorney had intervened, the Crown Attorney had carriage of the matter and it was the Crown Attorney's decision whether to call any further evidence or ask questions.

The committee concluded that His Worship's comments about whether the informant could give evidence or ask questions were decisions made by him based on his understanding and application of the law. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. If a person believes that a justice of the peace has made errors in determining the issues or that the process was unfair, the proper way to proceed is through remedies in the courts.

The committee found no evidence to support the allegation of bias against the complainant's mother and her concerns. The transcript showed that His Worship listened to the evidence and made his decision that fear of personal injury to the informant, her family or her property was not established on a the balance of probabilities. The committee noted that his assessment of the evidence and his decision were matters outside of the jurisdiction of the Council.

With respect to the allegation that His Worship washed his hands clean by informing his mother to rely on the police if she were attacked in the future, the committee noted that the transcript showed that the informant asked who would be responsible if anything happened to her. His Worship told her that if anything happened, she had the right to call the police and the Court encouraged her to do that. The committee concluded that the comment was not inappropriate; His Worship was providing the informant with information about her legal rights if there was an incident in the future.

The committee observed that the transcript showed that His Worship was professional and polite throughout the proceedings.

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

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### CASE NO. 26-037/15

The Review Council received a letter from a defendant arising from his application at a courthouse for an extension of time to pay a fine. His request was denied. Court staff confirmed the name of the justice of the peace who considered the application.

In his letter, the complainant alleged that he received an email from court staff informing him that his request was denied. The email included comments from an email written by the justice of the peace:

“The payment is just a joke. The whole amount is overdue. Was given 2 extensions on top of the 6 months initially.”

The complainant alleged that the email was offensive. He indicated that it was humiliating to him that the justice of the peace considered his struggle to pay the amount as a joke. He indicated that he expected to be shown some empathy by government employees. He expressed the belief that no-one has the right to humiliate people or laugh at their suffering. He included a copy of the emails that he received with his letter.

The committee reviewed the materials from the complainant. The committee noted that the decision of the justice of the peace to deny the request for an extension of time was a matter of judicial decision-making that was outside of the jurisdiction of the Council. The committee’s focus and concern was with regard to the allegations about the justice of the peace’s conduct.

The committee noted that justices of the peace must always be aware of the appearance created by their conduct. 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 others, including members of the public, defendants and court staff.

The committee noted that in a leading case on judicial conduct, *Therrien v. Minister of Justice et al*, the Supreme Court of Canada commented on the expectations held by the public of anyone performing a judicial function:

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



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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.”

*Therrien v. Minister of Justice et al.*, [2001]2 S.C.R. 3 at para. 111

The committee invited His Worship to respond to the complaint. After reviewing the response, the committee could see that the justice of the peace did not intend to minimize the defendant’s personal circumstances or to embarrass him. His Worship expressed his regret that his remark was taken as a personal attack. He explained that the comment arose in circumstances where there were two previous extensions of time to pay with no payments made.

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 are handled and individuals are treated in the future. The complaints committee decided that the appropriate disposition was to provide His Worship with written advice, pursuant to section 11(15)(b) of the *Justices of the Peace Act*. Under the Review Council’s Procedures, a complaints committee provides advice to a justice of the peace in circumstances where the conduct complained of does not warrant another disposition, there is some merit to the complaint, and advice is, in the opinion of the committee, a suitable means of informing the justice of the peace that his or her conduct was not appropriate.

The committee reminded His Worship of the high standards of conduct expected of a judicial officer by the public. The committee advised His Worship that in order to preserve confidence in the judiciary, a justice of the peace must be mindful of perceptions that others may have of remarks made by a judicial officer, particularly when the comment is contained in a court document, such as an email that constitutes a judicial decision.

A justice of the peace must be aware of and sensitive to how each person could view and understand his or her comments. A justice of the peace must also be mindful that a defendant’s first language may not be English, and the use of words such as “a joke” in a sarcastic manner may be misunderstood. Sarcasm can have the effect of insulting a person without technically intending that effect.

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The committee advised His Worship of the importance of always considering whether comments made in the reasons for a decision would be perceived as respectful and judicious.

After providing its advice, the committee closed the file.

### **CASE NO. 26-039/15**

The complainant alleged that he appeared before the justice of the peace in relation to a subpoena on an existing pre-enquête. He alleged that when he presented a document to His Worship, His Worship “turned around and attacked me and flipped the table upside down and uttered it onto me while drifting off on a tangent”. He further alleged that His Worship failed to adequately address the issue of the subpoena and told him to come back on another date. He also alleged that His Worship said that he can change the *Criminal Code* to exclude victims from equal protection before and under the law while changing his own job description.

He alleged that on a subsequent date, he was at the courthouse in relation to a different matter and His Worship came up to him and said, “I advised you to give me time to check things out”. The complainant said that he told His Worship he was there on a different matter. He alleged that His Worship’s “true colours came out” when he said “no complaints by you against anything right across the board”. The complainant alleged that His Worship shook his head and made it very clear that he wants to obstruct justice and defeat the course of justice in a proceeding existing or proposed.

The complainant expressed the view that the Canadian judiciary is scandalous and reckless.

The complaints committee read the letter from the complainant and asked court staff for information from the court records relevant to the alleged appearances. Court staff advised that the court records showed that His Worship was not sitting at the specified court location on the date alleged by the complainant. They advised that the records showed that the complainant attended at the courthouse and appeared before a female justice of the peace.

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Court staff confirmed that on the second court date, His Worship was presiding in Intake Court but the court records showed that the complainant's name was not on the docket list of persons who appeared before him.

The complaints committee dismissed the complaint on the basis that the information gathered during the investigation did not support the allegations. The committee found no evidence of judicial misconduct and dismissed the complaint. The file was closed.

### **CASE NO. 26-040/15**

The complainant said that he attended court on behalf of a friend and he appeared before a justice of the peace. He alleged that the justice of the peace demonstrated incompetence. The complainant alleged that the justice of the peace was an idiot and an arrogant bully and that he should not be on the bench.

He alleged that the justice of the peace was “in cahoots” with the prosecutor and that he liked to show off to the police. He alleged that His Worship made a back room deal with the prosecutor and the police to conspire to attempt to obstruct justice.

He alleged that he was outside of the courtroom and His Worship asked the clerk to page him by name. He alleged that His Worship read from a document that he had forged in the presence of the complainant and that His Worship altered the document by cutting and pasting it. He said he referred His Worship to a court order made by a judge and His Worship couldn't care less.

He further alleged that His Worship was predisposed to insult him and to toss him out of the courtroom, humiliating him in front of his friends. The complainant demanded an apology and damages.

The committee read the complainant's letter and ordered and reviewed the transcript of the court appearance. The committee listened to the audio recording of the proceeding.

The committee found no evidence to support the complainant's allegations that the justice of the peace demonstrated incompetence, was an idiot, that he was an arrogant bully or that he should not be on the bench. The committee observed that the court record showed that after the complainant kept interrupting His Worship, His Worship told him

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not to interrupt him and to allow him to finish speaking, and told the complainant he would give him the same courtesy. His Worship remained calm and polite throughout.

The committee observed that there was no evidence to support the complainant's suspicion that the justice of the peace made any deals with the prosecutor or the police. The committee observed that the transcript showed that before the complainant entered the courtroom, the prosecutor informed the justice of the peace that the complainant would be appearing on behalf of a defendant. The prosecutor provided the justice of the peace with a court order finding the complainant to be a vexatious litigant and ordering that no further proceedings could be instituted by him in any court except by leave of the Superior Court of Justice. His Worship then had the complainant paged into the courtroom. The committee noted that the prosecutor was providing case law and information to the justice of the peace in an open courtroom. There was no evidence of conspiracy or back room deals.

With respect to the allegations that His Worship forged a document and altered it, the committee noted that His Worship referred the complainant to a particular paragraph in the court order. The committee noted that His Worship interpreted the prior court order and made a decision that he was bound to follow it. He told the complainant he could not represent other persons without leave from the Superior Court of Justice. The committee concluded that these allegations related to the complainant's disagreement with how His Worship interpreted and applied the law in the exercise of judicial decision-making.

The committee concluded that the allegations related to judicial decision-making were outside of the jurisdiction of the Council and the allegations about conduct were not supported by the evidence. The file was closed.

### **CASE NO. 27-001/16**

The complainant appeared before the justice of the peace in Guilty Plea Court on a charge of Failure to Surrender Licence under the *Highway Traffic Act*. In his letter of complaint, he said that he intended to plead guilty with the hope that the fine might be lessened or removed. He said he explained to His Worship that he believed the officer should have given him a timeframe to show his licence, rather than charging him with an offence. His Worship accepted the guilty plea and imposed a fine.

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The complainant alleged that His Worship's tone was belittling and condescending. He alleged that His Worship showed a lack of reason and compassion. He said that His Worship took very little time to listen to his situation and appeared to have made his mind up long before he even stepped into the courtroom.

The complaints committee reviewed the letter of complaint, as well as the certified transcript of the appearance. The committee also listened to the audio recording of this appearance.

The committee found no evidence in the court record to support the allegations that His Worship was belittling, condescending or lacking in compassion or reason. The committee observed that His Worship was professional and polite. He gave the complainant an opportunity to show why there should be leniency and then decided to impose the set fine for the offence. The committee found no evidence to support the allegation that His Worship made his mind up before entering the courtroom.

The committee noted that the decisions made by the justice of the peace to accept the guilty plea and impose the set fine were decisions made in the exercise of judicial discretion, not matters of conduct. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council has no discretion to change a justice of the peace's decision. If a person is of the view that a justice of the peace erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

The committee dismissed the complaint and the file was closed.

### **CASE NO. 27-002/16**

The complainant wrote to the Review Council arising from her appearance before a justice of the peace in Intake Court when she was making an application for a Form 2 under the *Mental Health Act* to have her son taken to the hospital.

She said that she entered the office and she started telling the justice of the peace that she was concerned and stressed for her son. She also told him about the events that led her to appear in Intake Court. She alleged that, "He seemed annoyed and began to give me a lecture, saying he really didn't like it when the police tell people to get a Form 2.

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He said that the police really are in the best position to see how the person is acting and whether they need to go to the hospital or not. He then saw fit to tell me that they are trying to get policy in place to cut down on this sort of thing in the future.”

She also alleged that his tone became more and more dismissive and she was getting more and more frightened that her son wouldn't get the help he needed.

She alleged that the justice of the peace told her that no psychiatrist would see her son if she got him to the hospital because her son used illegal drugs. She questioned the expertise of the justice of the peace to make such a statement. She alleged that His Worship quite adamantly told her that her son would most likely just be sent home if she did get him to the hospital.

She indicated that she became more upset and used bad language and that ultimately the justice of the peace told her to leave. The application process for a Form 2 was not completed.

She alleged that His Worship was “condescending, arrogant, impatient and completely lacking in empathy toward me, and, ultimately, my child.” She expressed the view that he was ignorant of mental health issues and she found troubling his eagerness to stray far beyond the limits of his competence and speculate on what a medical doctor may or may not do.

The complaint was assigned to a three-person complaints committee of the Review Council, consisting of a judge, a justice of the peace and a community or lawyer member for review and investigation. The committee read the letter from the complainant and requested and reviewed the transcript and the audio recording of the proceeding.

The committee observed that the record confirmed that the application process was not completed and no decision was reached on the application for a Form 2.

The committee noted that judicial officers must be mindful of the fact that their conduct in interaction with persons in the courtroom plays a role in the level of confidence of the public in the judiciary. A justice of the peace has a unique role as exemplar and guardian of dignity of the court. In carrying out that role, a justice of the peace needs to be mindful that people who are not regularly in a courtroom can find the legal process to be a difficult and stressful experience.

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The committee noted that a justice of the peace needs to understand that a person in Intake Court, particularly one who is dealing with mental health issues and applying for a Form 2 under the *Mental Health Act*, may be emotional and perhaps fearful. It is understandable that an applicant requesting a Form 2 may be very upset. The justice of the peace needs to respond in a manner that demonstrates to the applicant that he or she is being heard and that results in the relevant considerations and facts being placed before the Court. This requires listening patiently, carefully and respectfully to the person's concerns and fears in order to obtain the relevant information.

The committee noted that the court record did not support the complainant's allegations that the justice of the peace said, "This is over. You need to leave my office" or that she was "kicked out". The record showed the following conversation:

Complainant: Unbelievable. Okay, if you're not gonna help me – I – what I'm doing...

Justice of the Peace: I'm not saying I'm not going to help. I'm explaining. Do you want to take a few minutes?

Complainant: No, I don't. My son's out there and he's need – he needs help and nobody's willing to help him.

Justice of the Peace: Where is he out there – he's in the parking lot?

Complainant: If you're gonna be an [redacted obscenity] then forget it – forget it.

The Court: Okay – good-bye.

Complainant: Can't believe this...

The Court: Good-bye.

Complainant: Are you kidding me?

The Court: Good-bye.

The committee observed that the court record did not support the allegations that the justice of the peace was condescending, arrogant, impatient or rude. However, the committee was concerned that the justice of the peace's manner and comments left the

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complainant with the perception that he was becoming more and more dismissive and that her reasons for the application were not being heard or understood. The committee was concerned by the lack of sensitivity shown by the justice of the peace to the needs of a person in distress and his reaction when she became more agitated.

The committee also noted that the role of a justice of the peace is to be an impartial and objective adjudicator. A justice of the peace has a duty to remain impartial and to be seen to be impartial. Justice must be done and be seen to be done. The committee was concerned by the comments that His Worship made to the complainant about doctors and the police including the following:

Justice of the Peace: ...and they can make a better determination. We often have people sent here by the police. We question why that is. They essentially use the same test that we do in making their determination, so I get somewhat concerned when – people coming here say – “I was sent here by the police” and I’m wondering – why is that because if they weren’t satisfied, then why should I, and...

Complainant: No.

Justice of the Peace: ...and that’s – that’s a bit of a concern and we’re trying to maybe get – eliminate that because it’s an easy one for the police. We get – police sending – we get more business sent here by the police than – anybody else. So anyway, having said that...

.....

Justice of the Peace: And most times – I’m going to say – most times that I’ve ever spoken to folks after the fact, they’re released immediately. They – they never get – they’re never helped at the hospital – just for your information.

The committee invited the justice of the peace to respond to the complaint. His Worship provided a response.



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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. After reviewing the response from the justice of the peace, the committee could see that he had reflected upon his conduct and treated the complaint process as a learning experience. He acknowledged the value of the medical profession and the police in the community and explained that he did not want to diminish their importance. His Worship showed a better appreciation of the high standards of conduct expected of justices of the peace, including the importance of a justice of the peace being seen to be impartial. He also indicated an understanding of how the comments and actions of a justice of the peace impact upon the individuals who come before him or her. He assured the committee that the types of comments made to the complainant would not be repeated in the future.

The committee concluded that no further action was required and the complaint was dismissed. The file was closed.

### **CASE NO. 27-003/16**

The complainant wrote a letter to the Council arising from her appearance in provincial offences court before a justice of the peace in relation to a parking violation. In her letter, she alleged that the justice of the peace demonstrated unprofessional behaviour and that there was a lack of proper procedure regarding the presence of police officers who initiated the tickets. She also alleged that for those defendants, including herself, who were present to provide an explanation:

- ◆ His Worship did not look at anyone as they stood there;
- ◆ His Worship cut people off after a short explanation of one or two sentences;
- ◆ His Worship sat turned slightly to one side, eyes down, pen poised, and “barked out” fine amounts none of which were reduced or forgiven for any reason;
- ◆ His Worship left it to the clerk and prosecutor (who chewed gum all the time) to speak to them;
- ◆ His Worship's demeanor bordered on confrontational and was surly; and,

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- ◆ The process and His Worship's tone in his Court was clearly a travesty of having a fair hearing.

The complainant alleged that the prosecutor informed defendants that they should not ask whether police officers were present because they were in attendance. The complainant noted that the officers did not make their presence known and did not come forward for the cases that involved them.

The complainant questioned the credentials of the justice of the peace.

In a letter acknowledging receipt of the complaint, the complainant was informed that the Council has no jurisdiction to assist with the complainant's request for the credentials for appointment. General information about the current selection process is available on the website of the Justices of the Peace Appointments Advisory Committee.

The complaints committee read the letter from the complainant and ordered and reviewed the transcript of the full tier of proceedings before the justice of the peace. The committee also ordered the audio recording of the proceedings and listened to excerpts.

The committee observed that the court record did not support the allegations that His Worship was unprofessional, that he cut people off or that he "barked out" fines. The committee observed that the transcript and the portions of the audio recording listened to by the committee showed that His Worship's manner did not appear to be confrontational or surly. The committee found his tone to be polite and calm.

Although the committee was unable to assess the allegations that His Worship was turned slightly to one side with his eyes down, the committee observed that it may be difficult for a justice of the peace to look at all defendants given the high number of defendants that are scheduled to appear in a busy provincial offences court. As well, frequently justices of the peace take notes. The committee noted that even if His Worship was turned slightly to the side with his eyes looking down, it would not constitute judicial misconduct.

With respect to the allegation that His Worship did not reduce or forgive the fines, the committee observed that the transcript showed that the law sets out minimum penalties for the parking infractions that were before the Court. The transcript showed that His Worship interpreted the law to mean that he could not reduce a minimum fine. The committee noted that His Worship's interpretation and application of the law were matters of judicial decision-making outside of the jurisdiction of the Council.

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With respect to the concern related to the prosecutor saying that the police officers were present even though the complainant did not see them in the courtroom, the committee noted that the actions of the prosecutor were not within the jurisdiction of the Council. The Council's conduct is limited to complaints about the conduct of justices of the peace. If the complainant wanted to pursue that concern, she could write to the Director of Prosecutions.

After completing its investigation, the committee concluded that there was no evidence of misconduct in His Worship's approach toward defendants who appeared before him. The complaint was dismissed and the file was closed.

### **CASE NO. 27-004/16**

The complainant appeared in a designated red light camera court before the justice of the peace and pleaded guilty with an explanation. The complainant said that the justice of the peace gave her the same "false discount" that he gave everyone present that day. She alleged that when she advised him that she was a full-time university student and a single parent of a small child and would have difficulty paying the fine, His Worship made some troubling comments. She alleged that he said:

- ◆ Low income from being a single parent and full-time university student living on student loans does not amount to poverty but is a lifestyle choice.
- ◆ He spent years in university, too, and paying the fine would only mean the complainant had less "party money".
- ◆ He worked three to four construction jobs to pay his way through school (implying that the complainant could have more money if she worked hard too) and that parenting is a lifestyle choice.
- ◆ If she later needed more time to pay the fine, she would need to prove that she had made an effort to pay.

The complainant said that his comments went beyond his judicial role and his remarks about university students and single parents were so unreasonable and demeaning that a stranger offered to pay her fine.

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The complaints committee read the letter from the complainant. The committee ordered and reviewed the transcript and audio recording of the proceeding.

The committee noted that His Worship's decisions on the fines that he imposed were matters of judicial decision-making outside the jurisdiction of the Council. The Council's jurisdiction is limited to the conduct of justices of the peace. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*.

The committee observed that His Worship's comment that if she needed more time to pay, she would need to prove that she made an effort to pay, was his explanation of his understanding of the law. This was a matter of law outside the jurisdiction of the Council.

The committee observed that the court record confirmed that during the sentencing, after the complainant asked whether she could plead poverty and said she was a single parent and a university student, His Worship made comments of the nature that she alleged in her letter. The transcript included the following dialogue:

The Court: And I appreciate that, having gone to university myself for more years than I care to remember, that it can be tough, financially tough. It was certainly tough not being able to party as much as I wanted 'cause I didn't have – I had to put money into stupid books and courses and things but...'

Complainant: Can't do that with a child anyway.

The Court: Yeah. And – well, sometimes there are other things.

Complainant: I mean, this is – this isn't party money, this is...

The Court: Having a child is another issue, I grant you that. We do offer an awful lot that's available in other ways if someone falls down on their luck and needs some other kind of help but my point is, is that a student is not – not exactly the same as someone living in poverty. There's more choices that are being made as to lifestyle, at that point.

I made deliberate choices about going on and getting my education and getting again what's more, probably more than I ever needed. That was my choice and how I lived at that time

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and the triple or quadruple jobs, I had to work in construction or nights or weekends and over Christmas and always – that was my choice to do that.

Similarly, often having a child is a choice that we make and – and – on – on things like this. So I’m not discounting the fact that you may be having a hard time financially with all of this and – I’m also playing this against the fact that this is a red light and it has some seriousness to it.

As well, the committee observed that when the complainant explained to him that she had a car and that because she had a child she needed to drive, he interrupted her, stating: “Right, poverty and – poverty and cars don’t necessarily go together...”

While the committee understood the demands of a busy docket upon a justice of the peace, the committee was of the view that it is important that a justice of the peace not allow a busy schedule to infringe upon his or her conduct towards people in the courtroom. The committee noted that all persons in the court process are observers of the comments and behaviour of a justice of the peace. Each and every comment made by a justice of the peace, and his or her tone and manner in the courtroom are all important elements of how he or she is perceived by members of the public. A justice of the peace has a unique role as exemplar and guardian of dignity in the court.

A justice of the peace must be mindful of whether comments would be perceived as respectful and judicious. As indicated in the preamble of the *Principles of Judicial Office for Justices of the Peace*, justices of the peace “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 place in the men and women who have agreed to accept the responsibilities of judicial office.”

The committee invited His Worship to respond to the 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 are handled and individuals are treated in the future. The committee could see from His Worship’s response that he had taken the complaint very seriously and that he had carefully reviewed the court record and reflected upon his conduct. The committee could see that the conduct towards the complainant

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was out of character for this justice of the peace who was generally respectful of people in the courtroom.

The committee concluded that His Worship's difficult personal circumstances at the time may have impacted on His Worship's conduct towards the complainant on the day in question. He deeply regretted his comments and the impression left with the complainant. He extended his sincere apology for the comments that he made.

The committee could see that His Worship was embarrassed by his conduct and that he had put in place strategies to ensure in the future that his personal circumstances would not affect how he conducted himself in the courtroom. As well, he thoughtfully re-evaluated his practices and procedures in court to make sure that a similar situation would not happen again.

The committee was satisfied that the remedial objectives of the complaints process had been met and concluded that no further steps were needed. The complaint was dismissed.

#### **CASE NO. 27-005/16**

The complainant was a self-represented defendant who appeared before a justice of the peace for a trial in provincial offences court on a charge of speeding. His Worship found him guilty. The complainant filed an appeal of his conviction. He wrote to the Council requesting that the conviction be quashed. He was informed that the Council has no jurisdiction to change a decision made by a justice of the peace. He was also informed of the Council's policy that it will not generally commence an investigation until the proceeding and related proceedings before the courts have concluded. This is to ensure that any investigation by the Council is not interfering with or perceived to be interfering with any ongoing court matters. After his appeal was granted, he wrote again to the Review Council advising that the court proceedings were completed.

He said that every person has a right to be presumed innocent in a fair hearing by an independent and impartial tribunal, and to make full answer and defence, and that these were not respected by His Worship. He alleged that he had evidence to submit about recall notices for his vehicle that identified his vehicle as one that could experience unwanted acceleration. He alleged that His Worship asked to look at the evidence, and then said he would not allow it. He alleged that after he asked His Worship why he would not allow the

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evidence, His Worship asked him whether he had a chance to show it to the prosecutor. The complainant believed that he had no obligation to show it to the prosecutor.

He said that when he took the stand to give evidence, His Worship would not permit him to refer to his evidence. The complainant questioned why the officer could refer to his notes but he could not, and His Worship then said he could use them as reference only. The complainant alleged that His Worship was trying to stop him from submitting the evidence.

He said that when he started to speak about the recall that could affect his vehicle, His Worship asked him to stop and said he only wanted to hear what happened that day. The complainant said that His Worship told him that he would have a chance to talk about the recalls when he made his submissions. He indicated that when it was time to make submissions to the Court, he was told that he could not speak about recalls. He sought to take the stand again to give evidence on the recalls and His Worship did not permit him to do so. The complainant expressed the view that His Worship not only disallowed his evidence but “he used his skill to trick me into not submitting it.”

The complainant said that, “The atmosphere was like a circus, not an atmosphere conducive to an impartial trial.” He felt that His Worship skillfully directed a self-represented litigant in a manner that precluded him from submitting his evidence. He believes that His Worship did it on purpose and aided the prosecution in doing so.

The complaints committee read his letter and ordered and reviewed the transcripts and audio recordings of the proceeding.

The committee observed that the appeal court confirmed that the justice of the peace made a number of errors during the trial, including not permitting him to give evidence about the recall, not permitting the defendant to reopen his case to call that evidence, and not providing sufficient reasons.

The committee concluded that His Worship conducted the trial based on his understanding of the law and how it should be applied. After carefully considering the court record in this case, the committee concluded that the instances of legal error were matters of judicial decision-making, not judicial misconduct. If a person is of the view that a person erred in his rulings or decisions, a higher level of court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

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The committee considered the complainant's allegations about His Worship's conduct and noted that the court record did not support the allegations that the justice of the peace was trying to trick the defendant or that the atmosphere was a circus.

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

### **CASE NO. 27-006/16**

On behalf of her sister, the complainant appeared before the justice of the peace to address a parking ticket. She entered a guilty plea. She alleged that the justice of the peace refused to hear her explanation and refused to see the documents she had brought to court. She alleged that Her Worship was extremely short with her, impatient, intolerant and rude. She alleged that Her Worship demonstrated appalling behaviour, a racist attitude and unfair judgment. She said Her Worship had a very rude, demeaning and intimidating tone and Her Worship's behaviour was "vile and disproportionate to the situation."

The complainant believed that the justice of the peace was clearly racist towards her and her judgment of the complainant's case was unfair. She alleged that every single white person who appeared in front of her had their fines suspended, waived or reduced to the minimum but did not suspend sentence in her case or reduce the fine. She requested to the Council that the sentence for her parking ticket be suspended or the fine be reduced.

In a letter sent to the complainant to acknowledge receipt of her complaint, the complainant was informed that the Council has no legal authority to intervene in a court case or to change a decision made by a justice of the peace.

The complaints committee reviewed the complainant's letter and ordered and reviewed the transcript of the full tier of proceedings before the justice of the peace, including the complainant's appearances. The committee also obtained the audio recording and listened to the excerpts of the interactions between the complainant and the justice of the peace.

The committee observed that there was no evidence in the court record that the justice of the peace was racist or that every single white person who appeared in front of her had their fines suspended, waived or reduced. There was no evidence to support the allegation that Her Worship's behaviour was vile or appalling.



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The investigation showed that the tier was very busy with more than 30 cases scheduled. At different points during the proceedings, Her Worship explained that the Court had no legal authority to reduce the set fine for parking offences.

The committee observed that the complainant entered a guilty plea and received a fine. Her matter at that point was completed. Later, when other matters were being dealt with, she came forward wanting to provide an explanation, indicating that she wasn't familiar with the process. The transcript showed that Her Worship said that the Court had already made its decision, that the matter had been dealt with and that she was not going to revisit the matter. Her Worship indicated that the Court must move on and she referred to the next docket of cases that had to be dealt with. The committee noted that Her Worship told the complainant that she was functus but did not explain what that meant and that because a decision had already been made, she had no further authority over the case.

The committee observed that the excerpts of the audio recording indicated that Her Worship's tone was firm but it was not rude or demeaning.

The committee observed that it is important for a self-represented defendant in court to have a very clear understanding of the process. By pleading guilty, he or she is giving up the right to have a trial and put forward evidence. A guilty plea is considered the end of the challenge to the charge against the defendant and a full admission of guilt. It appeared to the committee that this complainant may not have understood those aspects of the process.

After reviewing the full transcript, the committee was concerned that the justice of the peace appeared to be impatient and abrupt in the manner in which she dealt with the complainant. The committee notes that one of the Commentaries in the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* states:

Justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office.

The committee noted that the public's perceptions of the administration of justice are impacted by the conduct of a justice of the peace. The committee was concerned that Her Worship's manner and comments to the complainant left her with the perception that she had not been treated fairly.

The committee invited Her Worship to respond to the complaint. After reviewing Her Worship's response, the committee could see that she had taken the complaint seriously

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and had reviewed and reflected upon her conduct. Her Worship recognized that she had been short with the complainant and acknowledged the complainant's frustration with the process. Her Worship regretted that the complainant left feeling ill-treated in court and the committee could see that it was not Her Worship's intention to give that impression.

Her Worship explained that she had been attempting to manage the heavy list of cases and she referred to the fact that the law in the jurisdiction has changed so that there were now fixed statutory fines for parking offences. There was no longer the ability to exercise discretion to reduce these fines if an explanation were given. However, members of the public who attended court did not appear to know about this change. The committee recognized that the high volume of cases and the challenges of managing a busy court affect the time available for justices of the peace to explain these types of changes to the many defendants who appear in court. Even so, the committee observed that Her Worship generally tried to inform defendants of the meaning of absolute liability offences and fixed fines at the beginning of the tier and from time to time during the proceedings.

After considering all of the information gathered during the investigation, the committee concluded that there was no evidence of judicial misconduct. The complaint was dismissed and the file was closed.

#### **CASE NO. 27-007/16**

The Review Council received a letter of complaint from a complainant who appeared before a justice of the peace arising from her son's trial appearance in provincial offences court. The complainant was acting as the representative for her son.

The complainant alleged that she and her son were subjected to rude and unprofessional behaviour by the justice of the peace during the trial. She also alleged, "Unprofessional behaviour after the trial ended insisting on deriding my son and my parenting."

She also made the following allegations:

- ◆ His Worship did not insist that the police officer respond to all her questions during the cross-examination;

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- ◆ His Worship showed anger and aggression and addressed her in a loud tone, saying that she needed to control her client because he raised his hand in court while the officer was testifying. She said that instead of understanding that the youth was unfamiliar with court proceedings and that he did not disrupt the court by raising his hand, His Worship “painted the youth as an unacceptable disruptive person in the court”. She alleged that this was racial bias against the young black male before him.
- ◆ His Worship did not allow her to show video-taped evidence which would have proven the officer’s testimony to be flawed. She alleged that this showed a conflict of interest and bias in favour of the officer.
- ◆ His Worship leaned forward, glared at her and in a loud voice repeated the officer’s name three times because she had erroneously pronounced it as a French name. She alleged that this showed conflict of interest and bias towards the officer and rude behaviour. She said he was speaking down to a black Muslim woman.
- ◆ His Worship told her that he was not interested in history but in the issue that took place on the offence date. She alleged that when she made reference to the history of a black male youth being stopped by white police officers, and referred to it as racial profiling, he did not see this as relevant information. She alleged that this showed racial bias and ignorance of racial profiling.
- ◆ When she exited the courtroom, His Worship called out to her and said, “You are looking at your son with rose-coloured glasses” and then “launched into a sermon about how I better change the way I am dealing with him.” She said that she interrupted this unsolicited parenting advice and told him that “I am proud of my son and don’t have a problem with his behaviour in court today, this is his first time and he is not familiar with proceedings and this has been a hostile environment.” She alleged that this was unprofessional behaviour on the part of His Worship and he was insisting on deriding her son and her parenting.
- ◆ When she continued towards the door, His Worship yelled, “Now I see where he gets it from!” She alleged that this was an unprofessional verbal attack.

The committee reviewed the letter from the complainant and ordered and reviewed the transcript of the proceeding before the justice of the peace. Two members listened to the audio recording of the proceeding.

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The committee noted that the allegations about His Worship's rulings on the questions which he would permit the complainant to ask or the relevance of evidence were matters of judicial decision-making outside of the jurisdiction of the Review Council. 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. If a person is of the view that a justice of the peace erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

After its review of the court record, the committee observed that there was no support for allegations made by the complainant that during the trial His Worship was prejudicial or racially biased. Although the committee was unable to assess the allegation that he glared at the complainant, the committee observed that the court record showed that during the trial, His Worship did not raise his voice, he did not appear to be aggressive or angry, and his tone and manner were professional and polite.

The committee was concerned that the transcript showed that His Worship made the following comments after the trial ended:

The Court: I think it's time your son grew up. I asked him to remove his hat, he didn't seem to think that was something he had to do.

Ms. [name]: Oh, he didn't remove it?

The Court: He laughed and giggled all the way out looking back at the Court. I think that somehow you have come to look at your son through rose-coloured glasses.

Ms. [name]: Okay. All right, well, I have other thoughts on that because I understand...

The Court: Yeah.

Ms. [name]: ...more than you do the history of where all these behaviours originate and I also understand that from the get go as – as when we arrived...

The Court: No. You know what?

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Ms. [name]: ...that we were in a hostile environment.

The Court: We're finished. If you wish to appeal the matter...

Ms. [name]: I will appeal it.

The Court: ...you can go ahead and do that.

Ms. [name]: I will certainly appeal it because this is a sham.

The Court: I know where he gets it from.

The committee observed that the comments suggested that His Worship was frustrated by the actions of the complainant's son in the courtroom. Such comments could be perceived to be disparaging or demeaning towards the complainant. As well, his comment telling her that she could appeal the matter could be perceived as combative.

The committee noted that a justice of the peace has a unique role as exemplar and guardian of the dignity of the court. The conduct and comments of a justice of the peace set the tone for the environment in the courtroom. It is always important for a justice of the peace to be aware of how his or her comments and conduct are viewed and understood by those appearing before him or her. Each and every comment that a justice of the peace makes, his or her tone and manner are all important elements of how he or her, a justice of the peace, is perceived by members of the public.

The committee also noted that a justice of the peace is expected to remain patient and polite. A commentary in the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* states: "Justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office..."

The committee invited His Worship to respond to the complaint and received and reviewed his response. The committee observed that His Worship had reviewed the transcript and the audio recording of the proceedings and he had genuinely reflected on his conduct. The committee could see that he regretted making the comments to the complainant about her parenting. He recognized that their interaction had escalated into a verbal altercation. He showed an appreciation for the role of a justice of the peace and realized how the comments or actions of a justice of the peace can impact on public confidence in the judiciary. He expressed his apology.

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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 observed that His Worship had taken the complaint seriously and had learned from the complaint. The committee was satisfied that the behaviour would not be repeated. The committee concluded that no further action was required and dismissed the complaint. The file was closed.

### **CASE NO. 27-008/16**

The complainant wrote a letter of complaint arising from his appearance before a justice of the peace for a pre-enquête. (A pre-enquête is a proceeding before a justice of the peace to determine if criminal process should issue.) The complainant stated that His Worship saw a video of the assault on the complainant but no ruling was made. He stated that he and his father waited two hours and then learned that the matter had been rescheduled to a subsequent date.

The complainant alleged that when he appeared on the next court date, another justice of the peace was presiding when His Worship stepped in and inserted himself into the pre-enquête, heard the same evidence and dismissed the complainant's matter.

The complaint was assigned to a complaints committee for review and investigation. The committee reviewed the complainant's letter and ordered and reviewed the transcripts of the proceedings on both court dates before the justice of the peace.

The committee observed that on the first court date, the hearing began and evidence was called but the hearing was not finished because there were bail matters that had to be dealt with. The committee noted that under the law, once a justice of the peace begins hearing evidence in a hearing, that justice of the peace becomes seized with the hearing and he or she must preside over it until it has concluded.

The committee observed that the transcript indicated that His Worship was helpful during the hearing and attempted to explain the process to the complainant.

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

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### CASE NO. 27-009/16

This complaint arose from a *Provincial Offences Act* trial. The complainant alleged that:

- ◆ There was a miscarriage of justice by Her Worship based upon her personal opinion and wrongful decision with prior knowledge of voluminous verifiable evidence. Her Worship's personal opinion was out of context, wrongful, and biased.
- ◆ Her Worship ignored the overwhelming evidence submitted, including evidence of the no trespassing sign on his property. She repeatedly abused her authority by ignoring/disregarding verifiable evidence. She set a dangerous safety and security precedent for home and property owners trying to protect their family and property, giving crime the right of way.
- ◆ The case was riddled with major injustice flaws, perjury, and false statements and must be overturned and stricken from the court. Her Worship ignored perjury by the witnesses.
- ◆ The municipal prosecutor made false statements on the court records with prior knowledge.
- ◆ The search warrant used in the process was not warranted. There was no evidence or grounds to support the warrant.
- ◆ A city employee and others invaded the complainant's privacy and violated his Constitutional rights to protect his family home from verified threats.
- ◆ The city and parking staff resorted to abuse of authority, lawlessness, false statements, perjury, behaviour and misconduct.
- ◆ The "JP" lost her compass for fairness and balance and failed to understand family safety and security is the priority.
- ◆ Her Worship ignored serious violations by employees of the city involved in this case.
- ◆ Her Worship ignored the applicable by-law exemption.
- ◆ Her Worship had several options and legal tools available to her to dismiss/throw out the case.

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- ◆ Her Worship denied two motions brought by the complainant.
- ◆ Her Worship “for no reason was vexed, angered, and bias against us” and she “ripped off in a rage against us”. The complainant alleged that Her Worship was trying to bait him into combat.
- ◆ Her Worship must have “lost her presence of mind and temporarily forgot what this case was all about, or angered at herself knowing she has gravely made a mistake, because at one point she stated she will not continue to read her own personal opinion summation decision.”
- ◆ Her Worship implicated herself by concurring in her summation with what the complainant proved in court.
- ◆ The complainant was wrongfully fined.

The committee reviewed the letters received from the complainant and ordered and reviewed all of the transcripts. The committee observed that the transcripts showed that the justice of the peace was very helpful and she articulated questions to assist the complainant in the process. Her Worship was professional and polite. There was no evidence to support the allegations that she lost her presence of mind or what the case was about, or that she was vexed or angered.

The committee noted that the decision made by the justice of the peace was well-reasoned and based on Her Worship’s assessment of the evidence and her interpretation and application of the law. There was no evidence of bias, nor any evidence that the decision was based upon her personal opinion.

The committee noted that many of the complainant’s allegations and concerns related to how the justice of the peace assessed the evidence, interpreted and applied the law, the legality of the search warrant and the decisions Her Worship made in the case. The committee noted that these were matters of judicial decision-making outside of the jurisdiction of the Review Council. 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. If a person is of the view that a justice of the peace erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.



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This complaint was dismissed on the basis that there was no evidence to support the allegations about conduct and the remainder of the allegations were outside of the jurisdiction of the Review Council. The file was closed.

### **CASE NO. 27-010/16**

The complainant went to court to set a date for a trial on a red light camera offence. When he went to court for the trial, he was told that the matter had been dealt with on an earlier date and he had been convicted of the offence in his absence.

From his letters to the Council, it appeared that he wanted someone to look into his case and to review it. He indicated that the fine was too high and he provided information about his financial circumstances. He believed that the justice of the peace had told him to appear on one date but that she then deliberately proceeded with the case on an earlier date when he was not present. He also questioned why he was not given the trial date in writing.

In the letter acknowledging receipt of his complaint, staff of the Council explained that the Council had no jurisdiction to intervene in a court case or to change a decision made by a justice of the peace. To change the decision made in his case, he would need to pursue his legal remedies through the courts, such as an application for a reopening.

The complaints committee read his letter and ordered and reviewed the transcript of both of his appearances before the justice of the peace.

The committee observed that the transcript of the first appearance showed that the complainant was advised to return on the correct date for his trial.

The committee noted that there is no legal requirement that when a court proceeding appearance is adjourned to another date, the defendant is to be provided with the date in writing.

The committee noted that the Council had no jurisdiction to intervene with a decision made by a Justice of the Peace. The proper way to proceed if a person seeks to try to change a decision is to contact the nearest Provincial Offences Office to inquire about an application for a reopening.

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

### **CASE NO. 27-011/16**

The complainant was the victim and witness in a motor vehicle accident. He wrote a letter of complaint relating to the justice of the peace who presided over the trial of the driver of the vehicle that hit the complainant. The justice of the peace dismissed the charges against the defendant.

The complainant alleged that his case received unfair and biased treatment. He was very upset that the charges were dismissed. He stated that he wanted to speak with Her Worship but was not permitted to do so. His letter of complaint also included a letter to the presiding justice of the peace and to the police officer as part of his complaint.

He was also of the view that the prosecutor did not do his job properly. He alleged that the prosecutor's supervisor told him that the justice of the peace made a wrong decision dismissing the charge of careless driving.

The complaints committee read his letter and the enclosures that he included with his letter. The committee ordered and reviewed the transcript of the proceeding. The committee observed that the transcript did not support the allegations of unfair treatment or bias.

The committee concluded that the complaint related to the complainant's disagreement with the justice of the peace's decision to dismiss the charges against the defendant. The committee noted that the Council's jurisdiction is limited to the conduct of justices of the peace. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. 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. If a party in a case is of the view that a justice of the peace erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

With respect to the complainant's concern about the conduct of the prosecutor, the complainant was informed that the Council's jurisdiction is limited to the investigation

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and disposition of complaints that relate to the conduct of a justice of the peace. The complainant was referred to the Director of Prosecutions to pursue his concerns about the prosecutor.

The complainant was also informed that if he wished to seek legal advice to determine whether he had legal remedies arising from the accident or his injuries, he could contact the Law Society Referral Service (LSRS) operated by the Law Society of Upper Canada.

The committee dismissed the complaint on the basis that it was outside of the jurisdiction of the Council and closed the file.

### **CASE NO. 27-016/16**

The complainant was a lawyer who was retained by a client in relation to a provincial offences matter. The complainant did not appear in the courtroom as the charge against his client was being withdrawn. The complainant indicated in his letter to the Review Council that he was made aware that during the court proceedings, the justice of the peace made a comment about him in open court. He alleged that Her Worship asked the prosecutor about the disposition of the client's case and then said that the complainant "Mr. [complainant's name] is not to be trusted and that's on the record."

The committee reviewed the correspondence received from the complainant, enclosures that he provided and the transcript of the proceedings to which he referred in his letter. The committee observed that the transcript showed that the justice of the peace said:

The Court:	What matter was [the complainant] here for?
Prosecutor:	The one that was withdrawn.
The Court:	Well, I want to see it. I do, because I don't trust him.
Prosecutor:	Oh, you don't?
Courtroom Clerk:	I'll find it.
The Court:	And that's on the Record.

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The committee noted that the preamble to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* provides guidance to a justice of the peace on the expectations for a person holding judicial office:

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 committee noted that a justice of the peace must conduct himself or herself in a manner that is consistent with the appearance that he or she is discharging his or her duties in a manner that is independent and impartial. The committee observes that the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* state:

1.1 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.

A justice of the peace has a unique role as exemplar and guardian of dignity of the court.

The committee invited the justice of the peace to respond to the complaint. In her response, Her Worship explained that her comment arose from the particular charge being withdrawn by the prosecutor. The committee observed that Her Worship had reflected upon her conduct and realized that she should have handled the matter differently. She recognized that the comment was inappropriate and confirmed that no malice was intended. She undertook that no such conduct would be repeated in the future.

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 are handled and individuals are treated in the future. The complaints committee decided that in order to bring about a fuller understanding of the impropriety of such conduct and the potential

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consequences of making such comments, the appropriate disposition was to provide the justice of the peace with written advice, pursuant to section 11(15)(b) of the *Justices of the Peace Act*. Under the Review Council's Procedures, a complaints committee provides advice to a justice of the peace in circumstances where the conduct complained of does not warrant another disposition, there is some merit to the complaint, and advice is, in the opinion of the committee, a suitable means of informing the justice of the peace that his or her conduct was not appropriate.

The advice letter reinforced the importance of a judicial officer refraining from making inappropriate comments about counsel. It further reiterated the importance of upholding the standards of integrity and impartiality in order to preserve the confidence of participants in the justice system and members of the public in the judiciary.

After the committee provided its advice, the file was closed.

### **CASE NO. 27-017/16**

The complainant wrote a letter of complaint arising from a trial before a justice of the peace. After he was convicted by His Worship, the complainant appealed and the appeal was dismissed.

The complainant's allegations included the following:

- ◆ His right to a fair trial was violated.
- ◆ Honesty, fairness and professionalism were not present during his trial.
- ◆ The justice of the peace did not remain impartial and he allowed his personal actions and thoughts to alter the outcome of the trial.
- ◆ The justice of the peace "gave me the dirtiest look I have ever seen and would not take his eyes off me." He "continued to stare at me with daggers in his eyes".
- ◆ The justice of the peace accused him of arguing with the prosecutor.

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- ◆ When the complainant sought to enter photographs into evidence, the “hassle this [justice of the peace] gave me was ridiculous”. The justice of the peace wanted to label them Exhibit 1, 2, and 3 which the complainant viewed to be nonsense. The justice of the peace made the complainant give them to the Crown Attorney for approval. The justice of the peace was annoyed and making it tough for the complainant to make an argument in his defence.
- ◆ The evidence from the police officer was lies.
- ◆ After the Crown Attorney objected to a question by the complainant to the officer about the procedure of a road closure, the justice of the peace raised his voice at him, yelling, “Where are you going with this?”
- ◆ The justice of the peace wanted him to take the stand and after the complainant said no, the justice of the peace made an angry face at him. The complainant then said he would take the stand but he was forced to do so because of His Worship’s behaviour.
- ◆ In his decision, the justice of the peace ignored facts.
- ◆ They started the trial at 5:00 pm. This was discrimination – they would never do that to a lawyer.
- ◆ He was locked in the courthouse and was unable to leave because it was after regular court hours.

The complainant also indicated that the judge who heard the appeal said that the justice of the peace was probably grumpy from a sore back from sitting all day. He also said that he “paid a deposit of \$75” for transcripts but the appeal judge never received them. He also expressed the view that the city runs an overcrowded courtroom.

The complaints committee read the letter from the complainant and requested and reviewed the transcript and the audio recording of the proceeding.

The committee noted that several of the allegations related to trial procedure, matters of evidence and law, and judicial decision-making. The committee noted that these were matters of judicial decision-making outside of the jurisdiction of the Review Council. 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

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justices of the peace. If a person is of the view that a justice of the peace erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

The committee found no evidence that the justice of the peace did not remain impartial.

The committee observed that the record showed that His Worship's manner was polite, professional and courteous towards the complainant. There was no support for the allegation that His Worship was angry, grumpy or that he yelled at the complainant.

The committee noted that the evidence was not consistent with the allegation that the justice of the peace made an angry face at him and the complainant was forced to take the stand. The committee noted that the manner and tone of the justice of the peace were not consistent with a state of anger. The transcript showed that the complainant voluntarily took the stand:

THE COURT: ...at the conclusion of the evidence on points you would like me to consider when making my decision today, Sir, so you are not obligated to take the stand but if you do you are subject to cross examination.

MR. [NAME]: I would be willing to take the stand.

THE COURT: Well it, it's your choice sir.

MR. [NAME]: Yes sir.

THE COURT: I can't sway you either way

MR. [NAME]: No, you're not swaying me anywhere.

THE COURT: Thank you, if you'd like to come up sir. If you'd like to bring your photographs with you sir.

The committee dismissed the complaint on the basis that some of the allegations were outside of the jurisdiction of the Council and the allegations about conduct were unsupported by the record. The file was closed.

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#### **CASE NO. 27-018/16**

A complaint about a justice of the peace was referred to the Chief Justice of the Ontario Court of Justice, pursuant to section 11(15)(d) of the *Justices of the Peace Act*. The Chief Justice said that she scheduled the meeting with the justice of the peace and when he arrived, she realized that he was secretly recording their conversation on a recording device. Her Honour ended the meeting and filed a complaint with the Review Council about His Worship's conduct.

The complaint was assigned to a complaints committee for investigation. Before a final determination was made on the complaint, the committee received information that the justice of the peace had left judicial office. The Review Council lost jurisdiction to proceed further and the file was administratively closed due to a loss of jurisdiction.

#### **CASE NO. 27-020/16**

The complainant wrote a letter of complaint arising from his appearance before a justice of the peace for a pre-enquête. The complainant argued that he had sufficient evidence to support charges against a lawyer for fraud, perjury, forgery of documents and misleading justice.

He alleged that His Worship discriminated against him as a self-represented litigant. He said that His Worship chose not to proceed, did not listen to the complainant and did not give him enough credit. He alleged that His Worship failed to do his job. He said that:

- ◆ His Worship failed to obey the *Justice of the Peace Act* and the regulations;
- ◆ His Worship ignored the criminal matter and criminal acts; and,
- ◆ His Worship ignored his witness who was waiting outside of the court room to testify.

He requested that the Council listen to the audio recording of the proceeding.

He questioned how much bribery took place and was of the view that the Canadian justice system was protecting the lawyer. He asserted that the real criminals are in the Law Society, and that lawyers are protected and above the law.



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The complaints committee read the letter and materials that he included with his letter. The committee requested and reviewed the transcript and the audio recording of the proceeding. The committee observed that the court record showed that the justice of the peace listened to the complainant and gave him ample opportunity to speak and to put forward his position. His Worship handled the matter politely.

The committee noted that the way that His Worship applied the law, considered the evidence and decided the case were matters of judicial decision-making outside of the jurisdiction of the Review Council. 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. If a person is of the view that a justice of the peace erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

The committee dismissed the complaint on the basis that the allegations in regards to conduct were unsupported and the other allegations were outside of the jurisdiction of the Review Council. The file was closed.

### **CASE NO. 27-021/16**

This complaint arose from a *Provincial Offences Act* proceeding where the defendant requested that the trial be heard in the French language however, it was scheduled before the subject justice of the peace who was not a French-speaking justice of the peace.

The complainant acted as the agent for the accused in the matter. The complainant stated that she appeared on one date with the accused and requested that the trial in the matter be held in French. She said that it was the accused's constitutional right to have his matter held in the French language on the scheduled date for trial but as the justice of the peace was not French-speaking it was addressed in English.

The complainant alleged that there were breaches of the accused person's constitutional rights. She also alleged that His Worship would not allow her to speak to the matter. She said that His Worship "completely shut me down" and dismissed her from the proceeding. She indicated that she tried to explain the administrative error and later the constitutional breach and unlawful adjournment but he would not listen and told her the matter was

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completed. She alleged that when she returned after court was finished, she provided His Worship with a copy of a handwritten complaint letter and he used a mocking and condescending attitude with her and threw the letter back at the clerk saying he didn't want it.

The complainant concluded, "I find this behaviour deplorable given his position in our community, not to mention his lack of knowledge re constitutional rights and unlawful adjournments." She indicates that she and the accused both felt embarrassed, humiliated and very unfairly treated.

The complainant also expressed the view that His Worship should have withdrawn the charge rather than further aggravating the courts administrative errors with constitutional breaches.

The complaints committee read the complainant's correspondence and requested and reviewed the transcript and excerpts of the audio recording of the proceeding.

The committee observed that His Worship handled the matter professionally and was courteous to the complainant. The committee observed that the record did not support the allegations that His Worship acted in a "deplorable manner" or that he displayed a mocking and condescending attitude.

The committee observed that the transcript showed that the clerk informed the court that when a request is made for a French trial, there would normally be a French interpreter, and a bilingual clerk, prosecutor and justice of the peace. The committee noted that the administrative error of scheduling a French trial in an English language court was a matter outside of the control of the justice of the peace.

The justice of the peace asked the prosecutor for her position and she said that the proper remedy would be to adjourn the matter to a French court. The justice of the peace agreed with the prosecutor and expressed the view that it was in the public interest that the matter be tried in the language chosen by the defendant, and he decided to adjourn the matter to a future date. The transcript showed that the complainant attempted to address the issue and the justice of the peace responded that he had already made his decision and would not make another one.

The committee concluded that the way that His Worship interpreted and applied the law applicable to a request for a French trial and his decision to adjourn the proceeding

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were matters of judicial decision-making outside of the jurisdiction of the Review Council. 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. If a person is of the view that a justice of the peace erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

The complaint was dismissed as the allegations about conduct were not supported by the court record and the matters of judicial decision-making were outside of the jurisdiction of the Review Council. The file was closed.

### **CASE NO. 27-022/16**

The complainant appeared before the justice of the peace for a trial of a provincial offences matter. During the proceedings, he wrote to the Council. He was informed of the Council's policy that where 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 is to ensure that any investigation by the Council is not interfering or perceived to be interfering with any on-going court matters. The complainant was informed that the Council would hold his letter on file pending confirmation from him that the court matter had finished.

The justice of the peace who was the subject of the complaint became aware that the complainant had posted a copy of his letter of complaint on the internet and contacted the Council to express her concern.

The committee noted that it would be contrary to the rules of natural justice if the expression of concern from the justice of the peace were to initiate the complaints process. The committee noted that at the time when the justice of the peace raised her concern about the letter, it had been over three years since the complainant was informed that he would need to confirm that the court process was completed and since his appeal concluded. The complaints committee concluded that this complaint should be considered as abandoned. The complaint was dismissed on the basis that in the circumstances, the committee had no jurisdiction to proceed.

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### **CASE NO. 27-023/16**

The complainant attended before the justice of the peace for a trial on a parking ticket that was issued to his son's vehicle. The complainant said that the reason his son's car was parked on the road was because there were repairs and maintenance taking place on his driveway and his lawn. He alleged that the trial was not properly conducted. He said that the trial was done in haste with no proper application of justice. He alleged that "the judge" did not listen to the explanations or look at the solid evidence. He believed that the verdict given was a mistrial, done in haste, and there was no justice at all.

Before a final determination was made on the complaint, the Review Council became aware that the justice of the peace was no longer in office. The file was administratively closed due to a loss of jurisdiction.

### **CASE NO. 27-024/16**

The complainant wrote a letter of complaint arising from his appearance before a justice of the peace for a pre-enquête. The complainant said he wanted to bring a private prosecution against a lawyer for fraud, perjury, forgery of documents and misleading justice.

The complainant alleged that Her Worship failed to do her job by not issuing process. He stated that more than one crime occurred and the hearing should have proceeded.

He further alleged that:

- ◆ Her Worship failed to obey the *Justices of the Peace Act* and the regulations;
- ◆ Her Worship ignored the criminal matter and criminal acts;
- ◆ Her Worship listened to his witness and the witness confirmed that the documents were not signed by him;
- ◆ Her Worship was ignorant of the criminal matter and criminal charges;
- ◆ Her Worship misled the proceeding on purpose;

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- ◆ Her Worship thought one of his accusations was forgery when it was uttering a forged document; and,
- ◆ No justice was done.

He also said that the prosecutor was also responsible for the result. He questioned how much bribery took place and was of the view that the Canadian justice system was “another shame for protecting criminal [the lawyer]”.

The complaints committee read the letter from the complainant and the materials that he included with his letter. The committee requested and reviewed the transcript of the proceeding. The committee observed that the transcript showed that the justice of the peace listened to the complainant and gave him ample opportunity to speak and to put forward his position. The evidence did not support the allegation that Her Worship ignored the evidence or that she misled the proceeding on purpose. Her Worship handled the matter politely, listened carefully and provided thoughtful reasons for her decision in the case.

The committee noted that the allegation of bribery was not supported by any facts or evidence.

The committee noted that the way that Her Worship applied the law, considered the evidence and decided the case were matters of judicial decision-making outside of the jurisdiction of the Review Council. 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. If a person is of the view that a justice of the peace erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

The committee dismissed the complaint on the basis that the allegations about conduct were unsupported by the transcript and the other allegations were outside of the jurisdiction of the Review Council. The file was closed.

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### **CASE NO. 27-027/16**

The complainant appeared before the justice of the peace in relation to a traffic ticket.

In his letter to the Review Council, he said that it looked like the justice of the peace didn't want to hear the case. He said that the justice of the peace told him that there were 41 cases in his court that morning, he had to deal with them all in only 70 minutes and he wouldn't have time to complete all of the cases. The complainant felt that the comments were irrelevant to his case and inappropriate. If the justice of the peace had a complaint about administration, he should have known how to get that addressed.

He said that when his matter was called, he started making an argument that his case should be stayed but he felt that the justice of the peace wasn't interested in hearing it. The justice of the peace denied his right to be heard by the court and adjourned the matter, even though the prosecutor did not request an adjournment. The complainant alleged that the justice of the peace wanted to help the prosecutor by adjourning the matter so that they could get an opportunity to prove their case the next time.

He alleged that when he tried to continue his argument, the justice of the peace became stern and angry and autocratically told him that the matter was adjourned. He said he asked whether he could argue his stay application the next time, and His Worship said that he could. He alleged that he was denied his basic right to be heard in a court due to the unprofessional and unethical behaviour of His Worship. He also asked for advice regarding his case.

The complainant was informed by staff of the Review Council of the policy of the Council that if a complaint raises allegations of conduct about a justice of the peace who was 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 is to ensure that any investigation by the Council is not interfering or perceived to be interfering with any ongoing court matters.

After his court case concluded, the complainant contacted the office of the Review Council to advise that the case was completed. The investigation into his complaint proceeded. The complaints committee read the letter from the complainant and requested and reviewed the transcript and audio recording of the proceeding.

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The committee observed that the transcript showed that the justice of the peace asked the prosecutor how the court could deal with 41 matters in 70 minutes, and the prosecutor explained to him that there were no trials on the next docket so there would be additional time. The committee noted that His Worship's question was asked in the context of clarifying how much time there would be to deal with cases in the exercise of his administrative responsibilities for managing the court. The committee concluded that this was not judicial misconduct.

The committee observed that the audio recording did not support the allegations that the justice of the peace was angry or autocratic. His tone was firm but he was professional and calm.

The court record showed that after the complainant informed the court that he was making an application for a stay of the proceedings, His Worship reviewed the court record, observed that the complainant had made a request for further disclosure from the prosecutor and that the complainant had previously been granted an adjournment of the trial because he could not get the day off work. The committee noted that His Worship focused on the outstanding disclosure request and wanted the defendant to have full disclosure. In that context, he decided to adjourn the case.

The committee noted that His Worship's reasons for adjourning the case and his decision to adjourn it to another date related to legal procedure and judicial decision-making. The committee noted that these were matters of judicial decision-making outside of the jurisdiction of the Review Council. 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. If a person is of the view that a justice of the peace erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

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

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### **CASE NO. 27-030/16**

The complainant wrote to the Council regarding his appearance before a justice of the peace arising from a traffic violation.

He alleged that Her Worship abused her position of power when speaking on her personal views of morality regarding his traffic violation after the charges were read and following the declaration of time for payment of the fine. He alleged that Her Worship's personal views were accusatory in manner. He alleged that, prior to his matter being called, no other citizen was singled out in front of the entire courtroom for a speech on "her personal accusatory views on personal violations".

He alleged that he was "singled out based on racial bias being the only black male in the courtroom." He alleged that additional racial and ethnic bias was evident in the transcript. He also alleged poor use of discretion and communication on the part of Her Worship, who he said lost her patience with an Urdu-speaking citizen.

He requested that the Council review the court transcript. He also requested that the Council review the justice of the peace's previous cases as he alleged they would demonstrate a pattern of professional misconduct, racial bias and taking advantage of her position to speak down to citizens before her.

The complaints committee read the complaint letter. The committee requested and reviewed the transcript of the proceedings on the date referred to by the complainant.

Based on the committee's review of this complaint and the transcript, the committee did not find any basis to review Her Worship's previous cases on other dates.

The committee observed that the court record showed that the justice of the peace listened to the complainant, communicated well, and handled the matter courteously. The committee also observed how the justice of the peace treated others in the courtroom on this day and noted that the transcript showed that others (including an Urdu-speaking citizen) were also treated politely and patiently. The committee found no basis for the allegation of bias or judicial misconduct.

The committee observed that the transcript showed that Her Worship said to the complainant: "You know, you seem a nice young man. And I'm sure you don't want to lose your life, but that's a sure-fire way, if you're going to do that; going through, okay?" Her



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Worship also said, “And don’t go through red lights.” The committee noted Her Worship’s comments were made in the context of her consideration of the appropriate sentence for the offence and her explanation to the complainant of the dangerousness of the situation, the severity of the matter and the potential consequences of his conduct. The committee did not observe in the transcripts any evidence of racial bias or an accusatory manner on the part of Her Worship.

The committee dismissed the complaint on the basis that there was no judicial misconduct. The file was closed.

### **CASE NO. 27-039/16**

The complainant wrote to the Council regarding his appearance before a justice of the peace for a trial relating to several provincial offences.

He alleged that Her Worship forced him into a hearing without the opportunity for “discovery”, abused her position of power by using facial and hand gestures to avoid court recordings, allowed a prosecutor to threaten a witness to leave the courtroom three times. He further alleged that Her Worship did not allow him a five minute break to take an aspirin or his medicine when he was sick, and that did she not allow him to make a phone call. He alleged that instead Her Worship led the witness to make heavier accusations against him.

The complainant also alleged that Her Worship treated him inappropriately, disrespectfully and unfairly.

He also alleged that the transcripts, audio recordings and other information had been manipulated.

The complaints committee read the complaint letters. The committee requested and reviewed the unedited transcript and reviewed excerpts of the audio recording of the proceedings on the date referred to by the complainant.

The committee observed that the transcript and audio recordings were complete and available for the full proceedings referred to by the complainant. The committee observed that the justice of the peace listened to the complainant, allowed him to have an

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opportunity to ask questions, treated him respectfully and handled the matter courteously, professionally and fairly. The committee did not observe in the transcript evidence to support any of the other allegations put forward by the complainant.

The committee dismissed the complaint on the basis that there was no judicial misconduct. The file was closed.

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**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, 2016.

For current procedures, please see the Review Council's website at:

**[www.ontariocourts.ca/ocj/jprc/policies-and-procedures/extra-remunerative-work/](http://www.ontariocourts.ca/ocj/jprc/policies-and-procedures/extra-remunerative-work/)**

## APPENDIX B

# 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.

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- 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.

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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 for approval to engage in 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.

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### ***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.

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### ***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 2016

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-27-001/16 was the first application for approval in calendar year 2016).

Names of applicants are not included in the case summaries.

### **CASE NO. ER-27-001/16**

The Review Council received an application from a justice of the peace for approval to engage in extra-remunerative work as a census taker. Approval was not granted.

The Review Council considered that the *Access to Justice Act*, 2006 brought about significant comprehensive reform for the justices of the peace bench in Ontario intended to strengthen public confidence in a professional bench and in the justice system.

This evolution and increased professionalism of the bench is reflected in the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* that were approved by the newly established Justices of the Peace Review Council in 2007 which state:

“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.”

After carefully considering 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 had the following concerns about the application:

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# Policy on Extra-Remunerative Work and Applications Considered

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### a) Actual or Perceived Conflict of Interest

There would be a perceived conflict of interest if a justice of the peace, whose role is to be independent of any level of government, becomes an employee of the federal government.

There would be potential for an actual conflict of interest to arise if the duties of a census worker result in collecting personal information from a person who may appear before the justice of the peace in the future when presiding in court.

### b) Intrusive Demand on the Time, Availability or Energy of the Justice of the Peace and His or Her Ability to Perform Judicial Duties

Extra-remunerative work in the range of 20 hours per week would encroach upon the time and energy of a justice of the peace to perform judicial duties. The duties of a justice of the peace are demanding and important, requiring full attention and alertness, and sometimes additional work after regular court hours. Working a full schedule as a justice of the peace plus 20 hours as a census employee might well be exhausting.

As well, one qualification of the census worker is being willing to work long hours, including evenings and weekends as required.

### c) Unseemly or Inappropriate Activity for a Justice of the Peace

It would be unseemly and inappropriate for a justice of the peace, an independent judicial officer, to be going door-to-door collecting personal information from members of the public. As well, safety issues could arise if a justice of the peace were recognized as a judicial officer by a member of the public who has previously been sentenced or held in custody as a result of the decisions in a court case.

## **CASE NO. ER-27-002/16**

The Review Council granted approval of an application to engage in extra-remunerative work presiding on a part-time basis as a Deputy Judge of the Small Claims Court for a three year term, subject to renewal by the Regional Senior Justice of the Superior Court of Justice.

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# Policy on Extra-Remunerative Work and Applications Considered

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The application was granted based upon the information from the justice of the peace that he would be assigned a few days a month and the per diem rate would be similar to the level of remuneration received by a per diem justice of the peace.

The approval of Council was subject to the conditions below:

1. His Worship must not accept an assignment to work as a Deputy Judge for any time when he had already accepted an assignment to work as a per diem justice of the peace.
2. The Review Council reserved the right to revisit the request and its decision should any relevant circumstances change.

### ***CASE NO. ER-27-003/16***

The Review Council approved of an application to engage in extra-remunerative work teaching one course at a university. The approval was granted after the Council confirmed that the Regional Senior Justice of the Peace had no concerns about potential impacts related to scheduling and Her Worship's assignment of duties. The Council emphasized its view that the assignment of judicial duties should be the first priority and if a justice of the peace seeks to engage in extra-remunerative work, he or she should arrange the times for that activity in a manner that does not require special accommodation in judicial scheduling. This should be of prime consideration.

The approval was subject to the following conditions:

- 1) The Review Council's approval of the request must present no difficulties in fulfilling judicial assignments during the period of teaching.
- 2) Her Worship's availability to instruct must not impact upon her availability to fulfill his primary responsibilities as a justice of the peace during assigned hours. As such, Her Worship had to request that the final examination, if any, be scheduled on an evening or weekend when she would not otherwise be assigned to judicial duties; if that could not be arranged, she must use vacation time or compensating time off.

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# Policy on Extra-Remunerative Work and Applications Considered

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Her Worship's office hours, meetings, training, TA coordination meetings, labs/seminars, and availability for student consultation must not interfere with the regular court day and should be scheduled in the evening after her approved teaching times or at times when she was not otherwise assigned to judicial duties and where she has requested either vacation or compensating time off. Similarly, any Program Evaluation should be done at a time when she had requested either vacation or compensating time off.

The responsibilities of Session Lecturer must be carried out as to not interfere with the regular court day and so that it does not require accommodation in judicial scheduling. The Council was of the view that non-presiding days should not be used for such purposes.

- 3) Her Worship must maintain appropriate distance in the completion of the teaching of this course from her role and responsibilities as a judicial officer.
- 4) She may accept remuneration for the teaching, but such remuneration must be the same as that paid to other instructors without regard to her position as a justice of the peace.
- 5) Her Worship must refrain from using the Court's email network, computer or other resources for any purpose related to the teaching activities, as those resources are provided for purposes associated with her official responsibilities.
- 6) The Review Council reserved the right to revisit the request and its decision should any relevant circumstances change.

### ***CASE NO. ER-27-004/16***

The Review Council approved an application to engage in extra-remunerative work teaching two courses at the Business School at a community college. The Regional Senior Justice of the Peace advised that he had no concerns about potential impacts related to scheduling and the applicant's assignment of duties.

The Council approved the request, subject to the conditions set out below. Nonetheless, 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

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# Policy on Extra-Remunerative Work and Applications Considered

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present any potential impact on judicial responsibilities or pose issues relating to fulfilling scheduling obligations at a base court location. The Council understood that these courses were not offered in the evenings.

The approval was subject to the following conditions:

- 1) The Review Council's approval of the request must present no difficulties in fulfilling judicial assignments during the period of teaching.
- 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 was not otherwise assigned to judicial duties and where he had requested either vacation or lieu time off. The Review Council was of the view that non-presiding days should not be used for such purposes.
- 3) His Worship must maintain appropriate distance in the completion of the teaching of this course from the role and responsibilities as a judicial officer.
- 4) He may accept remuneration for the teaching, but such remuneration must be the same as that paid to other instructors without regard to his position as a justice of the peace.
- 5) His Worship must refrain from using the Court's email network, computer or other resources for any purpose related to the teaching activities, as those resources are provided for purposes associated with his official responsibilities.
- 6) The Review Council reserves the right to revisit the request and its decision should any relevant circumstances change.



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**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

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*“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

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## 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.

## APPENDIX C

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

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2.4 Justices of the peace have a duty to maintain their professional competence in the law.

*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.

## APPENDIX C

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

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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.