

# JPRC



## FOURTEENTH ANNUAL REPORT

2020

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**JUSTICES OF THE PEACE  
REVIEW COUNCIL**

ONTARIO

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ISSN 1918-3755



***The Honourable Lise Maisonneuve***

**CHIEF JUSTICE**

**ONTARIO COURT OF JUSTICE**

Chair, Justices of the Peace Review Council



JUSTICES OF THE PEACE REVIEW COUNCIL

September 15, 2021

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

Dear Minister:

It is my pleasure to submit the Fourteenth Annual Report of the Justices of the Peace Review Council concerning its operations in 2020, 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, 2020 to December 31, 2020.

Respectfully submitted,

Lise Maisonneuve  
Chief Justice  
Ontario Court of Justice



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## INTRODUCTION

The period covered by this Annual Report is from January 1, 2020 to December 31, 2020. This report is the Fourteenth 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 Fourteenth Annual Report of the Review Council provides information on the Council's membership, its functions and procedures, and its work during 2020. 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 several 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 375 provincially appointed justices of the peace, full-time, part-time and *per diem*, during the period covered by this Annual Report. In 2020, Ontario justices of the peace presided over provincial offences matters, such as traffic offences, bail hearings, and intake and assignment courts.



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During 2020, the Council received 17 new complaints about justices of the peace and carried over 29 from previous years. Information about the 30 complaint files completed and closed in 2020 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”.


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 several 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;

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- ♦ 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 balance in gender identity, 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, 2020 to December 31, 2020) 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 Sharon Nicklas..... (Toronto)

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

Her Worship Kristine Diaz ..... (London)

Her Worship Liisa Ritchie ..... (Peel Region)

Her Worship Christine Smythe ..... (Toronto)



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

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

The Honourable Justice Diane M. Lahaie ..... (Ottawa)

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

Regional Senior Justice of the Peace Melanie Bremner ..... (Toronto)  
(Effective February 4,2020)

***Lawyer Member:***

Ms. S. Margot Blight ..... (Mississauga)  
*Lawyer/Advocate*

***Community Members:***

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

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

Ms. Lauren Rakowski ..... (Toronto)  
*Lawyer, Gardiner Roberts LLP*

Mr. John Tzanis ..... (Markham)  
*B.A., J.D. (Paralegal), Continental Legal Services Professional Corporation*  
(Effective March 25, 2020)



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### ***Members – Temporary:***

Subsection 8(10) of the *Justices of the Peace Act* permits the Chief Justice of the Ontario Court of Justice to appoint a judge or a justice of the peace to be a temporary member of the Justices of the Peace Review Council of a complaints committee or hearing panel 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 Kathleen Caldwell ..... (Toronto)

The Honourable Justice Joseph De Filippis ..... (St. Catharines)

The Honourable Justice Peter K. Doody ..... (Ottawa)

The Honourable Justice Neil Kozloff ..... (Toronto)

The Honourable Justice Martin P. Lambert ..... (Timmins)


The Honourable Justice Timothy Lipson ..... (Toronto)

Regional Senior Justice of the Peace Thomas Stinson ..... (Kitchener)

## **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.



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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. Ingrid Richards – Administrative Assistant  
(Effective September 8, 2020)

## **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;
- ◆ 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.

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

### ***Procedural Amendments***

In 2020, the Council continued to refine and develop its procedures and policies. Several amendments were made to clarify and improve the hearing process.

- ♦ The Council observed that persons who file complaints may not be aware that their letter of complaint will be provided to the subject justice of the peace if the justice of the peace is invited to respond to the complaint in the course of the investigation. The Procedures were amended to explain that the principle of natural justice requires that the subject justice of the peace be provided with a copy of the complaint letter if he or she is being invited to respond to the complaint.
- ♦ The Council noted that there was previously no requirement that the letter of complaint be filed as an exhibit when a hearing is ordered. If the letter was not filed, members of the public or the media may not know the details of the letter that led to the investigation and a hearing. As well, without a complaint letter, a Hearing Panel may not have all relevant information about the complainant’s perception of the conduct in question, particularly if the complainant was not called as a witness at the hearing. Amendments were made to require that the letter of complaint be filed by Presenting Counsel as an appendix to the Notice of Hearing at the initial set-date appearance, with the name of the complainant(s) redacted, subject to any order of the hearing panel. If there were allegations in the letter of complaint that were not ordered to a hearing, these allegations must be redacted in the exhibit copy of the letter of complaint.




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The Council noted that Presenting Counsel has, on occasion, withdrawn allegations ordered to a formal hearing. The Council considered that a complaints committee, which includes a member of the public, makes the decision to order a hearing where they determine that the allegations have a basis in fact which, if believed by a hearing panel, could lead to a finding of judicial misconduct. If Presenting Counsel is permitted to unilaterally withdraw an allegation, members of the public may incorrectly perceive that allegations were ordered to a hearing without evidence to support the allegation, or that a private agreement was reached between Presenting Counsel and the justice of the peace.

- ◆ The Council amended its procedures to clarify that Hearing Panels should decide whether or not an allegation may be withdrawn by Presenting Counsel. The Council noted that the process must be supportive of the objective of preserving public confidence in the complaints process and the judiciary. The amendment requires a formal motion by Presenting Counsel to be considered by the Hearing Panel. This provides a clear process with the benefit of submissions from both parties. The Panel must be satisfied that there is no reasonable prospect of a finding of judicial misconduct based on the evidence available at the time of the hearing, or that withdrawal of the allegation(s) from the Notice of Hearing will achieve a just result and preserve confidence in the judiciary.

Amendments were also made to:

- ◆ Make it clearer that Presenting Counsel, who should be seen to be independent both from the Hearing Panel and the judicial officer, should not be entering into a joint submission on disposition;
- ◆ Provide guidance for Hearing Panels on when it may reject an Agreed Statement of Facts while protecting the public interest in the judicial discipline process;
- ◆ Make it clear that the parties will have an opportunity to make submissions if the Hearing Panel is considering rejecting an Agreed Statement of Facts;
- ◆ Provide both the Registrar and the Deputy Registrar authority to issue summonses to increase efficiency;
- ◆ Reflect changes made to the *Justices of the Peace Act* that came into effect on July 8, 2020 regarding compensation for legal costs.



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A copy of the Council's current procedures for the complaints process that incorporates the amendments made in 2020 is posted on the Review Council's website under the link "Policies and Procedures at [www.ontariocourts.ca/ocj/jprc/policies-and-procedures/](http://www.ontariocourts.ca/ocj/jprc/policies-and-procedures/).

## 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/](http://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.



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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 also serve to assist the public in understanding the standards expected of justices of the peace in the performance of their 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 [www.ontariocourts.ca/ocj/jprc/principles-of-judicial-office/](http://www.ontariocourts.ca/ocj/jprc/principles-of-judicial-office/).

## 7. EXTRA-REMUNERATIVE WORK

Under section 19 of the *Justices of the Peace Act*, all justices of the peace are required to seek the written approval of the Review Council before accepting or engaging in any extra-remunerative work.

Applications received from justices of the peace to engage in other remunerative work are considered in accordance with the Council’s policy. The policy sets out criteria that are used in assessing applications, including:

- ♦ whether there is an actual or perceived conflict of interest between the 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,


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- ♦ 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 seemingly 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,



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religious or creative standpoint. In accordance with the Council’s policy and procedure, an applicant who seeks approval to engage in commercial activity must address the issue of why the application for extra-remunerative work should be approved as an exception to the general policy that full-time presiding justices of the peace should not engage in extra-remunerative work that is commercial in nature.

The *Policy on Extra-Remunerative Work* is included as Appendix B in this Annual Report. The most recent version is posted on the Council’s website under the link “Policies and Procedures” at [www.ontariocourts.ca/ocj/jprc/policies-and-procedures/extra-remunerative-work/](http://www.ontariocourts.ca/ocj/jprc/policies-and-procedures/extra-remunerative-work/).

### ***Summary of Extra-Remunerative Files Closed in 2020***

During 2020, the Council completed its consideration of four applications that were submitted in 2020.

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/](http://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/](http://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/](http://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/](http://www.ontariocourts.ca/ocj/conduct/do-you-have-a-complaint/). The brochure, “Do You Have a Complaint?” provides information on what a justice of the peace does, how to tell whether the presiding judicial officer is a judge or a justice of the peace, and on how to make a complaint about conduct.



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## 9. 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. 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/policies-and-procedures/>.

No applications for orders of accommodation to enable performance of essential duties were received in 2020.

## 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



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



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## ***Preliminary Investigation and Review***

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

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



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The complaints committee will determine whether 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 decision-making of the justice of the peace); 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 allegations warrant 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.



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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;
- ◆ 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 the files closed in 2020, two justices of the peace were non-assigned work pending the final disposition of the complaint process. Two justices of the peace were re-assigned to other court locations pending the final disposition of the complaint process.

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## ***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, 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.

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**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



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the peace; and, a lawyer or community member. Complaints committee members who participated in the investigation of the complaint do not participate or form part of the 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 an 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.

With some exceptions, the *Statutory Powers Procedure Act* 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 any documents or things 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





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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 Following s. 11.1 Hearing***

After hearing the evidence and submissions, under section 11.1(10) of the *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



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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;
- ◆ 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. Where a hearing has been ordered, 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 both the investigation and the hearing. Where a complaint was made on or after July 8, 2020, and a recommendation for removal from office is made by a hearing panel, compensation shall not be recommended by the hearing panel: s. 11.1(17.2).

In 2020, five recommendations for compensation for legal costs were made to the Attorney General by complaints committees or hearing panels.

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## **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/fr/lois>. The website contains a database of Ontario's current and historical statutes and regulations.

## **11. SUMMARY OF COMPLAINTS CLOSED IN 2020**

### **Overview**

The Justices of the Peace Review Council carried forward 29 complaints to 2020 from previous years. During 2020, 17 new complaint files were opened by the Review Council.<sup>1</sup> Including those cases carried into 2020 from previous years, the total number of files open during 2020 was 46. Of the 46 open files in 2020, 30 files were completed and closed before December 31, 2020.

Of the 30 files that were closed, eight files opened in 2020, 16 were opened in 2019, two were opened in 2018 (one was the subject of a public hearing), one in 2017 (which was the subject of a public hearing), and three (which were the subject of a public hearing) were opened in 2016.

Sixteen of the 46 open files were still ongoing at the end of 2020 and carried over into 2021. Nine were complaints filed in 2020. Three were complaints filed in 2019. Three were filed in 2018, and one in 2017.


### **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;

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<sup>1</sup> The number of new complaints may be lower due to the impact of the COVID-19 pandemic on court proceedings. Court proceedings were adjourned due to health risks associated with the pandemic. Most complaints arise from proceedings in court.

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- ♦ 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 30 files addressed and closed in 2020, one complaint was dismissed by the Review Council under section 11(15)(a) on the basis that it was found to be outside of the jurisdiction of the Council. These files typically involve a complainant who expresses 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 means that the complaint is 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.

Sixteen 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 two cases, the Review Council provided advice in writing to a justice of the peace under section 11(15) (b) of the *Act*.

Two complaints were referred to the Chief Justice of the Ontario Court of Justice pursuant to section 11(15)(d) of the *Act*. A complaints committee will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the committee is of the opinion that the conduct complained of does not warrant another disposition and that there is some merit to the complaint 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



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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 four complaints when the justices of the peace who were the subject of those complaints left office before the complaints process was completed. The files were administratively closed.

Of the files closed in 2020, five complaints about the conduct of justices of the peace were the subject of public hearings. A public hearing is ordered pursuant to section 11(15)(c) where the complaints committee is of the opinion that there has been an allegation of judicial misconduct which the majority of the members of the committee believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct.

Following a hearing into three complaints about the conduct of Her Worship Julie Lauzon, the majority of the Hearing Panel recommended to the Attorney General that Her Worship be removed from office. Her Worship filed an application for judicial review. This application was still ongoing at the time when this Report was written.

A complaint about the conduct of Her Worship Claire Winchester resulted in a reprimand, a five-day suspension without pay and an order that she apologize in writing to a defendant.

A complaint about the conduct of His Worship Paul Welsh was dismissed.

Hearing decisions are posted on the Review Council's website on the webpage "Public Hearings Decisions" at <https://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 Dianne Ballam, Justice of the Peace Anna Gibbon, Justice of the Peace Margot McLeod, and Justice of the Peace Paul Welsh. Updates on ongoing hearings are provided on the Review Council's website at <https://www.ontariocourts.ca/ocj/jprc/public-hearings/>.



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## ***Types of Cases***

Of the 30 files that were completed and closed in 2020, ten complaints arose from events during provincial offences proceedings, eight arose from matters in Intake Court, four arose from pre-enquête hearings, two arose from bail hearings, one arose from an application for a peace bond, and five related to conduct outside of the courtroom.

## ***Case Summaries***

Case summaries for each complaint file closed during 2020 follow in Appendix “A” of this Report.

## SUMMARY OF COMPLAINTS CLOSED IN 2020

DISPOSITIONS ON COMPLAINTS CLOSED IN 2020	
Dismissed as out of jurisdiction	1
Dismissed as unsubstantiated or did not amount to misconduct	16
Advice Letter	2
Advice - In-person	0
Referred to Chief Justice	2
Loss of jurisdiction	4
Hearing	5
<b>TOTAL CLOSED IN 2020</b>	<b>30</b>

## DISPOSITIONS IN FORMAL HEARINGS IN 2020\*

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

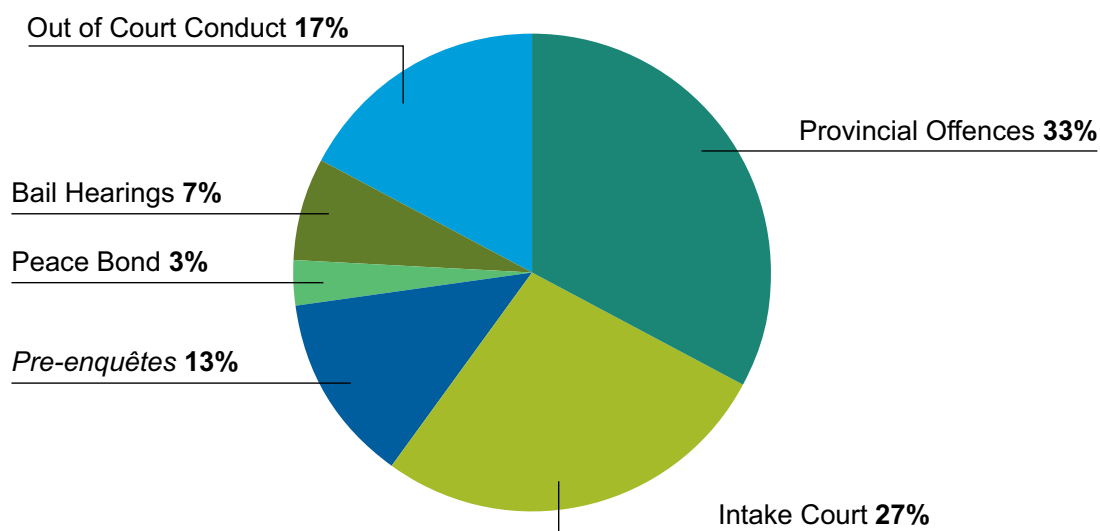
<https://www.ontariocourts.ca/ocj/jprc/public-hearings-decisions/>.

JUSTICE OF THE PEACE	# OF COMPLAINTS	DISPOSITION
Her Worship Julie Lauzon	3	Recommendation for removal from office
Her Worship Claire Winchester	1	Reprimand, five days suspension without pay and an order to make an apology to a defendant in writing
His Worship Paul Welsh*	1	Dismissed

\* A hearing into two 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 2020

TYPES OF CASES	# OF COMPLAINTS
Provincial Offences Court	10
Intake Court	8
Bail Court	2
Peace bond application	1
<i>Pre-enquêtes</i>	4
Out of Court Conduct	5
<b>TOTAL</b>	<b>30</b>

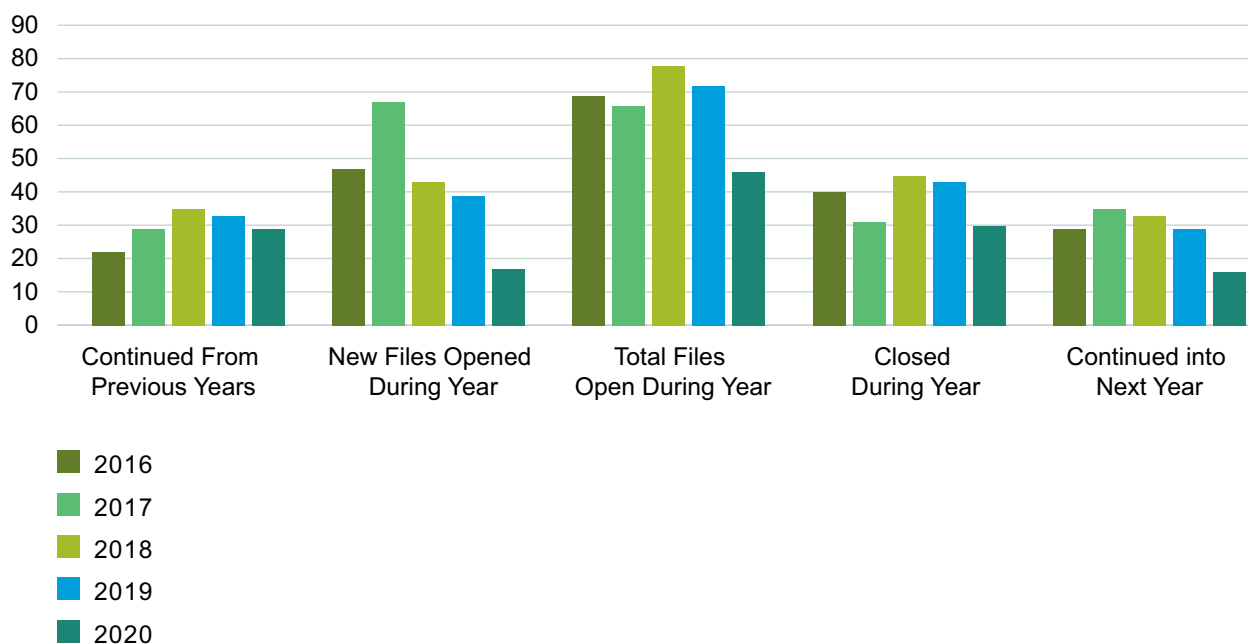




## CASELOAD IN CALENDAR YEARS

	2016	2017	2018	2019	2020*
Continued From Previous Years	22	29	35	33	29
New Files Opened During Year	47	37	43	39	17
Total Files Open During Year	69	66	78	72	46
Closed During Year	40	31	45	43	30
Continued into Next Year	29	35	33	29	16

\* The number of new complaints received in 2020 may have been lower due to the impact of the COVID-19 pandemic on court proceedings. Court proceedings were adjourned due to health risks associated with the pandemic. Most complaints arise from proceedings in court.





**APPENDIX A**

**2020  
CASE SUMMARIES**

## APPENDIX A

### Case Summaries

Complaint files are given a two-digit prefix indicating the complaint year, followed by a sequential file number and by two digits indicating the calendar year in which the file was opened (i.e., Case No. 31-001/20 was the first file opened in the calendar year 2020).

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. 27-013/16, 27-014/16 AND 27-015/16**

The complaints arose from an article Her Worship wrote that was published in the *National Post*.

On March 14th, 2016, Her Worship Julie Lauzon wrote an article that was published online in the *National Post* newspaper. The article was entitled: "*When bail courts don't follow the law*". In the article, Her Worship called the Court in which she presides "a disgrace", citing a "lack of respect for the JP bench" and "the absence of the rule of law in this court". She also referred to the court as "dysfunctional and punitive" and repeated in the last paragraph that it was "devoid of the rule of law".

In the article, Her Worship referred to the conduct of Crown Attorneys appearing before her as being characterized by "cynicism and bullying." She described three specific incidents alleging unprofessional behaviour of Crown Attorneys. In one of the incidents, Her Worship described how when she questioned certain proposed bail conditions, the prosecutor threw a "temper tantrum". She also wrote that prosecutors "attempt to wrestle jurisdiction from the court through a variety of unacceptable tactics" instead of appealing decisions with which they are unhappy.

A complaints committee investigated the complaints and ordered a formal hearing. After hearing the evidence, the Hearing Panel found that in writing and publishing the article, Justice of the Peace Lauzon exceeded the bounds of permissible speech for a judicial officer and, in so doing, engaged in judicial misconduct. The Panel found that the article was a means for Her Worship to vent her personal views and professional frustrations in public. The Panel was of the view that no matter the level of frustration, Justice of the Peace Lauzon had a duty to remain civil and conduct herself with dignity and restraint

## APPENDIX A

### Case Summaries

both in court and in the community when publicly expressing her opinion about matters relevant to the administration of justice.

The Panel found that the article was not a justifiable response to Her Worship's displeasure with how bail courts were run. It created a reasonable perception that she lacked impartiality. This was damaging to her in her role as a judicial officer, the judiciary, and the administration of justice. It also had the effect of undermining the public's confidence in the administration of justice and thereby risked diminishing respect for the rule of law.

With respect to disposition, the majority of the Panel was not satisfied that one of the lesser dispositions under section 11.1(10)(a) to (f) or a combination of those dispositions was sufficient to restore public confidence in Her Worship, the judiciary or the administration of justice. The Panel found that the serious nature of the misconduct, which was reinforced by Her Worship's testimony, was so seriously contrary to the impartiality, integrity and independence of the judiciary that it irreparably undermined public confidence in Justice of the Peace Lauzon's ability to perform her duties. The Panel found that the erosion in confidence in Her Worship rendered her incapable of performing the duties of her office. In the result, the majority of the Panel recommended to the Attorney General that Her Worship be removed from office as this was necessary to restore public confidence in the judiciary and the administration of justice.

The justice of the peace member of the Panel concluded that a combination of a reprimand and a suspension of duties, without pay, for a period of thirty days, would be a proportionate disposition to impose. His Worship was of the view that this disposition would drive home the seriousness of the misconduct of Justice of the Peace Lauzon and would be sufficient to restore the confidence of the public in the integrity of the judiciary as a whole and in the administration of justice.

Her Worship Lauzon requested that she be compensated for her legal costs in the amount of \$202,481.31, including HST and disbursements. The Hearing Panel considered the factors set out in the case law and recommended that Justice of the Peace Lauzon receive partial compensation for her legal costs and disbursements in the amount of \$112,010.68, plus HST.

The full decisions of the Hearing Panel are posted on the Review Council's webpage under the link "Public Hearings Decisions" at <https://www.ontariocourts.ca/ocj/jprc/public-hearings-decisions/>.

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### Case Summaries

#### **FILE NO. 29-029/18**

The complaint raised allegations about Justice of the Peace Claire Winchester's conduct on:

- a) May 23, 2018, when she left Intake Court early in L'Original resulting in a member of the public not having an opportunity to have his bail conditions varied; and,
- b) June 27, 2018, when she closed Bail Court early in Cornwall "depriving an accused person of his right to reasonable bail, fair treatment in accordance with the law, due process, and ultimately his right to liberty."

It was also alleged that Her Worship's conduct on both occasions amounted to "a pattern of conduct that was inappropriate and/or demonstrated bias and partiality."

A complaints committee investigated the complaint and ordered a formal hearing. The Hearing Panel concluded that while Her Worship acted inappropriately in inexcusably leaving her assigned duties in Intake Court before the end of court hours on May 23, 2018, they were not satisfied, given all of the evidence, that Her Worship's conduct constituted judicial misconduct. The Panel held that while this was an instance of neglect of duties, it was not so seriously contrary to the integrity of the judiciary that it undermined the public's confidence in the judiciary or in the administration of justice generally.

The Panel noted that their decision in this respect should not be taken to mean that leaving court early and neglecting one's assigned judicial duties can never amount to judicial misconduct. The evidence that the Panel heard indicated that there may have been a lack of clarity about whether such conduct can constitute judicial misconduct. Given their finding that Her Worship's conduct was clearly inappropriate, the expectations of justices of the peace to fulfill their judicial assignments have now been made clear. A Hearing Panel in the future may well find judicial misconduct when a judicial officer neglects his or her duties.

Further, the Panel concluded that while there was no judicial misconduct on May 23, 2018 and therefore the allegation of a "pattern" of judicial misconduct could not be established, Her Worship's actions on May 23, 2018 and her subsequent conversation with her Regional Senior Justice of the Peace (RSJP) provided context in which to consider her conduct on June 27, 2018.

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### Case Summaries

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After the events of May 23, 2018, RSJP Leblanc made it clear to Her Worship Winchester that a justice of the peace has an obligation to fulfill their judicial duties until the end of the court day.

With respect to Her Worship's conduct on June 27, 2018 in bail court, the Panel unequivocally concluded that, in closing bail court early, Her Worship acted in haste and without due regard to the right of the accused to have his bail hearing held that day. The Panel found that in disregarding the constitutional, procedural and fundamental rights of the accused on June 27, 2018, Her Worship failed to uphold and maintain judicial integrity, and undermined public confidence in the integrity of her judicial office and in the administration of justice.

The Panel concluded that the allegations about Her Worship Winchester's conduct and comments in court on June 27, 2018 were made out on the evidence and constituted judicial misconduct that undermined public confidence in the judiciary and warranted a disposition under section 11.1(10) of the *Justices of the Peace Act*.

The Panel determined that a combination of dispositions, namely a reprimand, an apology from Her Worship to the defendant in bail court and a five-day suspension without pay, were required to restore the public's confidence in Her Worship, in the judiciary and in the administration of justice in general.

Her Worship requested compensation for the costs of legal services incurred by her during the hearing. Her Worship sought a recommendation for payment of \$171,596.25 in legal fees, \$22,307.51 in HST and \$11,329.51 in disbursements, for a total of \$205,233.27. The Hearing Panel recommended to the Attorney General that Her Worship receive compensation of \$127,000 in legal fees plus HST of \$16,510.00 on the fees, and \$8,329.51 for disbursements inclusive of HST. The total amount recommended was \$151,839.51.

The full decisions of the Hearing Panel are posted on the Review Council's webpage under the link "Public Hearings Decisions" at <https://www.ontariocourts.ca/ocj/jprc/public-hearings-decisions/>.

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### Case Summaries

#### FILE NO. 28-035/17

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

The complaints committee ordered the complaint 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:

While His Worship presided over a pre-enquête, he failed to explain to the self-represented informant and his family what was occurring. After the Crown Attorney stayed the charges, His Worship pretended to the informant that the pre-enquête was going to proceed, appearing to mock and deliberately mislead the informant and his family. His Worship commented to the Crown Attorney, “Like the way I handled that?” and laughed. His Worship’s conduct lacked the integrity, courtesy, sincerity, respect, dignity and fairness expected of a judicial officer.

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. Following oral evidence and submissions, the Hearing Panel dismissed the complaint. The Panel concluded that the proceeding was a difficult matter for any jurist to deal with, involving a litigant who was almost unimaginably obstructive. There were times during the hearing when Justice of the Peace Welsh was abrupt with the litigant, but the Panel found that the litigant had to be controlled in order to keep the proceeding on track, and His Worship was doing that. The Panel found that His Worship struck a reasonable balance in dealing with the litigant, and that he exercised patience with him, despite his numerous interruptions and lack of respect for court decorum.

Justice of the Peace Welsh subsequently requested that, pursuant to section 11.1(17) of the *Justices of the Peace Act*, the Hearing Panel make a recommendation to the Attorney General that he should be compensated for the legal costs that he incurred in



## APPENDIX A

### Case Summaries

connection with the hearing process. The Hearing Panel recommended that His Worship be compensated in the amount of \$22,133.88, inclusive of HST, for the cost of legal services incurred in connection with the hearing.

The full decision of 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. 29-042/18**

The complainant was a police officer who appeared before the justice of the peace as a Crown witness in provincial offences court.

In his letter of complaint, the complainant indicated that he was not feeling well that day and, given the cool weather, he wore his patrol jacket over his uniform in the courtroom. He alleged that, while he was sitting next to the prosecutor, Her Worship said, "in a loud, unfriendly, degrading" and "authoritative voice", "Officer, officer, take your jacket off!" The complainant indicated that Her Worship was "staring down at [him] with an angry look on [her] face".

The complainant said that he felt ostracized by Her Worship's comments and that everyone in the courtroom was staring at him. He said that he got up and left the courtroom to avoid a conflict with the justice of the peace. He alleged that when he returned, the justice of the peace told him again to take his jacket off and to remove the glasses from his head. He stated that he could not understand why Her Worship found it necessary to "single [him] out in front of everyone once again." He noted that traffic agents and other members of the public were wearing jackets in the courtroom.

The complainant said that he apologized to Her Worship for wearing glasses on his head but told her that his jacket would stay on. He alleged that the justice of the peace "got upset and called a recess". He stated that during the recess, members of the public, including defendants, approached him and told him that they felt Her Worship was "overboard, a bully, and even hubris in the way she was treating [him]".

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### Case Summaries

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A The complainant alleged that after court resumed, the justice of the peace once again told him to remove his jacket and made a derogatory remark about his lack of professionalism. This comment was allegedly made in front of three defendants the complainant had charged and had to testify against. The complainant said that he told the justice of the peace that he wanted to keep his jacket on because he was cold, but she said she did not care. He said that her response was inhumane.

The complainant stated that he took his jacket off to give evidence “while feeling very uncomfortably cold” and then left the courtroom. He concluded that Her Worship “had no business” telling him to take off his police issued patrol jacket in front of members of the public on three separate occasions. He alleged that her conduct was belittling and “publicly humiliating”.

The complainant further alleged that, on a subsequent date, he was approached by a police officer in court who told him that a city employee had overheard Her Worship and another justice of the peace, who were having lunch together, discussing the complainant and the jacket incident. He stated that he felt he was being ostracized, intentionally embarrassed, and falsely accused.

The complaints committee reviewed the letter of complaint and the transcript of the proceedings before the justice of the peace. One member of the committee also listened to the audio recording of the proceedings. The committee also retained external investigating counsel to interview witnesses with potentially relevant information. The committee reviewed transcripts of those interviews.

Further, the committee provided Her Worship with disclosure of the materials considered in its investigation and invited her to respond to the complaint. The committee reviewed and considered Her Worship’s response.

The committee observed that Her Worship provided an explanation in response to the complainant’s allegations and version of events. She said that she observed the officer sitting at counsel table, using his cellphone, and constantly opening and closing the Velcro portions of his jacket, which she said made a distracting noise. Her Worship indicated that the jacket was both visibly distracting and audibly disruptive. A member of the committee listened to the audio recording and could hear the sound of Velcro at one point.

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Her Worship disputed the allegations that she was angry, rude and belittling toward the complainant in asking him to remove his coat. The committee observed from the transcript that Her Worship said to the complainant, “And, officer, can you remove your out coat -outside coating, please, in the court. Thank you”. The transcript showed that when the justice of the peace asked the officer to remove his coat a second time, he refused and stated that she had no business to tell him to take his jacket off.

The committee observed from the transcript that, in the course of the proceedings, Her Worship asked a self-represented defendant who was in the courtroom for an unrelated matter to remove the sunglasses from his head and, in another unrelated matter, she asked another self-represented defendant to remove his jacket. The committee found no evidence in the transcript that the justice of the peace was singling the officer out, as alleged.

Further, the committee observed that it did not appear that the justice of the peace got upset and called a recess, as alleged by the complainant. The transcript showed that the prosecutor requested a recess and Her Worship granted the request. With respect to the allegation that Her Worship said she “did not care” that the officer was cold, the committee noted from the transcript that no such remark was made. Nor did the transcript appear to support the allegation that Her Worship made a derogatory comment about the complainant’s lack of professionalism. Rather, Her Worship stated, “I would expect after [the number of years he had been a police officer] that you’re extremely professional”.

The committee was satisfied that, in the circumstances, it was within Her Worship’s authority to ask a police witness who was sitting at counsel table to remove his outdoor jacket. The committee noted that the *Principles of Judicial Office* for justices of the peace indicate that justices of the peace are responsible for maintaining order and decorum in the courtroom. Justices of the peace have a duty to ensure that those who appear in court demonstrate respect for the court and legal process.

The committee observed that it is not inappropriate for judicial officers to ask a party, witness, or legal representative to remove an article of clothing that may be perceived as disrespectful, disruptive or distracting to the proceedings. For the same reason, it would not be inappropriate for a judicial officer to ask that persons refrain from talking while court is in session or to not use their cell phones.

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A Finally, with respect to the alleged conversation between Her Worship and the other justice of the peace, the committee observed from the witness interviews that there was conflicting evidence about whether this conversation occurred and whether persons other than the two justices of the peace, such as court staff and a prosecutor, were present. While the committee observed that it would have been inappropriate for Her Worship and another justice of the peace to discuss a prior incident involving the complainant in front of court staff or a prosecutor, the totality of the evidence could not support a conclusion that such allegations had been substantiated.

The committee determined that the justice of the peace's conduct was appropriate in the circumstances and the allegations of misconduct were not supported by the record. The complaint was dismissed, and the file was closed.

#### **CASE NO. 30-012/19**

The complainant was a police officer who appeared before the justice of the peace as a Crown witness in provincial offences court.

In his letter to the Council, the complainant indicated that when he arrived in Her Worship's courtroom, he sat next to the municipal prosecutor. The complainant said that when the proceedings commenced, he reviewed his notebooks and tickets and sent a text message to his sergeant to update him on his courtroom attendance.

The complainant stated that as he was text messaging his sergeant, the municipal prosecutor turned to him and advised that the justice of the peace was addressing him. The complainant alleged that Her Worship said that she did not appreciate him sleeping in her courtroom and asked him to leave.

The complainant stated that he was "absolutely shocked and embarrassed as the courtroom was filled with traffic agents, members of the public [whom he had charged], and fellow police officers."

The complainant said he immediately stood up and told the justice of the peace that he was not sleeping, but rather, texting his sergeant on his work phone. He stated that

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the prosecutor also stood up and confirmed that the complainant was not sleeping. The complainant said that he gathered his evidence and left the courtroom while everyone stared at him.

He alleged that when he left the courtroom, he was approached by a police officer who told him that a city employee had overheard Her Worship and another justice of the peace, who were having lunch, talking about him in relation to an incident on a different date when the complainant appeared in court before the other justice of the peace. He stated that he felt he was being ostracized, intentionally embarrassed, and falsely accused.

The complainant said that he subsequently returned to the courtroom to provide evidence on three trial matters. He indicated that after his matters had concluded, Her Worship told the court clerk to go off the record so that she could talk to the complainant. The complainant indicated that he did not want to talk to Her Worship and continued to gather his evidence and prepare to leave. It was alleged that Her Worship became upset, raised her voice and directed the complainant to look at her while she was speaking to him. The complainant said that the justice of the peace told him that she had been watching him for a period of time and that he was sleeping.

The complainant said he told the justice of the peace that he would not speak to her without his union representative present and reiterated that he was not sleeping. He also indicated that he would be filing a complaint and that Her Worship had completely embarrassed him. He then walked out of the courtroom. The complainant felt that he was publicly shamed.

The complaints committee reviewed the letter of complaint and the transcript of the proceedings before the justice of the peace. The committee also retained external investigating counsel to interview witnesses with potentially relevant information. The committee reviewed transcripts of those interviews.

Further, the committee provided Her Worship with disclosure of the materials considered in its investigation and invited her to respond to the complaint. The committee reviewed and considered Her Worship's response.

The committee observed from the court transcript that during the proceedings, the justice of the peace suggested to the court clerk that the complainant be asked to leave the courtroom since he was sleeping. The transcript showed that the complainant responded

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that he was not sleeping but texting with his sergeant on his work phone. The committee noted that Her Worship said, “I’m sorry, I thought you were sleeping” and suggested that the complainant use his cell phone outside the courtroom.

The committee observed that in her response, the justice of the peace acknowledged that she had mistakenly believed the complainant was sleeping because she perceived that his “head was tilted downwards, his chin appeared to be resting on his vest, his eyes were closed, and his hands appeared to be in his lap.” The justice of the peace indicated that she did not consider the possibility that he would be texting, as she had never observed an officer texting in open court. Her Worship reflected that the complainant likely adopted such a posture in order to discretely sit with his phone in his lap and text.

The committee observed that Her Worship appeared to acknowledge that she had made a mistake and she explained that she attempted to apologize to the complainant after court had concluded. Her Worship also indicated that she was upset and embarrassed by what had occurred and took full responsibility for her words and actions that day.

In considering the allegations and Her Worship’s response, the committee noted that justices of the peace are responsible for maintaining order and decorum in the courtroom. This includes asking persons to refrain from sleeping or using a cell phone while court is in session. The committee concluded that Her Worship took the complaint very seriously, had reflected on her conduct, and was apologetic and remorseful about the way she had behaved toward the complainant.

Finally, with respect to the alleged conversation between Her Worship and the other justice of the peace while at lunch, the committee observed from the witness interviews that there was conflicting evidence about whether this conversation occurred and whether other persons, such as court staff and a prosecutor, were present. While the committee observed that it would have been inappropriate for Her Worship and another justice of the peace to discuss a prior incident involving the complainant in front of court staff or a prosecutor, the totality of the evidence could not support a conclusion that such allegations were made out.

After considering the evidence and Her Worship’s response to the complaint, the committee concluded that no further action was required. The complaint was dismissed, and the file was closed.

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#### **CASE NO. 30-014/19**

The complainant is a paralegal who appeared before His Worship on behalf of a defendant for a provincial offences trial. His Worship found the defendant guilty on one charge and acquitted him on the other. The conviction was successfully appealed on the basis that the complainant's ineffective assistance resulted in a miscarriage of justice.

The complainant stated that, following the trial, she attended the courthouse on a different matter for an Early Resolution Meeting with the prosecutor. She indicated that as she and four or five other people were waiting to speak with the prosecutor, she overheard His Worship talking about her with another paralegal in his chambers. The complainant alleged that she overheard the justice of the peace discussing how inept she had been at the trial, how she should not have a license, and that her career would be over.

The complainant stated that when she subsequently appeared before His Worship that afternoon, she felt ill. She said that when she stated her name for the record, all she could think about was that the other people waiting for the prosecutor had likely overheard His Worship's comments. The complainant asserted that the justice of the peace's behaviour was highly unethical and that His Worship "clearly has favourites when it comes to representatives". She concluded that she feels embarrassed and uneasy every time she attends the courthouse where His Worship presides.

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 for review and investigation. The committee reviewed the letter of complaint and the transcripts of the trial and appeal decisions. The committee also retained independent external counsel to interview persons with information relevant to the allegations.

The committee observed that it appeared the justice of the peace had a conversation with another paralegal about the complainant in his chambers, with the door open. The evidence also indicated that, during this conversation, the justice of the peace made or reiterated comments about the complainant being incompetent at the trial.

The committee invited His Worship to respond to the complaint and reviewed his written response. The committee observed that the justice of the peace acknowledged that he had spoken to another paralegal about the appeal of his trial decision in which it

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A was alleged that the complainant had provided ineffective assistance to the defendant, although he stated that this conversation occurred in the Intake Office and not in his chambers. He also expressed an unreserved apology to the complainant for causing her distress and explained that it was never his intention to cause her grief and he was truly sorry for any grief caused to her.

He acknowledged that his discussion of the appeal with the paralegal was unprofessional and below the high standard of conduct expected of a judicial officer. He apologized for his conduct.

His Worship stated that he would no longer adopt an “open door policy” in the Intake Office and would only admit those who have court business to attend to.

Based on the information gathered during its investigation, including His Worship’s response, the committee remained concerned by evidence suggesting that the justice of the peace had gossiped about a paralegal (the complainant) with another paralegal, both of whom appeared before him in court.

The committee observed that public confidence in the impartiality and integrity of the judiciary requires not only that justices of the peace are impartial and objective in carrying out their judicial duties, but that they are seen to be impartial and objective. Justices of the peace should not be, or seen to be, gossiping about a party or his or her legal representative.

The committee noted that where a justice of the peace shares personal views or opinions about a legal representative, this may give rise to the perception that the justice of the peace is biased against (or in favour of) the legal representative. This in turn could affect, or be seen to affect, his or her judicial decision-making. The committee noted that one of the commentaries to the *Principles of Judicial Office of Justices of the Peace* provides that: “Justices of the peace should maintain their objectivity and shall not, by words or conduct, manifest favour, bias or prejudice towards any party or interest.”

The 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 His Worship with written advice, pursuant to section 11(15)(b).



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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 His Worship on the high standard of conduct expected of judicial officers, the importance of maintaining a detached, impartial, and dignified demeanour and on refraining from conduct that could be perceived as inappropriate gossiping about a case, party or legal representative. The committee reminded His Worship that justices of the peace should be mindful about how their comments and interactions with other persons might be perceived if heard by an unintended observer or listener.

As well, if a justice of the peace permits particular legal representatives to casually drop by to discuss court matters, that may give rise to a perception that the justice of the peace treats such persons, and their clients, more favourably and perhaps differently from others.

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

#### **CASE NO. 30-024/19**

The complainant appeared before the justice of the peace for a trial on a traffic charge. The complainant alleged that Her Worship demonstrated "religious bias" against him in court. He said that after Her Worship heard his legal arguments, she subjected him to a public lecture on his duties as a minister of the church:

She became quite animated as she expressed her "shock" (her word) that I, as clergy, would challenge a traffic ticket, instead of simply accepting my punishment. She went on at some length and said that people would come to me with the things they had done wrong and would be expected to submit to the penalties I would give them. She said that I was setting a bad example by not doing the same.

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I can only presume that this refers to the Roman Catholic practice of “Confession”, which is not part of United Church ministry, and not part of my religious calling. She publicly criticized me for failing to fulfil a religious role that has nothing to do with my calling.

The complainant alleged that Her Worship’s “religious bias” led her to increase his fine by \$105. He was left with the impression that Her Worship increased his fine to punish him “for having the temerity, as clergy, to challenge this ticket.” The complainant alleged that Her Worship’s decision was based on her “personal view of the role of a religious leader”, “had nothing to do with the law” and was “offensive and inappropriate to her position as the presiding officer of the court”.

The complainant was left with the perception that Her Worship’s “bias is the true reason for the \$105 increase in the total fine and amounts to an abuse of her authority.”

The complaint was assigned to a complaints committee, comprised of a judge, a justice of the peace and a community member for review and investigation. The committee reviewed the complaint letter, as well as the transcript and audio recording of the proceeding before Her Worship.

The committee noted that the decision of Her Worship to find the complainant guilty and the sentence she imposed were matters 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 jurisdiction of the Council extends only to complaints about the conduct of justices of the peace.

The committee observed from the transcript of the court proceeding that when the complainant finished giving his evidence-in-chief, Her Worship did not ask the prosecutor whether he wanted to cross-examine the complainant. Nor did she invite submissions from the parties prior to making her decision. Rather, after the complainant concluded his evidence, Her Worship proceeded to give her Reasons for Judgment in which she found the complainant guilty of the offence.

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In doing so, Her Worship made the following remarks to the complainant:

- ♦ “And to have, quite frankly, the audacity as a clergyman, someone who hears from people and someone who, you know, I would think does, you know, some type of counselling, to come here and claim that you wouldn’t be charged because of section 176 of the *Criminal Code*...”.
- ♦ “And, quite frankly, I mean, I would think people go to you, ‘Oh, I made a mistake,’ and you know you try to atone and whatnot – and I’m not saying that that’s necessarily the circumstances – but there’s certainly something to, to be said for someone who accepts and recognizes that they made a mistake.”

The transcript showed that Her Worship invited no submissions on the appropriate penalty before increasing the complainant’s fine.

The committee noted the remarks of the Supreme Court of Canada in *Re: Therrien*, 2001 SCC 35 where the Court stated:

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

Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. Many factors, including unfair or uninformed criticism, or simple misunderstanding of the judicial role, can adversely influence public confidence in and respect for the judiciary. Another factor which is capable of undermining public respect and confidence is any conduct of judges, in and out of court, demonstrating a lack of integrity. Judges should, therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality, and good judgment.

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

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

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

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

The *Principles* also state:

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

*Commentaries:*

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

- 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.

The committee noted that it is a fundamental principle of the Canadian legal system that justices of the peace perform their duties with impartiality, free from bias. A basic precept pertaining to the judiciary is that justices of the peace should be neutral adjudicators, treating all parties equally and fairly, and keeping an open mind while hearing all sides of an argument.

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Where a justice of the peace appears to express personal views on matters before the court or appears to insult or demean a defendant in delivering judgment, this may negatively affect the perceived objectivity, integrity and professionalism of the judicial officer.

Further, a justice of the peace has a responsibility to ensure that the rights of the parties are not sacrificed, or perceived to be sacrificed, for the sake of expediency. While justices of the peace should make efforts to dispose of matters in a timely manner, they must do so having regard to the interests of justice and the rights of the parties before them. Justice must not only be done, it must be seen to be done.

The committee noted that Her Worship's comments and the manner in which she conducted the trial led the complainant, and perhaps others in the courtroom, to conclude that her decision was based on her personal dislike of the complainant, her preconceived views about the role of a religious leader and/or her annoyance with the complainant's defence.

The committee noted that Her Worship's failure to invite submissions from the parties may have contributed to the complainant's perception that she had prejudged his matter, that she treated him as she did because he was a Reverend, and that Her Worship did not conduct a fair trial.

The committee invited a response to the complaint from Her Worship and reviewed and considered her response. The committee observed that Her Worship's response focused on the legal aspects of the complainant's case rather than the impact of her conduct and comments on public confidence in the administration of justice. Her Worship did not appear to fully appreciate that a defendant has the right to make submissions on sentence, even on an absolute liability offence. Nor did she appear to appreciate that the opportunity to make submissions is an important aspect of trial fairness. Where a justice of the peace fails to permit a defendant to make submissions on sentence, the perception may arise that the justice of the peace has predetermined the penalty and is not open-minded.

While the committee noted that the way Her Worship conducted the trial did not result in any actual unfairness to the complainant, Her Worship's comments were perceived by him as insulting, demeaning and unbecoming of a judicial officer.

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The committee was concerned that Her Worship may lack insight into her own conduct and the high standard of conduct expected of a justice of the peace to preserve public confidence in the judiciary.

The complaints process through the 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.

The committee determined that the appropriate disposition was a referral of the complaint to the Chief Justice. 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.

Given the circumstances of the COVID-19 pandemic, the meeting between the Chief Justice and the justice of the peace was delayed. After the Chief Justice met with Her Worship, the Chief Justice provided a report to the complaints committee.

The committee noted that the Chief Justice reminded Her Worship of the high standards of conduct expected of justices of the peace and discussed the impact that the conduct and comments of a justice of the peace can have on public confidence. Her Honour also reviewed with Her Worship the concerns arising from her conduct during the complainant's court proceeding.

The Chief Justice reported to the committee that Her Worship had genuinely reflected upon her conduct. Her Worship appeared very remorseful. Her Worship understood why her conduct on the day in question left the complainant with the perception that she was biased and that Her Worship dealt with the matter unfairly.

The committee observed that Her Worship was dealing with personal family issues at the time that may have led to her being impatient in the courtroom. However, Her Worship recognized that this was no excuse for her conduct, and she took full responsibility for her actions. She accepted that a justice of the peace must always fulfill his or her duties with professionalism, patience, politeness and fairness.

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The committee accepted Her Worship's undertaking to the Chief Justice that the type of conduct she demonstrated towards the complainant would not happen again. Her Worship undertook to conduct herself in a professional manner and to refrain in the future from making comments that may be perceived as unprofessional and unfair.

As the complaints process had concluded, the file was closed.

#### **CASE NO. 30-026/19**

The complainant attended Intake Court before the justice of the peace to lay private charges against two individuals. The justice of the peace declined to issue process.

In his letter to the Council, the complainant indicated that Her Worship did not allow him to lay private charges and violated the "Rules of Court and the Administration of Justice." He alleged that Her Worship did not permit him to fully explain what had transpired, and that she was biased and prejudiced against him based on his (the complainant's) previous "encounters in the court system". The complainant further alleged that the justice of the peace refused to return his original documents.

The complaints committee reviewed the letter of complaint and copies of the documents that the complainant filed with the Court. The committee also reviewed the transcript of the proceeding before Her Worship.

The committee observed from the transcript that the complainant explained to Her Worship that the charges against the two individuals arose from his hearing and conviction before an Ontario tribunal. The complainant indicated that he was appealing his conviction, and that his appeal had not yet been heard. The committee found no support for the allegation that Her Worship did not allow the complainant to explain the circumstances that prompted him to initiate a private prosecution.

The committee observed from the transcript that after listening to the complainant's submissions, Her Worship decided not to issue process on the charges. She attempted to explain that because the complainant's allegations directly related to the hearing, they should be addressed in his appeal rather than through the criminal process. The committee

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observed that the justice of the peace's decision in this respect 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 committee acknowledged that Her Worship could have better explained the private prosecution process to the complainant, including why the charges would not proceed. The committee also noted that some of Her Worship's comments may have been confusing to the complainant. However, in considering the entire exchange between the complainant and Her Worship, the committee determined that the justice of the peace's conduct did not rise to the level of judicial misconduct.

The committee also noted that Her Worship advised the complainant that the original documents he filed with the court could not be returned to him, but that the court would make a photocopy of the documents for his records. The committee found nothing inappropriate on the part of the justice of the peace in this regard.

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

#### **CASE NO. 30-027/19**

The complainant was convicted of assault and uttering threats in respect of three individuals. On appeal, his conviction was overturned and a new trial was ordered. The Crown Attorney chose not to proceed with a new trial on the basis that the prosecution was no longer in the public interest.

The complainant subsequently attempted to lay criminal charges against the three individuals involved in the criminal charges. He appeared before the subject justice of the peace for a pre-enquete hearing. The subject justice of the peace did not issue process.

In his letters of complaint to the Council, the complainant alleged that the justice of the peace accused him of committing assault even though the appeal judge found him not guilty.



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He also asserted that his conviction was overturned because the Ontario Provincial Police failed to disclose a relevant piece of evidence at trial. The complainant alleged that at the pre-enquete, “the Crown Prosecutor and Justice of the peace refused [to allow him to lay charges] because they know ultimately if the charges [were] registered, it [would] lead to charges against the OPP Officer for blocking Disclosure.”

The complaints committee reviewed the complainant’s correspondence and the transcript of the proceeding before His Worship. The committee observed from the transcript that the complainant gave evidence and was examined by Counsel for the Provincial Crown. Crown counsel submitted that process should not issue. After listening to the evidence and submissions, His Worship accepted the recommendation of the Crown and refused to issue process.

While the committee observed that the complainant disagreed with His Worship’s decision, it noted that decisions made by justices of the peace, including their assessment of the evidence and application of the law, 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.

Further, the committee observed from the transcript that His Worship did not indicate that the appeal judge had erred or accuse the complainant of committing assault, as alleged.

The committee concluded that the allegations of misconduct were not substantiated by the record and the allegations related to the justice of the peace’s decision-making were outside the Council’s jurisdiction. The committee dismissed the complaint and closed the file.

#### CASE NO. 30-028/19

The complainant appeared before the justice of the peace for a judicial pre-trial. The prosecutor was seeking a \$500.00 penalty. The complainant indicates that he was “wanting to settle and move on once the court heard both sides.”

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The complainant alleged that when he appeared before Her Worship, she “appeared to have issue with the colour of my skin.” He further alleged that:

- ◆ Her Worship repeatedly asked why he did not have representation;
- ◆ Her Worship asked him if he spoke English despite him communicating in English; and,
- ◆ Her Worship Would not allow him to address the court. She allowed the prosecutor to address the court and agreed to what the prosecutor wanted, including the prosecutor’s request regarding the location for service.

He alleged that when he informed Her Worship that he was present for his pretrial, Her Worship informed him that he needed to follow the court rules and serve the prosecutor in a specified city.

The complainant said that he asked that Her Worship respect him and proceed with the pre-trial. He said that he was denied his right to a pre-trial. He alleged that he had previously been to many pre-trials and had never been humiliated as he was by this justice of the peace.

At the time when the complainant wrote to the Council, his case was still before the courts. Council staff informed the complainant in writing that the Procedures of the Review Council provide that if a complaint raises allegations of conduct about a justice of the peace who is presiding over a court proceeding, the Review Council will not generally commence an investigation until that court proceeding and any appeal or other related legal proceedings have been completed. This is to ensure that any investigation by the Council is not interfering or perceived to be interfering with any on-going court matters.

After the court case was fully concluded, a file was opened for the complaint to be investigated.

The complaints committee reviewed the complainant’s letter and ordered and reviewed the transcript of the pre-trial.

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The committee noted that the Preamble to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* (the “*Principles*”) provides that:

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

The *Principles* also state:

- 1.3 Justices of the peace will endeavor 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.

- 2.2 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.
- 3.1 Justices of the peace should maintain their personal conduct at a level which will ensure the public’s trust and confidence.

The committee noted the comments of the Commissioner, the Honourable Justice David George Carr in the *Report of a Judicial Inquiry Re: His Worship Benjamin Sinai* (2008) at page 8 where His Honour considered the impact of judicial conduct on public confidence in the justice system:

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

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

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

The committee noted that justices of the peace have a responsibility to ensure that all parties are afforded an opportunity to be heard on the issues to be decided and that the rights of parties are not sacrificed, or perceived to be sacrificed, for the sake of expediency. While justices of the peace should make efforts to dispose of matters in a timely manner, they must do so having regard to the interests of justice and the rights of the parties before them. Justice must not only be done; it must be seen to be done.

Further, a justice of the peace must have the ability and demeanour to assist self-represented parties understand the trial and pre-trial process and resolve any issues that arise in the courtroom with patience, courtesy, and professionalism. Where a justice of the peace fails to demonstrate such qualities, this may give rise to the impression that he or she is unable, or unwilling, to decide matters with an open-mind or with the level of integrity required of a judicial officer.

The committee observed that judicial pre-trials serve various purposes, including to promote a fair and expeditious trial, narrow the issues for trial and/or assist the parties arrive at a resolution without the need for a trial. In order to conduct an effective pre-trial, judicial officers must understand the facts of the case, the parties’ positions and the issues and allegations in dispute. They must also actively listen to the parties, clearly and fairly communicate their positions, and provide them with clear guidance about the strengths and weaknesses of their case and what steps are required for trial.

Further, in order to estimate the amount of time required for a trial (and any pre-trial motions), judicial officers must ascertain how many witnesses each party intends to call and the nature or purpose of the witnesses’ evidence. This is particularly important where a defendant is self-represented and may not understand what evidence is relevant and/or necessary to defend a charge.

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Judicial officers are required to assist self-represented defendants understand their rights, the legal process and, in the context of a judicial pre-trial, the relevance and strength of the evidence they intend to present.

Based on its review of the transcript of the judicial pre-trial, the committee observed that the record suggested that:

- ◆ Her Worship did not communicate with the complainant, a self-represented defendant, in a clear or respectful manner, and assist him in understanding the trial and pre-trial process;
- ◆ Her Worship appeared to be impatient, rude and abrupt toward the complainant;
- ◆ Her Worship appeared to be unwilling to listen to the complainant's position or allow him to raise issues that could affect the trial;
- ◆ Her Worship did not assist the complainant understand the pre-trial and trial process, or provide clear guidance on the relevant issues for trial; and,
- ◆ Her Worship did not make appropriate inquiries to understand the facts of the case, the parties' positions and the issues in dispute.

The committee observed that Her Worship asked the complainant whether he would require an interpreter for the trial and whether he spoke and understood English. Her Worship did not explain to the complainant that, in conducting a pre-trial, a justice of the peace is required to ask all defendants a series of standard questions, including whether he or she requires an interpreter, to help the Court prepare for and schedule trial dates. The committee observed that without an understanding of the purpose of the question, the defendant appeared to have perceived the question as a judgment on his race and/or ability to understand English.

The committee observed that Her Worship made comments that appeared to suggest that she was blaming the complainant for not better preparing his case, for example, by stating, "you should know by now, we were having this judicial pre-trial today, that you should understand what your list of witnesses should be." Her Worship did not ask the complainant what information he wanted to provide. The committee noted that exploring

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his intended defence further may have provided an opportunity to narrow the issues, and to provide information to him on the strength or weakness of the case. Her Worship responded by saying that he should have “prepare[d] more.”

The committee observed that Her Worship remarked that the complainant’s proposed witnesses were “none of my business”. The committee notes that it is the business of a justice of the peace conducting a judicial pre-trial to identify the witnesses for the Crown and the defence and ascertain the nature or purpose of the witnesses’ evidence. Such information ensures that the judicial officer is aware of any procedural or legal issues that may affect the accuracy of trial scheduling and may assist the judicial officer to provide guidance to the parties about the strength and weaknesses of their case and what steps are required for trial. This is particularly important where a defendant is self-represented and may not understand what evidence is relevant and/or necessary to defend a charge.

With respect to the defendant’s time estimate for trial, the committee observed that Her Worship did not inquire into why the complainant believed he needed four days for the trial before telling him that it should not take that long, concluding that his case was “not complex”. Her Worship appeared to accept the Crown Attorney’s assessment based upon a standard case but did not appear to want to hear from or listen to the complainant discuss the particulars he may hope to present in his case or explain issues that could affect trial scheduling. For example, the transcript showed the following dialogue:

Complainant: Am I not allowed to ask for the evidence that...

The Court: No, no. I am not going through that because, like I said, we’re trying to assess time for trial, and the information that I asked you based on that, the Court has determined that you need to prepare your case a little better and that you were going to confirm with your lawyer or law student. And then we’ll come back and determine the proper amount of time that’s going to be required. Okay.

The committee was concerned that Her Worship appeared unwilling to allow the complainant an opportunity to be fully heard on issues that could affect the trial, such as the length of time the trial may take and the Crown’s disclosure. She appeared to demonstrate a lack of patience and courtesy toward the complainant during the entire proceeding.

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The committee noted that when a defendant is in court, he may feel emotional and that may result in his or her manner appearing to be aggressive. He or she may not listen carefully. In such circumstances, it is helpful if the justice of the peace remains patient and takes the time to explain the process to help the defendant understand it.

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

The committee observed that Her Worship's response showed that she had reviewed the transcript of the proceeding and carefully reflected on her conduct. Through her response to the committee, Her Worship expressed her regret for her conduct and her regret to the complainant for giving him the impression that justice was not being done in his case. The committee was satisfied that Her Worship recognized how the complainant perceived her conduct and realized how she could have handled the matter better. Her Worship's response showed meaningful insight into the situation and a willingness to be more mindful of how she conducts such proceedings in the future.

Therefore, the committee concluded that no further action was required and dismissed the complaint.

#### **CASE NO. 30-029/19**

The complainants appeared before the justice of the peace on two dates for a pre-enquete hearing. The complainants sought to lay criminal charges against their property manager for perjury and defamatory libel arising from his evidence in an underlying Landlord and Tenant Board (LTB) hearing.

In their letter of complaint, the complainants made various allegations about His Worship's conduct and application of the law during the pre-enquete hearing and on a subsequent date. Their allegations include the following:

- ♦ His Worship was disrespectful to the complainants and others in the courtroom by arriving 15 minutes late to court on the first date. He did not provide an explanation or apology.
- ♦ His Worship refused to hear the majority of the complainants' allegations and did not listen carefully to their evidence.

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- ◆ His Worship ended the hearing early on the second date.
- ◆ His Worship discriminated against the complainants because they did not hire a lawyer and required an interpreter.
- ◆ At the end of the hearing on the second date, His Worship stated that the criminal matter could not proceed because of the ongoing proceedings before the LTB. His Worship told the complainants to return to court once their LTB matters had concluded. His Worship did not provide any Reasons for Judgment from which they could appeal.
- ◆ After their LTB matter was concluded, the complainants attempted to resume the criminal process and lay Informations against their property manager. They appeared in Intake Court before another justice of the peace. While they were speaking to that justice of the peace, the justice of the peace who presided over the pre-enquete entered the room and spoke to the presiding justice of the peace. This conversation was not translated. It was alleged that His Worship told the second justice of the peace that he had refused to issue process at the pre-enquete because of insufficient evidence (and not because of the underlying landlord and tenant proceedings). The complainants alleged that based on this misinformation, the second justice of the peace refused to deal with their matter. They said that His Worship should not have discussed their matter with another justice of the peace, and that he abused his authority by improperly influencing the second justice of the peace.
- ◆ After His Worship left Intake Court, the presiding justice of the peace told the complainants (through an interpreter) that the first justice of the peace had refused to issue process because there was insufficient evidence to commence a criminal prosecution. Based on this information, the second justice of the peace refused to assist them with laying the Informations.
- ◆ On the basis of all of the above, His Worship lacked integrity and should be removed from the bench.

Along with their letter of complaint, the complainants enclosed various documents in support of their case against the property manager.



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The complaints committee reviewed the complaint letter and enclosures. The committee also ordered and reviewed the transcripts of the proceedings before the justice of the peace who was the subject of the complaint, as well as the proceeding in Intake Court when the complainants returned to court to try to have charges laid against the property manager.

#### *1) Allegations about His Worship's conduct toward the complainants during the pre-enquete hearing*

The committee noted that the transcript of the first date showed that court was delayed due to waiting for the interpreter to arrive.

Based on its review of the transcripts of the proceedings, the committee was concerned by comments made by His Worship that suggested he may have been rushing through the hearing and did not want to hear evidence and submissions from one of the complainants.

For example, the committee observes the following dialogue between His Worship and the informant:

The Court:     Okay, do you want to provide that evidence?

Complainant: I gave you a DVD.

The Court:     Yes.

Complainant: Everything is there. This is on the computer recorder is also in the computer.

The Court:     So what we could do now is you could tell me by evidence, if you could provide it to me, because we don't have that much time, you can provide me with the evidence with regards to what was the false statement.

As well:

Complainant: ...Can I show the DVD, please?

The Court:     How long is it?

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Complainant: Very short.

The Court: Very short. I guess so, yes....

The committee observes that at the conclusion of the first appearance, His Worship raised the issue of the matter going over to another date. In discussing putting over the matter, the complainant asked for a longer time because she had many documents and wanted to explain. His Worship responded that one hour would be booked.

The committee notes that the court clerk asked His Worship if he wanted to schedule the next appearance for more than an hour or a full day. However, His Worship scheduled only one hour:

The Court: Okay, so that's [a particular date], and that's in [a particular] court, this courtroom here, at 9:00 a.m. And once again we have the court only for one hour. We will order a [particular] Interpreter, okay, and it will be completed on that day.

When the matter resumed, it appeared that the complainant was not provided with an opportunity to complete her evidence. The committee observed that the Crown Attorney intervened to remind His Worship that the evidence had not been completed:

The Court: ...The purpose today is to hear submissions from [the complainant] and the Crown Attorney on this matter, and it will proceed—I want to finish this before court starts at 10:00 o'clock here. So what I will do is I will hear submissions from [the complainant].

Crown Attorney: We are still in evidence, I think.

The Court: Are we still in—

Crown Attorney: As I recall, His Worship, the informants were – they had –I'm not sure if they had finished calling evidence. I hadn't asked them any questions, I think –

The Court: Oh, okay.

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The committee observed from the transcripts that His Worship did not take steps to ensure that the complainant understood that she could not call any further evidence to support her allegations once the Crown Attorney commenced her cross-examination. During the complainant's cross-examination, the following dialogue occurred:

Q. Have you already told us the basis of the perjury charge in His evidence on the last occasion?

A. In fact there were six points I would like to articulate, but last time due to a time limitation I was only able to give one, one of the six points.

Ultimately, His Worship decided that he should not issue process because the complainant(s) had ongoing matters before the Landlord Tenant Board. The committee observed from the transcript that the complainant expressed confusion about the decision and over whether all of her points would be considered.

The committee was concerned that it appeared that His Worship did not seek submissions from the complainant or Crown Counsel prior to making His decision. Nor did he attempt to explain the basis for his decision to the complainant, a self-represented party with a language barrier.

The committee noted that judicial officers have an obligation to assist self-represented parties understand the legal process and their rights. The transcripts indicated that His Worship appeared annoyed or impatient with the complainant when she tried to present all of her evidence to the court, and when she expressed confusion about his decision not to issue process.

#### *2) Subsequent appearance before another justice of the peace in Intake Court*

From its review of the transcript of the appearance before the second justice of the peace, the committee observed the following sequence of events:

- ◆ Her Worship indicated that it appeared the complainants' matter had already been dealt with and denied.
- ◆ Following a recess, Her Worship ascertained that the matter had been heard before the justice of the peace who was the subject of the complaint. The complainants confirmed that they were not able to present all their evidence in support of the allegations to His Worship at the pre-enquete.

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- ◆ Her Worship told the complainants that she could not deal with their matter, and that it was open to them to file an application in the Superior Court of Justice for *mandamus* with *certiorari* in aid.

The committee noted that the decisions made by the first justice of the peace that he would not issue process and by the second justice of the peace that she had no legal authority to proceed were matters 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 complaints about the conduct of justices of the peace.

The committee decided to invite His Worship to respond to the other allegations raised in the complaint. The committee received and reviewed His Worship's response. The committee could see that His Worship had reflected on his conduct. His Worship said that he had developed a personal pre-enquete and POA trial procedure process maps to ensure that he does not miss a step in any trial in the future.

With respect to the appearance of the complainants before the second justice of the peace in Intake Court, His Worship explained that he was in the area to pick up and drop off requests for warrants. Her Worship saw him and asked him whether he had dealt with a case related to the complainants. His Worship indicated that he did but gave Her Worship no details and did not advise her what to do with the matter before her.

The transcript of the appearance before the second justice of the peace showed that Her Worship determined that she could not deal with the matter because no process was issued on the charges after the pre-enquete. Her Worship's decision was that the law did not permit her to proceed and that the proper remedy to try to proceed with charges was to apply for a remedy in a higher court.

After reviewing the transcript of the Intake Court appearance and His Worship's response, the committee was satisfied that His Worship did not give inaccurate information to Her Worship. There was no evidence to support the allegation that he influenced her decision or that he abused his office.

The committee found no evidence to support the allegation that His Worship discriminated against the complainants because they did not hire a lawyer and required an interpreter.

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With respect to the allegations about how His Worship handled the pre-enquete, the committee noted the remarks of the Supreme Court of Canada in *Re: Therrien*, 2001 SCC 35 where the Court stated:

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

Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. Many factors, including unfair or uninformed criticism, or simple misunderstanding of the judicial role, can adversely influence public confidence in and respect for the judiciary. Another factor which is capable of undermining public respect and confidence is any conduct of judges, in and out of court, demonstrating a lack of integrity. Judges should, therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality, and good judgment.

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

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

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The committee observed that because justices of the peace hold positions of considerable authority, they are expected to conduct themselves according to high standards of professional conduct. Justices of the peace must perform the duties of their office impartially, independently and with integrity. The Preamble of the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* states:

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

The Principles also state:

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

*Commentaries:*

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

- 1.3 Justices of the peace will endeavor 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.

- 2.2 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.
- 3.1 Justices of the peace should maintain their personal conduct at a level which will ensure the public's trust and confidence.

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

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

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

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

The committee noted that justices of the peace have a responsibility to ensure that all parties are afforded an opportunity to be heard on the issues to be decided and that the rights of the parties are not sacrificed, or perceived to be sacrificed, for the sake of expediency. While justices of the peace should make efforts to dispose of matters in a timely manner, they must do so having regard to the interests of justice and the rights of the parties before them. Justice must not only be done; it must be seen to be done.

The complaints process through the Review Council is remedial in nature. The committee decided that the appropriate disposition was to provide the justice of the peace with written advice, pursuant to section 11(15)(b) of the *Act*. 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 reminded His Worship of the high standard of conduct expected of justices of the peace and the importance of upholding that high standard when interacting with members of the public. Given the role of a judicial officer in the administration of justice, justices of the peace are expected to treat self-represented individuals with patience and consideration.

Where a party appears in court with no legal representation, a justice of the peace has an obligation to assist them in understanding the court process and his or her rights, and to ensure that he or she is afforded due process under the law.

The committee advised His Worship that justices of the peace who preside over pre-enquetes are obligated to listen carefully and patiently to each person who appears before them and ensure that they have an opportunity to ask questions, to give their evidence and to make submissions. It is important to remember that self-represented persons are often unfamiliar with the court process and therefore may not know what questions to ask or when they should be making submissions during a proceeding.

Most individuals who appear in a courtroom do not understand the criminal or legal process, and that it is important to take the time with each individual to ensure that he or she understands what is occurring and is given an opportunity to raise any questions or concerns. Each defendant must be afforded the opportunity to put forward his or her evidence and to make submissions. Justice must not only be done; it must be seen to be done.

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

#### **CASE NO. 30-030/19**

The complainant was a senior administrative justice of the peace.

In her letter to the Council, the complainant stated that she received information that His Worship was exhibiting signs of alcohol intoxication in the workplace. The complainant said that when she attended His Worship's chambers to discuss these concerns with him, she heard what she believed to be pornographic material emanating from His Worship's laptop computer. His Worship was not present in his chambers.



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The complainant subsequently spoke to His Worship in person about her concerns. She indicated that, during this conversation, His Worship disclosed that he was taking medication which resulted in symptoms of slurred speech and glossy eyes. The complainant also raised the pornography issue with His Worship, to which he responded that it was possible that anything could be playing on his laptop computer since the internet connection was through the City, and he had been listening to the news prior to leaving his chambers for court. The complainant reminded His Worship that he should be careful when using his judicial computer.

The complainant concluded that she was mindful of the sensitivity of the allegations and the importance of maintaining a safe and respectful workplace environment for all justice sector participants.

The complaint was assigned to a complaints committee of the Review Council for investigation. As part of its investigation, the committee retained an external, independent lawyer to interview witnesses with potentially relevant information about the allegations. 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 and the file was administratively closed.

#### **CASE NO. 30-031/19**

The complainant, a provincial offences officer with the Ministry of Transportation, sent a letter to the Review Council after appearing before the justice of the peace as a witness for the Crown.

The complainant alleged that the justice of the peace was extremely unprofessional and rude during the afternoon tier of proceedings. He alleged that at one point during the proceeding, His Worship “started to snap at the prosecutor, unprovoked in any way”, demanded that the prosecutor sit down and “began hurling empty threats of him being guilty of misconduct.” He stated that His Worship had no jurisdiction to tell anyone to sit when they are addressing the court.

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He continued that His Worship's behaviour made him, his fellow officers and members of the public who attended the tier feel very uncomfortable. The complainant requested that His Worship apologize to those in his courtroom for his behaviour.

The complaints committee reviewed the letter of complaint and the transcript of the full afternoon tier of proceedings before the justice of the peace. The committee also listened to the audio recording of the full afternoon tier of proceedings.

The committee found no evidence in the transcript or audio recording to support the allegation that the justice of the peace demonstrated rude behaviour in the courtroom. The committee noted that His Worship's request that the prosecutor sit down was appropriate in the circumstances, and not unprofessional or rude.

The committee also noted from the transcript and audio that His Worship appeared to be very accommodating and respectful toward those appearing before him. The record showed that the justice of the peace was reasonable and polite in dealing with the matters before him and did not exhibit a rude or unprofessional tone, as alleged.

The committee concluded that the allegations of misconduct were not supported by the record. The complaint was dismissed, and the file was closed.

#### **CASE NO. 30-032/19**

The complainant went to the courthouse to apply for a Form 2 under the *Mental Health Act* to obtain a psychiatric assessment of her son.

She indicated that when she arrived at the courthouse at 10:45 a.m., she was told that because she was applying for a Form 2, the request would be expedited, and her matter would be scheduled before a justice of the peace between bail hearings. She alleged that instead, the justice of the peace decided to hear all bail hearings first and as a result, she waited until 4:45 p.m.

The complainant said that because the application was granted at the end of the day, she had to wait a further two hours at the police station before police could be dispatched to take her son to the hospital.

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The complainant indicated that requesting a Form 2 was emotional, as she was committing her son to the hospital against his will. She alleged that “the lack of empathy and time management (as it took all of 5 minutes to testify and sign the form) was totally unacceptable.”

She said that her son was admitted to the hospital and the psychiatrists deemed him to have severe mental health issues. She commented, “The current legal system is difficult to manoeuvre and it certainly does not need a Justice of the Peace who makes the system even more difficult.” She expressed the view that, in her opinion, training is required on time management and having some compassion for those who are attending court through no fault of their own.”

The complaints committee read the complaint letter and ordered and reviewed the transcript of the complainant’s appearance before the justice of the peace. The committee could understand why the complainant felt frustrated with how the events occurred. Applying for a Form 2 to get help for her son would have been a very emotional and upsetting experience. Waiting for several hours to do so would have been even more upsetting and difficult.

The committee also noted that justices of the peace are sometimes required to preside in bail court and to hear “walk in” matters brought by members of the public to the courthouse during the day. The presiding justice of the peace must consider competing priorities, including the *Charter* right of a person in custody, who is entitled to have his or her bail hearing in a reasonable time.

The committee observed that it appeared that the justice of the peace decided that he must deal with the bail hearings as a priority; he then remained past 4:30 p.m., the usual time when courts close, to hear and consider the complainant’s application.

The committee concluded that there was no evidence of misconduct and the justice of the peace’s decisions on how to proceed with the matters over which he was presiding 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.

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

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#### **CASE NO. 30-034/19**

The Review Council received a complaint from a court clerk at Provincial Offences Court setting out allegations about the conduct of a justice of the peace towards court staff.

She indicated that she assisted in copying a portion of proceedings onto a USB stick for the justice of the peace at his request. She said that subsequently, His Worship approached her in the administration office and indicated that he was having a problem listening to something on Liberty Player and that he needed something else put on a USB stick. The complainant said that she told His Worship that she was not very good at that sort of thing and suggested that he ask a different staff person for assistance. She alleged that His Worship said, 'I am a Judicial Officer and if I demand something, I get it'.

The complainant indicated that afterwards, she felt very badly and went to His Worship's chambers to discuss the incident. She alleged that His Worship said that she had not listened to him and he became irritated and raised his voice.

The complainant also alleged that following this exchange, she went into her manager's office, and while she was speaking to the manager, His Worship opened the door and loudly said to her that she had "accosted me and got right in my face". The complainant said that she was extremely upset by His Worship's comments and accusations.

The complainant indicated that she no longer wished to sit with His Worship in court. She also referred to other allegedly inappropriate events, such as His Worship asking staff to carry his personal belongings from his car into the building.

Subsequently, the complainant sent a second letter setting out His Worship's schedule of assignments at the courthouse where she worked and requesting that he not be assigned at that courthouse until the complaints process was completed.

The complaints committee reviewed the complaint letter and retained independent counsel to interview witnesses with relevant information. The committee also reviewed and considered the second letter received from the complainant.

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

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#### CASE NO. 30-035/19

The complainant made allegations about a justice of the peace arising from his appearance before her in Provincial Offences Court. He said that he attended court as an “advocate” and sat through most of the morning docket presided over by Her Worship.

He alleged that he observed Her Worship repeatedly commit misconduct. He alleged:

- ◆ Her Worship refused to dismiss charges against a motorist who was scheduled for a French trial. He said that there was no translator available and the Court was unprepared to hold a hearing in French. The complainant said that the motorist specifically requested that the matter be dismissed, but Her Worship refused and instead stayed the matter for a year. The complainant alleged that Her Worship’s tone was “abusive and injudicious”.
- ◆ Her Worship refused to give credence to an Uber driver’s statements and instead accepted the police officer’s testimony.
- ◆ Her Worship issued a \$10,000 ticket *in absentia* without proof that the motorist was ever notified of the court date.
- ◆ Her Worship took the prosecutor’s side in the case he was handling. The complainant said that in a discussion with the prosecutor about the case that the complainant was handling, the prosecutor indicated that the Court was not going to take certain action that was otherwise required by Court policy. The prosecutor seemed to know that the judge was going to take the prosecutor’s side before the judge heard either side of the argument.
- ◆ Her Worship conducted herself in an “overly harsh” manner. The complainant stated that he had “never seen [Her Worship] find for a motorist, ever, regardless of the strength of the defence.”

The complainant said that from observing Her Worship and from speaking to others who have appeared before her, it was apparent that the justice of the peace “brings disrepute to the Court by eroding the public’s confidence that she is able to discharge her duties in a fair and judicious manner.”

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The complaints committee reviewed the complainant's letter and ordered and reviewed the audio recording and transcript of the proceeding. The committee observed that the audio recording showed that Her Worship's tone was professional and appropriate. There was no support for the allegations that her tone was abusive, injudicious or that her manner was harsh.

The complaints committee found no evidence to support the allegation that Her Worship took the side of the prosecutor. The court record indicated that she made her decisions based upon the evidence and submissions presented to her.

The committee found that the transcript showed that one defendant had requested a trial in French but there was no French prosecutor available. The English-speaking prosecutor who was present in the courtroom requested an adjournment and the defendant objected to the adjournment on the basis that it was his fourth time coming to court. Her Worship decided that an adjournment would not be granted, and the prosecutor stayed the charge.

The committee noted that the allegations related to Her Worship's decisions and assessment of evidence were matters 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 of justices of the peace.

The committee found no evidence to support the allegations about the conduct of the justice of the peace. The complaint was dismissed, and the file was closed.

#### CASE NO. 30-036/19

The complainant appeared before the justice of the peace for a pre-enquete hearing. The complainant alleged that:

- ♦ "With the connivance' of the justice of the peace, the Deputy Crown "in very aggressive manner skip form the only event we were suppose[d] to discuss to the event which took a place almost two years ago" *[sic]*.
- ♦ Her Worship refused to allow the complainant to call her witness and declared that her witness "was not registered as a witness" which, the complainant states, was an "outrageous lie".

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- ♦ Her Worship demonstrated bias against the complainant “most likely based on racial belonging.”
- ♦ Her Worship “lies in court and declared that [the complainant] was not a “reliable source”.
- ♦ Her Worship coached the Crown Attorney, “who masks his lack of knowledge by malicious attacks on informant”.

The complainant alleged that she experienced mockery by the “lying” justice of the peace, “demonstration of bias and manipulation with Court procedure, and breaching my witness’s and my constitutional right to be heard in court”.

The complaints committee read the complainant’s letter and ordered and reviewed the transcript of the proceeding.

The committee observed that the transcript showed that the justice of the peace listened carefully to the evidence given by the complainant and then asked her whether she had any other evidence she would like to call. The complainant said, “No.”

The justice of the peace heard submissions from the Crown Attorney and then decided that there was a *prima facie* case (which meant that there was some evidence of the elements of the offence). The justice of the peace issued process. Subsequently, the Crown Attorney indicated that he would be asking that the charge be withdrawn.

After the justice of the peace explained to the complainant that the Crown Attorney had the power to decide whether to prosecute the charge, the complainant told the justice of the peace that her son was a witness. The complainant told the justice of the peace that she didn’t know the meaning of “evidence” and that her son was a witness. The justice of the peace explained that she had already issued process so it would not matter.

The case was moved to another court for the charge to be withdrawn at the request of the Crown Attorney.

The committee noted that a Crown Attorney, as counsel for the Attorney General, may enter a stay of proceedings on a private Information as soon as the Information has been laid and even before the commencement or completion of the pre-enquête. In addition, the Crown Attorney may withdraw the Information once a justice has determined that process should issue. The Crown Attorney may do so without permission of the Court.

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The complaints committee found no evidence that the justice of the peace was biased against the complainant, that the justice of the peace “was in connivance” with the Crown Attorney, or that Her Worship lied.

The committee observed that it appeared that as a self-represented person, the complainant was not familiar with the meaning of “evidence”. The complainant appeared to misunderstand the question when Her Worship asked whether the complainant had “any other evidence”. The committee noted that persons who do not regularly appear in courts may not be familiar with the language and terms used by those who frequently appear in court. The committee noted that if the justice of the peace had specifically asked whether the complainant had any other witnesses who had information for the Court, that may have prevented the misunderstanding. As well, if the complainant were asked if the complainant had submissions or arguments about whether there was enough evidence for criminal process to issue, that may have assisted in providing an opportunity to clear up the misunderstanding of the complainant.

The committee concluded that although the justice of the peace could have handled the matter differently to ensure that the complainant fully understood what was occurring in the courtroom, there was no judicial misconduct. The complaint was dismissed, and the file was closed.

#### **CASE NO. 30-037/19**

The complainant appeared before the justice of the peace in November 2019 to file a private Information. The complainant alleged that the justice of the peace told him to file his complaint with the Royal Canadian Mounted Police instead. The complainant said he told the justice of the peace that this was incorrect and that section 507.1 of the *Criminal Code* was created for private citizens to pursue charges when the police fail to act. He concluded that either His Worship’s judgment was “out of whack” or that he (His Worship) was obstructing justice.

The complainant further alleged that in late 2018, when he was pursuing a fraud charge against a former tenant, His Worship tried to tell him that he “couldn’t know the accused”. The complainant alleged that this was “just his way of brushing me off. In legal-speak, he deliberately fails to act judicially.”



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After a complaint file was opened, Council staff wrote to the complainant to request additional information with respect to his prior appearance before the justice of the peace in “late 2018”. Council staff requested the date on which the complainant appeared before the justice of the peace. The complainant subsequently confirmed by letter that he previously appeared before the justice of the peace in June 2017.

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 for review and investigation. The committee observed that the transcript of the proceeding on the June 2017 date showed that the complainant appeared before a different justice of the peace, not His Worship. The committee was therefore unable to substantiate the allegations arising from this alleged appearance.

With respect to the allegations regarding the November 2019 proceeding, the committee observed that the allegations were largely, if not entirely, based on His Worship’s decision to refuse to issue the private Information. The committee noted that this 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 complainant believes that a justice of the peace has erred in law, the proper recourse would be to seek a remedy, if available, through the courts, such as an appeal.

Further, the committee found no evidence to support the allegations that His Worship was “unsuited to the job”, obstructed justice, or failed to act judicially. Rather, the committee observed from the November 2019 transcript that His Worship listened to the complainant’s submissions and appeared patient and respectful.

The committee concluded that the allegations of misconduct were unsupported by the evidence and the allegations relating to His Worship’s decision-making were outside the jurisdiction of the Review Council. The complaint was dismissed, and the file was closed.

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#### **CASE NOS. 30-038/19 & 30-039/19**

The complainant sent complaints about two justices of the peace to the Review Council arising from his speeding ticket.

The complainant indicated that he appeared in court for an early resolution date and accepted a resolution offered by the prosecutor. He alleged, however, that he was unable to “officially accept” the offer in court because the justice of the peace left early. He said that, as a result, he was provided with a trial date (which he did not request) “that ended up getting [him] a worse offer in court than initially promised at [his] early resolution date”.

The complainant stated that he would like to know why the justice of the peace left early and “ended up causing more harm” to his case. He alleged that “everyone else in front of [him] had the opportunity to accept their offers, yet [he] did not, and ended up with a worse deal in the end”. The complainant alleged that he was “given an ultimatum in court, either go to trial or accept a worse deal than [his] early resolution date.”

The complainant said that he appeared before the second justice of the peace on a subsequent date for trial. He alleged that he explained what occurred at his first appearance, but the Court did not have the form from the early resolution date and Her Worship “did not care” and “did nothing about it”. He requested to know why both justices of the peace had no problem “failing [him] when it came to doing the right thing and attaining real justice”.

#### ***File 30-038/19***

The complaints committee reviewed the letter of complaint and the transcript of the first proceeding in which the complainant’s matter was addressed. The committee observed from the transcript that the complainant did not attend when his matter was called; rather, the prosecutor indicated to the Court that the complainant’s matter would be proceeding to trial.

The committee observed that if the prosecutor’s statement to the Court about the complainant’s intention to proceed to trial was inaccurate or incorrect, this would not have been the fault of the presiding justice of the peace. Moreover, the transcript confirmed that Her Worship was present in court when the complainant’s matter was called. Accordingly, the allegation that she “left early” was not substantiated.

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The committee concluded that there was no evidence to support the allegations of misconduct against the justice of the peace. The complaint was dismissed, and the file was closed.

#### ***File 30-039/18***

The complaints committee read the letter of complaint and reviewed the transcript of the proceeding before the second justice of the peace. The committee noted from the transcript that the complainant entered a guilty plea to a lesser charge of going 65 kilometers in a 50-kilometer zone.

The committee did not find any support for the allegations that Her Worship “did not care” or “did nothing about” about the fact he was offered a “better deal” by a different prosecutor at the early resolution date. The committee observed that prosecutors have discretion to negotiate with defendants and decide on what resolution they are willing to offer on any given date. Justices of the peace have no authority to interfere in negotiations between prosecutors and defendants.

Moreover, the transcript showed that Her Worship listened to the complainant’s submission that he was given a better offer at his last appearance and considered his request for a reduced fine. Her Worship reduced the fine to \$45.00, the statutory fine, and offered the complainant additional time to pay. The complainant asked if he could pay the fine that same day and thanked the Court.

The committee concluded that there was no evidence to support the allegations of misconduct against the justice of the peace. The complaint was dismissed and the file was closed.

#### ***CASE NO. 31-001/20***

The complainant was a licensed paralegal. In his letter to the Council, he alleged that on numerous occasions, the justice of the peace belittled and criticized him in court due to the way he was attired. The complainant stated that he had a medical condition that affected how he could wear shirts and ties.

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The complainant alleged that the justice of the peace bullied and belittled him for not fully fastening his tie/collar-shirt button. The complainant said that he explained to Her Worship that he had a medical condition and could provide a doctor's note, however, Her Worship was "unmoved by this information".

The complainant said that because of Her Worship's comments, "he was distraught" and "discombobulated". He indicated that he was so ill at ease and desperate to leave the courtroom because of Her Worship's bullying tactics, that he accepted a proposed date for an adjournment when he knew he was unavailable. He subsequently had to file a motion to change the return date.

The complainant indicated that before the commencement of the court appearance before Her Worship, he was approached by two defendants who wanted him to represent them in defending their tickets. He alleged that after the incident in court with Her Worship, neither of the defendants wanted to retain his services.

The complainant further alleged that this was not the first time Her Worship engaged in "discriminatory as well as degrading behaviour/commentary" towards him. He said that over the years, Her Worship "demonstrated similar actions as well as vocalizations" against him in court. He described Her Worship's comments towards him as derogatory, and her behavior as "unequitable".

The complaint was assigned to a three-person complaints committee of the Review Council, consisting of a judge, a justice of the peace and a community or lawyer member for review and investigation.

The committee reviewed the complaint letter and the transcript of the proceeding before Her Worship. A member of the committee also reviewed the audio recording of that proceeding.

In the course of its investigation, the committee requested further information from the complainant regarding his allegations. The complainant provided the committee with two medical notes from his doctor about his needs arising from his medical condition. The complainant also provided a transcript from another proceeding before Her Worship which he alleged showed a pattern of harassment.

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The committee noted the remarks of the Supreme Court of Canada in *Re: Therrien*, 2001 SCC 35 where the Court stated:

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

Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. Many factors, including unfair or uninformed criticism, or simple misunderstanding of the judicial role, can adversely influence public confidence in and respect for the judiciary. Another factor which is capable of undermining public respect and confidence is any conduct of judges, in and out of court, demonstrating a lack of integrity. Judges should, therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality, and good judgment.

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

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

The committee observed that because justices of the peace hold positions of considerable authority, they are expected to conduct themselves according to high standards of professional conduct. Justices of the peace must perform the duties of their office impartially, independently and with integrity. The Preamble of the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* states:

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

The Principles also state:

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

*Commentaries:*

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

- 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.

*The Human Rights Code* and the *Accessibility for Ontarians with Disabilities Act* define “disability” very broadly. Both *Acts* contemplate that a person with a disability should be treated with dignity and respect. The Ontario Human Rights Commission’s *Policy and Guidelines on Disability and the Duty to Accommodate* recognizes that disabilities are often “non-evident” and subjective, but still may result in impairment to a person. The essence of accommodating people with disabilities is individualization. Each person with a disability must be considered, assessed and accommodated individually. The Policy notes, “It is well established in human rights law that equality may sometimes require different treatment that does not offend the individual’s dignity”.

The committee noted that public perceptions of the administration of justice may be negatively impacted by the demeanor, conduct and comments of a justice of the peace in the courtroom. All parties who appear before judicial officers, including agents and paralegals, are entitled to be treated with courtesy, civility, dignity and respect. If a justice of the peace appears to bully a legal representative who indicates that he has a medical

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condition, and the justice of the peace demonstrates rudeness or arrogance in open court towards that person, this may negatively affect the perceived objectivity, integrity and professionalism of the judicial officer.

Further, condescension, impatience, or combativeness on the part of a judicial officer may negatively impact the perceived fairness of the proceedings, the legal interests of the parties and public confidence in the administration of justice. If a justice of the peace fails to maintain a respectful judicial demeanor toward a defendant or legal representative, including disregarding his or her physical or medical needs, this may create the impression that the judicial officer lacks integrity, and is punishing the person because he or she has indicated that he has a medical condition that requires accommodation. The judicial officer may be perceived as unwilling to accommodate a person's medical condition, and unable or unwilling to remain impartial.

The committee observed from the court transcripts that the complainant advised the justice of the peace that he was unable to fasten his shirt collars and/or ties due to a medical condition for which he had a doctor's note. The record suggested that despite this explanation, Her Worship continued to reprimand and/or lecture the complainant about his physical appearance and/or attire. In doing so, Her Worship appeared to demonstrate impatience, annoyance, rudeness, condescension and arrogance toward the complainant and to show a lack of sensitivity or disregard for his medical condition. For example, the transcript showed the following dialogue:

The Court: You know exactly how - how the decorum – your attire, how it has to be proper in this courtroom. I know that I have called you on it many times before. I have called you on it this morning. It's not acceptable – let me finish.

Complainant: I didn't interrupt you.

The Court: Don't say another word. If you have any kind of medical condition as to why you can't button your shirt get a bigger shirt with a bigger collar but it needs to be properly attired when you come into Court. It is not me personally that you are disrespecting, by not being properly attired, it is not me, it's what this bench represents. It's what stands behind my head that it represents and it is what this coat of arms that

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stands behind me what that represents. That's what you are disrespecting, not me personally because frankly personally, I don't care. But I am here representing everything that stands behind me and I expect you to be properly attired when you come into my courtroom.

Complainant: May I speak?

The Court: I am not finished. I have called you on it before. I have called on it this morning. I will speak to – you can speak to your matter now. Don't you ever come back into my courtroom not properly attired. Do you understand me?

Complainant: May I speak?

The Court: Mr. – do you understand me? Answer the question.

Complainant: Yes.

The Court: Thank you. Now you may speak.

Complainant: Your Worship I have indicated to you that I do have a Doctor's note, that I do have medical problems...

The Court: Mr. – Mr. [redacted name] I am going to stop you right there. I have already acknowledged that and I have already spoke to that. There is nothing else to say.

Complainant: Your Worship I just want the record clear, I do not do this with disrespect to you or to The Court...

The Court: Then get bigger shirts.

...

The Court: When you come in here and your shirt is all open...

Complainant: It is not all open.



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The Court: And your tie is all loose, that is a sign of disrespect Mr. [redacted name]. And if you can't properly address your matters attired properly, then – then you know there has got to be a solution so that you don't disrespect the Court and then you can speak to your matters. Having said all that let's move on. Do what is necessary in order for you to be proper in my Court, Mr. [redacted name]. But I don't want to waste any more time when we have a courtroom full of people.

The committee was concerned that Her Worship interrupted the complainant when he attempted to address her concerns regarding his attire, and appeared to show a disregard for, or insensitivity toward, his stated medical condition. Based on a committee member's review of the audio recording, the committee was also concerned that Her Worship appeared to adopt a bullying and patronizing tone toward the complainant.

The committee observed that Her Worship's comments and tone could be perceived by the complainant, and perhaps others in the courtroom, as rude, arrogant, insensitive and disrespectful. This in turn could negatively affect her perceived objectivity and impartiality as a judicial officer.

The committee observed from its review of the transcript of a second court proceeding before Her Worship that as soon as the complainant addressed the Court, Her Worship again reproached him for his attire. The dialogue included the following:

The Court: It's not appropriate, Mr. [redacted name], and you know that. I think I've put you on caution and on alert other times before.

Complainant: Your Worship...

The Court: I will not tolerate when you're not properly attired.

Complainant: Your Worship, I did address to you the medical reason as to why I don't...

The Court: Mr. [redacted name], I will not tolerate it, plain and simple. So, we'll hold the matter down. Fix the issue. You know what the issue is. Fix it, come back, we'll address your matter.

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A The committee observed that when the matter was recalled, the complainant explained to the Court that the parties needed to set a date to appear before another justice of the peace. The committee noted that Her Worship did not appear to listen to the complainant's submissions regarding his other court commitments and his inability to attend on the date proposed by the court clerk, nor did Her Worship appear willing to consider whether an alternative date could be identified that was convenient to the other justice of the peace and the complainant.

The committee noted that Her Worship interrupted the complainant when he attempted to make submissions. The committee was concerned that Her Worship's impatient manner toward the complainant could give rise to the perception that she was not treating him with respect or due consideration as a result of her annoyance with him regarding his attire.

The committee was concerned that Her Worship's comments and tone in both proceedings lacked the level of respect, professionalism, tact and judgment expected of a justice of the peace.

The committee invited Her Worship to respond to the complaint. After reviewing Her Worship's response, the committee was concerned that Her Worship may continue to hold the view that her conduct towards the complainant was justified. Her Worship's lawyer requested that the committee seek information and documentation from the complainant's doctor to authenticate his letters and his explanation of the precise nature of his medical condition. The committee was concerned that Her Worship may not appreciate that such actions may be perceived as intrusive questioning about someone's disability, medication, treatment or accommodation needs.

The committee decided to refer the complaint to the Chief Justice pursuant to section 11(15)(d) of the *Justices of the Peace Act*. 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 committee referred the complaint to the Chief Justice subject to the conditions that Her Worship agree to meet with the Chief Justice and Her Worship was prepared to participate in such education or counselling on the duty to accommodate as the Chief Justice considered appropriate. Her Worship agreed to both conditions.

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The circumstances arising from the COVID-19 pandemic resulted in a delay in the Chief Justice meeting with Her Worship. After the meeting, the Chief Justice provided a report to the complaints committee.

The committee noted that the Chief Justice discussed with Her Worship the complainant's perception that Her Worship had discriminated against due to his medical condition. The committee observed from the report that Her Worship had reflected on her conduct and recognized that she should have provided the complainant with the opportunity to file his medical information, and she should have respected that information. Her Worship explained that she and the complainant had some history but fully acknowledged that she was wrong to behave in the manner that she did. She accepted that regardless of the history that they may have, as a justice of the peace, she should not have conducted herself in the manner that she did.

The committee noted that the Chief Justice reported that Her Worship understood and accepted how her conduct gave rise to perceptions that she was discriminating against the complainant and that she did not know the law applicable to persons with needs arising from disabilities. Her Worship acknowledged that she treated the complainant in a manner that lacked dignity and respect. She admitted without reservation that she was inappropriately harsh towards him and apologized for her conduct. She recognized that she ought to have apologized to him right away.

The committee accepted that Her Worship had taken the complaint seriously and had learned from this experience. Her Worship appeared to be committed to ensuring that this type of conduct would not be repeated.

After reviewing the report from the Chief Justice, the complaints committee closed the file.

#### **CASE NO. 31-002/20**

The complainant appeared before the justice of the peace to lay a private Information against his neighbour. In his letter to the Council, he stated that he explained to Her Worship that he had a medical condition which impaired his ability to deal quickly with a lot of information at a time.

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A The complainant asserted that the justice of the peace failed to explain how he could prove that his neighbour had intent to commit the alleged offence. In particular, he stated that he read a portion of his affidavit to Her Worship which he believed showed intent on his neighbor's behalf, however, Her Worship responded that the neighbour could say that she had "made a mistake". He alleged that the justice of the peace asked for "proof of [his neighbor's] 'intent' without a clear explanation of what characteristic of 'intent' she was looking for; all without reading his affidavit".

The complainant indicated that he did not return to the courthouse for fear of being humiliated once again. He concluded by expressing the view that he deserves to have his complaint considered and "at least a nominally clearly explained reason for its acceptance or rejection."

The complaint was assigned to a complaints committee of the Review Council for review and investigation.

The committee reviewed the letter of complaint and requested a copy of the transcript and audio recording of the proceeding before Her Worship. The committee was advised that there was a technical problem with the audio recording equipment in Her Worship's Intake Court on the date of the complainant's appearance. Accordingly, there was no recording made of the proceeding, nor could a transcript be prepared.

The committee provided Her Worship with a copy of the complaint letter and invited her to respond to the allegations. The committee received and reviewed Her Worship's written response. The committee observed from her response that Her Worship was unable to recall any details about the complainant's appearance in Intake Court given the passage of time and the absence of any audio recording or transcript of the matter.

With respect to the complainant's allegation that Her Worship did not read his application, the committee observed from her response that the justice of the peace confirmed that "applications for matters in Intake Court are first vetted by the clerk and then given to the justice of the peace to review before the applicant is admitted to the office for further discussion" [emphasis in original]. Her Worship expressed the view that it was unlikely that any justice of the peace "would not thoroughly read and consider the application and materials prior to seeing someone" in Intake Court.

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The committee observed that Her Worship correctly noted that where an applicant is unhappy with the decision of a justice of the peace, the remedy would be to either appeal the decision or resubmit the application for consideration by another justice of the peace. Her Worship concluded by stating that she wished the best for the complainant's continued recovery and hoped that he could find a resolution to his matter.

The committee determined that Her Worship's response showed insight into her role and responsibilities as a judicial officer and empathy toward the complainant's personal circumstance. Based on the materials before it, the committee concluded that the allegations of misconduct could not be substantiated. The complaint was dismissed, and the file was closed.

#### **CASE NO. 31-004/20**

The complainant appeared in intake court before the subject justice of the peace to lay a private Information. The justice of the peace declined to issue process.

In his letter of complaint, the complainant alleged that Her Worship "rejected" his cases without giving him a legal reason and did not inform him whether his cases met the statutory requirements under the Criminal Code. He indicated that he asked the justice of the peace to write down why she had "rejected" his cases, but she refused. He also alleged that Her Worship gave him legal advice by telling him that his matters were civil, not criminal. He referred to the first page of the standard form for commencing a private prosecution, which states, "Justices of the Peace are prohibited from giving any advice about your rights, nor can they give you any other type of legal advice, opinion or guidance...". He stated that based on the form, Her Worship violated the rules.

In addition, the complainant asked that the Review Council find a different justice of the peace to hear his matters and decide whether his cases met the requisite statutory provisions. He indicated that if his matters met the statutory requirements, he would like the Review Council to schedule a pre-enquête hearing "as quickly as possible". If, on the other hand, his matters did not meet the statutory requirements, he requested that the Review Council provide him with written detailed reasons.

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The complaint was assigned to a complaints committee of the Review Council, consisting of a judge, a justice of the peace and a lawyer or community member for review and investigation.

In opening the complaint file, Council staff wrote to the complainant and informed him that the jurisdiction of the Review Council was limited to allegations about the conduct, not decisions, of justices of the peace. The Council does not have the legal authority to change a decision of a justice of the peace, determine whether he or she made a legal error, or schedule a hearing before a different justice of the peace. The complainant was informed that if a person disagrees with the decision of a justice of the peace, the proper way to proceed is to seek a remedy, if available, through the courts.

The committee reviewed the letter of complaint and enclosures provided by the complainant, as well as the transcript of the proceeding before the subject justice of the peace.

The committee observed that the allegations centered around the complainant's dissatisfaction with the decision of the justice of the peace to not issue process. The committee observed that Her Worship's decision in this respect, including her interpretation of the law and reasons for refusing to issue process, 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*. As the complainant was previously informed, the Review Council's jurisdiction is limited to allegations about judicial conduct, not judicial decision-making.

The committee further observed that it did not have any jurisdiction to schedule a pre-enquête before a different justice of the peace or to provide the complainant with written reasons regarding why his Information may or may not comply with the statutory requirements. As the complainant was previously informed, if a person seeks to change or challenge the decision of a justice of the peace, the proper course of action is to seek a remedy through the courts, if available.

Finally, the committee observed from the transcript that the justice of the peace provided oral reasons for refusing to issue the private Information, contrary to the complainant's allegations. While Her Worship could have taken steps to ensure that the complainant understood why his private Information did not satisfy the statutory requirements, such conduct did not rise to the level of misconduct requiring further action by the Review Council.

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The committee concluded that the allegations relating to Her Worship's conduct did not rise to the level of misconduct that required further action by the Review Council and the allegations regarding Her Worship's decision-making were outside the jurisdiction of the Council. The complaint was dismissed, and the file was closed.

#### **CASE NO. 31-005/20**

The Review Council received a complaint from a Provincial Offences Officer of a Ministry of the Ontario Government. He attended Intake Court to act as an Informant on several Part III Information/Summons for the Ministry.

The complainant alleged that during the proceedings in Intake Court, the justice of the peace neglected his duties. The complainant said that His Worship said that he does "not follow the same protocol [as his] fellow colleagues".

The complainant alleged that when he asked the justice of the peace if the matter was ready to commence on the Digital Audio Recording (DAR), the justice of the peace did not respond to the question and asked for the Information/Summons. In his letter, the complainant said that he proceeded to give the facts that led to the charges but noticed that the Information/Summons had already been signed by His Worship. His Worship then proceeded to sign the second set of documents.

The complainant, who was an experienced Informant and Commissioner of Affidavits, expressed the concern that the Information/Summons that His Worship signed "were not legal charging documents." He said that he believed that His Worship neglected his duties "by not attempting to turn on the recording (DAR), or even writing down any information. Justice did not ask me to swear or affirm to the information/summons, which I was acting as informant on."

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

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The committee noted the remarks of the Supreme Court of Canada in *Re: Therrien*, 2001 SCC 35 where the Court stated:

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

Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. Many factors, including unfair or uninformed criticism, or simple misunderstanding of the judicial role, can adversely influence public confidence in and respect for the judiciary. Another factor which is capable of undermining public respect and confidence is any conduct of judges, in and out of court, demonstrating a lack of integrity. Judges should, therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality, and good judgment.

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

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

The committee observed that because justices of the peace hold positions of considerable authority, they are expected to conduct themselves according to high standards of professional conduct. Justices of the peace must perform the duties of their office



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impartially, independently and with integrity. The Preamble of the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* states:

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

The Principles also state:

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

The committee noted that receiving an Information is a legal process that must be taken seriously by a presiding justice of the peace. If the proper process is not followed, the Information may be invalid. Following the proper procedure ensures that the person named in the Information is protected from the dissemination of what might turn out to be unfounded allegations.

Before signing the Information, the justice of the peace must confirm the identity of the informant and ensure that the requirements of section 504 of the *Criminal Code of Canada* are met. The Informant must make a sworn declaration in the information that he or she has personal knowledge or believes on reasonable grounds that the person to be charged has committed the specific offences. Until the informant has completed his or her sworn declaration, the justice of the peace is not able to legally confirm that he or she saw the document sworn or affirmed before him or her.

Court staff provided the complaints committee with the sign-in-sheet from Intake Court confirming that the complainant appeared before His Worship. The committee was concerned that the allegations made by the complainant indicated that on this date, His Worship may have disregarded the legal requirements for receiving an Information and that as a matter of practice, His Worship may not have followed the proper processes that apply to such matters in Intake Court.

The committee noted that court staff found that there was no audio recording made of the complainant's proceeding before the justice of the peace.

## APPENDIX A

### Case Summaries

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The committee noted that within the complaint review process, the court record is often the best and most objective evidence available to inform the committee as to what happened in court. The absence of a complete record can, such as in this case, prevent the complaints committee from making findings and hinder its ability to fully assess a complaint.

The committee noted that following the decision of *R. v. Billingham* [1995] O.J. No. 2984, a best practice has been adopted by many justices of the peace of ensuring a comprehensive court record of all proceedings in Intake Court. A justice of the peace has a responsibility to ensure a complete and accurate record of proceedings in the Intake Court in which he or she presides.

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

#### **CASE NO. 31-008/20**

The complainant appeared before the subject justice of the peace for a trial on charges of Careless Driving and Fail to Remain under the *Highway Traffic Act*. The justice of the peace dismissed the Careless Driving charge and found the complainant guilty of Fail to Remain. The complainant unsuccessfully appealed His Worship's decision.

In his letter to the Council, the complainant stated that he had 49 pages of evidence "to give in his remarks" and had given "up to 37 pages" when His Worship "got real mad, threw papers in the air" and "stormed out of the courtroom". The complainant alleged that he lost 49 pages of evidence to prove that he was not guilty of failing to remain. He concluded by stating that he hoped the Council could do something about his "wrong conviction".

The complaint was assigned to a complaints committee of the Review Council, consisting of a judge, a justice of the peace and a community or lawyer member. In a letter to the complainant acknowledging receipt of his complaint, Council staff informed him that the Council does not have the jurisdiction or legal authority to change a decision of a justice of the peace. Only a higher court has the jurisdiction to review decisions made by a justice of the peace.

## APPENDIX A

### Case Summaries

The complaints committee reviewed the letter of complaint, transcripts of the complainant's appearances before the subject justice of the peace, and the exhibits filed on his appeal. The committee also listened to a portion of the audio recording of the appearance in which the complainant alleged that the justice of the peace "got real mad, threw papers in the air" and "stormed out of the courtroom".

The committee observed that the complainant's allegations were not borne out by the transcripts or audio recording of the proceedings. In particular, the record did not substantiate the allegations that the justice of the peace threw papers in the air and stormed out of the courtroom; rather, the transcript and audio recording indicated that he called a recess in order to obtain a date for the next appearance. The record showed that throughout the proceedings, His Worship was calm and patient toward the complainant.

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

#### **CASE NO. 31-010/20**

The complainant was charged with assault with a weapon following a physical altercation with her neighbour.

She appeared before the subject justice of the peace to have charges laid against her neighbour and another individual. The complainant alleged that the police conducted an improper investigation and should have charged her neighbour instead. The subject justice of the peace refused to issue process against the complainant's neighbour and the other individual.

In her letter of complaint, the complainant requested that Her Worship's decision be "overturned and the process to proceed". She made numerous allegations against the subject justice of the peace, including that Her Worship was prejudiced, denied her justice, treated her like a villain and failed to order a proper investigation.

The complainant alleged that when she informed the justice of the peace about the "police's dereliction of duty", Her Worship responded by saying, "you do not tell the police how to do their job". The complainant stated that Her Worship's comments showed an

## APPENDIX A

### Case Summaries

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outrageous and callous attitude and that the justice of the peace “inflicted the same bias and prejudice against [her] efforts to have [her neighbour] charged and investigated by police”.

The complaint was assigned to a complaints committee of the Review Council, consisting of a judge, a justice of the peace and a lawyer or community member. The committee reviewed the letter of complaint and ordered and reviewed the transcript of the appearance before the subject justice of the peace.

Based on its review of the transcript, the committee determined that none of the allegations of misconduct were substantiated by the record. In particular, the committee found that Her Worship was patient and respectful toward the complainant throughout the proceeding and listened to her submissions before making a decision. Further, the committee observed that the allegations regarding Her Worship’s comments in court were not borne out by the transcript. For example, while the complainant alleged that Her Worship said, “you do not tell police how to do their job”, the transcript showed that the justice of the peace in fact said, “I can’t tell the police how to do their jobs”.

The committee observed that the complainant’s request to have Her Worship’s decision reviewed and/or changed was outside the jurisdiction of the Review Council. Decisions made by justices of the peace, including their assessment of the evidence and application of the law, are 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*. Accordingly, the Council has no authority to change a decision of a justice of the peace.

The committee concluded that the allegations related to Her Worship’s conduct were not supported by the record and the allegations regarding her decision-making were outside the jurisdiction of the Council. The complaint was dismissed and the file was closed.

#### **CASE NO. 31-011/20**

The complainant appeared in Intake Court before the subject justice of the peace to lay a private Information. She alleged that she was the victim of a home invasion and physical assault.

## APPENDIX A

### Case Summaries

After the complainant laid the private Information, a return date was scheduled for a pre-enquete hearing before a different justice of the peace. On the return date, the charges were stayed at the request of the Crown Attorney.

In her letter of complaint, the complainant made various allegations against the subject justice of the peace, including that she was racist, unprofessional, had no knowledge of the law, acted as a “corrupt police officer”, made “bad faces” at her, accused her of lying, revictimized her and was aggressive and angry.

The complaint was assigned to a complaints committee of the Council, consisting of a judge, a justice of the peace and a lawyer or community member. The committee reviewed the correspondence from the complainant as well as the transcript of the appearance before the subject justice of the peace.

Based on its review of the transcript, the committee found no evidence to substantiate the complainant’s allegations of misconduct. To the contrary, the committee observed that the justice of the peace was patient and respectful toward the complainant throughout the proceeding and took steps to explain the court process to her.

The complaints committee concluded that the court record did not support the complainant’s allegations of judicial misconduct. The committee dismissed the complaint and the file was closed.

#### **CASE NO. 31-012/20**

The complainant appeared before the justice of the peace to obtain a peace bond against a family member. In her letter to the Review Council, she said that she was a victim of abuse by that family member. The complainant alleged that Her Worship overlooked that the complainant’s family member was abusive towards her for an extensive period of time and had a previous record of convictions for violent domestic assaults.

The complainant’s allegations about Her Worship included:

- ◆ Bias, lack of effort;
- ◆ Unprofessionalism;
- ◆ Failure to consider; and
- ◆ Discriminatory behaviour.

## APPENDIX A

### Case Summaries

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She alleged that Her Worship put her at risk of harm and impacted on her health. She alleged that Her Worship's decision "allowed a violent abuser to continue to torture me, with ongoing harassment that continues, to this day." She indicated that she was in fear for her life and had no protection due to Her Worship's erroneous view of the matter.

The complainant said that Her Worship should receive disciplinary action for her decision in the form of sensitivity training regarding interactions with persons with disabilities, and there should be a review of Her Worship's fitness to work in the courts.

The complainant alleged:

1) *Bias and Unprofessionalism:*

The complainant said that Her Worship's comments and reasons for not granting the peace bond included the phrase "because I'm a parent, too." The complainant said that she did not believe there is room for personal conclusions or such personal bias in the courtroom. Decisions should be made based on facts and evidence, first and foremost.

2) *Lack of Effort:*

During each short appearance before other justices of the peace, those justices of the peace were considerate of the full packages of evidence. However, Her Worship only "opened one and just briefly skimmed the first 2 pages."

3) *Failure to Consider:*

Her Worship did not investigate or properly assess the criminal history of the complainant's family member; Her Worship took him at his word, asking him whether his record and crimes involved any family, and he said no. The complainant alleged, "There was a lack of applying the true facts."

Her Worship concluded that the complainant had no reason to fear her family member and no reason to fear for her safety. The complainant believed that his criminal patterns illustrated otherwise.

The complainant alleged that Her Worship repeatedly cut her off as she was speaking and did not allow her the opportunity to elaborate or explain her evidence. The complainant also said that she was not permitted to read her Victim Impact Statement. She expressed the view that this was a violation of the Victim's Bill of Rights.

## APPENDIX A

### Case Summaries

Her Worship “ignorantly” commented that her “mind was wandering off topic” and told the complainant to “bring [your mind] back to the present moment”.

#### 4) *Discriminatory Behaviour:*

The complainant said she was wheelchair-bound and physically disabled and has been since birth. She indicated that she could not stand, and Her Worship repeatedly asked her to stand to address her.

The complainant alleged that Her Worship incorrectly and rigidly assumed that the complainant had deliberately chosen to move across the street from her family member. In her letter, she explained that due to the social housing situation in her community, the lack of wheelchair accessible options, and because she was turned down by the local shelter, she had no choice but to choose that spot. She indicated that she had an ongoing Human Rights application and her housing/shelter struggles contributed to the delay in submitting her complaint to the Council.


The complainant indicated that her housing proximity was a large reason for the denial of the peace bond, but it was never her choice to live there.

The complaints committee read the complainant’s letter and ordered and reviewed the transcript of the court proceeding.

The committee noted that most aspects of the complaint related to Her Worship’s assessment of and findings on the evidence, her determinations with respect to relevance of evidence, her decision not to grant a peace bond, and her reasons for her decision. These are 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 transcript showed that Her Worship said that, “As a parent myself, I believe it’s always upsetting when there is a disagreement.” The committee observed that it appeared that Her Worship was trying to show compassion for the parties before her who were family members, whom she believed had experienced a breakdown in their relationship. The committee concluded that the comment did not show bias or unprofessionalism.

The committee observed that the transcript showed that Her Worship listened carefully to the evidence and made her decision after considering the evidence.



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The transcript indicated that Her Worship permitted the complainant to give her evidence and provided her with the opportunity to make submissions. Her Worship asked both parties to focus on the events on the date alleged in the application for the peace bond. The committee noted that it is part of the role of a presiding justice of the peace to determine the relevance of matters before the court and to direct the parties to focus on the issues that he or she determines to be relevant.

The committee observed that Her Worship was polite and respectful in her interactions with both parties.

The committee observed that the transcript did not show that the complainant asked to read a victim impact statement. She asked Her Worship whether another person could read her evidence if she could not finish reading it. Her Worship explained that she probably would not be reading evidence, rather she would take the stand and tell the judge what her evidence was. Her Worship told the complainant that although she would not be permitted to read, she could refer to her papers if there were any pertinent points.

The committee observed that the transcript indicated that after Her Worship initially asked the complainant to stand, the complainant told her that she was in a wheelchair and could not stand. Her family member also told Her Worship that the complainant was in a wheelchair. Her Worship apologized, stating, “Oh, I’m sorry, I didn’t - I didn’t notice that, so thank you for telling me. Are you ready to proceed?” Her Worship did not ask the complainant to stand after she was informed that the complainant was in a wheelchair.

The committee also observed that when the complainant’s family member sought an adjournment of the hearing, Her Worship took into consideration that it was difficult for the complainant to return because she was in a wheelchair and would have to book the accessibility bus. The request for an adjournment was denied. Her Worship also appeared to invite the complainant to let her know if she needed assistance or a break. The committee concluded that the transcript did not support the allegation of discrimination.

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



**APPENDIX B**

**POLICY ON  
EXTRA-REMUNERATIVE  
WORK AND  
APPLICATIONS  
CONSIDERED**

## Policy on Extra-Remunerative Work and Applications Considered

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

### **CRITERIA & PROCEDURE FOR APPROVAL**

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

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

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

### ***Application Procedure***

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

## Policy on Extra-Remunerative Work and Applications Considered

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- 5) The Council looks at two aspects in relation to remuneration associated with the work. Firstly, the Council considers whether the work gives rise to any remuneration to the applicant justice of the peace. Secondly, the Council considers that a justice of the peace is engaged in extra-remunerative work when that justice of the peace is a party to someone else's remunerative work. Once the Council has established whether there is any remuneration, the policy and criteria set out in the Council's Extra-Remunerative Policy are considered.
- 6) The following are some of the criteria which should be addressed by the applicant in the letter of application and which will be considered by the Review Council in assessing whether 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.

## Policy on Extra-Remunerative Work and Applications Considered

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

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

### ***Additional Information***

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

### ***Approval of Application without Conditions***

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

## Policy on Extra-Remunerative Work and Applications Considered

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### ***Opportunity to Respond to Concerns***

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

### ***Decision***

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

### ***No Authority to Order Compensation for Legal Costs***

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

## Policy on Extra-Remunerative Work and Applications Considered

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### ***Application Process in Private***

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

subs. 8(18)

### ***Quorum of Review Council***

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

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

### ***Annual report***

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

subs. 9(7)

Amended at Toronto, June 4, 2010.

## Policy on Extra-Remunerative Work and Applications Considered

# APPLICATIONS FOR APPROVAL OF EXTRA-REMUNERATIVE WORK IN 2020

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-31-001/20 was the first application for approval in calendar year 2020).

Names of applicants are not included in the case summaries.

### ***CASE NO. ER-30-001/20***

The Review Council approved an application from a justice of the peace seeking approval to engage in extra-remunerative work as a musician, subject to the conditions below:

- 1) The Council's approval of the request must present no difficulties in fulfilling judicial assignments as a justice of the peace during these periods of time.
- 2) His Worship's availability to participate and perform must be subject to his responsibilities as a justice of the peace and as such must be undertaken at times when he is not otherwise assigned to judicial duties.
- 3) His Worship must maintain distance as a musician from his role and responsibilities as a judicial officer, particularly in relation to avoiding any reference to his judicial position in advertising or informational materials related to his musician activities and performances.
- 4) His Worship must refrain from knowingly conducting any extra-remunerative work activities as a musician with anyone directly involved with the justice system. He must demonstrate sensitivity in transactions related to his music activities to ensure the avoidance of any real or perceived conflict of interest or bias. Of particular concern to Council is the occurrence of any work in that capacity for known members of the justice community such as Crown Attorneys, police, agents, paralegals, lawyers, or

## Policy on Extra-Remunerative Work and Applications Considered

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others who may have the opportunity to appear before His Worship in his decision-making capacity, or persons with whom justices of the peace have a relationship in the course of their duties, including court administration and court security staff.

- 5) Extra-remunerative music activities provided for justices of the peace or for judges would be exempt from the provisions of Condition #4. His Worship was permitted to conduct such activities for justices of the peace or judges. However, he must refrain from using the Court's email network to promote or advertise his music activities. His personal business in relation to his music activities must not be conducted on the Court's resources, which are provided for purposes associated with his official responsibilities.
- 6) His Worship may accept remuneration for the musical performances, but such remuneration must be the same as that paid to other musicians and be without regard to his position as a justice of the peace.
- 7) The Review Council approves of the occasional engagement of musical performance services as described in his correspondence to the Review Council. Should his services increase beyond that level of frequency or should any other change in circumstances arise that affects the status outlined in his correspondence, he must advise the Review Council in writing. It would be his responsibility to apprise the Review Council of any change.
- 8) The Review Council reserved the right to revisit the request and its decision should the Council become aware of any new information or any relevant circumstances change.

The Council assumes that His Worship would demonstrate appropriate discretion regarding the venues in which he performs.



## Policy on Extra-Remunerative Work and Applications Considered

### **CASE NO. ER-30-002/20**

The Review Council approved an application by a justice of the peace seeking to engage in part-time work as a Registered Nurse for TeleHealth Quebec in the circumstances of the COVID-19 pandemic on Saturdays and Sundays, subject to the conditions proposed below:

- 1) Her Worship must conduct any work for TeleHealth Quebec, including community mental health services, from her home by telephone or from her home over the internet in order that she remain socially isolated from persons with whom she works while performing this work;
- 2) The Council's approval of Her Worship working part-time on a temporary basis for Telehealth Quebec must present no difficulties in fulfilling judicial assignments as a justice of the peace during the period of time when approval is granted;
- 3) Her Worship's availability to accept this part-time work must be subject to her responsibilities as a justice of the peace and as such must be undertaken at times when she is not otherwise assigned to judicial duties;
- 4) Her Worship must undertake to maintain distance as a Registered Nurse from her role and responsibilities as a judicial officer, including avoiding any reference to her judicial position in carrying out her nursing duties;
- 5) Her Worship must undertake to refrain from knowingly providing nursing services to anyone directly involved with the justice system. She must undertake to demonstrate sensitivity in transactions related to her nursing activities to ensure the avoidance of any real or perceived conflict of interest or bias. Of particular concern to Council is the occurrence of any work in that capacity for known members of the justice community such as Crown Attorneys, police, agents, paralegals, lawyers, or others who may have the opportunity to appear before Her Worship in her decision-making capacity, or persons with whom justices of the peace have a relationship in the course of their duties, including court administration and court security staff;

## Policy on Extra-Remunerative Work and Applications Considered

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- 6) Nursing activities provided for justices of the peace or for judges would be exempt from the provisions of Condition #5. Her Worship would be permitted to respond to calls through TeleHealth Quebec from justices of the peace or judges. However, she must refrain from using the Court's email network in carrying out her nursing extra-remunerative work. The Court's resources are provided for purposes associated with official judicial responsibilities;
- 7) Her Worship may accept remuneration for the nursing work, but such remuneration must be the same as that paid to other Registered Nurses working for Telehealth Quebec and must have no regard to her position as a justice of the peace. Her Worship undertook that she would be remunerated in accordance with each province's salary grid based on years of experience; she would be paid approximately \$50.00 to \$55.00/hour. Telehealth Quebec would cover all nursing license registration and professional liability;
- 8) Approval was granted for Her Worship to engage in this part-time nursing work for Telehealth Quebec on Saturdays and Sundays until June 1, 2020, subject to Conditions #2 and #3 above. A further application for approval would have to be made to the Review Council for any extension of the work period; and,
- 9) The Review Council reserved the right to revisit the request and its decision if the Council becomes aware of any new information or any relevant circumstances change.

### ***CASE NO. ER-30-003/20***

The Review Council approved an application from a justice of the peace seeking approval to engage in extra-remunerative work providing training support for NATO at the Joint Warfare Centre in Stavanger, Norway for twelve to twenty-four days in the Fall of 2020, subject to the following conditions:

- 1) Her Worship must undertake to maintain distance in her work for NATO from her role and responsibilities as a judicial officer, including avoiding any reference to her judicial position in her work for NATO;

## Policy on Extra-Remunerative Work and Applications Considered

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- 2) Her Worship must undertake to demonstrate sensitivity in interactions related to her work for NATO to ensure the avoidance of any real or perceived conflict of interest or bias;
- 3) Her Worship must refrain from using the Court's computer or email network in carrying out her extra-remunerative work. The Court's resources are provided for purposes associated with official judicial responsibilities;
- 4) Her Worship may accept remuneration for her work with NATO, but such remuneration must be the same as that paid to other persons performing the same work, and must have no regard to her position as a justice of the peace;
- 5) Approval is only granted for Her Worship to provide training support for NATO at the Joint Warfare Centre in Stavanger, Norway for 12-24 days (with a 14-day quarantine period upon her return), subject to the conditions set out above. A further application for approval would have to be made to the Review Council for any extension of the work period; and,
- 6) The Review Council reserved the right to revisit the request and its decision if the Council becomes aware of any new information or any relevant circumstances change.

### **CASE NO ER-30-004/20**

The Review Council approved an application from a justice of the peace to teach courses on evidence and on the litigation process at a community college starting in January 2021 and continuing until April 2021, 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.
- 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 daytime teaching must be undertaken on dates when he has neither a court assignment nor a non-presiding day, but rather on a scheduled vacation or lieu day.

## APPENDIX B

### Policy on Extra-Remunerative Work and Applications Considered

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- 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 judicial official responsibilities.
- 6) The Review 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**

## 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

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## 1. THE JUSTICE OF THE PEACE IN COURT

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

*Commentaries:*

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

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

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

*Commentaries:*

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

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

*Commentaries:*

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

## 2. THE JUSTICE OF THE PEACE AND THE COURT

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

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

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

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

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

*Commentaries:*

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

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

*Commentaries:*

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

### 3. THE JUSTICE OF THE PEACE IN THE COMMUNITY

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

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

*Commentaries:*

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

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

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



## APPENDIX C

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

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

*Commentaries:*

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