

JPRC



THIRTEENTH ANNUAL REPORT

2019

**JUSTICES OF THE PEACE
REVIEW COUNCIL**

ONTARIO

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

Monday, April 27, 2020

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

Dear Minister:

It is my pleasure to submit the Thirteenth Annual Report of the Justices of the Peace Review Council concerning its operations in 2019, 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, 2019 to December 31, 2019.

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, 2019 to December 31, 2019. This report is the Thirteenth 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.

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

This Thirteenth Annual Report of the Review Council provides information on the Council's membership, its functions and procedures, and its work during 2019. The Annual Report also includes information on the procedures used to address complaints. Information is also included on applications by justices of the peace 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 perform 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 391 provincially-appointed justices of the peace, full-time, part-time and *per diem*, during the period of time covered by this Annual Report. In 2019, Ontario justices of the peace presided over provincial offences matters, such as traffic offences, bail hearings, and intake and assignment courts.



During 2019, the Council received 39 new complaints about justices of the peace, and carried over 33 from previous years. Information about the 43 complaint files completed and closed in 2019 is included in this Report. Decisions made in public hearings during the year are posted on the Council’s website on the webpage “Public Hearings Decisions 2019”.

We invite you to find out more about the Review Council by reading this Annual Report, and by visiting its website at <https://www.ontariocourts.ca/ocj/jprc/>. 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; decisions made in public hearings, the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice*; 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*, R. S. O. 1990, c. J.4. 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 the following members:

- ◆ 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 Ontario; and,
- ◆ four community representatives appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General.

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

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, 2019 to December 31, 2019) was as follows:

Judicial Members:

CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

The Honourable Lise Maisonneuve (Toronto)

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

The Honourable Faith Finnestad (Toronto)
(Until September 1, 2019)

The Honourable Sharon Nicklas (Toronto)
(Effective September 2, 2019)

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

Her Worship Kristine Diaz (London)



His Worship Bruce Leaman (Thunder Bay)
(Until January 4, 2019)

Her Worship Liisa Ritchie (Peel Region)

Her Worship Christine Smythe (Newmarket)
(Effective February 22, 2019)

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

The Honourable Justice Lisa Cameron..... (Lindsay)

The Honourable Justice Diane M. Lahaie (Cornwall)

**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)
(Until February 21, 2019)

Regional Senior Justice of the Peace Lauren Scully(North Bay)
(Effective February 22, 2019 until November 29, 2019)

Lawyer Member:

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

Community Members:

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

Ms. Jenny Gumbs (Toronto)
Former Honorary Consul General to Canada for Grenada
(Until September 7, 2019)

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



Ms. Lauren Rakowski (Toronto)
Lawyer, Gardiner Roberts LLP
(Effective June 26, 2019)


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 when it is necessary in order to meet the requirements of the *Act*. During the period covered by this report, the following members were temporary members:

- The Honourable Justice Feroza Bhabha (Toronto)
- The Honourable Justice Peter K. Doody (Ottawa)
- The Honourable Justice Neil Kozloff..... (Toronto)
- The Honourable Justice Martin P. Lambert (Timmins)
- The Honourable Justice Robert Wadden (Ottawa)
- Regional Senior Justice of the Peace Thomas Stinson (Kitchener)
- Justice of the Peace Bruce Leaman (Thunder Bay)
- Justice of the Peace Warren Ralph..... (Toronto)

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.



The 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.

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, a Counsel/Deputy Registrar, two Assistant Registrars and an Administrative Assistant:

Ms. Marilyn E. King, LLB – Registrar

Ms. Shoshana Bentley-Jacobs, J.D. – Counsel and Deputy Registrar

Ms. Michelle M. Boudreau – Assistant Registrar

Ms. Ana M. Brigido – Assistant Registrar

Ms. Darlene Ferreira – Administrative Assistant
(Until March 22, 2019)


Ms. Arianna Martinez-Rodriguez – Administrative Assistant
(Effective April 8, 2019 until July 12, 2019)

Ms. Astra Tantalo – Administrative Assistant
(Effective September 3, 2019)

4. FUNCTIONS OF THE REVIEW COUNCIL

The *Justices of the Peace Act* sets out the functions of the Review Council:

- ◆ 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;

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- ◆ to consider applications under section 5.2 for the accommodation of needs;
 - ◆ to address 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 legal issues, the proper way to proceed is by pursuing available legal remedies through the courts, such as an appeal.

PROCEDURES

Under section 10(1) of the *Justices of the Peace Act*, the Review Council may establish rules of procedure for complaints committees and 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 under the link, “Policies and Procedures” at <https://www.ontariocourts.ca/ocj/ojc/policies-and-procedures/>.

Procedural Amendments

In 2019, the Council continued to refine and develop its procedures and policies.

In April 2019, the layout and structure of the JPRC’s Procedures Document was changed to make the procedures more comprehensive, transparent and clear for new members, lawyers, the bench and the public. Changes included reformatting the document to improve clarity and eliminate duplication, and adding new sections, including an “Overview”, “Definitions” and “Interpretation” sections. Information was added to explain the underlying legal principles governing the Council’s work, such as the confidentiality that applies to investigations and the factors set out by the Divisional Court in *Massiah v. JPRC* regarding requests by justices of the peace for compensation for their legal costs.



The Council's policies and procedures for applications by justices of the peace to engage in extra-remunerative work were added to the Procedures, as well as additional appendices, including the relevant legislation and the Council's protocol on the use of electronic communication devices.

The Council also amended its Procedures to clarify the authority of hearing panels to hear any (and all) allegations that were ordered to a hearing by a Review Panel. The Council established a rule that applies if Presenting Counsel does not intend to proceed with all allegations contained in the Notice of Hearing. Wording was added to the Procedures to make it clear that Presenting Counsel must inform the hearing panel on the record, prior to any evidence being called, of his or her intention not to proceed with one or more allegations ordered to a hearing by a complaints committee, and the reasons for his or her decision.

The amendment included wording to authorize the hearing panel to ask questions and/or request further information before accepting Presenting Counsel's submissions. If a hearing panel is not satisfied with Presenting Counsel's reasons for not proceeding with certain allegations, the hearing panel may order Presenting Counsel to proceed with evidence on all of the allegations.

An amendment was made to clarify that a hearing panel is not bound by joint submissions from the parties or an Agreed Statement of Facts, and may direct certain witnesses or evidence to be called at the hearing.

The Council also made a procedural amendment to formalize its historical practice of conducting hearings in Toronto. Prior to this, the Procedures did not contain specific rules governing the location of hearings. The amendment established a default rule for the location of hearings to be in Toronto and set out factors a hearing panel may consider if a party brings a motion for a change in venue.

Another provision was added to provide for disclosure of a justice of the peace's JPRC disciplinary history to a hearing panel in circumstances where a finding of judicial misconduct has been made. The Council noted that a justice of the peace's complete disciplinary history is provided to the complaints committee in order to assist them in considering the most appropriate disposition at the investigation stage of the complaints process. However, prior to the amendment, hearing panels were not made aware of such disciplinary history prior to making a decision on disposition.



The Council considered that where a hearing panel does not have the complete history of the remedial measures taken to respond to previous complaints about the conduct of the justice of the peace, it may impose the same measures against the justice of the peace following a hearing that have already proven unsuccessful. This gap in information may fail to preserve public confidence in the judiciary.


For example, a hearing panel may be considering as a possible disposition ordering a justice of the peace to take specified measures, such as receiving education or treatment, as a condition of him or her continuing to sit on the bench. It may be, however, that a complaints committee has already referred a previous complaint(s) about the justice of the peace to the Chief Justice with a condition that the justice of the peace undergo treatment or education to address the same (or similar) type of conduct issues. Disclosure of this prior disposition may assist the hearing panel in assessing whether a more serious disposition is warranted to change or sufficiently address the justice of the peace's behaviour, and to preserve or restore public confidence in the judiciary.

The Council considered the following instances where prior complaint disclosure may be relevant to a hearing panel:

- a) there are similarities between the previous conduct and the misconduct before the Panel;
- b) the misconduct that is the subject of the complaint in the hearing cannot be said to be the result of a momentary lapse of judgment or out of character; and/or
- c) The justice of the peace has had previous opportunities to learn from dispositions imposed to address previous complaints and has again demonstrated inappropriate conduct.

Accordingly, an amendment was made to provide that where there has been a finding of judicial misconduct, Presenting Counsel shall file with the hearing panel the justice of the peace's disposition history other than dismissed complaints to which the justice of the peace was not invited to respond.

An amendment was also made to explain that, where a justice of the peace has been invited to respond to a complaint, he or she will be provided with a copy of the materials under consideration by the complaints committee, including a copy of the complaint, any



court transcripts, any transcripts of witness interviews, and the disposition history of the justice of the peace other than dismissed complaints to which the justice of the peace was not invited to respond.

A copy of the Council's current procedures for the complaints process that incorporates the amendments made in 2019 is posted on the Review Council's website under the link "Policies and Procedures at <https://www.ontariocourts.ca/ocj/ojc/policies-and-procedures/>.


Format of the Annual Report

In 2019, legislation was passed that eliminated the requirement of tabling the Annual Report in the legislature (*Bill 100, Protecting What Matters Most Act (Budget Measures), 2019*). The law now provides that the Review Council must, between 15 and 30 days after submitting its annual report to the Attorney General, publish the report in English and French on its website. The Council considered feedback from readers of the Annual Report that they prefer the electronic version and no longer use the print version. Accordingly, the Council passed a motion to approve continuing to publish the Annual Report on the JPRC website in a design/look consistent with its historical format and to discontinue having print copies produced by an external vendor.

The Council decided to eliminate including JPRC hearing decisions in the Annual Report, as the decisions are posted on the Council's website. Instead of duplicating the decisions in the Annual Report, the Annual Report now includes a table setting out the dispositions in formal hearings in the reporting year and providing readers with the link to the "Public Hearings Decisions" page on the JPRC website at <https://www.ontariocourts.ca/ocj/jprc/public-hearings-decisions/> where they can read the full decisions.

5. EDUCATION PLAN

The Associate Chief Justice Coordinator 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 Review Council. In 2007, a continuing education plan was developed by the Associate Chief Justice Coordinator of Justices of the Peace



in conjunction with the Advisory Committee on Education. The Committee included the Associate Chief Justice Coordinator of Justices of the Peace as Chair (*ex officio*) and justices of the peace nominated by the Associate Chief Justice Coordinator of Justices of the Peace and by the Association of Justices of the Peace of Ontario.

An Advisory Committee on Education of the Court reviews the education programs and may make recommendations to the Associate Chief Justice-Coordinator of Justices of the Peace on changes and additions to existing programs, and on the content and format of new programs as they are being proposed and developed. Any proposed changes are submitted to the Review Council for review and approval.


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/.

6. STANDARDS OF CONDUCT

The Associate Chief Justice Coordinator 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 should subscribe. These principles are not exhaustive. Intended to assist justices of the peace in addressing ethical and professional dilemmas, they serve to assist the public in understanding 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 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 <https://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 judicial 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 fitting or appropriate activity in which a judicial officer should engage, having regard to public perceptions of judicial demeanour, independence and impartiality.

The Council considers two factors in determining whether non-judicial work is “remunerative”. First, the Council considers whether the work gives rise to any remuneration to the applicant justice of the peace directly. Second, the Council considers whether a justice of the peace is a party to someone else’s remunerative work. The Review Council has determined that there are circumstances, such as where a justice of the peace’s spouse is receiving remuneration, where a justice of the peace may be engaged in extra-remunerative work even though he or she is not receiving remuneration directly. If the Council determines that the justice of the peace is engaged in extra-remunerative work, the policy and criteria set out by the Council for considering applications is considered.



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 public perceptions of judicial demeanour, independence and impartiality (paragraph 6(c) of the *Policy Re Extra-Remunerative Work*). The Council has determined that this criterion must be understood in the context of the public policy encapsulated in the legislative framework set out in the *Justices of the Peace Act* 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, generally, it would 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 where the activity was primarily non-commercial and had other intrinsic value from an educational, patriotic, religious or creative standpoint. In accordance with the Council's policy and procedure, an applicant who seeks approval to engage in commercial activity must address the issue of why the application for extra-remunerative work should be approved as an exception to the general policy that full-time presiding justices of the peace should not engage in extra-remunerative work that is commercial in nature.

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

Summary of Extra-Remunerative Files Closed in 2019

During 2019, the Council completed its consideration of one application submitted for approval to engage in extra-remunerative work in 2018 and three applications that were submitted in 2019.

Case summaries for the completed files can be found at Appendix “B” in this Annual Report.


8. COMMUNICATIONS

The website of the Justices of the Peace Review Council includes information about the Council, including the most current version of its policies and procedures, as well as information about hearings that are underway or that have been completed. Information on ongoing hearings is available under the link “Public Hearings” at www.ontariocourts.ca/ocj/jprc/public-hearings/. Decisions made during hearings are posted under the link “Public Hearings Decisions” at www.ontariocourts.ca/ocj/jprc/public-hearings-decisions/. Each Annual Report of the Council is also available on the Council’s website (www.ontariocourts.ca/ocj/jprc/) no later than thirty days after it has been sent to the Attorney General.

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

9. APPLICATION FOR AN ORDER OF ACCOMMODATION TO ENABLE PERFORMANCE OF ESSENTIAL DUTIES

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 to enable him or her to perform the essential duties.



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 for the Council to properly consider applications for accommodation, the applicant justice of the peace must 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 wishes to make an application to the Council, he or she must provide a copy of all documentation from the Ministry's application process, including medical evidence and decisions.

The Council's Procedures include its policy governing applications for an order of accommodation at <https://www.ontariocourts.ca/ocj/jprc/accessibility-and-accommodation/>.

No applications for orders of accommodation to enable performance of essential duties were received in 2019.

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 Review Council are received from members of the public.

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

The Review Council has a legislative mandate to review complaints about the **conduct** of justices of the peace. The Council has no authority to review **decisions** of justices of the peace to determine whether there were any errors in how the issues were determined



or how conclusions were drawn. If a party involved in a court case thinks that a justice of the peace reached the wrong decision in the case, he or she may have legal remedies through the courts, such as an appeal. Only a court can change a decision or order of a justice of the peace.

All correspondence sent to the Review Council is reviewed to determine whether a complaint is within the jurisdiction of the Review Council. In 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.

If a 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 police officer, a Crown Attorney, or another office, the complainant is generally given the contact information of the appropriate body that may address his or her concerns.

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 <https://www.ontariocourts.ca/ocj/ojc/policies-and-procedures/>.

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 raises allegations of conduct about a justice of the peace who is presiding over a court proceeding, the Council will not generally commence an investigation until that court




proceeding and any appeal or other related legal proceedings have been completed. This will ensure that any investigation by the Council is not interfering or perceived to be interfering with any ongoing court matters.

If there is no ongoing court proceeding, a complaints committee of the Council will be assigned to investigate the complaint. Members of the Council serve on complaints committees on a rotating basis. Each complaints committee is composed of a provincially-appointed judge who acts as chair, a justice of the peace and, either a community or 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 perception of bias or conflict of interest between a member of Council and the justice of the peace.

Apart from hearings ordered under section 11(15)(c) of the *Justices of the Peace Act*, 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 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 and 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.

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, a letter will be sent to him or her inviting a response, and enclosing a copy of the complaint, transcripts (if any) and any other relevant materials considered by the committee in its investigation. The justice of the peace will also be invited to listen to the audio recording, if one has been ordered and reviewed by the committee. The justice of the peace may seek independent legal advice or assistance before responding to a complaint.



Section 11(15) of the *Justices of the Peace Act* gives the complaints committee the authority to dismiss a 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 not substantiated; or, the allegation 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 also consider whether the allegation(s) warrants making an interim recommendation of non-assignment or re-assignment. Under section 11(11) of the *Act*, the committee may make an interim recommendation to the Regional Senior Justice where the justice of the peace presides that the justice of the peace be non-assigned work or reassigned to another court location pending the final disposition of the complaint.

A Regional Senior Justice has the discretion to accept or reject a complaints committee's interim recommendation. If the Regional Senior Justice decides to not assign work to the justice of the peace pending the final disposition of the complaint, pursuant to the legislation, the justice of the peace will continue to be paid. If the Regional Senior Justice decides to reassign the justice of the peace, the legislation requires that the justice of the peace must consent to the reassignment.

In deciding whether to make an interim recommendation, a complaints committee shall consider whether any of the following factors are present:

- ◆ 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;
- ◆ allowing the justice of the peace to continue to preside would likely bring the administration of justice into disrepute;
- ◆ the complaint is of sufficient seriousness that there are reasonable grounds for investigation by law enforcement agencies;

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- ◆ it is evident to the complaints committee that the justice of the peace is suffering from a mental or physical impairment that cannot be remedied or reasonably accommodated.

Where a complaints committee is considering making an interim recommendation, it may (but is not required to) provide the justice of the peace an opportunity to make written submissions before making its decision.

Particulars of the factors upon which the complaints committee's interim recommendation is based are provided to both the Regional Senior Judge receiving the interim recommendation and to the justice of the peace.

The Procedures of the Review Council recognize that an exception to the general requirement of confidentiality in the complaints process is warranted where an interim recommendation of non-assignment or re-assignment has been made and the complaint has been referred to a hearing. In such circumstances, once the Notice of Hearing has been filed and the complaints process has become public, the Review Council's website informs the public that the justice of the peace has been unassigned from work or has been reassigned to a different location as a result of an interim recommendation.

Of files closed in 2019, six justices of the peace were non-assigned work after complaints committees made interim recommendations of non-assignment pending the final disposition of complaints.

Dispositions of the Complaints Committee

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

- a) dismiss the complaint if it is frivolous, an abuse of process or outside the jurisdiction of the complaints committee;
- b) invite the justice of the peace to attend before the complaints committee to receive advice concerning the issues raised in the complaint or send the justice of the peace a letter of advice concerning the issues raised in the complaint, or both;

-
- c) order that a formal hearing into the complaint be held by a hearing panel; or,
 - d) refer the complaint to the Chief Justice of the Ontario Court of Justice.

The Review Council has developed criteria in its Procedures to assist complaints committees in determining the appropriate disposition of a complaint:

a) Dismissal:

A complaints committee will dismiss a complaint after reviewing the complaint if the complaints committee believes: (i) it is frivolous or an abuse of process; (ii) it falls outside the Review Council's jurisdiction because it is a complaint about the exercise of judicial discretion and does not include an allegation of judicial misconduct; (iii) if it does include an allegation of judicial misconduct, the allegation is unproven or unfounded, or the conduct does not rise to the level of misconduct that requires further action on the part of the Review Council.

b) Provide advice:

A complaints committee will provide advice to a justice of the peace, in person or by letter, or both, in circumstances where the misconduct complained of does not warrant another disposition, there is some merit to the complaint and the disposition is, in the opinion of the complaints committee, a suitable means of informing the justice of the peace that his/her course of conduct was not appropriate in the circumstances that led to the complaint.

c) Refer the complaint to the Chief Justice:

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 if, in its opinion, there is some course of action or remedial training of which the subject justice of the peace could take advantage.

d) Order a hearing:

A complaints committee will order a hearing into a complaint where there has been an allegation of judicial misconduct that the complaints committee believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct.

Through the Annual Report, complaints committees report to the Review Council and the public on their decisions. Except where a formal hearing is ordered, the report does not identify the complainant or the justice of the peace who is the subject of the complaint.

Notification of Disposition

After the complaints process is completed, the Review Council communicates its decision to the complainant and, in most cases, to the justice of the peace. A justice of the peace may waive receiving notice of a complaint where it has been dismissed (and the Council did not invite a response). In accordance with the Procedures, if the Review Council decides to dismiss a complaint, brief reasons will be provided in a disposition letter sent to the complainant and a case summary that appears in the Annual Report.

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 community member. Complaints committee members who participated in the investigation of the complaint do not participate in its review by a hearing panel.

The legislation provides authority for the Chief Justice of the Ontario Court of Justice to appoint judicial members as “temporary members” of the Council where it is necessary to achieve quorum to meet the requirements of the *Act*. This also provides a means to ensure that none of all three hearing panel members have been involved in the earlier stages of the investigation.



By the end of the investigation and hearing process, all complaints made to the 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.

The Review Council engages legal counsel, called Presenting Counsel, for the purposes of preparing and presenting the case about the justice of the peace to the hearing panel. 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 under 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 hearing under section 11.1 of the *Act* is public unless the Review Council determines, in accordance with criteria established under the *Statutory Powers Procedure Act*, that it should proceed in private because the hearing involves matters involving public security that may be disclosed; or, intimate financial, personal or other matters may be disclosed which are of such a nature 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. If a complaint involves allegations of sexual misconduct or sexual harassment, the hearing panel will, at the request of the complainant or a witness who testifies to having been the victim of



such conduct by the justice of the peace, prohibit the publication of information that might identify the complainant or the witness, as the case may be.

Dispositions after section 11.1 Hearing

After hearing the evidence and submissions, 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, following 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 following grounds:

- ◆ 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;

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- ◆ he or she has engaged in conduct that is incompatible with the execution of the office; or
 - ◆ he or she has failed to perform the duties of his or her office.

Only the Lieutenant Governor in Council may act upon the recommendation and remove the justice of the peace from office.

Recommendation of Compensation for Legal Costs

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

In 2019, nine recommendations for compensation for legal costs were made to the Attorney General by complaints committees or hearing panels.

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 <https://www.ontario.ca/laws>. The website contains a database of Ontario's current and historical statutes and regulations.

11. SUMMARY OF COMPLAINTS CLOSED IN 2019

Overview

The Justices of the Peace Review Council carried forward 33 complaints to 2019 from previous years. During 2019, 39 new complaint files were opened with the Review Council. Including those cases carried into 2019 from previous years, the total number of files open during 2019 was 72. Of the 72 open files in 2019, 43 files were completed and closed before December 31, 2019.

Of the 43 files that were closed, 20 files were opened and closed in 2019, 19 were opened in 2018, three were opened in 2017, and one was opened in 2016.


Twenty-nine of the 72 open files were still ongoing at the end of 2019 and carried over into 2020. Nineteen were complaints filed in 2019. Five were complaints filed in 2018. Two were complaints that were filed in 2017, and three were filed in 2016 (which were the subject of a hearing at the time when this report was written).

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 43 files addressed and closed, 6 complaints were dismissed by the Review Council under section 11(15)(a) on the basis that they were found to be outside of the jurisdiction of the Council. These files typically involved a complainant who expressed dissatisfaction with the result of a trial or with a justice of the peace's decision, but who



made no allegation of misconduct. While the decisions made by the justice of the peace in these cases could be the subject of other legal remedies, such as an appeal, the absence of any alleged misconduct meant that the complaints were outside of the jurisdiction of the Review Council.

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 complaints were dismissed by the Review Council under section 11(15)(a) after the allegations of misconduct 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 3 cases, the Review Council provided advice in writing to a justice of the peace under section 11(15) (b) of the *Act*.

In 2019, one complaint was 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 and the complaints 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.

The Council lost jurisdiction over 10 complaints when the 6 justices of the peace who were the subject of those complaints left office before the complaints process was completed. The files were administratively closed.

A public hearing is ordered pursuant to section 11(15)(c) of the *Justices of the Peace Act* where the complaints committee is of the opinion that there has been an allegation of judicial misconduct which the majority of the members of the committee believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial



misconduct. When a hearing is ongoing, updates on the status of the case are posted on the Review Council’s website under the link “Public Hearings” at **www.ontariocourts.on.ca/jprc/en/hearings/**. At the end of a hearing, the decision can be found on the website under the link “Public Hearings Decisions”.


Of the files closed in 2019, three complaints about the conduct of two justices of the peace were the subject of the public hearing process. His Worship Guthrie retired before evidence was presented in the hearing into the two complaints about His Worship’s conduct. A majority of the Hearing Panel dismissed the complaint about the conduct of His Worship Welsh.

Hearing decisions are posted on the Review Council’s website on the webpage “Public Hearings Decisions 2019” at **<http://www.ontariocourts.ca/ocj/jprc/public-hearings-decisions>**.

At the time when this report was written, public hearings were also underway arising from complaints about the conduct of Justice of the Peace Julie Lauzon, Justice of the Peace Paul Welsh and Justice of the Peace Claire Winchester. Updates on ongoing hearings are provided on the Review Council’s website at **<http://www.ontariocourts.ca/ocj/jprc/public-hearings/>**.

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. Mr. Massiah filed an application seeking leave to appeal to the Supreme Court of Canada. The Supreme Court of Canada denied Mr. Massiah’s application for leave.

A new Hearing Panel was of the view that a recommendation that Mr. Massiah be compensated for his legal costs would be contrary to the public interest and inconsistent with the objectives of the judicial discipline process. The Panel dismissed Mr. Massiah’s



request for a recommendation that he receive compensation for the costs of legal services incurred in connection with the hearing. Mr. Massiah filed an application for judicial review of the decision. The application had not been heard at the time when this Report was written.

Types of Cases

Of the 43 files that were completed and closed in 2019, 19 complaints arose from events during provincial offences proceedings, 7 arose from matters in Intake Court, 5 pre-enquêtes, 5 bail hearings, one from criminal set-date court, and 6 related to conduct outside of the courtroom.

Case Summaries

Case summaries for each complaint file closed during 2019 follow in Appendix “A” of this Report.

SUMMARY OF COMPLAINTS CLOSED IN 2019

DISPOSITIONS ON COMPLAINTS CLOSED IN 2019	
Dismissed as out of jurisdiction	6
Dismissed as not substantiated or did not amount to misconduct	20
Advice Letter	3
Advice - In-person	0
Referred to Chief Justice	1
Loss of jurisdiction	10
Hearing	3
TOTAL CLOSED IN 2019	43

DISPOSITIONS IN FORMAL HEARINGS IN 2019*

Decisions made in relation to each of the hearings are posted on the Council's website on the webpage Public Hearings Decisions at

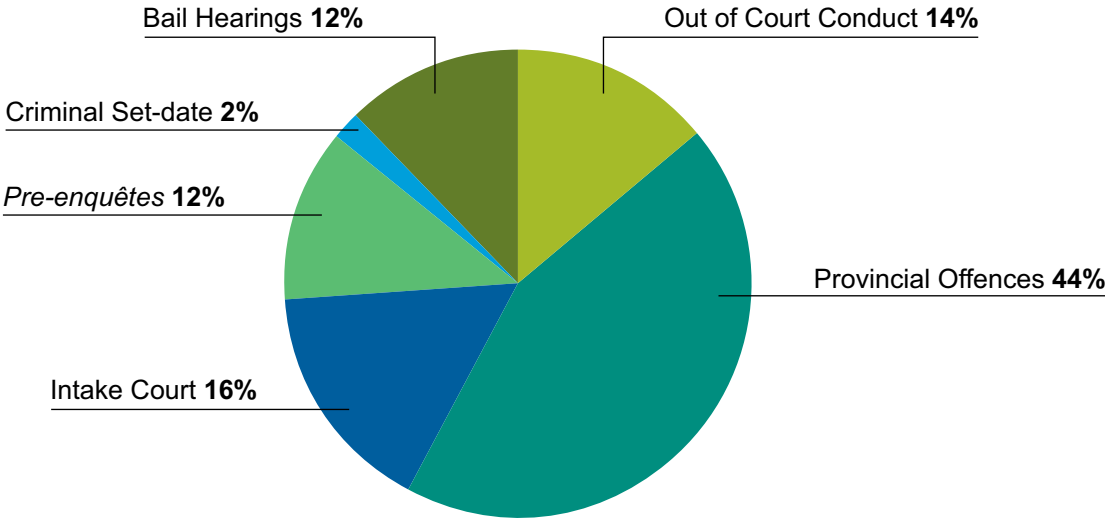
<https://www.ontariocourts.ca/ocj/jprc/public-hearings-decisions/>

JUSTICE OF THE PEACE	# OF COMPLAINTS	DISPOSITION
His Worship Paul Welsh	1	Dismissed
His Worship John Guthrie	2	Retired – loss of jurisdiction

* A hearing into three other complaints about the conduct of His Worship Welsh was still ongoing at the time when this Annual Report was written.

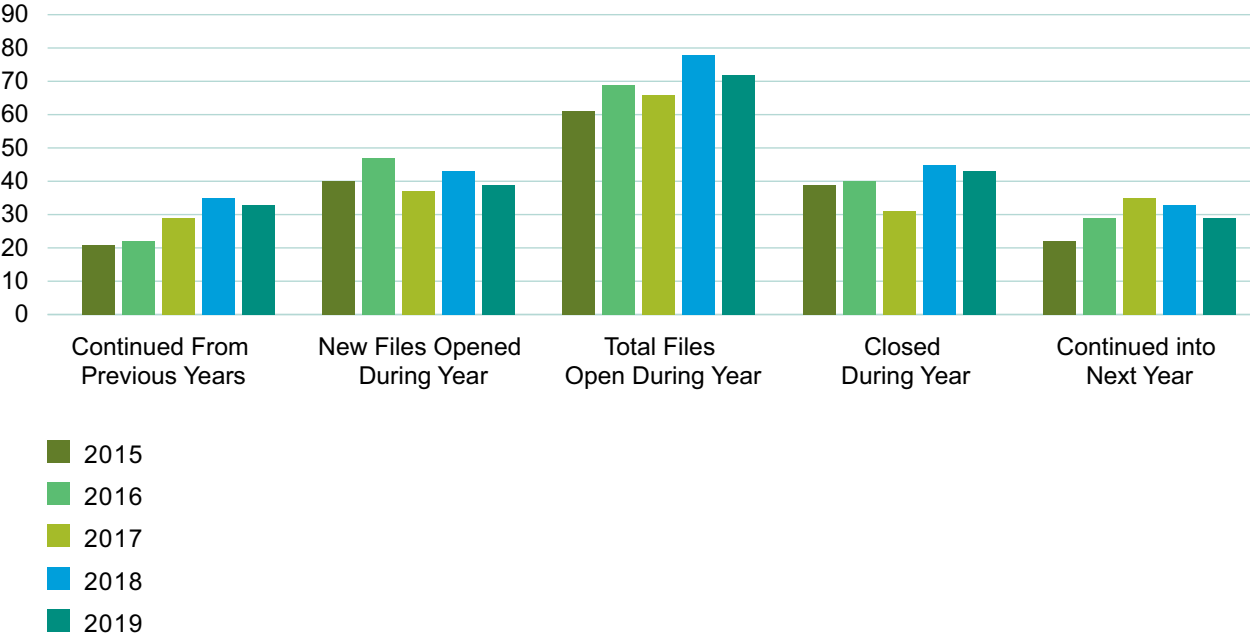
TYPES OF CASES CLOSED IN 2019

TYPES OF CASES	# OF COMPLAINTS
Provincial Offences Court	19
Intake Court	7
Bail Court	5
Set-date Court	1
<i>Pre-enquêtes</i>	5
Out of Court Conduct	6
TOTAL	43



CASELOAD IN CALENDAR YEARS

	2015	2016	2017	2018	2019
Continued From Previous Years	21	22	29	35	33
New Files Opened During Year	40	47	37	43	39
Total Files Open During Year	61	69	66	78	72
Closed During Year	39	40	31	45	43
Continued into Next Year	22	29	35	33	29



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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. 30-001/19 was the first file opened in the calendar year 2019).

The legislation requires that the names of the justice of the peace and the complainant are confidential, except where there was a public hearing process. Details on hearings can be found on the Public Hearings Decisions link on the Review Council's website.

CASE NO. 27-045/16

In his letter to the Council, the complainant stated that he attended court with his girlfriend for a trial with respect to a parking offence. The complainant had been driving his girlfriend's car at the time and was assisting her with the trial. The complainant stated that Her Worship dealt with guilty pleas first and ultimately adjourned the trial.

The complainant indicated that while he and his girlfriend were waiting in Her Worship's courtroom, they noticed some "common themes". He stated that:

- ◆ Many of the individuals who appeared before the justice of the peace did not have a strong grasp of the English language and had some issues understanding the court process and Her Worship's remarks.
- ◆ "Rather than being patient with these individuals and attempting to explain the information to them, the [justice of the peace] was rude, verging on belligerent and treated them all with disdain".
- ◆ Her Worship kept "badgering" individuals to agree that they understood what a guilty plea entailed, even though it was very clear that they did not understand what she was saying.

The complainant indicated that when he and his girlfriend returned before Her Worship on a subsequent date for the trial, he again had an opportunity to observe Her Worship's behaviour in court. The complainant stated that the justice of the peace was "once again unprofessional, verging on hostile" and demonstrated bullying behaviour. He alleged that

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Her Worship “continued to demean people who had a language barrier”. The complaint also referenced an incident where the justice of the peace “taunted and made fun of an individual who claimed that his vehicle was not at the location stated on his ticket.”

The complainant stated that when his girlfriend’s case was called, both he and his girlfriend respectfully asked that they be allowed to make a motion to have the case stayed due to unreasonable delay. He alleged: “This [was] where the judge began her tirade with us and it became very clear that we were not going to be given a fair trial.” He stated that Her Worship refused to allow them to read their motion and became increasingly adversarial.

He continued that when his girlfriend testified, Her Worship and the prosecution were rude and “got visibly excited” when they said her testimony differed from the complainant’s. The complainant indicated that after his girlfriend testified about the adversarial conduct of the parking enforcement officer, Her Worship went on to “mock” his girlfriend “for having ‘respect’ for an officer of the law who behaved in this manner.”

Given the manner in which Her Worship conducted the proceeding, the complainant felt “it was very clear...that we would not have a fair outcome”. He indicated that a person outside of the courtroom told his girlfriend that the justice of the peace was known to be rude and unreasonable, and that the best tactic was to just plead guilty and pay a reduced fine. He concluded that “Her Worship’s behaviour was demeaning and unprofessional”.

The complaint was assigned to the 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 reviewed the complaint letter and the transcript and audio recording of the proceeding before Her Worship. The committee carefully considered whether the evidence could support a finding that the justice of the peace engaged in a pattern of conduct that could be found to constitute misconduct.

Before a final determination could be made on the complaint, the Review Council received confirmation that Her Worship was no longer a justice of the peace. As she was no longer a justice of the peace, the Review Council had no jurisdiction to continue its complaints process. The complaint file was administratively closed due to a loss of jurisdiction.

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CASE NO. 28-003/17

The complainant filed a complaint arising from her appearance before the justice of the peace in provincial offences court in relation to a charge of parking contrary to a by-law. The complainant indicated in her letter that she was extremely disturbed by the “unprofessional, rude and intimidating manner of both the judge and the prosecutor who forced me against my will to plead guilty. They both never gave me a chance to declare freely of my intention.”

She alleged that initially His Worship was going to “postpone the court date which I was fine with that decision, but unfortunately, later on with interference of prosecutor, the judge and the prosecutor both were extremely pushy and forced me to plead guilty.” She indicated that she parked her car near a hospital because she had to take her ill husband to the hospital for medical attention.

She alleged that her basic right in the justice system was denied and was neither acknowledged nor respected. She said that she was “... shut down rudely by the judge and the prosecutor and constantly intimidated by them. I have not been given a minimal fare [sic] chance for trial.”

The complaint was assigned to a complaints committee for investigation. Before the complaints process was completed, information was received that the justice of the peace had left judicial office.

As His Worship was no longer a justice of the peace, the Review Council lost jurisdiction to proceed further with the complaint and the file was closed.

CASE NO. 28-022/17

A letter of complaint was received from the Manager of the Provincial Offences Court for the City of Hamilton about the conduct of Justice of the Peace Paul Welsh. She alleged that a defendant failed to appear for trial on a charge of Operate a Vehicle Without Insurance. She failed to appear and was convicted *in absentia* of the charge and a fine of \$5,000.00 was imposed, plus a surcharge.

The complainant indicated that the defendant subsequently attended the court office asked to complete a request for a re-opening. She was advised by court staff that she

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would have to file an appeal because it was a Part III offence. *The Provincial Offences Act* does not provide for a reopening on a Part III offence.

It was alleged that His Worship Paul Welsh granted a request by the defendant's lawyer for a reopening without following the proper court procedures and on a date when His Worship was not presiding in Intake Court.

The complainant also alleged: "This is not the first occasion that HW Welsh has signed paperwork for POA matters while not scheduled in the Intake Court. The other occasions were with other lawyers."

A complaints committee reviewed the complaint and retained independent counsel to interview witnesses and obtain relevant court documents and correspondence. The committee invited His Worship to respond to the complaint and reviewed his response.

The committee ordered a hearing into the complaint pursuant to section 11(15)(c) of the *Justices of the Peace Act*. The Procedures of the Review Council provide that a complaints committee will order a hearing into a complaint where there has been an allegation of judicial misconduct that the complaints committee believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct.

A hearing took place. The complaint was dismissed. The majority of the Hearing Panel (the judge and justice of the peace members) concluded that the impugned conduct of His Worship Welsh did not amount to judicial misconduct because it could not be said that his conduct was "so seriously contrary to the impartiality, integrity and independence of the judiciary that it has undermined the public's confidence in the ability of the justice of the peace to perform the duties of office or in the administration of justice generally." The community member of the Hearing Panel concluded that the conduct of His Worship Welsh gave rise to the appearance of bias and favouritism and, especially when his acts were considered cumulatively, constituted judicial misconduct.

The full decision of the Hearing Panel is on the Review Council's website under the link Public Hearings Decisions at <http://www.ontariocourts.ca/ocj/jprc/public-hearings-decisions/>.

His Worship requested that the Hearing Panel recommend to the Attorney General that he should be compensated for his legal costs incurred by the hearing. Based upon the

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maximum rate normally paid for such legal services, His Worship requested compensation in the amount of \$63,189.69 including fees, disbursements and HST. Presenting Counsel agreed with His Worship that, in the circumstances, compensation reflecting the nature of counsel's participation in the hearing would be appropriate.

The Hearing Panel issued a decision recommending to the Attorney General that His Worship be compensated in the amount of \$63,016.33, including HST and disbursements. The decision of the Hearing Panel is posted on the Review Council's website at <https://www.ontariocourts.ca/ocj/jprc/public-hearings-decisions/>.

CASE NO. 28-034/17

The complainants appeared before the justice of the peace for a pre-enquête hearing to lay a private Information against a police officer. Her Worship refused to issue process on the grounds that there was no evidence on two of the constituent elements of the alleged offence.

In their complaint to the Council, the complainants alleged that Her Worship "conspired with the Attorney General to obstruct justice". They further alleged that, contrary to section 507.1 of the *Criminal Code*, Her Worship deliberately refused to allow the complainants' witnesses to testify in order to prevent them from making out a *prima facie* case. They also indicated that the justice of the peace was biased and denied their recusal motion despite her "obvious criminal behaviour".

The complaint was assigned to a complaints committee for investigation. The committee reviewed the complaint and additional correspondence provided by one of the complainants. The committee also reviewed the transcripts of the proceedings before Her Worship, the decision of a Superior Court of Justice judge dismissing the complainants' application for a new hearing, and the decision of the Ontario Court of Appeal dismissing the complainants' appeal from the decision of the Superior Court.

Based on its review of the materials, the committee found no support for the allegations of misconduct. In particular, the committee found no basis for the allegation that the justice of the peace "conspired with the Attorney General to obstruct justice" or that Her Worship was biased against the complainants.

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The committee observed from the transcripts that one of the complainants was rude and hostile toward the justice of the peace during the hearing, and used profanity in the courtroom. The committee noted that Her Worship demonstrated restraint and patience toward the complainant in these circumstances.

The committee observed that the allegations regarding Her Worship's decision not to hear from the complainants' witnesses and her denial of their recusal motion were matters of judicial decision-making outside 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 assessment of the evidence or made an incorrect ruling, only a higher level court may determine whether there was an error in law and, if so, change the decision.

In any event, the committee noted that justices of the peace are entitled to control the process in their own courtrooms and exercise discretion to determine what evidence is relevant and necessary.

After completing its investigation, the complaints committee concluded that there was no support for the allegations of judicial misconduct, and the allegations related to Her Worship's decision-making were outside the Council's jurisdiction. The committee dismissed the complaint and closed the file.

CASE NO. 29-002/18

The complainant appeared before Her Worship on a *Provincial Offences Act* matter. In his letter of complaint to the Review Council, he alleged that Her Worship was verbally abusive towards him and exhibited "challenging and belligerent behaviour", including:

- ◆ lecturing him about retaining legal counsel even though he told her he could not afford a lawyer;
- ◆ commenting that Black men like him were the reason Black people were in the predicament they are in;
- ◆ stating that she did not understand "such big words" as "*modus operandi*";

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- ◆ calling the police to remove the complainant from the courtroom because, according to Her Worship, he was being disrespectful when he called the prosecutor “the person there”; and
- ◆ yelling at the complainant and telling him that she was going to find him guilty in his absence and have the police put him on the street.

The complaint was assigned to the 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 reviewed the complaint letter and the transcript and the audio recording of the court proceeding before Her Worship. The committee carefully examined the materials before it in order to determine whether the evidence could support a finding that the justice of the peace engaged in a pattern of conduct that could be found to constitute misconduct.

Before a final determination could be made on the complaint, the Review Council received confirmation that Her Worship was no longer a justice of the peace. As she was no longer a justice of the peace, the Review Council had no jurisdiction to continue its complaints process in relation to the complaint. The complaint file was administratively closed due to a loss of jurisdiction.

CASE NO. 29-003/18 AND 29-004/18

The Review Council received two complaints about the conduct of Justice of the Peace John Guthrie. The complaint was investigated by a complaints committee and His Worship was invited to respond to the complaints.

The complaints committee ordered the complaints to a hearing. The allegations of misconduct, which were set out in the Notice of Hearing filed in the hearing process, are briefly summarized below:

His Worship engaged in a course of conduct, including inappropriate and/or offensive comments to, and touching of, female persons working in the justice system resulting in a poisoned work environment that was not free of sexual harassment. His Worship continued to engage

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in inappropriate conduct after similar concerns were brought to his attention by the Manager of Court Operations and by a Regional Senior Justice of the Peace.

A Hearing Panel was appointed by the Chief Justice to hear evidence in relation to the allegations and determine whether there should be a finding(s) of judicial misconduct and, if so, determine the appropriate disposition of the complaints.

At the request of the complainants and witnesses who were expected to testify to having been the victim of sexual misconduct or sexual harassment, as communicated to the Hearing Panel by Presenting Counsel, the Hearing Panel ordered that the publication of any information that might identify any such person is prohibited under s. 11.1(9) of the *Justices of the Peace Act*.

On June 14, 2019, His Worship Guthrie fully retired from office. Jurisdiction to proceed with a hearing was lost. The hearing dates were vacated.

Former Justice of the Peace Guthrie requested a recommendation to the Attorney General that he should be compensated for legal services incurred in connection with the hearing process. The Hearing Panel issued a decision recommending to the Attorney General that His Worship be compensated in the amount of \$17,850.40, plus HST.

Decisions made by the Hearing Panel, including its decision on the request for a recommendation of compensation for legal costs, can be found on the Review Council's website at <https://www.ontariocourts.ca/ocj/jprc/public-hearings-decisions/>.

CASE NO. 29-011/18

The complainant appeared as his wife's agent at a trial before Her Worship. The complainant's wife was convicted of a red-light traffic offence.

In his complaint to the Council, the complainant alleged that the justice of the peace permitted the prosecutor to treat him with hostility, cut him off when he tried to object during the prosecutor's submissions and told him to be quiet. He also alleged that the prosecutor was rude and untruthful, and that Her Worship allowed the prosecutor to dictate the trial.

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The complainant noted that they appealed the conviction because they felt that “[his] Legal and Mobility Rights, under the *Canadian Charter of Rights and Freedoms*, [were] breached by the justice system”. The complainant concluded that he felt victimized “as a law abiding citizen of Canada”, and would like the Review Council and the Attorney General to look into the conduct of the individuals involved who are not supposed to “ride rough-shod over innocent people”.

The complaints committee reviewed the letter from the complainant and the materials he included with his letter. The committee also ordered and reviewed the transcript of the proceeding before Her Worship.

While the committee could understand how the complainant may have felt that the prosecutor was short or impatient with him, it found no evidence to support the allegation that Her Worship allowed the prosecutor to dictate the trial or told the complainant to be quiet. The committee observed that the transcript showed that Her Worship was courteous toward the complainant, provided him with an opportunity to make full submissions and listened to his evidence.

The committee also noted that the transcript indicated that the complainant admitted to the offence during cross-examination. In providing her oral reasons for decision, the justice of the peace referred to the complainant’s evidence and attempted to explain the basis for her decision. The committee also observed that Her Worship provided the complainant with information about filing an appeal after he indicated that he would be appealing the conviction.

The committee noted that the complainant disputed Her Worship’s guilty verdict. It observed, however, that the decision of the justice of the peace, including her assessment of the evidence, were matters of judicial decision-making outside the jurisdiction of the Review Council. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council has no authority to change a decision of a justice of the peace.

After completing its investigation, the complaints committee concluded that there was no support for the allegations of misconduct against Her Worship, and the allegations related to decision-making were outside the Council’s jurisdiction.

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In respect of the allegations against the prosecutor, the complainant was referred to the Manager of Prosecutions in the region where the complaint arose.

The committee dismissed the complaint and closed the file.

CASE NO. 29-014/18

A court manager submitted a complaint jointly with a court staff person. The complainants alleged that when the court staff person went to deliver court documents to the office in the courthouse where the justice of the peace was located, he got up from his chair, moved toward her, motioned for her to come closer and said to her “We can have lots of fun in here if we close the door.” She alleged that he then said, “If you tell anyone about this, I will completely deny it.”

The court staff person also alleged that this justice of the peace had made inappropriate comments of a sexual nature to her previously.

Before a final determination was made on the complaint, the Review Council received information that His Worship was no longer a justice of the peace. The file was administratively closed due to a loss of jurisdiction.

CASE NO. 29-015/18

In his letter to the Council, the complainant expressed serious concerns about the conduct of the justice of the peace. He indicated that he had appeared before His Worship on several occasions and observed that he frequently made “offensive and sarcastic remarks from the bench to defendants and defence agents/counsel.”

He noted that after reviewing the trial transcript of one particular matter, he became concerned by His Worship’s “sarcastic and derisive remarks”, which he said “not only compromised a fair trial, but furthermore brought the administration of justice into disrepute.” The complainant further alleged that “several Provincial Court judges sitting in POA appeal courts have expressed their concerns about a consistent and ongoing pattern of unprofessional conduct” by the justice of the peace.

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The complaint was assigned to a complaints committee for investigation. Before the complaints process was completed, information was received that the justice of the peace had left judicial office.

As His Worship was no longer a justice of the peace, the Review Council lost jurisdiction to proceed further with the complaint.

The file was administratively closed due to a loss of jurisdiction.

CASE NO. 29-020/18

The complainant, a lawyer, filed a complaint on behalf of a legal organization. The complaint alleged that while presiding in the courtroom, a justice of the peace “engaged in disrespectful, inappropriate conduct which reflects negatively on the administration of justice”. The complainant alleged that during an afternoon session of court, on at least two occasions the justice of the peace mimicked the accent of a lawyer appearing before him. The complainant said that “any language that mocks someone’s racial background or heritage...is simply unacceptable”.

The complainant expressed the view that if His Worship’s conduct were not denounced, it would have an extremely negative effect on the trust the community places in the criminal justice system to adjudicate matters in a respectful, objective and impartial manner.

The complaint was assigned to a complaints committee for review and investigation. The committee reviewed the complaint letter, and carefully reviewed the transcript and audio recording of the proceedings before His Worship. The committee also invited His Worship to respond to the complaint and reviewed his response.

From its review of the audio recording, the committee observed two instances where it could be perceived that His Worship’s tone and inflection mimicked the lawyer’s manner of speech.

The committee was concerned that His Worship’s manner and tone gave rise to the perception that he treated persons of a particular descent in a demeaning, racist, and/or culturally insensitive manner.

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The committee noted that every person who appears before a judicial officer has the right to be treated with respect, professionalism and civility. The committee noted instances in the transcript where it appeared His Worship treated the lawyer with abruptness, impatience and gratuitous sarcasm. The transcript indicated that His Worship made the following comments to the lawyer:

The Court: I didn't ask you for your suggestion all I want to know is if there's a message, yes or no.

...

The Court: I ask you a question answer it, that's it.

...

Lawyer: Court's indulgence?

The Court: Hold on breaking news. Go ahead.

The committee observed that the manner of a judicial officer in the courtroom and the tone of voice used can give rise to a perception of unfairness or intimidation on the part of the judicial officer. Condescension, hostility and sarcastic remarks from a justice of the peace can have a significant impact on the perceived fairness of the proceedings and public confidence in the administration of justice.

The committee considered the context provided by His Worship. He explained that he was under a lot of stress at the relevant time due to personal matters. The committee understood from His Worship's response that he did not intend to mimic or mock the lawyer's accent. The committee also observed that in his response, His Worship extended his apology to the complainant and the lawyer.

The committee remained concerned about the impact of His Worship's comments and tone toward the lawyer, irrespective of his intentions.

The complaints process through the Justices of the Peace Review Council is remedial in nature. Through the review of and reflection upon one's conduct, improvements are made as to how situations and individuals are treated and handled in the future.

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The Procedures provide that a complaints committee will refer a complaint to the Chief Justice in circumstances where the conduct complained of does not warrant another disposition, there is some merit to the complaint and the disposition 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 Procedures state that a committee may impose conditions on its referral to the Chief Justice if, in its opinion, there is some course of action or remedial training of which the subject justice of the peace could take advantage.

The committee referred the complaint to the Chief Justice on the condition that His Worship was prepared to attend such education or counselling on cultural sensitivity as the Chief Justice considered to be appropriate. His Worship confirmed his willingness to participate in the education or counselling.

After meeting with His Worship, the Chief Justice provided a report to the complaints committee. Her Honour reported that she discussed with His Worship the high standard of conduct expected of justices of the peace, the perceptions of the complainant that he was mocking the lawyer's racial background or heritage, and the negative impact such perceptions can have on the judiciary and on the administration of justice.

The committee could see from the report that His Worship acknowledged that his personal circumstances did not excuse his conduct, and he took full responsibility for his actions. It appeared that he had reflected upon his conduct, and he indicated that if he found himself under such stress in the future, he would take time away from work to ensure that he was properly managing the stress and his emotions.

Further to the complaints committee's recommendation that His Worship should attend education or counselling on cultural sensitivity, His Worship participated in a one-on-one professional boundaries education session and counselling. During the session, the counsellor reviewed with His Worship the standard of conduct expected of his position as a justice of the peace, and specific resources and strategies for self-regulating emotion and maintaining cultural sensitivity. Expectations for appropriate conduct and His Worship's plans to manage personal change were also discussed with him.

The committee observed that His Worship indicated to the Chief Justice that he had learned through this complaints process and he said that he will refrain from making

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condescending comments or comments that may be perceived as racist. He undertook to conduct himself in a professional manner and refrain from the type of conduct that led to the complaint.

After receiving and reviewing the report from the Chief Justice, the file was closed.

CASE NO. 29-022/18

The complainant appeared as his wife's agent before His Worship regarding a red-light camera infraction.

In his letter to the Council, the complainant alleged that the justice of the peace treated the "hearing" as an early resolution meeting instead of a trial, and deferred the trial to another date. He complained that he had to cut his vacation short in order to attend court, even though he previously advised court staff of his unavailability. The complainant indicated that he received a letter from the court office confirming the date of the "rescheduled hearing", and noted that the letter contained a warning that his absence could result in a conviction.

The complainant stated that he argued his trial should proceed that day, and questioned who would pay his expenses, including airline tickets, for having to attend court. He stated that no explanation was given for the deferral of the trial.

The complaints committee reviewed the letter from the complainant and the materials he provided with his letter. The committee also ordered and reviewed the transcript of the proceeding before His Worship.

The committee noted that the court attendance was scheduled as an early resolution meeting, and not a trial. The committee observed that it was unfortunate that the court office scheduled the early resolution meeting on a date when the complainant indicated he was unavailable. It noted, however, that the complainant was advised that he could send a representative to attend court on his behalf. It also noted that the complainant was not the person charged, but rather was acting as agent for his wife, who was the defendant.

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It appeared to the committee that there may have been a miscommunication or misunderstanding between the court services office and the complainant. While unfortunate, the committee noted that His Worship was not responsible for scheduling the early resolution meeting. Moreover, he did not “defer” the trial, as a trial had not yet been scheduled. The committee concluded that the justice of the peace set the trial date following the early resolution meeting, according to the normal process.

The committee observed that the circumstances, while regrettable, did not raise any conduct issues on the part of the justice of the peace.

The committee dismissed the complaint and closed the file.

CASE NO. 29-023/18

The complainant, a senior administrative judge, sent a letter to the Review Council about a justice of the peace who had presided in a provincial offences court that was scheduled to commence at 9:30 a.m. His Honour indicated that upon opening the court at 10 a.m., Her Worship told the persons in the courtroom that the Crown Attorney’s office had not scheduled a prosecutor to attend the court. His Honour alleged that the transcript of the proceedings showed that Her Worship was aware that a prosecutor was on his or her way. He alleged that Her Worship said that she didn’t want to have people wait unnecessarily and said that she had given the prosecutor enough time to show up. Between 10:01 a.m. and 10:08 a.m. Her Worship dismissed the charges against seven defendants for lack of prosecution.

The complainant alleged that Her Worship’s conduct was similar to that of the Honourable Justice Howard Chisvin, who was before the Ontario Judicial Council for a hearing in 2012 and found by a Hearing Panel to have engaged in judicial misconduct. The complainant referred to a decision of the Court of Appeal for Ontario in relation to one of the cases dismissed by Justice Chisvin, *R. v. Siciliano*, 2012 ONCA 168 in which the Court was critical of Justice Chisvin’s conduct.

The complainant also referred to a Review Council hearing that was held in 2014 in the matter of His Worship Alfred Johnston. His Worship dismissed the entire docket within three minutes of opening court because no prosecutor was present. A Hearing Panel found that His Worship’s conduct constituted judicial misconduct.

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The complainant also referred to subsection 53(1) of the *Provincial Offences Act* which states:

- 53(1) Where the defendant appears for a hearing and the prosecutor, having had due notice, does not appear, the court may dismiss or may adjourn the hearing to another time upon such terms as it considers proper.

The complainant alleged that waiting for the prosecutor would have delayed matters likely less than one hour. He stated that there appeared to be no reason for Her Worship to so hastily dismiss these offences against seven defendants. He requested that the matter be investigated to determine whether Her Worship's conduct fell short of the behaviour expected of a judicial officer.

The complaints committee read the correspondence from the complainant and ordered and reviewed an unedited version of the transcript, which is common practice by the Council.

The committee observed that there was no transcript available of proceedings in the courtroom until after 10:00 a.m. The transcript of the proceedings showed that after court commenced, Her Worship informed the people in the courtroom that the Crown Attorney's office did not schedule a prosecutor for that date, and the files had just been picked up. Her Worship explained that she generally gives 30 to 35 minutes for people to show up and that she does not want people to have to wait unnecessarily. She indicated that she felt that she had given the prosecutor enough time to show up.

The transcript indicated that each case was called separately and in circumstances where the defendant or a legal representative was present and wanted to plead not guilty, Her Worship dismissed the charge for lack of prosecution. In one case, where a defendant had sent a letter requesting an adjournment of the trial date, Her Worship granted the adjournment. Part I ex parte matters were dealt with pursuant s. 9.1 of the *Provincial Offences Act* and sentences were imposed by Her Worship. Charges laid under Part III of the *Provincial Offences Act* where the defendants were not present were adjourned.

The committee invited Her Worship to respond to the complaint. Her Worship sent a letter in which she requested that the committee obtain further court records and other information that she viewed to be relevant to the matter. The committee requested and

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A reviewed some of the additional materials proposed by Her Worship, including: a copy of the court docket for the morning in question; a copy of all the provincial offence notices and Informations that were scheduled before Her Worship on the date in question; copies of Informations and Certificates of Offence in respect of nine *ex parte* matters that were not dismissed by Her Worship; notices of appeal filed by either the defendants and/or the Crown and copies of transcripts of each proceeding for which an appeal took place; and, transcripts of seven appeals of matters dismissed by Her Worship.

The committee provided a copy of the above additional materials to Her Worship and invited her to provide a further response. The committee received and reviewed a response from Her Worship.

From the information gathered during the investigation, the committee observed that court did not commence at 9:30 a.m., the scheduled time. The committee observed that Her Worship's response showed that before Her Worship entered the courtroom, she was informed by the court clerk that a prosecutor was not in attendance. Information was not provided to Her Worship about the reason why no prosecutor was scheduled. Court commenced at approximately 10:00 a.m.

The committee noted that the manner in which Her Worship interpreted and applied subsection 53(1) of the *Provincial Offences Act* in her dismissal of certain matters was different from the manner in which Justice Chisvin and Justice of the Peace Johnston conducted themselves (*Re Johnston*, JPRC, August 19, 2014 and *Re Chisvin*, OJC, November 26, 2012). Most importantly, Her Worship did not summarily dismiss an entire court list at once as they did. Rather, Her Worship considered each matter before the court individually.

The committee observed that Her Worship considered the information available to her at the time, as well as the right of a defendant to have his or her matter heard in a reasonable time, and to be dealt with fairly and equitably. Her Worship considered the delay between 9:30 a.m. and 10:00 a.m., as well as her estimate of the additional time that it would take for a prosecutor to travel to the courthouse, and concluded that requiring defendants who were present in the courtroom to wait that length of time was unreasonable in the circumstances. Her Worship considered each matter individually and confirmed the presence of the defendant before a dismissing a charge.

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Her Worship acknowledged that if she had opened court at 9:30 a.m. a transcript of the proceedings would be available for that period of time. Her Worship also indicated that she should have shared with those in attendance the information provided to her that a prosecutor was not in attendance because no Crown had been scheduled for court. Her Worship accepted responsibility for not opening court at 9:30 a.m. and indicating on the record her understanding of what was transpiring that day.

The committee acknowledged that the matter could and ought to have been handled differently. Nonetheless, it concluded that the complaint about Her Worship's conduct could not result in a finding of judicial misconduct.

The complaints process through the Review Council is remedial in nature and the dispositions set out in section 11 of the *Justices of the Peace Act* may assist in improvements as to how situations are handled and individuals are treated in the future. The complaints committee decided that the appropriate disposition was to provide Her Worship with written advice, pursuant to section 11(15)(b). In accordance with 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 provided advice to Her Worship on the approach that a justice of the peace could take in such circumstances to ensure a complete and accurate record of the events and that all relevant information is available to the justice of the peace.

After providing advice to Her Worship, the file was closed.

CASE FILE NO. 29-031/18

The complainant appeared in court before the justice of the peace on behalf of her son, the defendant.

In her letter to the Council, the complainant said she told the court that her son had a "794 Criminal Code rebuttal, and a motion to dismiss, a stay and a summary judgment for harming his living being". She said the justice of the peace asked if she was a lawyer.

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When she replied “no”, he apparently said, “you can’t do that”. The complainant stated that His Worship refused to hear her submissions and excused her from the courtroom. She indicated that, after she left the courtroom, the justice of the peace set a return date without her or her son’s knowledge.

The complainant alleged that Duty Counsel called her son on the new return date and told him that he had missed his court date. The complainant made allegations against Duty Counsel, including that she threatened her son with a bench warrant, was aggressive, and “forced a court date” on her son.

The complainant concluded by stating that senior members in government had confirmed to her that “all of you actors are our employees. And you have no jurisdiction over a living being. The court actors involve [sic] are all going to have to pay for damages.”

The complaints committee reviewed the complainant’s letter and reviewed the transcript of the proceeding before His Worship.

The committee noted that a defendant has the right to appoint an agent, such as a family member, to appear in court and make submissions on his or her behalf. The committee observed from the transcript that His Worship did not allow the complainant to make submissions on behalf of her son and scheduled a return date for the defendant’s matter in her absence.

The committee found that, although His Worship could have handled the situation differently, the decisions that he made, including his decision to schedule a return date without input from the complainant, were matters of judicial decision-making outside the Council’s jurisdiction. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council’s jurisdiction is limited to the investigation of complaints about the conduct, not decisions, of a justice of the peace.

In respect of the allegations against Duty Counsel, the complainant was advised that the Review Council does not have jurisdiction to address complaints about lawyers. The complainant was referred to the Complaints Department of Legal Aid Ontario. She was also advised that the Council does not have jurisdiction to consider a claim for damages.

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

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CASE NO. 29-032/18

The Council received a complaint from a senior administrative judge in relation to an allegation that the justice of the peace tried to kiss a female court staff person in the hallway of a courthouse.

Before a final determination was made on the complaint, the Review Council received information that His Worship was no longer a justice of the peace. The file was administratively closed due to a loss of jurisdiction.

CASE NO. 29-033/18

The Review Council received a letter of complaint from a Chief of Police arising from police applications for two Judicial Authorizations to search and seize evidence from the residence of an accused person.

The complainant said that an officer presented the two applications before a justice of the peace. After review of the applications, the justice of the peace granted one application but denied portions of items to be searched for in the second application. The letter of complaint set out the reasons given by the justice of the peace for the denial.

The complainant indicated that later that same date, police seized items as allowed by the authorizations. He also stated that further seizures were made under section 489(2) of the *Criminal Code* on the basis that the items seized without warrant were believed to afford evidence in the investigation. The items seized included some items that had been listed on the portions of the warrant that had been denied by the justice of the peace.

The complainant alleged that the reasons for denial were unmerited given that the most listed reasons were articulated in the sworn affidavit of a named police officer and the remaining reasons were grammatical issues and not based on fact.

The complainant indicated that a second request for Judicial Authorization was applied for by telewarrant. The request was to search and seize data related to the previously requested items and the request was granted by a different justice of the peace. The

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Chief of Police stated that the request “was delayed in its review as the Telewarrant Centre was too busy to review the application in a timely manner resorting to it being reviewed several hours later when the next shift of Justices of the Peace commenced.”

The Chief of Police expressed concern that given the number of Judicial Authorizations required and the inefficiency of the Telewarrant Centre over thirty-six hours of time elapsed before access was granted to download and evaluate the contents of all seized data. He said that the data was paramount in their investigation and to assessing whether public safety was still a concern.

The complainant also alleged that frequently other Judicial Authorization denials were occurring for similar unjust reasons.

The complaints committee reviewed the letter of complaint.

The committee observed that Court Services staff confirmed that the police officer signed in at Intake Court and that the justice of the peace against whom the complaint was filed was the presiding justice of the peace that day. An audio recording of the proceeding was unavailable.

Mindful of the need to respect the right of constitutionally-protected judicial independence, the committee carefully considered whether the allegations about the decision of the justice of the peace and reasons for that decision were within the Review Council’s jurisdiction. 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.

The committee concluded that the decision of the justice of the peace on the scope granted for the warrant and the reasons for the decision were matters of judicial decision-making outside the jurisdiction of the Review Council. If a person, including a police officer, disagrees with the decision made by a justice of the peace, or believes that the reasons given for the decision were wrong in law, the proper way to proceed is through the courts, such as a judicial review.

With respect to the allegations of other Judicial Authorization denials “for similar unjust reasons”, the committee noted that such denials would constitute judicial decisions

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outside of the jurisdiction of the Council. If the police believe that applications are being denied for unjust or unlawful reasons, the proper way to proceed is through the courts.

With respect to allegations of “inefficiency” at the Telewarrant Centre, the committee also noted that the operation of the Telewarrant Centre is a matter outside the jurisdiction of the Review Council. The committee informed the complainant that these concerns may be pursued through the Ministry of the Attorney General and/or the Office of the Chief Justice of the Ontario Court of Justice.

The committee dismissed the complaint on the basis that the allegations related to matters outside the jurisdiction of the Council. The file was closed.

CASE NO. 29-035/18

The complainant appeared before the justice of the peace for a trial on a *Highway Traffic Act* charge. In his letter to the Council, the complainant made various allegations about the conduct of Her Worship. He stated that the justice of the peace ordered him “to come forward and approach the defence area” even though he “could hear her fine” from his location in the courtroom.

The complainant alleged that the justice of the peace asked him if he was a “freeman” a number of times even though he already told her that he was “the sole administrator and sole benefactor” of his account. He stated that when he attempted to serve Her Worship with his “Statement of Live Birth”, she said, “I’ll have a look at it just to humour the gentleman.”

The complainant alleged that the justice of the peace subsequently asked security officers to remove him from the courtroom because, according to Her Worship, he was being “belligerent” and not following her instructions to “approach the defence area”. The complainant stated that he:

“...attempted to say that [he] would approach the defence area if [Her Worship] would acknowledged [*sic*] for the record that the court was under common law jurisdiction and that [his] fundamental human rights and freedoms would be protected however she cut [him] off and said “this is not Let’s Make a Deal Monty Hall.”

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The complainant alleged that the officers “assaulted” him by “forcefully removing” him from the courtroom.

He indicated that “what occurred in the courtroom that day and the conduct of [Her Worship] was an absolute disgrace”. He alleged that he “was faced with fierce resistance, corruption, incompetence, intimidation and bullying.” He also stated that as a result of Her Worship’s conduct, his “human rights were infringed upon” as “security and peace officers assaulted [him]” and he was “degraded laughed at and embarrassed”.

The complainant further alleged that Her Worship convicted him of the traffic offence in his absence, “right after [he] was forcibly removed from the courtroom and not allowed back in.”

The complaints committee reviewed the complaint and ordered and reviewed the transcript of the proceeding before the justice of the peace.

The committee noted that a justice of the peace must be mindful of whether his or her comments in the courtroom would be perceived as respectful, professional, impartial and judicious. The disparity of power between judicial officers and defendants requires judicial officers to treat defendants with courtesy, respect, and patience. Where a party appears in court with no legal representation, judicial officers have an obligation to assist the defendant in understanding the court process and his or her rights, and ensure that he or she is afforded due process under the law.

From its review of the transcript, the committee observed that Her Worship did not explain to the complainant, a self-represented litigant, why or how a person must identify him or herself to the Court. Further, the committee observed that Her Worship appeared to treat the complainant in an argumentative, sarcastic, impatient and condescending manner. The committee noted that after the complainant asked why the justice of the peace was removing him from the courtroom, the following dialogue occurred:

The Court: Because you are being...

Complainant: (Inaudible)

The Court: ...belligerent. You’re not following any instructions. I’ve asked you very politely, in a professional manner–

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Complainant: I have every right–

The Court: Don't interrupt me. Don't interrupt me. I've asked you professionally...

Complainant: Yes.

The Court: ...politely three times to come to the microphone.

Complainant: I will move forward if you...

The Court: This is not "Let's make a Deal, Monty Hall."

Complainant: You cannot force me to recognition [*sic*] as a legal person. I have a common law right to be recognized as a human being before the law.

The Court: Perfect.

Complainant: Everywhere.

The Court: Great.

Complainant: I know the international covenants and I know the Constitution of Canada.

The Court: And what's the jurisdiction?

Complainant: Common law jurisdiction.

The Court: Tell me what it is.

Complainant: It's natural law.

The Court: Tell me what that it is.

...

Complainant: So I've just– I've just handed you prima facta [*sic*] evidence that I'm the admin–

The Court: Prima facie. Prima facie. Get it right.

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The committee could understand how Her Worship's comments and manner in court could have been perceived as mocking or belittling toward the complainant, and may have contributed to the escalation of the situation.

The committee also observed that when the justice of the peace ordered that the complainant be removed from the courtroom, she did not explain to him that his matter would be held down and that he would be called back into the courtroom when the court was ready to address his matter. The transcript showed that the complainant was paged approximately 40 minutes after he had been removed from the courtroom. The complainant did not appear and, in his absence, Her Worship entered a conviction on the traffic charge and imposed a fine against him.

As part of its investigation, the committee invited the justice of the peace to respond to the complaint.

The committee observed from her response that Her Worship took the complaint very seriously and was embarrassed and remorseful about the manner in which she treated the complainant. The justice of the peace indicated that it was not her intention to humiliate or belittle the complainant. Rather, she was trying to diffuse an aggressive situation with humour, an approach which she realized upon reflection was inappropriate.

The committee observed that Her Worship acknowledged that she should have taken a recess to de-escalate the situation, and advised the complainant that the court would proceed with his trial later that day. She indicated that she felt that she had let both the complainant and herself down.

Finally, the committee noted that the justice of the peace indicated that she had reviewed educational materials and case law relevant to the complaint, and assured the committee that her conduct would not be repeated.

The complaints process through the Review Council is remedial in nature. Through the review of one's conduct, improvements are made as to how situations and individuals are treated and handled in the future.

After completing its investigation, the committee concluded that Her Worship took the complaint very seriously, had reflected on her conduct and learned from the incident. The committee observed that the remediable purposes of the complaints process had been

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met in this case and concluded that no further action was required. The complaint was dismissed and the file was closed.

CASE NO. 29-036/18

The complainant was a lawyer for a municipality. She alleged that when the justice of the peace was presiding in provincial offences court, he “conducted himself in a manner which may be a breach of his sworn duties as a judicial officer”. She alleged that the justice of the peace continued to accept a guilty plea despite the defendant’s statements indicating that she believed that she had not committed the offence.

The complainant indicated that after the justice of the peace imposed a fine, the defendant left the courtroom. She then returned to the courtroom to try to address her matter again, as she felt that she was not guilty. The complainant alleged that the justice of the peace left the dias, walked to where the defendant was standing in the courtroom, grabbed her arm and repeatedly struck her arm until she told him to stop.

The complainant described the conduct of the justice of the peace as “concerning and troubling”. She stated that the prosecution would be filing an appeal to withdraw the charge in the public interest based on the events that occurred in the courtroom.

The complainant sent a further letter alleging that the same justice of the peace called a defendant “a smartass”.

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

CASE NO. 29-038/18

The complainant was a paralegal who represented the defendant at a trial before Her Worship on a careless driving charge.

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In her complaint to the Council, the complainant alleged that Her Worship failed to ensure that her client, the defendant, received a fair trial, and failed to perform her duties impartially, independently and with integrity. The complainant made various allegations about the manner in which the justice of the peace conducted the trial, including that she:

- ◆ Made discourteous, demeaning, impatient and sarcastic comments toward the complainant and demonstrated a lack of dignity and professionalism;
- ◆ Constantly interrupted the complainant during the trial and was overly argumentative and combative. The complaint indicated that Her Worship’s frequent interruptions interfered with her to ability to advance a full answer and defence on behalf of her client;
- ◆ “Entered the fray and area of prosecution”. The complainant indicated that Her Worship’s unwarranted interventions and comments gave rise to an overall appearance of bias and unfairness at a very early state of the trial;
- ◆ Threatened to report the complainant to the Law Society of Ontario because she objected to Her Worship’s constant interruptions;
- ◆ Misused her powers as a justice of the peace by claiming that the elements of an offence as set out and defined by the Court of Appeal were not binding on her and that Her Worship was free to ignore them as well as the *Highway Traffic Act*;
- ◆ Admitted an inability to read and understand a paragraph of case law that defined the elements of the offence before her, and in respect of which Her Worship was required to make a finding;
- ◆ Disregarded the right of a defendant to make full answer and defence;
- ◆ Showed favoritism toward police witnesses and treated them as “special witnesses”;
- ◆ Engaged in a private communication about the trial with the prosecutor outside the courtroom;
- ◆ Misstated the evidence on the second day of the trial, suggesting that she had already made a decision on the outcome of the case;
- ◆ Gave reasons that were supported by her own personal prejudices, not the law or the facts; and,

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- ◆ Committed a pattern of legal errors that demonstrated a lack of competence in the law, a failure to apply the law and a lack of awareness or understanding of the law in the context of the routine duties of a justice of the peace.

The complainant concluded that Her Worship's conduct during the trial brought the administration of justice into disrepute.

The complaint was assigned to the 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 reviewed the complaint letter and transcripts of the court proceedings before Her Worship. The committee also retained independent investigative counsel to assist the committee by interviewing witnesses with information relevant to the allegations. The committee received and reviewed the transcripts of those interviews.

Before a final determination could be made on the complaint, the Review Council received confirmation that Her Worship was no longer a justice of the peace. As she was no longer a justice of the peace, the Review Council had no jurisdiction to continue its complaints process in relation to the complaint. The complaint file was administratively closed due to a loss of jurisdiction.

CASE NO. 29-039/18

The complainant appeared before the justice of the peace seeking to lay a private Information against his neighbour. In his letter of complaint, the complainant indicated that he had previously laid a private Information against the same neighbour for violating a peace bond and that he wanted to lay a further charge because the neighbour was continuing to violate the peace bond.

The complainant stated that after he laid the first Information, the police laid criminal charges against the neighbour arising from the same matter.

When the complainant appeared in court before the justice of the peace, she dismissed his matter on the basis that criminal charges had already been laid and therefore the

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private Information was duplicitous. In his letter of complaint, the complainant made numerous allegations regarding his appearance before the subject justice of the peace, including that:

- ◆ He was not permitted to take the stand;
- ◆ When his case was called, he was only permitted to state his name and answer one question from the justice of the peace: “did [he] call the police?”;
- ◆ When he tried to advise the Court that he was aware his neighbour had been criminally charged but that he wanted to lay another private Information, he was “hushed” by Her Worship and told he would get a chance to speak later;
- ◆ The justice of the peace talked back and forth with the Crown Attorney but he was not given an opportunity to speak;
- ◆ A police officer and a Crown Attorney told him that he should tell the justice of the peace about new subsequent breaches of the undertaking by his neighbour, but Her Worship did not provide an opportunity for him to provide the new information;
- ◆ The justice of the peace and the Crown Attorney may have already been aware that his neighbour had been charged: “why was it so mysterious when I first got up? They must have known something”;
- ◆ The justice of the peace took an hour-long recess when it was only 25 minutes after court started; and,
- ◆ A pre-enquête is supposed to be conducted in private but this proceeding happened with other people in the courtroom.

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 member or lawyer member for review and investigation. The committee reviewed the letter of complaint and requested and reviewed the transcript and audio recording of the proceeding before Her Worship.

The committee observed that the transcript and audio recording of the proceeding showed that the justice of the peace was advised by the Crown Attorney that the complainant’s neighbour had already been criminally charged and, on this basis, the justice of the peace

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dismissed the complainant's matter. The committee noted that Her Worship told the complainant that because his neighbour had already been charged criminally, it would be duplicitous to proceed with the private Information.

The committee observed from the transcript that it appeared the complainant was not given an opportunity to ask questions or make submissions before his matter was marked as dismissed. When the complainant started to speak, the justice of the peace interrupted him and said, "Just a minute." When Her Worship asked him whether he had contacted the police, he said that he had done so several times and that he had something to explain. Her Worship told the complainant that she would get to that and there would be a hearing.

The committee observed that the complainant was not provided with an opportunity to explain his circumstances. In his letter of complaint, he indicated that he left the courtroom feeling that he did not get to speak about the new breaches of the undertaking, and that he had tried to find out what to do but "had gotten a run around." The committee noted that if the complainant had been permitted to speak, he may have been able to explain that he wanted to lay a second private Information against his neighbour in relation to the subsequent alleged violations of the undertaking. The justice of the peace could have then explained to the complainant that he would need to go to Intake Court before another justice of the peace to lay a second private Information.

The committee was concerned that the justice of the peace did not provide effective assistance to the complainant, a self-represented litigant, to help him fully understand what was happening and the process, including why the private Information was being dismissed, and to give him an opportunity to speak.

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

From the information gathered during the investigation, including Her Worship's response, the committee observed that the justice of the peace was not aware that the complainant did not understand the process or that he intended to lay a second private Information. The justice of the peace acknowledged, however, that she should have better explained the process to the complainant, particularly why his matter was being dismissed.

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With respect to the complainant's question as to why his initial appearance before Her Worship was "mysterious", the committee noted from the materials that the Crown Attorney was not initially aware of the details related to the complainant's proceeding before the court. The lengthy recess was taken so that the Crown Attorney could obtain more information to determine why the matter was before the court. After looking into the matter, the Crown Attorney informed the Court that the neighbour had already been charged criminally in relation to the same alleged events, and that, therefore, there was no need to continue with a private Information to charge him.

The committee noted that a pre-enquête is held in private once the hearing is underway. In the circumstances, information was being obtained and provided by the Crown Attorney to the Court before a pre-enquête hearing could begin. The committee observed that Her Worship explained in her response that if the pre-enquête had gone ahead, the evidence would have been given in private.

The committee noted that justices of the peace have an obligation to explain the criminal and legal process to self-represented litigants, to assist them understand what is occurring, and to provide them with an opportunity to be heard. The committee acknowledged that in her response, the justice of the peace indicated that in the future, she would endeavor to "make sure that everyone that appears before [her] understands the process, outcome and has the opportunity to be heard."

The complaints process through the Review Council is remedial in nature and the dispositions set out in section 11 of the *Justices of the Peace Act* may assist in improvements as to how situations are handled and individuals are treated in the future. The complaints committee decided that the appropriate disposition was to provide Her Worship with written advice, pursuant to section 11(15)(b).

In accordance with 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.

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The committee provided advice in writing to Her Worship on the importance of taking the time to explain the process to self-represented litigants, giving them an opportunity to be heard, and helping them understand what is occurring before decisions are made on the matters before the Court.

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

CASE FILE NO. 29-040/18

The complainant was the mother of the defendant, a young offender. The defendant was charged with a number of offences, including sexual assault of a young female. He appeared before the justice of the peace for a bail hearing.

In her letter of complaint to the Council, the complainant expressed concerns about comments made by the justice of the peace in her oral reasons for denying the defendant bail. The complainant alleged that Her Worship decided that the defendant was guilty without hearing any evidence and without a trial being conducted.

She stated that the justice of the peace exhibited bias in favour of the alleged victim because she was Caucasian and “probably a family friend”. The complainant indicated that Her Worship was racist and sexist, and that she unfairly denied her son bail on the basis of his (the defendant’s) “race, religion and sex”. She concluded that the justice of the peace “appeared more as an advocate [for] the [alleged victim] than a dispassionate judge”.

As the defendant’s criminal matter was ongoing when the complaint was filed, the complainant was informed of the Council’s policy that it will not generally commence an investigation until court proceedings have concluded. This is ensure that any investigation by the Council is not interfering with, or from being perceived as interfering with, any ongoing proceedings.

Subsequently, the Council received a letter from the complainant advising that her son’s case had fully concluded. She requested to proceed with the complaint to “ensure that people get a fair trial and are not subjected to some feminist, sexist and racist justice of the peace’s erratic and personal favouritism.”

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The complaints committee reviewed the complainant’s correspondence and the transcript of Her Worship’s ruling.

From its review of the transcript, the committee found no evidence to support the allegations that Her Worship exhibited bias against the defendant or otherwise treated him unfairly because of his race and/or gender. The committee also found no support for the allegations that the justice of the peace predetermined the defendant’s guilt, or that she acted as an advocate for or favored the alleged victim. The committee noted that while the justice of the peace summarized the allegations against the defendant in her ruling, she made no findings in this regard.

The committee also observed that Her Worship’s decision to deny bail was a matter of judicial discretion outside the Council’s jurisdiction. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council’s jurisdiction is limited to the investigation of complaints about the conduct, not decisions, of a justice of the peace. If a party has concerns about the decision of a justice of a peace, the proper recourse would be through the courts, such as filing an appeal.

The committee concluded that the record did not support the allegations of misconduct, and the allegations with respect to Her Worship’s decision-making were outside the jurisdiction of the Council. The committee dismissed the complaint and the file was closed.

CASE NO. 29-041/18

The complainant appeared before His Worship for a pre-enquête hearing, to commence a private prosecution against his former employer. He indicated that he had been fired from his employment after his employer discovered that he was suffering from post-traumatic stress disorder (PTSD).

The complainant was not represented by legal counsel at the hearing, but brought a “McKenzie Friend” to court for moral support. (A McKenzie Friend is a support person who provides practical and emotional support to self-represented litigants). In his letter to the Council, the complainant alleged that His Worship demonstrated “unjust bias” by requesting that his Mackenzie Friend leave the courtroom while allowing the Crown to be represented by an “unlicensed” and “unqualified” law student.

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The complainant further alleged that there was a “belligerent tone” in the courtroom, which exacerbated his PTSD symptoms, and caused him to feel embarrassed and humiliated. He stated that he felt a distinct animosity toward him while being questioned by the justice of the peace and Crown counsel. The complainant said he was left shaking and having difficulty collecting his thoughts: “I was being treated as if I was the criminal”.

The complainant further alleged that the justice of the peace “basically call[ed] [him] a liar” by refusing to admit certain materials into evidence on the basis that they were hearsay. He also complained that when he asked the justice of the peace for legal assistance, His Worship responded, “That’s not going to happen.”

The complainant stated that, initially, His Worship told him that the matter could go forward, but would have to proceed in the city where the allegations occurred. However, the justice of the peace subsequently quashed the matter after the Crown Attorney asked that the proceedings be stayed:

“The JP said that, upon reflection, he had decided that the matter could go forward, but it would have to go forward in [name of City]- which is not the case. The law student immediately rose, and said that he thought that the matter should be stayed. He did not give a reason why. The JP then looked at me and said, ‘that’s it, the matter is quashed’. I was flabbergasted. Then he said, ‘You’re free to go’. I was dismissed.”

The complainant concluded by stating that his *Charter* rights had been violated: “For a law student to stay my issues – including my human rights issues, with no reason given, beggars [*sic*] belief, and is itself a violation of my *Charter* rights”.

The complaints committee reviewed the complaint and ordered and reviewed the transcript of the proceeding before the justice of the peace. The committee also listened to substantial portions of the audio recording of the proceeding, including when the complainant was in the witness stand.

Based on its review of the audio recording, the committee did not observe any rudeness, animosity or belligerence on the part of His Worship. The committee observed that the justice of the peace asked the complainant questions to further his own understanding of the complainant’s position and evidence. He did so in a professional manner, and allowed the complainant an opportunity to make full submissions.

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The committee noted that the law student representing the Crown Attorney took the position that the complainant's McKenzie Friend should not be permitted in the courtroom due to the nature of the proceeding. His Worship agreed, indicating that "the ruling with respects [sic] to a 507.1 prosecution, private prosecution is, that is known as an *in camera*" hearing. The justice of the peace asked the complainant's friend to sit outside the courtroom.

The committee noted that while it would have been preferable for the justice of the peace to have explained the meaning of "*in camera*" [i.e. "in private"] to the complainant, it observed that his decision to not permit the complainant's friend to attend the hearing was a matter of judicial decision-making outside the jurisdiction of the 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, not decisions, of justices of the peace. Further, the committee noted that His Worship was not discourteous in exercising his discretion to excuse the complainant's friend from the courtroom.

Similarly, with respect to the allegation that His Worship refused to admit certain materials into evidence, the committee noted that decisions made by a justice of the peace regarding the admissibility of evidence constitute judicial decision-making outside the Council's jurisdiction.

Further, the committee observed that the transcript did not support the allegation that His Worship said, "that's not going to happen" in response to the complainant's request for legal assistance. Rather, the transcript indicated that the complainant asked the court to assign him a lawyer, to which His Worship responded: "That, that doesn't happen sir". The justice of the peace recommended that the complainant seek legal counsel, and suggested as one option that he attend a university legal clinic, where law students offer legal assistance to eligible members of the public.

With respect to the outcome of the hearing, the committee noted that following the afternoon recess, His Worship indicated that the court did not have jurisdiction to hear the matter, but the complainant was free to pursue the prosecution in another jurisdiction. The committee noted that this was a matter of judicial decision-making rather than conduct.

The transcript showed that the student appearing for the Crown then directed a stay of the proceedings on the basis that the evidence heard disclosed matters more of a civil nature than criminal law, and that it would not be appropriate for the matter to continue

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as a criminal complaint. His Worship explained to the complainant that the charges were stayed and the prosecution would not be proceeding:

The Court: Okay. All right, so as you hear now, sir the Crown has – has made a request for a stay of His Worship proceedings. That means that the Crown itself does not believe that you have merit in order to proceed. Okay. So that being said His Worship matters are now quashed.

If you wish to continue with this matter, you can make another laying of information at any courthouse, but you have to ensure that you have the appropriate evidence, the appropriate reasoning why you would lay that. And then you'd have to see if it can then make it to this next step again...

The committee noted that a Crown Attorney has the legal authority and discretion to stay criminal charges any time after an Information has been laid, pursuant to section 579(1) of the *Criminal Code*. His Worship had no legal authority to change or override the exercise of prosecutorial discretion in the complainant's matter.

After completing its investigation, the committee concluded that the allegations of misconduct were not substantiated by the record, and the allegations with respect to His Worship's decision-making were outside the jurisdiction of the Council. The committee dismissed the complaint and closed the file.

CASE NO. 29-043/18

Senior management at a courthouse submitted a complaint alleging inappropriate conduct by a male justice of the peace towards female court staff that she believed would constitute gender-based harassment. The complaint included allegations that His Worship made inappropriate comments to a female staff person arising from his observations of her winking at her colleague, and that he pushed her against the wall, asking her to wink again. It was alleged that His Worship pulled up a chair at a staff person's U-shape desk and sat facing her with his legs wide open, causing her to feel cornered. It was also alleged that he made inappropriate comments to a female staff persons such as, "that dress looks great on you", "black is flattering on you", and describing a woman as "attractive".

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

CASE NO. 30-001/19

The complainant was a person with disabilities who sought to lay a private Information. In his letter of complaint, he indicated that he had informed court staff and the subject justice of the peace that he was not physically able to attend the courthouse to appear before a justice of the peace. He alleged that the justice of the peace “made a detrimental decision which imposed unwanted burdens of manifest hardship on [his] disabilities”. The complainant stated that the justice of the peace refused to permit him to lay an Information by means other than personal attendance at the courthouse, and thereby denied him access to justice and undermined his equality rights by failing to afford him reasonable accommodation. He also referred to the *Convention on the Rights of Persons with Disabilities* and the Articles of the International Covenant on Civil and Political Rights.

The complainant further alleged that the justice of the peace committed the criminal offences of obstruction of justice and extortion, and failed to abide by the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice*, including by failing to maintain objectivity and manifesting bias or prejudice toward him as a self-represented person with disabilities and failing to maintain professional competence in the law.

The complainant enclosed various materials with his letter of complaint, including email correspondence with court staff regarding what he said to staff about his disability and his need for accommodation.

The complaints committee reviewed the letter of complaint and all of the enclosures provided by the complainant.

The committee observed that the complainant referred to section 9(5) of the *Justices of the Peace Act* in relation to his request for accommodation in the court process. The committee noted that section 9(5) of the *Justices of the Peace Act* is limited to a person’s

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need for accommodation in the complaints process, and does not apply to a person's need for accommodation in the courts.

The committee also observed from the email correspondence provided by the complainant that he had informed court staff that he was not physically able to attend the courthouse, and suggested that the justice of the peace visit him at his home to complete the process, as another justice of the peace had previously offered to do.

The committee observed that the materials provided by the complainant showed that the subject justice of the peace had indicated to the Manager of Court Operations that it was her understanding that, in accordance with the law, a person who sought to lay an Information would have to attend court personally to lay the Information. The justice of the peace explained that personal attendance was necessary to confirm identification. She also indicated that, in order to lay a charge, an Information would have to be sworn to by the person in front of a justice of the peace. Further, given that the process must occur in a court of record, the laying of an Information must be recorded with the individual who intends to lay the charge present in the courtroom.

The committee noted that in some circumstances, such as remote locations and in bail courts, persons appear in the justice system by videoconference. The committee observed from the correspondence that court staff had taken steps to work with the complainant to try to accommodate his needs arising from his disability, including suggesting the option of him using Skype (a form of videoconferencing) to participate in the court process. The committee noted that the complainant indicated that this option was not viable for him because of his hearing difficulties.

The committee observed that in communications with the Manager of Court Operations, the justice of the peace also raised to court staff the possibility of the complainant having an American Sign Language interpreter to assist him in laying a private Information.

As part of its investigation, the committee invited Her Worship to respond to the complaint. The committee could see from Her Worship's response that she was understanding of the complainant's frustration and supported the judicial system taking all reasonable steps to accommodate him and ensure his access to justice. The committee could see that the justice of the peace was mindful of the complainant's rights under the Ontario *Human Rights Code* and the *Charter* and the obligation of institutions to accommodate persons with disabilities to the point of undue hardship.

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The committee noted that the justice of the peace accepted the principle that the complainant was entitled to reasonable accommodation.

The committee noted that justices of the peace are expected to be available at the courthouse to carry out their judicial duties and serve the public. The committee noted that security is provided in the courthouse for judicial officers while they are carrying out their duties. The committee observed that if a justice of the peace left the courthouse to attend at the home of a member of the public, it could result in undue interference with his or her judicial duties and could give rise to health and safety risks for the judicial officer.

The committee observed that Her Worship had diligently taken steps to obtain further information about the legal requirements of swearing an Information before she communicated her decision to the Manager of Court Operations.

After reviewing the complainant's materials and Her Worship's response, the committee determined that the justice of the peace made a decision that the law required the complainant to attend court to swear to or affirm the truth of the information relied upon to lay the Information.

The committee noted that a justice of the peace's interpretation and application of the law is a matter of judicial decision-making outside 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 noted that while a justice of the peace has a role in approving specific accommodation requests that arise within the courtroom during legal proceedings, the obligation to work with persons with disabilities to determine the type of assistance or accommodation required at the courthouse lies with court services staff, not members of the judiciary. Accessibility Coordinators, for example, are identified for each courthouse to be responsible for addressing requests for accommodation. Such individuals have access to resources and specialized knowledge to determine whether and how a person's need for accommodation might be addressed.

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After completing its investigation, the complaints committee concluded that there was no misconduct by Her Worship, and the allegations related to decision-making were outside the Council's jurisdiction. The committee dismissed the complaint and closed the file.

CASE NO. 30-003/19

The complainant was a self-represented defendant who appeared before Her Worship for a provincial offences trial. In oral reasons for judgment, Her Worship found the complainant guilty of speeding contrary to section 128 of the *Highway Traffic Act*.

The complainant appealed his conviction. The appeal judge vacated the conviction and ordered a new trial. The matter subsequently came back before Her Worship for a new trial, and the complainant filed a motion to dismiss the charge.

In his letter to the Council, the complainant alleged that during the first trial before the justice of the peace, Her Worship:

- ◆ Made comments that suggested bias in favour of the police officer;
- ◆ Improperly stated that the complainant would take the stand even though defendants are not required to give evidence;
- ◆ Badgered him and got upset when he used the word “defendant” or referred to himself in the third person;
- ◆ Fabricated evidence in her reasons for judgment in order to convict him; and,
- ◆ Stated that he should have brought scientific evidence to prove that the officer's radar was not working.

With respect to his second appearance before Her Worship for the new trial, the complainant alleged that the justice of the peace would not hear his motion to dismiss without having the appeal transcript and indicated that it was his responsibility to bring it. The complainant alleged that when Her Worship realized that she was the presiding justice of the peace at the first trial, she repeatedly questioned him as to why her decision had been overturned.

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The complainant stated that he “felt as if [he] was in a very awkward position and tried to be as polite as possible”. He indicated that Her Worship recused herself from hearing the motion to dismiss but told him to go downtown and obtain a copy of the appeal transcript so she could look at it.

The complaint was assigned to the 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 reviewed the complaint letter and transcripts of the court proceedings before Her Worship and the transcript of the appeal.

Before a final determination could be made on the complaint, the Review Council received confirmation that Her Worship was no longer a justice of the peace. As she was no longer a justice of the peace, the Review Council had no jurisdiction to continue its complaints process in relation to the complaint. The complaint file was administratively closed due to a loss of jurisdiction.

CASE NO. 30-004/19

In his letter to the Council, the complainant indicated that he appeared before the subject justice of the peace in Intake Court to lay a private Information.

He stated that the justice of the peace “engaged within [*sic*] illegal practices” and improperly attempted to have a hearing at the time the Information was sworn. The complainant further alleged that His Worship tried to “filter the charges” by “influencing which charges he wanted laid, against [the complainant’s] will”.

The complainant stated that due to His Worship’s conduct, “he opted to stop the proceedings and wanted [the justice of the peace] to return [his] documentation”. According to the complainant, His Worship refused to return his paperwork or give him a copy, “while trying to force [him] to sign only the charges he [the justice of the peace] wanted laid”. The complainant alleged that His Worship refused to return his documentation, all while trying to “influence the judicial process and breaking the laws of Canada.”

In order to investigate the complaint, efforts were made by Council staff to obtain court records of the complainant’s appearance before the justice of the peace. Court staff advised that the subject justice of the peace was not sitting in court on the date alleged by

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the complainant. Accordingly, Council staff wrote to the complainant to request additional information, such as the location of the courthouse where he appeared before the justice of the peace. No response was received from the complainant.

The complaints committee reviewed the letter of complaint. The committee observed that the complainant did not provide the additional information requested by Council staff. Accordingly, the allegations could not be substantiated, as there was no record of the complainant having appeared before the justice of the peace

The committee dismissed the complaint on the basis that the allegations of misconduct were unfounded. The file was closed.

CASE NO. 30-005/19

The complainant had a pre-enquête hearing before the justice of the peace to lay private Informations against two individuals. When his matter came before the court, the complainant was not present in the courtroom and was paged. In his absence, the Crown Attorney directed that the charges be stayed.

In his letter of complaint, the complainant alleged that Her Worship “stayed the charges without even my presence in the court room or hearing the evidence from me.” He stated that:

“When I finally made it to the courtroom [the justice of the peace] told me that the Crown stayed the charges and she tried to intimidate me from asking questions about what took place in my absence, she even racially profiled me by saying she was going to call Security by me simply trying to ask about what was going on and wanting explanation.”

The complainant continued that Her Worship’s actions were meant to prevent him from “obtaining justice”, and that she had a conflict of interest due to her “lack of restraint [sic] in intimidating me” and “her knowledge that she was breaking the law of Canada”.

The complaints committee reviewed the letter of complaint and the transcript of the pre-enquête hearing before Her Worship. The committee observed from the transcript that Crown counsel informed the Court that the Crown would be entering a stay of the

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proceedings. The committee noted that section 579(1) of the *Criminal Code* permits a Crown Attorney to direct a justice of the peace to stay charges:

579 (1) The Attorney General or counsel instructed by him for that purpose may, at any time after any proceedings in relation to an accused or a defendant are commenced and before judgment, direct the clerk or other proper officer of the court to make an entry on the record that the proceedings are stayed by his direction, and such entry shall be made forthwith thereafter, whereupon the proceedings shall be stayed accordingly and any recognizance relating to the proceedings is vacated.

While the committee observed that Her Worship could have better explained the Crown Attorney's discretion under section 579(1) of the *Criminal Code*, it noted that the justice of the peace had no jurisdiction to proceed any further after Crown counsel exercised his discretion to stay the charges.

Further, the committee noted that the complainant's allegations of misconduct were not supported by the record. For example, the committee found no evidence to support the allegations that Her Worship racially profiled the complainant or attempted to prevent him from "obtaining justice". The committee concluded that Her Worship did not behave improperly and the allegations of misconduct were not supported by the record. The complaint was dismissed and the file was closed.

CASE NO. 30-006/19

The complainant, a self-represented defendant, was convicted of four *Highway Traffic Act* offences following his trial before the justice of the peace. In his letter of complaint to the Council, the complainant made various allegations about the presiding justice of the peace, the prosecutor and the police officers involved in his case. With respect to the justice of the peace, the complainant alleged, among other things, that:

- ◆ Her Worship ignored the fact that a police witness lied during his testimony;
- ◆ Her Worship ignored the complainant's motion to dismiss the charges;
- ◆ Her Worship ignored errors on the charge documents;

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- ◆ Her Worship engaged in “unnecessary maneuvering” during a voir dire, and improperly requested that he give evidence “so she could determine what actually happened”;
- ◆ The complainant alleged that his human rights were infringed by the police, and that Her Worship ignored the “list [sic] of the Human Rights and Freedoms” that he provided the court.
- ◆ Her Worship told the complainant not to mention his arrest during the trial, which implied that she was biased. This led the complainant to request that the justice of the peace recuse herself “for bias and deference” to the police officer;
- ◆ Her Worship “admonished [the complainant] vigorously” and claimed that he disrespected the police witness because he could not remember the officer’s last name and referred to his badge number instead; and,
- ◆ Her Worship complied with the prosecutor’s arbitrary request for increased fines.

The complainant asserted that he was racially profiled, and there was a reasonable apprehension of bias, a denial of justice and an “unnecessarily punitive outcome” before, during and after the trial. He also alleged that his ability to appeal Her Worship’s decision was “blocked”. The complainant indicated that his appeal applications were declined with “no judge’s name, no reasons” and “no recourse”, which he stated amounted to “no justice for the Defendant”.

Along with his letter of complaint, the complainant enclosed various materials related to his case, including copies of the offence notices, his motion to dismiss and his appeal applications. The complaints committee reviewed the complainant’s correspondence and the enclosures he provided. The committee also reviewed transcripts of the court proceedings before the justice of the peace.

The committee observed that the complainant’s allegations were largely based on his disagreement or dissatisfaction with the rulings made by the justice of the peace during the proceeding. The committee noted that the Council’s jurisdiction is limited to the conduct, not decisions, of a justice of the peace. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. In the letter to the complainant acknowledging receipt of his complaint, staff informed him that the Council has no authority to intervene in reviewing or changing decisions made by a justice of the peace.

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The committee observed that any allegations that could be perceived to be related to Her Worship's conduct were not supported by the court record. For example, the committee observed that the transcript showed that the justice of the peace did not ignore the complainant's motion to dismiss the charges, but addressed the motion prior to the commencement of the trial.

Further, with respect to the allegation that Her Worship ignored errors on the charging documents, the committee observed from the transcript that the municipal prosecutor indicated that the Notice of Trial and/or Notice to Attend listed the wrong offence due to a typographical error. The committee noted that the justice of the peace heard, but did not accept, the complainant's submission that the charge should be dismissed on this basis. The committee observed from the materials provided by the complainant that the offence notice was accurate, and there was no evidence that the complainant was not aware of the charge against him. The committee noted that the justice of the peace had the discretion to not accept the complainant's position on a legal issue; her decision to do so was a matter of judicial decision-making outside the jurisdiction of the Council.

Further, the committee did not find support in the transcript for the allegation that Her Worship ignored the copy of the *Universal Declaration of Human Rights and Freedoms* that the complainant provided to the Court. The transcript showed that during submissions on sentence, the complainant sought to add this document to his evidence with respect to the issue of his arrest. The committee observed that Her Worship accepted the document, advised the complainant that she was familiar with the section he was referencing, and stated, "We've moved past the trial now, sir. This...is the portion that deals with penalty". The committee noted that the manner in which Her Worship interpreted the law and treated materials provided to the court was a matter of judicial decision-making outside the jurisdiction of the Council.

The committee also found no evidence to support the allegation that the justice of the peace engaged in "unnecessary maneuvering" during a *voir dire* and requested that the complainant "take the stand". The transcript of the proceedings showed that Her Worship explained the trial process to the complainant at the start of the proceedings, including the burden of proof of the Crown Attorney and the fact that the defendant was not obligated to give evidence. The committee observed from the transcript that the complainant elected to give evidence after being advised of his rights.

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With respect to the allegation that Her Worship would not permit the complainant to refer to his arrest during the trial, the committee observed from the transcripts that the complainant alleged several times that the police had wrongfully arrested him. The transcript indicated that the justice of the peace explained to the complainant that the issues he was raising were not relevant to the charges before the court, and that the manner of his arrest had already been raised and decided in an earlier case.

The committee observed that justices of the peace are permitted, and expected, to assess the relevance of a party's evidence and the propriety of questions asked on cross-examination. The committee observed that Her Worship's rulings in this regard were matters of judicial decision-making outside the jurisdiction of the Council.

Further, the committee found no evidence in the transcripts to suggest that Her Worship was prejudiced in favour of the police. The committee noted that where a justice of the peace rules against a party on a point of law, this does not, in and of itself, create a reasonable apprehension of bias. The committee also observed from the transcript that the justice of the peace permitted the complainant to bring a recusal motion in the middle of the trial. After hearing both parties' submissions, the justice of the peace dismissed the motion.

The committee also found no evidence to support the allegation that the justice of the peace "vigorously admonished" the complainant. The committee noted from the transcript that the complainant continually called the police witness by the wrong name, even after being repeatedly corrected by the justice of the peace. It was only after he continued to do so that Her Worship said "it's disrespectful to do that, Mr. [name], I'm going to ask you to stop" to which he replied, "I'll just call him 384".

Further, the committee could find no support for the allegation that Her Worship "complied" with the prosecutor's "arbitrary" request to increase the fines imposed against him. The committee noted that the justice of the peace decided upon the amount of the fine for one offence (speeding) based on the requirements of the governing legislation and, with respect to the remaining offences, exercised her discretion to impose elevated fines. The committee noted that Her Worship's exercise of discretion was a matter of judicial decision-making outside the jurisdiction of the Council. The committee also observed that in considering the appropriate fine, the justice of the peace referred to the principles of specific and general deterrence, and the complainant's complete denial of culpability.

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Finally, the committee found no support for the allegation that the complainant's ability to appeal his convictions was "blocked". The committee noted from the transcript that the justice of the peace advised the complainant at the end of the proceeding: "you have every right in law to appeal the decision of this court and I welcome you to do that if you wish to...so if you think my decision's wrong, sir, you're more than welcome to take those steps to go through an appeal process. You go down to the first floor, they'll give you the documents that you need, sir".

The committee observed from the materials provided that the complainant received a letter from court staff informing him that a justice denied his applications to appeal his conviction "without paying the fine and to waive compliance with section 112". The committee noted that the decision to decline these applications was not made by the subject justice of the peace, and was, in any event, a matter of judicial decision-making outside the Council's jurisdiction.

Based on the transcripts of the proceedings before the subject justice of the peace, the committee found that the justice of the peace was patient, attentive, and respectful toward the complainant. The committee observed that Her Worship made efforts on numerous occasions to explain the trial process and legal concepts to the complainant and ensure that he understood his legal rights.

With respect to the allegations about other participants in the justice system involved in his case, the complainant was informed that complaints about municipal prosecutors could be directed to the Manager of Provincial Prosecutions for the court location in which the trial took place, and complaints about the conduct of police officers could be directed to the Office of the Independent Police Review Director (OIPRD).

The committee dismissed the complaint on the basis that: (a) the allegations concerned with Her Worship's decision-making were outside the jurisdiction of the Council; (b) any allegations of misconduct were not supported by the court record; and, (c) the balance of the allegations concerned persons other than the justice of the peace and were therefore outside the jurisdiction of the Council.

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CASE FILE NO. 30-007/19

The complainant was charged with various criminal offences arising from his interaction with a woman (“Ms. X”). He was found not guilty on all of the charges at trial.

The complainant subsequently appeared before the subject justice of the peace to lay a private Information against Ms. X arising from her conduct during the criminal trial. Following the pre-enquête hearing, His Worship decided not to issue process.

In his letter to the Council, the complainant made numerous allegations against the subject justice of the peace, including that he:

- ◆ Failed to consider the evidence, including the findings of the trial judge and the court transcripts before him;
- ◆ Possessed a hidden agenda, was prejudiced against him and had predetermined the outcome of the proceeding;
- ◆ Failed to thoroughly assess the evidence and “condoned the illegal actions and crimes of Ms. [X]”;
- ◆ Colluded with the Crown Attorney to, among other things, make him take the witness stand;
- ◆ Possessed ulterior motives, including entrapment, while presiding over the proceeding and intentionally neglected the evidence in an effort to “cover up for Ms. [X];” and,
- ◆ Failed to recognize and address the fact that sections of the *Charter of Rights and Freedoms* had been violated in the underlying criminal matter.

The complainant concluded that His Worship’s perceptions and views were “impaired prior to entering the courtroom.”

The complaints committee reviewed the complainant’s correspondence and enclosures, as well as the transcript of the proceeding before His Worship.

From its review of the transcript, the committee found no evidence to support the complainant’s allegations. For example, the committee found that the record did not show that His Worship failed to consider the evidence, possessed a hidden agenda or ulterior

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motives, was prejudiced against the complainant or that he had predetermined the outcome of the proceeding. With respect to the allegation that His Worship had “colluded” with the Crown Attorney to have the complainant take the witness stand, the committee found that the record did not suggest that any collusion had occurred.

The committee observed that in a pre-enquête hearing, the onus is on the private informant to establish that a summons or warrant should be issued to compel an accused to attend before the court to answer a criminal charge. The complainant appeared in court as a private informant and was therefore required to demonstrate that there was sufficient evidence to support the laying of private charges against Ms. X. In the circumstances, the committee found nothing improper in the justice of the peace asking the complainant to take the stand. In any event, the committee noted that His Worship’s decision to have the complainant testify was a matter of judicial decision-making outside the jurisdiction of the Council.

Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council’s jurisdiction is limited to the investigation of complaints about the conduct, not decisions, of a justice of the peace. If a party has concerns about an order or decision of a justice of a peace, the proper recourse would be through the courts, such as filing an appeal.

The committee concluded that the record did not support the allegations of misconduct, and the allegations with respect to His Worship’s decision-making were outside the jurisdiction of the Council. The committee dismissed the complaint and the file was closed.

CASE NO. 30-008/19

The complainant was found guilty of a speeding offence after he failed to attend his trial. In his letter of complaint, the complainant alleged that he was unable to attend his trial due to a severe snow storm, which made it unsafe to drive. The complainant said that he called court staff the day before his trial to discuss his concerns about driving to the courthouse in a severe snowstorm. The complainant indicated that he was told that His Worship would be informed of his intention to appear (pending the weather conditions), and that the justice of the peace would likely adjourn the case if he was unable to attend. He said that he also spoke with someone at the Prosecutor’s Office and was given the same message.

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The complainant alleged that on the morning of his trial, he left a voicemail at the courthouse to confirm that he would not be able to attend court due to the snowstorm. He said he was subsequently advised (by a court staff person) that His Worship did not accept his reason for failing to attend court and convicted him of the offence in his absence.

The complainant stated he was “livid that a Justice of the Peace would want someone to travel in unsafe conditions when being told by all local, municipal, provincial and federal governments to abstain from road travel.” He indicated that the justice of the peace should have exercised common sense and granted an adjournment of the trial. The complainant concluded that he wanted his case to be reopened and assigned to a different justice of the peace, and His Worship “admonished for his poor judgement”.

The complaints committee reviewed the letter of complaint and the enclosed Notice of Trial. The committee also reviewed the transcript of the trial proceeding before His Worship.

The committee noted from the transcript that the municipal prosecutor advised the court that she spoke with the complainant the day prior, and that he indicated he had “every intention of coming to the court and fighting his ticket” but he was travelling from out of town. She said that “due to the poor weather, that was expected, he indicated if he was not in attendance, it would only be because of bad weather.” The municipal prosecutor also indicated to the justice of the peace that she told the complainant that she could put that on the record but she could not seek an adjournment on his behalf. Further, she informed the justice of the peace that the investigating officer was in attendance and the prosecution was prepared to proceed.

The committee noted that the transcript did not indicate that court staff had communicated information to the justice of the peace that the complainant had left a voicemail at the court office on the morning of the trial, confirming that he was unable to attend court due to the snowstorm. Rather, the transcript suggested that the justice of the peace was informed that no-one contacted the court office on the morning of the trial to indicate that the complainant was not attending.

The committee observed the following comments of His Worship:

...Definitely we are not looking at putting people at risk; however, that being said, history of this winter – we have had very bad reports of weather pending and it has materialized, and this may well materialize. I, you did indicate earlier

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that you did contact the administration this morning and no one contacted them to confirm they were not attending. So the name having been paged in the court, no response, jurisdiction having been established and certificate of offence is complete and regular on its face. The prosecution is not in a position to request an adjournment so I am only left with the matter to be dealt with by way of 9.1...that failing to appear...there is a finding of guilt commissioned registered and the set fine is imposed.

The committee observed that His Worship's decision to proceed with the trial instead of adjourning it was a judicial decision made in the exercise of judicial discretion outside the jurisdiction of the Council. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*.

The committee could appreciate the complainant's frustration, given the steps that he had taken to communicate that he wanted to have the opportunity to put forward a defence. However, the committee observed that, as the complainant was previously advised, if he believed His Worship made the wrong decision based on the facts, the remedy was to apply through the court to have his case reopened.

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

CASE NO. 30-009/19

The complainant filed a complaint about a justice of the peace who was presiding in Intake Court. The complainant alleged that His Worship left the courthouse early "and has been known to leave whenever he pleases". He stated that justices of the peace "are not to leave just when they feel like it and are required to stay the day or be fired. JPs are leaving when they feel like it. I am seeking that he be fired."

He also stated that he is "requesting that discipline be instilled against these people whom feel they can drain the public of money and leave freely. I am seeking that they also be fired!"

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The complaints committee reviewed the complainant's letter. The committee received information from court staff about the events that occurred on the day in question. Court staff indicated that on the day in question, the complainant went to the office at the courthouse just before 4:00 p.m. and requested several private complaint packages. The complainant told court staff that he had understood that a person could appear in Intake Court any time after 10:00 a.m. He was informed by a court staff person that he could not do so at that courthouse; he would need to return the next morning at 10:00 a.m., the time when that court started. The information from court staff indicated that the complainant then left the courthouse without seeing a justice of the peace.

The committee observed that the information from court staff also confirmed that His Worship was still at the courthouse after 4:00 p.m. and did not leave the courthouse early that day.

The committee concluded that the complaint was unsubstantiated and without merit. The complaint was dismissed and the file was closed.

CASE FILE NO. 30-010/19

The complainant, a self-represented defendant, wrote a letter of complaint arising from his attendances at Intake Court. In his letter to the Council, the complainant indicated that he appeared before multiple justices of the peace at the same courthouse. He stated that he was not permitted to file an Information.

The complainant said that he spoke with someone at the courthouse over the phone about his failed attempts to file an Information and was told that the Administrative Justice of the Peace had a phone meeting with then Ontario Attorney General, Yasir Naqvi who told the justice of the peace not to let the complainant file a private prosecution, and, if necessary, have the police escort the complainant out of the courthouse.

The complainant said that he was concerned about the conduct of the Attorney General and about "JP's colluding with the Attorney General to obstruct justice – even to point of using armed police to do so". The complainant included affidavits with his letter.

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The complainants committee reviewed the correspondence from the complainant, including the affidavits provided by him. The committee invited the justice of the peace to respond to the complaint.

The committee received a response from the justice of the peace. The justice of the peace informed the committee that he had not spoken with then Attorney General Yasir Naqvi about this matter or any matter before the court. His Worship said that there was no telephone meeting between the Attorney General and himself. Nor had the justice of the peace convened a meeting with justices of the peace to instruct them on how to deal with the complainant.

The committee noted that there was no evidence to support the allegations made by the complainant. The committee accepted the information provided by the justice of the peace.

The complaint was dismissed on the basis that there was no support for the complaint. The file was closed.

CASE FILE NO. 30-013/19

The complainant, a self-represented defendant, wrote to the Council arising from his attendances at Intake Court. In correspondence to the Council, the complainant indicated that he appeared before multiple justices of the peace at the same courthouse.

Enclosed with his letter of complaint were two affidavits regarding one appearance at Intake Court. The complainant alleged that he went to the courthouse to “once again” attempt to “file a criminal charge with a Justice of the Peace.” He alleged that “when the JP saw [him], she refused to allow [him] into her office and asked to view [his] legal documents in a public hallway.” The complainant said that members of the public could hear his discussion with the justice of the peace and were able to see his documents. He alleged that the justice of the peace insisted on discussing his “private legal affairs [in the hallway], with no regard for [his] privacy.”

The complainant also stated that the justice of the peace said that she was not a lawyer. He said that he told her that since she was not a lawyer, it should be up to a judge to decide whether his matter should go forward. The complainant alleged that the justice of

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the peace told him that the justices of the peace had a meeting with their Administrative Supervisor who instructed them not to put [his] matter before a judge.

The complaint was assigned to the three-person complaints committee of the Review Council, consisting of a judge, a justice of the peace and a community member for review and investigation. The committee reviewed that complaint letter and the materials provided by the complainant, including the affidavits.

The committee also requested and reviewed court documents that showed that the complainant's name appeared on the sign-in sheet for that date.

The committee invited the justice of the peace who was presiding in Intake Court on the particular day to respond to the complaint. The justice of the peace responded to the complaint. The justice of the peace indicated that she spoke to the complainant at the door, telling him that it had been decided by another justice of the peace that the charges he sought to lay were to be laid in the jurisdiction in which the events occurred, and that the local justice of the peace had been advised of that decision.

The committee concluded that the justice of the peace's decision to uphold or follow her colleague's earlier decision, that the complainant must pursue his request to lay Informations in the jurisdiction where the events took place, was a matter of judicial decision-making outside the jurisdiction of the Council.

The committee noted that following the case of *R. v. Billingham*, 1995 CanLII 7224 (ON SC) all justices of the peace should ensure a comprehensive record of all proceedings, including Intake Court appearances. Proceedings in Intake Court should be recorded so that there is a complete record of all dialogue between the justice of the peace and persons who appear before him or her and the events that occur.

The committee decided the appropriate disposition of the complaint was to provide the justice of the peace with written advice, pursuant to section 11(15)(b) of the *Justices of the Peace Act*. The complaints process is remedial. The Procedures of the Council provide that a complaints committee will provide advice to a justice of the peace, in person or by letter, or both, in circumstances where the misconduct complained of does not warrant another disposition, there is some merit to the complaint and the disposition is, in the

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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.

In its letter of advice to the justice of the peace, the committee reminded Her Worship of the importance of a justice of the peace ensuring a comprehensive record of all proceedings in Intake Court. As well, the committee addressed the importance of a justice of the peace permitting the member of the public to address his or her application in the Intake Court, rather than in the hallway. This affords the person attending Intake Court a private space to put forward his or her application, which may involve personal details, rather than having to speak about his or her matters in a public setting.

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

CASE NO. 30-015/19

The complainant appeared before the subject justice of the peace to lay private charges against the Workplace Safety and Insurance Board.

In his letter to the Council, he alleged that the justice of the peace incorrectly told him that his private Information would have to be filed in a different region. The complainant said he told the justice of the peace that he did not have the resources to file in another region. He claims that she told him it “didn’t matter” because, “even if [he] did manage to file, it would be ignored and placed in a ‘dead file’.”

The complainant said he “was sickened by this casual contempt for our justice system”. He claimed that he subsequently met with the clerk of the Federal Court and was informed that he could file the private Information in the region where the justice of the peace was presiding.

The complaints committee reviewed the complaint and ordered and reviewed the transcript of the proceeding in which the complainant appeared before the justice of the peace. The committee observed that the transcript did not support any of the allegations against the justice of the peace, including the allegation that Her Worship told the complainant that the Information would be put in a “dead file”.

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After completing its investigation, the committee concluded that the allegations of misconduct were not substantiated by the record. The committee dismissed the complaint and closed the file.

CASE NO. 30-016/19

The complainant appeared before the subject justice of the peace to lay private charges against the Workplace Safety and Insurance Board.

The complaint alleged that the justice of the peace took his documentation, went back into her office, and reappeared with two uniformed and armed police officers. He said that the officers escorted him out of the courthouse.

The complainant alleged that the justice of the peace colluded with the Attorney General to obstruct justice, “even to the point of using armed police to do so”. He stated that he was illegally arrested and unlawfully confined at the direction of the justice of the peace.

The complaints committee reviewed the complaint and ordered and reviewed the transcript of the proceeding in which the complainant appeared before the justice of the peace. The committee observed that the transcript did not support any of the allegations against the justice of the peace, including the allegation that Her Worship returned to the courtroom with armed police officers who escorted him out of the courthouse.

The committee noted from the transcript that the justice of the peace was polite toward the complainant and allowed him to make submissions on the record. The justice of the peace advised the complainant that she could not set his matter down for a hearing because the allegations occurred in a different jurisdiction. The committee noted that Her Worship’s decision in this regard was a matter of judicial decision-making outside the Council’s jurisdiction.

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 assessment of the evidence or made an incorrect ruling, only a higher level court may determine whether there was an error in law and, if so, change the decision.

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The committee concluded that while the transcript did not suggest that Her Worship engaged in judicial misconduct, the complainant's concerns highlighted the need for judicial education on how to address situations where a member of the public seeks to file an Information in a different region than where the incident(s) occurred. Accordingly, the committee decided to bring this issue to the attention of the Office of the Chief Justice, so that steps could be taken to ensure that justices of the peace are better informed of the proper practices applicable in the jurisdictions in which they preside.

After completing its investigation, the committee concluded that the allegations of misconduct were not substantiated by the record. The committee dismissed the complaint and closed the file.

CASE FILE NO. 30-017/19 AND 30-018/19

The complainant, a self-represented defendant, wrote letters of complaint arising from his appearances before two different justices of the peace in bail court.

As the defendant's criminal matter was ongoing when the complaints were filed, the complainant was informed of the Council's policy that it will not generally commence an investigation until court proceedings have concluded. This is to ensure that any investigation by the Council is not interfering with, or from being perceived as interfering with, any ongoing proceedings.

Subsequently, the Council received letters from the complainant advising that his case had fully concluded.

Case File No. 30-017/19

The complainant appeared before a justice of the peace by video in bail court.

He alleged that during his court appearance the justice of the peace repeatedly insisted that he schedule a date for an in-person court appearance for disclosure material. He indicated that he was a self-represented defendant and asserted that it is always the responsibility of the Office of the Crown Attorney to provide disclosure material, if requested. He stated that he had not requested the disclosure material.

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He alleged that it was evident that the justice of the peace was intent on using court processes to harass and place undue responsibility upon him.

The complaints committee reviewed the complaint, and ordered and reviewed the transcript of the proceeding in which the complainant appeared before the justice of the peace. The committee observed that the transcript did not support the allegation that the justice of the peace was intent on using court processes to harass and place undue responsibility upon him. In fact, the transcript of the proceedings demonstrated that Her Worship explained the process to the complainant so that he could receive full disclosure. The committee observed that Her Worship expressed concern that the complainant had only received partial disclosure in advance of his scheduled trial date. The committee also observed from the transcript that Her Worship explained the role of the parties and provided the complainant with ample opportunity to speak on the record. The committee observed from the transcript that the complainant then became argumentative after being advised of his rights.

After completing its investigation, the committee concluded that the allegations of misconduct were not substantiated by the record. The committee dismissed the complaint and closed the file.

Case File No. 30-018/19

During another court appearance, the complainant alleged that the justice of the peace refused to provide her name despite the complainant's request for it.

The complainant also indicated that he was unable to see due to the loss of his lenses. He also indicated that he was at risk of violence from other inmates and noted that his physical disability also made it difficult for him to defend himself. He alleged that the justice of the peace violated his *Charter* rights by keeping him in custody.

The complaints committee reviewed the letter of complaint and ordered and reviewed the transcript of the bail proceeding before the justice of the peace. The transcript did not show that Her Worship withheld her name from the complainant. The committee observed that when the justice of the peace asked for a response to her question which related to the charges, the complainant appeared to be argumentative. The committee noted from

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the transcript that the justice of the peace clarified whether the complainant had refused the assistance of duty counsel. Her Worship permitted the complainant to respond on the record before remanding his bail hearing to another date.

The committee noted that Her Worship's decision to keep the complainant in custody was a matter of judicial decision-making outside the Council's jurisdiction.

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 assessment of the evidence or made an incorrect ruling, only a higher level court may determine whether there was an error in law and, if so, change the decision.

After completing its investigation, 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 Council's jurisdiction.

CASE NO. 30-019/19

The complainant represented his wife in a provincial offences trial before the subject justice of the peace.

In his letter to the Council, the complainant alleged that the justice of the peace had a "lack of knowledge about court procedure." He stated that his wife, the defendant, had submitted a request for full disclosure prior to the trial but was only provided with handwritten notes and a copy of a radar manual. He alleged that the notes were not legible, and the Crown denied his request for typed notes and other missing information.

The complainant stated that at the trial, through an interpreter, he advised the court that the defendant did not receive full disclosure and that the hand-written notes she was provided were not legible. He alleged that Her Worship read some of the hand-written notes and stated that they were legible. The complainant said he argued that the defendant's *Charter* rights had been violated because the defendant did not receive full disclosure and, in the alternative, sought an adjournment until the prosecutor provided full disclosure. He stated that Her Worship was not "bothered about *Charter* rights".

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The complainant continued that the justice of the peace asked the police officer to read his notes to the complainant in the hallway. The complaint alleged that the police officer read his notes but did not give him time to write everything down, so it was not possible for him to “make any argument in court”. He indicated that as he was not expecting “justice” from Her Worship, he “unwillingly accepted” the prosecutor’s offer of a lesser charge.

The complainant further alleged that when a Tamil interpreter missed an appearance on another matter, the justice of the peace improperly adjourned the matter to another date. Regarding this incident, the complainant stated, “it was incumbent upon the court to dismiss the charges or compensate for the loss of time and money for coming again as it was failure on the part of the court.”

The complainant concluded that the justice of the peace “did not adequately deal with issues that arose during the trial, such as the defendant’s violation of rights by not getting full disclosure including typed notes”. He stated that Her Worship’s conduct was unacceptable and fell below the minimum standard of conduct.

The complaints committee reviewed the complaint and the materials provided by the complainant and ordered and reviewed the transcript of the proceeding before the justice of the peace.

The committee observed that the complainant’s allegations related to the decisions, not conduct, of the justice of the peace. 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 assessment of the evidence or made an incorrect ruling, only a higher level court may determine whether there was an error in law and, if so, change the decision.

The committee noted that Her Worship’s interpretation and application of the law, including her assessment of the sufficiency of the disclosure provided to the defendant, and her exercise of discretion to adjourn an unrelated matter, were matters of judicial decision-making outside the jurisdiction of the Review Council.

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The committee observed that the Procedures of the Review Council direct a complaints committee to dismiss a complaint if it is outside the Review Council's jurisdiction. After completing its investigation, the committee concluded that the allegations in the complaint related to matters of judicial decision-making outside the jurisdiction of the Review Council.

The committee dismissed the complaint and closed the file.

CASE NO. 30-020/19

The complainant appeared before the justice of the peace on behalf of her step-father with respect to a parking infraction.

In her letter of complaint to the Council, the complainant alleged that the justice of the peace was not very pleasant, "didn't ask why [her step-father] wasn't there and didn't care to listen to what [she] had to say." The complainant stated that Her Worship wanted to rush through her case load "because she had somewhere else to be."

The complainant also indicated that she was discriminated against because she appeared on behalf of her step-father. She stated that she asked for a lesser fine but the justice of the peace "didn't care or feel the need to listen". She explained that she sought a reduced fine because her father is unemployed and receives only \$500 a month from the Canada Pension Plan and had already been fined \$400 by the City. She asserted that this was his first offense and it was "unfair justice to fine him \$700 in total".

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 member or lawyer member. The complaints committee reviewed the letter of complaint and the transcript of the proceeding before Her Worship.

The committee noted from the transcript that the complainant pleaded guilty on behalf of her step-father and made submissions regarding the circumstances leading to the issuance of the ticket. The committee observed that, after listening to the complainant's submissions, Her Worship imposed the minimum fine of \$300 for the offence. The transcript showed that Her Worship offered the complainant's step-father additional time to pay the fine and explained the process by which he could obtain a further extension.

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The committee found no evidence in the transcript to support the complainant's allegations that the justice of the peace was unpleasant, did not listen to her and rushed through the proceedings. The committee observed that, throughout the proceeding, Her Worship communicated with the complainant in a clear and considerate fashion. Nor did the committee find any evidence to support the allegation that the justice of the peace was biased against the complainant because she appeared on behalf of her step-father.

The committee observed that Her Worship's decision to impose a fine and the amount imposed were matters of judicial decision-making outside the jurisdiction of the Review Council. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council has no authority to change a decision of a justice of the peace.

After completing its investigation, the complaints committee concluded that the allegations of misconduct were not substantiated by the record and the allegations with respect to Her Worship's decision-making were outside the jurisdiction of the Review Council. The complaint was dismissed and the file was closed.

CASE NO. 30-021/19

The complaint related to an accused's bail hearing before the subject justice of the peace.

The complainant was the father of the accused. In his letter to the Council, he alleged that the justice of the peace made defamatory and insulting remarks in the courtroom. The complainant made various complaints about the conduct of the bail hearing, including that:

- ◆ His son's lawyer was not the one he had chosen;
- ◆ The questions that were asked of his son were humiliating;
- ◆ His Worship was prejudiced and arbitrarily denied his son bail despite the fact that he (the accused) had a clean criminal record. His Worship based his decision on the physical appearance of the accused and without evidence;
- ◆ His Worship addressed the accused like a dog, with a face full of hate and contempt and aggression; and,
- ◆ His Worship was racist and discriminatory.

APPENDIX A

Case Summaries

Staff of the Review Council noted that the complainant's correspondence was written in French but the court proceeding before the justice of the peace was conducted in English. Accordingly, the complaint was assigned to a bilingual complaints committee of the Council, consisting of a judge, a justice of the peace and a community member or lawyer member.

The complaints committee reviewed the letter of complaint and the transcript of the proceeding before His Worship.

The committee observed that the transcript did not support the complainant's allegations, including the allegations that His Worship was racist and prejudiced against the accused. The committee observed from the transcript that the justice of the peace treated both the complainant and the accused with dignity and respect.

Further, the committee noted that His Worship's findings and his decision to detain the accused were matters of judicial decision-making outside the jurisdiction of the Review Council. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council has no authority to change a decision of a justice of the peace.

After completing its investigation, the complaints committee concluded that there was no merit to support the allegations of misconduct against the justice of the peace, and the allegations with respect to His Worship's decision-making were outside the jurisdiction of the Review Council. The complaint was dismissed and the file was closed.

CASE NO. 30-022/19

The complainant appeared before the subject justice of the peace for a bail hearing.

In his letter to the Review Council, the complainant indicated that he did not agree with His Worship's decision to deny him bail. He further alleged that, during the bail hearing, His Worship verbally assaulted him, made defamatory comments and acted with aggression and contempt. He also stated that His Worship treated him like an idiot and like someone who was mentally ill. He felt that His Worship had prejudged him.

APPENDIX A

Case Summaries

Staff of the Review Council noted that the correspondence from the complainant was written in French but the court proceeding before the justice of the peace was conducted in English. Accordingly, the complaint was assigned to a bilingual complaints committee of the Council.

The complaints committee reviewed the letter of complaint and the transcript of the proceeding before His Worship.

The committee observed that the transcript did not support the complainant's allegations, including the allegations that His Worship treated the complainant with aggression and contempt. The committee observed from the transcript that the justice of the peace treated the complainant with dignity and respect.

Further, the committee noted that His Worship's findings and his decision to detain the complainant were matters of judicial decision-making outside the jurisdiction of the Review Council. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council has no authority to change a decision of a justice of the peace.

After completing its investigation, the complaints committee concluded that there was no merit to support the allegations of misconduct against the justice of the peace, and the allegations with respect to His Worship's decision-making were outside the jurisdiction of the Review Council. The complaint was dismissed and the file was closed.

CASE NO. 30-023/19

The complainant appeared before the justice of the peace on a red-light camera offence. The complainant was found guilty.

In his letter to the Review Council, the complainant alleged that Her Worship made a serious error during his hearing. He alleged that the justice of the peace would not allow him to present evidence about an error on his ticket before he entered a plea. He said he was treated differently from other defendants who appeared before Her Worship that day, as Her Worship allowed other defendants to make submissions regarding ticket errors before entering a plea and starting their trials.

APPENDIX A

Case Summaries

The complainant alleged that Her Worship's conduct was an abuse of power, discrimination, and a violation of his legal rights. He stated that the justice of the peace did not follow the law "and rules stated in the Provincial Law Book".

Further, the complainant asserted that during his trial, the justice of the peace "chose to do nothing about [his invalid ticket] and continue[d] the invalid and illegal trial based on invalid ticket produced by a malfunction system."

The complaints committee reviewed the letter of complaint. Given that the complainant alleged that Her Worship treated him differently from other defendants who appeared before her, which he said was discrimination, the committee reviewed the court transcript of the full tier of proceedings before the justice of the peace.

Based on its review of the transcript, the committee found no evidence to support the allegation that the justice of the peace treated the complainant differently from the other defendants. The committee observed that Her Worship was very patient with the complainant, listened to his submissions, explained the trial process, and made a determination based on the evidence.

Contrary to the complainant's allegations, the committee observed from the transcript that Her Worship gave the complainant an opportunity to make submissions regarding the alleged problems with his ticket and the red-light camera prior to the start of his trial.

The committee observed that Her Worship's assessment of the evidence, and her decision to find the defendant guilty and impose a fine were matters of judicial decision-making outside the jurisdiction of the Review Council. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council has no authority to change a decision of a justice of the peace.

After completing its investigation, the complaints committee concluded that there was no evidence to support the allegations of misconduct and the allegations related to Her Worship's decision-making were outside the jurisdiction of the Review Council. The complaint was dismissed and the file was closed.

APPENDIX A

Case Summaries

CASE NO. 30-025/19

The complainant appeared before the justice of the peace to obtain subpoenas for witnesses for his motion on a constitutional question.

The complainant alleged that His Worship refused to issue the subpoenas “for reasons not explained to [him]”. He alleged that, “as such”, His Worship “not only obstructed the Justice...he proved again that he is a member of criminal organization and no way will do any help to fight those criminal elements of the Justice system! [sic]”

The complaints committee reviewed the letter of complaint and the transcript of the proceeding before His Worship.

The committee observed that the transcript showed that His Worship was very patient and fair throughout the proceeding. After listening to the complainant’s submissions, His Worship decided not to issue the summonses requested by the complainant and His Worship informed the complainant that the reason was that they were not related to the matter before the court. The committee observed that His Worship’s decision was a matter of judicial decision-making outside the jurisdiction of the Review Council. Justices of the peace have decision-making independence in accordance with the *Constitution Act, 1867*. The Council has no authority to change a decision of a justice of the peace.

After completing its investigation, the complaints committee concluded that there was no merit to support the allegation that His Worship obstructed justice or was involved in a criminal organization, and the allegations related to his decision-making were outside the jurisdiction of the Review Council. The complaint was dismissed and the file was closed.

APPENDIX B

POLICY ON EXTRA-REMUNERATIVE WORK AND APPLICATIONS CONSIDERED

Note:

This version of the procedures reflects decisions of the Review Council up to December, 2019.

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

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.

APPENDIX B

Policy on Extra-Remunerative Work and Applications Considered

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

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

The Review Council has approved some applications 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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Policy on Extra-Remunerative Work and Applications Considered

Opportunity to Respond to Concerns

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

Decision

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

No Authority to Order Compensation for Legal Costs

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

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Policy on Extra-Remunerative Work and Applications Considered

Application Process in Private

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

subs. 8(18)

Quorum of Review Council

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

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

Annual report

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

subs. 9(7)

Amended at Toronto, June 4, 2010.

Policy on Extra-Remunerative Work and Applications Considered

APPLICATIONS FOR APPROVAL OF EXTRA-REMUNERATIVE WORK IN 2019

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-30-001/19 was the first application for approval in calendar year 2019).

Names of applicants are not included in the case summaries.

CASE NO. ER-29-005/18

The Review Council received an application from a justice of the peace relating to co-writing an updated edition of an existing legal text. The Review Council approved of the application, subject to conditions.

Subsequently, Her Worship requested that the Review Council reconsider one condition which stated: “If you become involved in the sales or promotion of the book in any way, and at any events related to the book, you must maintain distance from your role and responsibilities as a judicial officer, including avoiding any reference to your judicial position in advertising, interviews, promotional or informational materials or activities related to the book.” Her Worship submitted that the Review Council should consider creating a separate category, relating to requests by a justice of the peace, to approve education writings such as legal texts, and she provided reasons in support of her request.

Taking into account Her Worship’s background prior to her appointment to the bench and the nature of this particular legal text, the Review Council decided to make an exception to its policy that the terms set out in the condition above are generally necessary when a justice of the peace engages in extra-remunerative work.

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Policy on Extra-Remunerative Work and Applications Considered

The Review Council confirmed its decision approving of Her Worship’s application for approval to co-author the updated edition of the legal text, contingent upon the conditions set out below and based on the Council members’ understanding that the book is not critical of the justice system:

- 1) The Council’s approval of the request must not impact on judicial scheduling and Her Worship’s assignment of duties.
- 2) Her Worship’s activities in relation to the book must be subject to her responsibilities as a justice of the peace and as such must be undertaken at times when she was not otherwise assigned to judicial duties.
- 3) Her Worship must demonstrate sensitivity in transactions related to her book to ensure the avoidance of any real or perceived conflict of interest or bias.
- 4) Her Worship must refrain from using the Court’s email network to promote, advertise, or sell the book. Her Worship must refrain from conducting personal business in relation to the book on the Court’s resources, which are provided for purposes associated with a justice of the peace’s official responsibilities.
- 5) Her Worship may accept remuneration for the publication in the form of royalties from the sale of the book, but such remuneration must be established without reference to her position as a justice of the peace.
- 6) The Council reserved the right to revisit the request and its decision should the Council become aware of any new information or any relevant change in circumstances

CASE NO. ER-30-001/19

The Review Council approved an application by a justice of the peace seeking to teach a course called “Evidence and the Litigation Process” at a community college. The course would be taught once a week for three hours for the Winter semester of 2020.

The Review Council approved the application, subject to the following conditions:

- 1) The Council’s approval of the request must present no difficulties in fulfilling judicial assignments during the period of teaching.

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Policy on Extra-Remunerative Work and Applications Considered

- 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 Worship's daytime teaching must be undertaken on dates when he had neither a court assignment nor a non-presiding day, but rather on a scheduled vacation or lieu day.
- 3) His Worship must maintain appropriate distance in the completion of the teaching of these courses from his role and responsibilities as a judicial officer.
- 4) His Worship 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 his teaching activities, as those resources are provided for purposes associated with his official responsibilities.
- 6) The Review Council reserved the right to revisit the request and its decision should any relevant circumstances change.

CASE NO. ER-30-002/19

The Review Council approved an application from a justice of the peace seeking approval to engage in extra-remunerative work teaching one course, "Introduction to Canadian Law", at a university's summer program for American law students.

The approval of the application was granted in this instance, subject to the conditions below:

- 1) The 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 her primary responsibilities as a justice of the peace during assigned hours. Her Worship's availability to carry out any other tasks related to teaching must be undertaken at times when she was not otherwise assigned to judicial duties and where she requested either vacation or compensating time off such as earned lieu

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Policy on Extra-Remunerative Work and Applications Considered

days. The Council is of the view that non-presiding days should not be used for such purposes. Her Worship indicated that the teaching would occur during approved vacation days.

- 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, including in any promotional and other course materials.
- 4) Her Worship 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 her 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-30-003/19

The Review Council approved an application from a justice of the peace to sell her artwork for modest prices, subject to the conditions below:

- 1) The Council accepted Her Worship's understanding and expressed undertakings to demonstrate sensitivity regarding to whom her artwork is sold, with the view of avoiding any real or perceived conflict of interest or bias. Of particular concern to Council are any sales made to municipalities or to members of the justice community such as agents, paralegals, lawyers, or others who may have the opportunity to appear before Her Worship in her decision-making capacity;
- 2) Should sales increase beyond occasional or should any other change in circumstance arise that affects the status outlined in Her Worship's correspondence, the Council instructed her to advise it in writing;

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Policy on Extra-Remunerative Work and Applications Considered

- 3) Her Worship must maintain distance as an artist from her role and responsibilities as a judicial officer, particularly in relation to avoiding any reference to her judicial position in advertising or informational materials related to her artwork.
- 4) The Council cautioned Her Worship respecting the donation of her artwork for fundraising purposes. The Council's concerns centered around the public's sensitivity in regards to a justice of the peace participating in fundraising activities having regard to the public perceptions of judicial demeanour, independence and impartiality. The Council recognizes this is not an issue of extra remuneration, but could be an issue for Council to address should a complaint regarding the ethics of such involvement arise.
- 5) The Council reserved the right to revisit the request and its decision should any relevant circumstances change.

APPENDIX C

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

APPENDIX C

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

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

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

PREAMBLE

A strong and independent judiciary is indispensable to the proper administration of justice in our society. Justices of the peace must be free to perform their judicial duties without fear of reprisal or influence from any person, group, institution or level of government. In turn, society has a right to expect those appointed as justices of the peace to be honourable and worthy of its trust and confidence.

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

The following principles of judicial office are established by the justices of the peace of the Ontario Court of Justice and set out standards of excellence and integrity to which all justices of the peace subscribe. These principles are not exhaustive. They are designed to be advisory in nature and are not directly related to any specific disciplinary process. Intended to assist justices of the peace in addressing ethical and professional dilemmas, they may also serve in assisting the public to understand the reasonable expectations which the public may have of justices of the peace in the performance of judicial duties and in the conduct of their personal lives.

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

1. THE JUSTICE OF THE PEACE IN COURT

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

Commentaries:

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

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

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

Commentaries:

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

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

Commentaries:

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

2. THE JUSTICE OF THE PEACE AND THE COURT

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

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

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

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

APPENDIX C

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

Commentaries:

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

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

Commentaries:

Subject to applicable legislation, justices of the peace may participate in law related activities such as teaching, participating in educational conferences, writing and working on committees for the advancement of judicial interests and concerns, provided such activities do not interfere with their primary duty to the court.

3. THE JUSTICE OF THE PEACE IN THE COMMUNITY

- 3.1 Justices of the peace should maintain their personal conduct at a level which will ensure the public's trust and confidence.

- 3.2 Justices of the peace must avoid any conflict of interest, or the appearance of any conflict of interest, in the performance of their judicial duties.

Commentaries:

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

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

- 3.3 Justices of the peace must not abuse the power of their judicial office or use it inappropriately.

- 3.4 Justices of the peace are encouraged to be involved in community activities provided such involvement is not incompatible with their judicial office.

Commentaries:

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