

# OJC



## **NINETEENTH ANNUAL REPORT**

**2013 – 2014**

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**ONTARIO  
JUDICIAL COUNCIL**

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ISSN 1206-467X



***The Honourable George R. Strathy***

**CHIEF JUSTICE OF ONTARIO**  
**PRESIDENT OF THE COURT OF APPEAL FOR ONTARIO**  
Co-Chair, Ontario Judicial Council



***The Honourable Annemarie E. Bonkalo***

**CHIEF JUSTICE**  
**ONTARIO COURT OF JUSTICE**  
Co-Chair, Ontario Judicial Council



ONTARIO JUDICIAL COUNCIL

December 5, 2014

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

Dear Minister:

It is our pleasure to submit the Annual Report of the Ontario Judicial Council concerning its nineteenth year of operation, in accordance with subsection 51(6) of the *Courts of Justice Act*. The period of time covered by this Annual Report is from April 1, 2013 to March 31, 2014.

Respectfully submitted,

Handwritten signature of George R. Strathy in black ink.

George R. Strathy  
*Chief Justice of Ontario*  
*President of the Court of Appeal for Ontario*

Handwritten signature of Annemarie E. Bonkalo in black ink.

Annemarie E. Bonkalo  
*Chief Justice*  
*Ontario Court of Justice*





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## **INTRODUCTION**

The period of time covered by this Annual Report is from April 1, 2013 to March 31, 2014.

The Ontario Judicial Council investigates complaints made by the public about the conduct of provincially-appointed judges and masters. In addition, it approves the continuing education plan for provincial judges on an annual basis. The Council has approved criteria for continuation in office and standards of conduct developed by the Chief Justice of the Ontario Court of Justice which are called the *Principles of Judicial Office*. The Judicial Council may make an order to accommodate the needs of a judge who, because of a disability, is unable to perform the duties of judicial office. Such an accommodation order may be made as a result of a complaint (if the disability was a factor in a complaint) or on the application of the judge in question. Although the Judicial Council itself is not directly involved in the appointment of provincial judges to the bench, a member of the Judicial Council serves on the provincial Judicial Appointments Advisory Committee.

The Ontario Judicial Council had jurisdiction over approximately 337 provincially-appointed judges, including full-time and *per diem* judges, and two masters during the period of time covered by this Annual Report. Most of the judicial officers whose conduct is under the jurisdiction of the Ontario Judicial Council preside over proceedings of the Ontario Court of Justice. The Ontario Court of Justice is the busiest trial court in Ontario, which is the province in Canada with the largest population. In 2013, the population was approximately 13,505,900. In an average year, judges of the Court deal with over 250,000 adult and youth criminal cases and over 24,000 new family law proceedings. The Court holds sittings at approximately 200 locations across Ontario, ranging from large courthouses in cities to fly-in locations in northern Ontario.

The Ontario Judicial Council received 30 new complaints in its nineteenth year of operation, as well as carrying forward 27 complaint files from previous years. Of these 57 complaints, 31 files were completed and closed before March 31, 2014. Twenty-six complaints remained open to be carried over into the twentieth year of operation. Information about the 31 files that were completed and closed is included in this Report.



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We invite you to find out more about the Council by reading this Annual Report, and by visiting its website at [www.ontariocourts.ca/ocj/ojc/](http://www.ontariocourts.ca/ocj/ojc/). On the website, you will find the Council's current policies and procedures; updates about any public hearings; the *Principles of Judicial Office*; the Education Plan; and links to the governing legislation.

## **1. COMPOSITION AND TERMS OF APPOINTMENT**

The Ontario Judicial Council includes:

- ◆ the Chief Justice of Ontario (or designate from the Court of Appeal)
- ◆ the Chief Justice of the Ontario Court of Justice (or designate from the Ontario Court of Justice)
- ◆ the Associate Chief Justice of the Ontario Court of Justice
- ◆ a Regional Senior Judge of the Ontario Court of Justice appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General
- ◆ two judges of the Ontario Court of Justice appointed by the Chief Justice of the Ontario Court of Justice
- ◆ the Treasurer of The Law Society of Upper Canada or another bencher of the Law Society who is a lawyer, designated by the Treasurer
- ◆ a lawyer who is not a bencher of The Law Society of Upper Canada, appointed by the Law Society
- ◆ four persons, neither judges nor lawyers, who are appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General

The Chief Justice of Ontario or another judge of the Court of Appeal designated by the Chief Justice chairs all proceedings dealing with complaints against particular judges that deal with applications for orders of accommodation of a judge's needs resulting from a disability or requests for continuation in office by a Chief Justice or an Associate Chief Justice. The Chief Justice of the Ontario Court of Justice, or another judge of that Court designated by the Chief Justice, chairs all other meetings including review panel meetings.



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The judges appointed by the Chief Justice, the lawyer appointed by the Law Society of Upper Canada, and the community members appointed by the Lieutenant Governor hold office for four year terms and may not be re-appointed. In the appointment of these members to the Council, the importance of reflecting Ontario’s linguistic duality and the diversity of its population and ensuring overall gender balance on the Council is recognized.

## **2. MEMBERS – REGULAR**

The membership of the Ontario Judicial Council in its nineteenth year of operation (April 1, 2013 to March 31, 2014) was as follows:

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

#### **CHIEF JUSTICE OF ONTARIO**

The Honourable Warren K. Winkler ..... (Toronto)  
*Co-Chair*

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

The Honourable Annemarie E. Bonkalo ..... (Toronto)  
*Co-Chair*

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

The Honourable Peter D. Griffiths ..... (Ottawa/Toronto)  
*(Until July 24, 2013)*

The Honourable Lise Maisonneuve ..... (Toronto)  
*(Effective July 25, 2013)*

#### **REGIONAL SENIOR JUSTICE**

The Honourable Kathryn Hawke ..... (Hamilton)  
*(Until August 12, 2013)*

The Honourable Martin Lambert ..... (Sudbury)  
*(Effective August 21, 2013)*



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

The Honourable Justice Fern Weinper ..... (Toronto)

The Honourable Justice Eileen S. Martin ..... (Welland)  
*(Until August 9, 2013)*

The Honourable Justice Peter De Freitas ..... (Oshawa)  
*(Effective August 10, 2013)*

***Lawyer Members:***

**TREASURER OF THE LAW SOCIETY OF UPPER CANADA**

Mr. Thomas G. Conway, Cavanagh LLP ..... (Ottawa)  
*(Renewed June 27, 2013)*

**LAWYER MEMBER APPOINTED BY THE LAW SOCIETY OF UPPER CANADA:**

Ms. Kim Bernhardt, Grant and Bernhardt ..... (Toronto)  
*(Until August 16, 2013)*

Mr. Paul R. Sweeny, Evans Sweeny Bordin LLP ..... (Hamilton)  
*(Effective August 27, 2013)*

***Community Members:***

Mr. Anish Chopra ..... (Toronto)  
*Managing Director, TD Asset Management Inc.*

Ms. Delores Lawrence, O. Ont. .... (Markham)  
*NHI Nursing and Homemakers Inc.*  
*(Until January 5, 2014)*

Ms. Sylvie Powell ..... (Ottawa)  
*President/Senior Consultant, MediaLane Communications Inc.*

Mr. Farsad Kiani ..... (Markham)  
*President and Chief Executive Officer at ENSIL Canada Inc.*  
*(Effective August 28, 2013)*



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## **Members – Temporary**

Sections 87 and 87.1 of the *Courts of Justice Act* give the Ontario Judicial Council jurisdiction over complaints made against every person who was a master of the Supreme Court prior to September 1, 1990 and every provincial judge who was assigned to the Provincial Court (Civil Division) prior to September 1, 1990. When the Ontario Judicial Council deals with a complaint against a master or a provincial judge of the former Civil Division, the judge member of the complaint subcommittee is replaced by a temporary member appointed by the Chief Justice of Superior Court of Justice – either a master or a provincial judge who presides in “Small Claims Court”, as the case may be.

During the period of time covered by this report, the following individuals served as temporary members of the Ontario Judicial Council to deal with any complaints against these provincially-appointed judges and masters:

### **Masters**

- ◆ Master Rick B. Peterson  
(Superior Court of Justice)
- ◆ Master David H. Sandler  
(Superior Court of Justice)

### **Judges**

- ◆ The Honourable Mr. Justice M. Don Godfrey  
(Superior Court of Justice)
- ◆ The Honourable Madam Justice Pamela Thomson  
(Superior Court of Justice)

Subsection 49(3) of the *Courts of Justice Act* permits the Chief Justice of the Ontario Court of Justice to appoint a provincial judge to be a temporary member of the Ontario Judicial Council to meet the quorum requirements of the legislation with respect to Judicial Council meetings, review panels and hearing panels.

During the period covered by this report, the following judge of the Court of Appeal of Ontario was appointed by the Chief Justice of Ontario to serve on a Hearing Panel of the Ontario Court of Justice:

The Honourable Justice Eileen Gillese ..... (Toronto)



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During the period covered by this report, the following judges of the Ontario Court of Justice were appointed by the Chief Justice to serve as temporary members of the Ontario Judicial Council when required:

- The Honourable Justice Claude H. Paris ..... (Toronto)
- The Honourable Justice Peter D. Griffiths ..... (Ottawa)
- The Honourable Justice Kathryn Hawke..... (Hamilton)
- The Honourable Justice Jean-Gilles Lebel ..... (North Bay)
- The Honourable Justice Sally Marin ..... (Toronto)
- The Honourable Justice Eileen Martin .....(Welland)
- The Honourable Justice Manjusha Pawagi..... (Brampton)
- The Honourable Justice Barry Tobin ..... (Windsor)

### **3. ADMINISTRATIVE INFORMATION**

Office space in downtown Toronto is utilized by both the Ontario Judicial Council and the Justices of the Peace Review Council. The Councils' make use of financial, human resources and technology support staff in the Office of the Chief Justice, as needed, and computer systems without the need of acquiring a large staff.

Councils' offices are used for meetings of both Councils and their members, and as needed for meetings with judicial officers that may result as part of the disposition of complaints. The Councils have a shared telephone reception and fax number. They share a toll-free number for the use of members of the public across the province of Ontario and a toll-free number for persons using TTY/teletypewriter machines.

In the nineteen year of operation, the staff of the Ontario Judicial Council and the Justices of the Peace Review Council consisted of a registrar, two assistant registrars and a secretary:

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

Ms. Ana M. Brigido – *Assistant Registrar*



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Mr. Thomas A. Glassford – *Assistant Registrar*  
(Until March 11, 2014)

Ms. Janice C. Cheong – *Administrative Secretary*

#### **4. FUNCTIONS OF THE JUDICIAL COUNCIL**

The *Courts of Justice Act* provides that the functions of the Judicial Council are:

- ◆ to establish complaint subcommittees from amongst its members to receive and investigate complaints about the conduct of judges, and report to the Judicial Council;
- ◆ to establish review panels to consider every complaint referred by the complaint subcommittees and decide upon dispositions under section 51.4(18);
- ◆ to hold hearings under section 51.6 when hearings are ordered by review panels pursuant to section 51.4(18);
- ◆ to review and approve standards of conduct;
- ◆ to consider continuing education plans;
- ◆ to consider applications under section 45 for orders that needs of judges arising from disabilities be accommodated; and,
- ◆ to consider requests by the Chief Justice or the Associate Chief Justices to continue in office beyond age sixty-five.

The Judicial Council’s jurisdiction is limited to the investigation and imposition of dispositions of complaints about conduct. It does not have the power to interfere with or change a decision made by a judge. If a person believes that a judge made an error in assessing evidence or in making a decision, the proper way to proceed is through other legal remedies in the courts, such as an appeal.

Under section 51.1 of the *Courts of Justice Act*, the Council may establish rules of procedure for complaint subcommittees, review panels and hearing panels and the Council must make the rules available to the public. The Council has established procedures containing rules for the complaints process which are posted on its website at the link for “Policies and Procedures” at [www.ontariocourts.ca/ocj/ojc/policies-and-procedures/](http://www.ontariocourts.ca/ocj/ojc/policies-and-procedures/).



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Recognizing its nature as an independent body, in 2014, the Council decided that it would use independent reporting services at its hearings who were external to the Ministry of the Attorney General. This provides for certification of the accuracy of the transcripts while respecting the independent nature of the Council.

Taking into account the use of technology that is prevalent today, the Council adopted a *Protocol Regarding the Use of Electronic Communication Devices in OCJ Hearings* modelled after the protocol that was established by the Ontario Court of Justice, with revisions reflecting the Judicial Council processes. The Protocol is posted on the Council's website under the link [www.ontariocourts.ca/ocj/ojc/public-hearings/policies-and-procedures/electronic-communication/](http://www.ontariocourts.ca/ocj/ojc/public-hearings/policies-and-procedures/electronic-communication/).

A copy of the Council's current procedures for the complaints process that incorporates the amendments made during the period of time covered by this report is posted on the Council's website under the link "Policies and Procedures".

## **5. EDUCATION PLAN**

The Chief Justice of the Ontario Court of Justice is required by section 51.10 of the *Courts of Justice Act* to implement and make public a plan for the continuing judicial education of provincial judges and the education plan must be approved by the Judicial Council, as required by subsection 51.10(1). The continuing education plan is developed by the Chief Justice in conjunction with the Education Secretariat. In the most recent version, competencies for the judges and a new section on computer education have been added. The computer education was originally focused on basic skills. There is now an intermediate level focused on legal research. The Court has also increased funding for self-directed education. The most recent version of the continuing education plan can be found on the Council's website at: [www.ontariocourts.ca/ocj/ojc/education-plan/](http://www.ontariocourts.ca/ocj/ojc/education-plan/).

## **6. COMMUNICATIONS**

The website of the Ontario Judicial Council continues to include information regarding the Council, as well as information about any upcoming hearings. Updates on ongoing hearings are posted on the website under the link "Public Hearings". Copies of "Public



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Hearings Decisions” for public hearings are posted on the website when released and all of the publicly available Annual Reports are included in their entirety.

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

## **7. PRINCIPLES OF JUDICIAL OFFICE**

The Chief Justice of the Ontario Court of Justice was empowered to establish “standards of conduct for provincial judges” by section 51.9 of the *Courts of Justice Act*. A document entitled, the *Principles of Judicial Office* was prepared by the Judicial Conduct Subcommittee of the Chief Judge’s Executive Committee in consultation with the Judges’ Association and the judges of the court. The document was then submitted to the Ontario Judicial Council for its review and approval in the second year of Council’s operation, as required by subs. 51.9(1) of the *Courts of Justice Act*. The *Principles of Judicial Office* is a guide to assist judges in addressing ethical and professional dilemmas. It may also serve in assisting the public to understand the reasonable expectations which the public may have of judges in the performance of judicial duties and in the conduct of judges’ personal lives. A copy of the *Principles of Judicial Office* is attached as Appendix “C” and is posted on the website at [www.ontariocourts.ca/ocj/ojc/principles-of-judicial-office/](http://www.ontariocourts.ca/ocj/ojc/principles-of-judicial-office/).

## **8. JUDICIAL APPOINTMENTS ADVISORY COMMITTEE**

A member of the Ontario Judicial Council serves on the provincial Judicial Appointments Advisory Committee as its representative. The Honourable Justice Eileen Martin was appointed by the Judicial Council to act as its representative on the Judicial Appointments Advisory Committee until August 9, 2013. The Honourable Justice Peter De Freitas was appointed to act as its representative effective August 10, 2013.

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## **9. THE COMPLAINTS PROCEDURE**

Any person may make a complaint to the Judicial Council about the **conduct** of a judge. Complaints must be made in writing. The governing legislation and the principles of natural justice do not provide for the Judicial Council to act on anonymous complaints or to initiate inquiries into the conduct of a judicial officer. Rather, an investigation conducted by the Judicial Council must be in response to specific allegations submitted by a complainant. All correspondence is reviewed to determine whether or not the complaint is within the jurisdiction of the Judicial Council. If an individual is complaining about his/her lawyer, a Crown Attorney or another office, the complainant is referred to the appropriate office of authorities to make the complaints.

In cases where the complaint is within the jurisdiction of the Judicial Council to consider, a complaint file is opened and a letter of acknowledgement is sent to the complainant, usually within a week of his or her letter being received by the Council. If the complainant expresses dissatisfaction with a **decision** that has been made by a judge, the letter of acknowledgment advises the complainant that the Judicial Council has no power to change a decision made by a judge. In such cases, the complainant is advised that he or she may wish to consult with legal counsel to determine what, if any, legal remedies may be available.

A brief outline of the complaints process follows below. A more detailed outline of the Judicial Council's procedures can be found on the Judicial Council's website at: [www.ontariocourts.ca/ocj/ojc/policies-and-procedures/procedures-document/](http://www.ontariocourts.ca/ocj/ojc/policies-and-procedures/procedures-document/).

### ***A) Investigation and Review of Complaints***

The complaint is assigned to a two-person complaint subcommittee for review and investigation. A complaint subcommittee of Judicial Council members, comprised of a provincially-appointed judicial officer (a judge, other than the Chief Justice of the Ontario Court of Justice, or a Master if the complaint relates to conduct of a Master) and a community member, is assigned to examine each complaint made to the Council. Complaints are generally not assigned to members from the same region where the judge who is the subject of the complaint presides. This avoids any risk of or perception of bias or conflict of interest between a member of the Council and the judge.



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Subsection 51.4(6) of the *Courts of Justice Act* states that the investigation must be conducted in private.

Subsection 51.4(3) empowers the complaint subcommittee to dismiss complaints which are either outside of the jurisdiction of the Council (e.g., it is a complaint about how a judge exercises his or her discretion, such as findings of credibility, or disagreement with the decision of a judge) or which, in the opinion of the complaint subcommittee, are frivolous or an abuse of process. All other complaints are investigated further by the complaint subcommittee.

Frequently, the subcommittee orders and reviews the transcript of the proceedings. The subcommittee may also order and listen to the audio recording. In some cases, the subcommittee may decide to conduct further investigation, such as interviewing witnesses. Under section 51.4(5), the subcommittee may retain external persons, including counsel, to assist it in the investigation by conducting interviews with witnesses.

The subcommittee may decide to request a response to the complaint from the judge. If a response is requested, a copy of the complaint, the transcript (if any), and the relevant materials considered by the subcommittee will be provided to the judge, together with a letter from the Judicial Council inviting a response. The judge may seek independent legal advice to provide him or her with assistance in responding to the Council.

Once the investigation is completed, under subsection 51.4(13) of the *Act*, the complaint subcommittee will report to a review panel of the Judicial Council. The subcommittee may recommend that the complaint be dismissed, that it be referred to the Chief Justice of the Ontario Court of Justice for discussion with the judge about his/her conduct, that it be referred for mediation, or that a hearing be held under section 51.6.

## ***B) Dispositions of Review Panels***

Review panels are composed of two provincial judges (other than the Chief Justice of the Ontario Court of Justice), a lawyer and a community member. The Council (or a review panel thereof) will review the complaint, the report of the investigating complaint subcommittee and all materials that are recommended by the subcommittee. At this stage of the process, only the two complaint subcommittee members are aware of the identity of the complainant and the judge who is the subject of the complaint. Complaint



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subcommittee members who participated in the investigation of the complaint do not sit on the review panel or, if a hearing is ordered, on the hearing panel at the subsequent hearing. Similarly, review panel members who dealt with a complaint's review or referral will not participate in a hearing of the complaint, if a hearing is ordered. By the end of the investigation and review process, all decisions regarding complaints made to the Judicial Council will have been considered and reviewed by a total of at least six members of Council – two members of the complaint subcommittee and four members of the review panel – including two community members and one lawyer. There, of the six persons who consider each complaint, at least half of the members are not judges under subsection 51.4(18) the Council (or a review panel thereof) may decide upon the following dispositions:

- ◆ dismiss the complaint;
- ◆ refer it to the Chief Justice of the Ontario Court of Justice;
- ◆ refer it to a mediator; or
- ◆ order that a hearing into the complaint be held.

A complaint may be dismissed where, in the opinion of the review panel:

- ◆ it is frivolous or an abuse of process;
- ◆ it falls outside of the Judicial Council's jurisdiction because it is a complaint about how a judge exercises his or her judicial discretion (the proper way to proceed in such cases is through other legal remedies in the courts);
- ◆ it does not include an allegation of judicial misconduct;
- ◆ the allegation is not proven; or,
- ◆ the misconduct does not rise to the level of misconduct that requires further action on the part of the Council.

A mediation process may be established by the Council and only complaints which are appropriate (given the nature of the allegations) will be referred to mediation. Under subsection 51.5(3) of the *Courts of Justice Act*, complaints of conduct may not be referred for mediation in the following circumstances:

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- ◆ where there is a significant power imbalance between the complainant and the judge, or there is such a significant disparity between the complainant's and the judge's accounts of the event with which the complaint is concerned that mediation would be unworkable;
  - ◆ where the complaint involves an allegation of sexual misconduct or an allegation of discrimination or harassment because of a prohibited ground of discrimination or harassment referred to in any provision of the *Human Rights Code*; or
  - ◆ where the public interest requires a hearing of the complaint.

Provisions for temporary members have been made in order to ensure that a quorum of the Council is available to fulfill the requirements of the complaints process, including conducting a hearing into a complaint if a hearing has been ordered.

Because of the role of the Council in balancing judicial independence and accountability for judicial conduct, the legislation provides that proceedings, other than hearings to consider complaints against specific judges, may be private and confidential.

### ***C) Hearings under Section 51.6***

Hearing panels are made up of at least two of the remaining six members of Council who have not been involved in the process up to that point. At least one member of a hearing panel is a community member. The Chief Justice of Ontario, or his designate from the Court of Appeal, chairs the hearing panel.

A hearing into a complaint is public unless the Council determines, in accordance with criteria established under subsection 51.1(1) of the *Courts of Justice Act*, that exceptional circumstances exist and the desirability of holding an open hearing is outweighed by the desirability of maintaining confidentiality, in which case the Council may hold all or part of a hearing in private. In certain circumstances, for example, where a complaint involves allegations of sexual misconduct or sexual harassment, the Council also has the power to prohibit publication of information that would disclose the identity of a complainant or a witness.

The *Statutory Powers Procedure Act*, with some exceptions, applies to hearings into complaints.



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The Judicial Council engages legal counsel for the purposes of preparing and presenting the case against the judge. The legal counsel, called ‘Presenting Counsel’ operates independently of the Judicial Council. The duty of legal counsel retained under this part is not to seek a particular order against a judge, but to see that the complaint against the judge is evaluated fairly and dispassionately to the end of achieving a just result.

The judge has the right to be represented by counsel, or to act on his or her own behalf during the proceeding.

After a hearing, under subsection 51.6(11) the hearing panel of the Council may dismiss the complaint (with or without a finding that it is unfounded) or, if it finds that there has been misconduct by the judge, it may impose one or more of the sanctions set out below or may recommend to the Attorney General that a judge be removed from office.

The sanctions which can be imposed under section 51.6 by the Judicial Council for misconduct, either singly or in combination, are as follows:

- ◆ a warning;
- ◆ a reprimand;
- ◆ an order to the judge to apologize to the complainant or to any other person; an order that the judge take specific measures, such as receiving education or treatment, as a condition of continuing to sit as a judge;
- ◆ suspension, with pay, for any period;
- ◆ suspension, without pay, but with benefits, for up to thirty days.

The hearing panel may also recommend to the Attorney General that the judge should be removed from office. A recommendation by the Council to the Attorney General that the judge be removed from office cannot be combined with any other disposition.

#### ***D) Removal from Office***

A judge may be removed from office only if a hearing panel of the Judicial Council, after a hearing under section 51.6, recommends to the Attorney General that the judge should be removed on the ground that he or she has become incapacitated or disabled from the due execution of his or her office by reason of:

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- ♦ inability, because of a disability, to perform the essential duties of his or her office (if an order to accommodate the judge’s needs would not remedy the inability, or could not be made because it would impose undue hardship on the person responsible for meeting those needs, or was made but did not remedy the inability);
  - ♦ conduct that is incompatible with the due execution of his or her office; or,
  - ♦ failure to perform the duties of his or her office.

Only the Lieutenant Governor in Council may act upon the recommendation and remove the judge from office.

## **10. NOTIFICATION OF DISPOSITION**

The Judicial Council communicates its decision in writing to the person who made the complaint and to the judge. A judge may waive notice of the complaint if it is being dismissed and no response was requested from the judge by the Council. In accordance with the Procedures of the Judicial Council, if the Council decides to dismiss the complaint, brief reasons will be provided.

## **11. LEGISLATION**

The official version of the *Courts of Justice Act*, which governs the work of the Ontario Judicial Council is posted on the government’s e-laws website at:

[http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90c43\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c43_e.htm)

## **12. COMPENSATION FOR LEGAL COSTS INCURRED**

When the Judicial Council has dealt with a complaint, section 51.7 of the *Courts of Justice Act* makes provision for a judge to request compensation for costs of legal services incurred in connection with the investigation and/or mediation and/or hearing under sections 51.4, 51.5 and 51.6 of the *Act* respectively. Such a request would generally be submitted to the Council after the complaints process has been completed, along with a copy of the statement of account of legal services to support the request.



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The Judicial Council may make a recommendation to the Attorney General that a judge be compensated, indicating the amount of compensation. Pursuant to section 51.7(7) of the *Act*, the Council's order for compensation may relate to all or part of the judge's costs for legal services and must be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services. The Attorney General is required to pay compensation to the judge if such a recommendation is made. No recommendations for compensation were made to the Attorney General during the period covered by this report.

### **13. SUMMARY OF COMPLAINTS**

The Ontario Judicial Council received 30 complaints in its nineteenth year of operation, as well as carrying forward 27 complaint files from previous years. Of these 57 complaints, 31 files were closed before March 31, 2014. One of the files closed was from the fifteenth year (2009-2010), one from the sixteenth year (2010-2011), eight from the seventeenth year (2011-2012), thirteen from the eighteenth year (2012-2013) and eight from the nineteenth year (2013-2014).

Of the 31 files that were closed during the period covered by this Report, 20 arose from proceedings under the *Criminal Code*, eight arose from family court proceedings, one arose from a matter in Small Claims Court, and two related to *Provincial Offences Act* appeals.

Nine of the 31 complaint files closed by the Ontario Judicial Council during the period of time covered by this report were dismissed on the basis that they were found to be outside of the jurisdiction of the Council. This occurred if a complainant expressed dissatisfaction with the result of a trial or with a judge's decision, but the complaint contained no allegation of misconduct. While the decisions made by the trial judge in these cases could be appealed, the absence of any alleged misconduct meant that the complaints were outside of the jurisdiction of the Judicial Council.

Twenty of the 31 files closed were dismissed by the Council on the basis that they contained allegations of misconduct that were unfounded or that did not amount to judicial misconduct. The complaints included allegations such as improper behaviour (e.g., rudeness, belligerence, etc.), lack of impartiality, conflict of interest or some other form



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of bias. The allegations contained in each of these files were reviewed and investigated in each case by a complaint subcommittee and considered by a review panel before a decision was made.

Two complaints were referred to a Chief Justice. A review panel will refer a complaint to a Chief Justice where the majority of the panel are of the opinion that there is some merit to the complaint and the disposition is, in the opinion of the majority of the review panel, a suitable means of informing the judge that his or her course of conduct was not appropriate in the circumstances that led to the complaint.

A review panel will order a hearing where a majority of the members of the review panel are of the opinion that there has been an allegation of judicial misconduct which the majority of the members believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct. One complaint was ordered to a public hearing during this year. A hearing was ordered in relation to a complaint about the conduct of the Honourable Justice Dianne M. Nicholas. At the time of writing this report, the hearing was not yet concluded. Information about the status of the hearing and decisions made by the Hearing Panel in this case will be available on the Council's website under the links Public Hearings and/or Public Hearings Decisions.

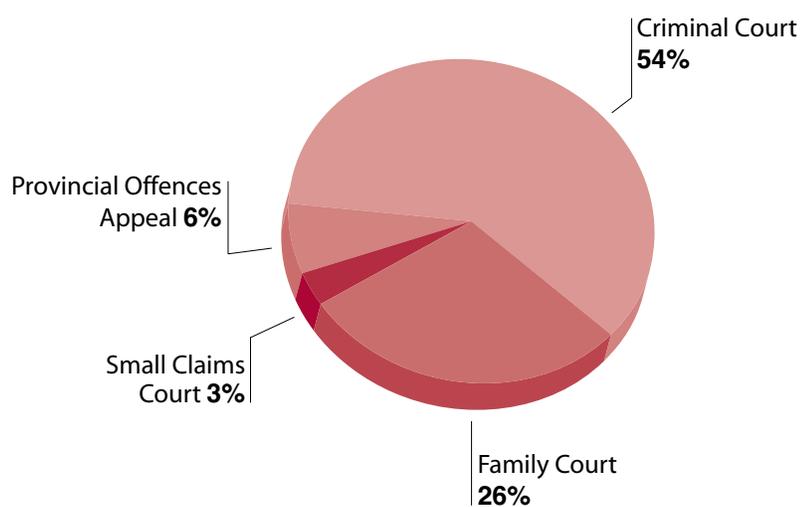
Twenty-six complaints remained open to be carried over into the twentieth year of operation. Of those 26 files, one file was from Year 17 (2011-2012), and two were from Year 18 (2012-2013) and twenty-three were from Year 19 (2013-2014).

## DISPOSITIONS IN 2013/2014

DISPOSITION	NUMBER OF CASES
Dismissed – Out of Jurisdiction	9
Dismissed – unfounded, not judicial misconduct, etc.	20
Referred to Chief Justice	2
Ordered to a Hearing	0
<b>TOTAL</b>	<b>31</b>

## TYPES OF CASES CLOSED IN 2013/2014

TYPES OF CASES CLOSED	NUMBER OF CASES
Criminal Court	20
Family Court	8
Other – Outside of Court	0
Small Claims Court	1
Provincial Offences Appeal	2
<b>TOTAL</b>	<b>31</b>



## CASELOAD IN FISCAL YEARS

FISCAL YEAR	09/10	10/11	11/12	12/13	13/14
Opened During Year	42	32	35	22	30
Continued from Previous Year	30	22	28	29	27
Total Files Open During Year	72	54	63	51	57
Closed During Year	50	26	34	24	31
Remaining at Year End	22	28	29	27	26



**CORRECTION:** A statistical error was identified after transmission of this Report to the Attorney General, which was not reflected in the hard copy version that was tabled.

Due to a data entry error, the data base system did not capture one file opened in 2013-2014. The number of new files in 2013-2014 is 30 and not 29 as stated in the chart in the tabled report. The above chart, and all other references to data in this online version of the Report, is accurate.



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**APPENDIX A**

**CASE SUMMARIES**

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# Case Summaries

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Files are given a two-digit prefix indicating the year of the Council's operation in which they were opened, followed by a sequential file number and by two digits indicating the calendar year in which the file was opened (i.e., file no. 19-001/13 was the first file opened in the nineteenth year of operation and was opened in calendar year 2013).

Details of each complaint, with identifying information removed as required by the legislation, follow.

### ***CASE NO. 15-034/10***

The complainant was charged with several counts of mischief and harassing phone calls. Over a two-year period, the subject judge was assigned to address all of the pre-trial motions brought by the complainant. The motions were many and varied including applications for additional disclosure, applications to have the charges quashed, and applications for funding to hire a lawyer. During this time the complainant engaged and discharged many lawyers. Eventually, the Crown Attorney withdrew all charges.

The complainant first wrote to the Council while the matter was still before the court. He received a letter from staff of the Council explaining that if a complaint raises allegations of conduct about a judge 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 ensures that any investigation by the Council is not interfering or perceived to be interfering with any ongoing court matters. He was asked to notify our office when the case had been completed.

After the complainant indicated that the court case was completed, the complaint was assigned to a complaint subcommittee for its review and consideration. The complainant made the following allegations against the judge:

- 1) The judge ignored repeated requests by the complainant to set trial dates and thereby intentionally denied the complainant his right to a speedy trial.
- 2) The judge ignored documentation provided by the complainant showing that he had been denied legal representation because he was relying on legal aid.
- 3) The judge made statements in court that suggest he was routinely discussing the case with the Crown Attorney outside of the courtroom.

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# Case Summaries

The complaint subcommittee reviewed the complainant's correspondence and asked the complainant to provide particulars of the allegation that the judge made in court statements indicating he was routinely discussing the case outside the courtroom with the Crown Attorney. In particular, the complainant was asked about the nature of the statements and when they were made. The complainant was unable to answer either question.

Subsequently, the complainant wrote to the Council indicating that he was again appearing in court before the subject judge. He alleged that the judge was refusing to appoint an *amicus curiae* and that he had denied a number of motions made by the complainant in the case. An *amicus curiae*, sometimes called a "friend of the court", is someone who is not a party to a case who offers information that bears on the case but that has not been solicited by any of the parties to assist a court. The complainant was again informed of the Council's policy that it will not generally commence an investigation while a case is ongoing before the courts. He was told that the complaint would be held in abeyance pending the conclusion of the court case. This was to ensure that the Council would not be perceived to be interfering with the on-going court matter.

After it was determined that the court case had concluded, the complaint file was reactivated. The complaint subcommittee ordered and reviewed numerous transcripts of the complainant's appearances before the judge and at the conclusion of the investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed the results of the subcommittee's investigation and the subcommittee's report to them.

The review panel noted that the first two allegations related to in-court statements and actions by the judge in the course of trying to case manage the complainant's charges. Case management is important in the justice system to ensure that cases proceed efficiently and that court resources are used effectively. Case management is an essential part of the duties of a judge. The panel concluded that the judge's decisions and orders in this regard, and on the question of whether an *amicus curiae* should be appointed, were matters that are outside of the jurisdiction of the Judicial Council in that they relate to decisions of the judge and not judicial conduct. These allegations were dismissed by the review panel on the basis that they were outside of the jurisdiction of the Council.

The review panel found the judge was infinitely patient and unfailingly polite with the complainant during the course of over 20 court appearances. They found his conduct

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to be a model of judicial decorum. The review panel found that the statements the complainant alleged were made by the judge were not made. There was no evidence that the judge routinely discussed the case with the judge outside of the courtroom. The panel concluded that these allegations were unfounded.

For the reasons noted, the review panel dismissed this complaint and closed the file.

### **CASE NO. 16-028/11**

The complainant was the only witness called by the Crown Attorney in a criminal trial before the subject judge. The complainant described the judge's conduct during the trial as an "outburst" and said that "the roar and demeanour" of the judge was embedded in her mind. She expressed concern with the judge's angry demeanour and abrupt manner. She described the judge as a bully in his treatment of her. The judge dismissed the charge against the accused.

In her letter of complaint, she referred to three incidents during the trial to illustrate her concerns:

- 1) During her testimony, she referred to a shopping cart as a 'buggy'. She alleged that when she looked at the judge, she saw his 'face looking distorted' and in a bullying way he snapped at the Crown Attorney saying that 'first she called it a shopping cart and now she calls it a buggy'. She also alleged that a few minutes later, the judge was "more or less reaming the crown out, stood up and stomped out of the courtroom".
- 2) After the judge returned to court he was told by a lawyer that there would be a video that the Crown Attorney sought to introduce as evidence. She alleged that he snapped, 'You mean to tell me I have to sit through 15 minutes of video!!!' She alleged that he looked furious and that he snapped again at the lawyer, said he had to get his glasses and stomped out of the room.
- 3) She said that when court reconvened a police officer was poised to operate the video but was having trouble getting it to operate properly. She alleged that the judge "roared" at the officer, "Get a TV in here that works!" His tone was loud and his manner was rude. He then got up and stomped out of the courtroom again.

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She stated that the judge's demeanour and tone of voice was embedded in her mind. She expressed the view that no witness "should be subjected to feeling so small, especially by a judge who gets paid so well and have other perks in his every day life". She stated that the judge "owes us all an apology for his Bullying".

The complaint subcommittee reviewed the letter from the complainant and ordered and reviewed the transcript. The subcommittee also ordered and listened to the audiotape of the trial. The subcommittee also invited the judge to listen to the audio recording and asked him to respond to the allegations made in relation to his conduct. His Honour listened to the audio recording and provided a response. Upon conclusion of the investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed the letter of complaint, the transcript of the proceedings, the subcommittee's request for a response from the judge, the judge's response and the subcommittee's report.

The panel noted that the transcript showed that, in giving her evidence, the complainant did use the word "buggy". After the Crown Attorney said it was a "cart", the judge said that he had not heard the word "cart", that he was visualizing a buggy, and that he was confused. The complainant/witness then clarified that the item was a shopping cart or buggy. After reviewing the transcript and the judge's response, the review panel observed that while the complainant thought of a shopping cart and "buggy" as being synonymous, the judge thought of a "buggy" was a child's pram. The panel accepted that he made the comments because he sought clarification so that the evidence would be clear. It is a judge's responsibility to be make findings as to what the exact facts were. However, the panel remained concerned about the abrupt manner in which he addressed the issue. It appeared to the panel that His Honour may not fully appreciate how the manner in which he spoke could impact on the perceptions left with a person giving evidence.

With respect to the second allegation that when told about the video evidence, he "snapped" a remark at the lawyer, said he had to get his glasses and stomped out of the courtroom, the review panel found that the transcript showed that he said, "Perfect. You get it set up. I'll go and get my glasses so I can see it." The panel found that allegation about stomping out of the courtroom was not supported by the evidence.

With respect to the third allegation about the difficulty with the video, the panel found that the court record showed that the judge was abrupt in some of his exchanges with persons

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in the courtroom and he appeared to be frustrated by the technical failure of the video equipment. The transcript showed that the Crown Attorney informed His Honour that they were limited by primitive technology and did not have a remote that would allow them to do what they would like when playing it. His Honour remarked, “So, it’s the full sixteen minutes I’m gonna watch.” He also said, “That’s fine. It’s all pensionable time, but thank you for this very much.”

The transcript also showed that at one point when His Honour asked the Crown Attorney who he was looking at in the video, the police officer began to answer. His Honour interrupted him and said, “did I ask you?...This is a courtroom, officer. You are not a participant, you are a witness.” When the officer was not able to pause the video, His Honour remarked, “Is this the only video machine in this entire darn courthouse? Get another one.” He then said, “Court will rise” and left the courtroom. Following the recess, there were difficulties with the video. At one point, the police officer spoke out, and the judge said, “Who is conducting this examination.” He also commented, “If someone could ‘cause I feel like I’m Alice in Wonderland right now.” It was determined that the lawyers would try to find the end portion of the video, and His Honour left the courtroom, stating, “All right. Let me know when you got it there.”

The review panel noted that in the response received from the judge, His Honour acknowledged his frustration and impatience over the technical difficulties with the video equipment and that the lawyers did not take steps to make the process more efficient. His Honour also agreed that he raised his voice and that he should have dealt with the issues in a more moderate tone and in a different manner. He accepted that he should have used a softer and more judicious tone.

The review panel understood the competing priorities faced by a judge presiding over a busy courtroom. However, there is an obligation on every judge to treat everyone who appears before them with appropriate courtesy and civility. A judge must always strive to be patient, dignified and courteous in performing the duties of judicial office. A judge must have a heightened sense of awareness of the appearance to others as to how his or her conduct or comments are perceived. Even in difficult circumstances, a judge has a duty to maintain a high standard of conduct and professionalism so as to preserve the integrity of the judicial office and the faith and trust of society in the persons who hold that judicial office.

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After reviewing the transcript and the response from the judge, the review panel remained concerned that the judge may not fully realize how his conduct on the date of the proceeding was perceived by others, and how his conduct could undermine confidence in the judiciary and in the administration of justice generally. The panel noted that all persons in the courtroom are observers of the comments and behaviour of a judge. Each and every comment made by a judge, and his or her tone and manner are all important elements of how a judge is perceived by members of the public. A judge has a unique role as exemplar and guardian of dignity in the courts.

The panel also noted the preamble of the *Principles of Judicial Office of Judges of the Ontario Court of Justice* that has been approved by the Ontario Judicial Council, which in part states:

The judges 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 complaints process through the Ontario Judicial Council is remedial in nature and 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. As such, the review panel determined that the appropriate disposition of this complaint was a referral of the complaint to the Chief Justice, pursuant to section 51.4(18)(c) of the *Courts of Justice Act*. The panel made the referral on the condition that His Honour was prepared to take such course of education as directed by the Chief Justice.

The Chief Justice met with the judge and provided a report to the review panel on the meeting. After reviewing the report, the review panel was satisfied that His Honour had learned from the complaints process and from a program in anger management. He understood the concerns about his behaviour and how it was perceived by others. He was committed to being patient, dignified and courteous in performing the duties of judicial office in the future.

With the disposition completed, the review panel closed the file.

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#### **CASE NO. 17-025/11**

The complainant came before the subject judge as a witness in an assault trial arising out of a domestic disturbance. She alleged that the charge of sexual assault was neglected as “not my jurisdiction” by the judge. She indicated that was humiliating and reckless disregard of her dignity and honour and a violation of the principles of justice. She stated that it was obvious that the judge was influenced and biased as the evidence on the sexual assault was strong, and that was why it was “swept off like ordinary rubbish”. With respect to the trial on the charge of assault, she alleged that it was overwhelming and victimizing for her. She alleged that her testimony was made by the judge to be as brief as possible and she did not have a single chance to speak out without being interrupted by the judge. She also said that that judge was not embarrassed by the weaknesses and absurdness of the testimony of the accused. Nor was he concerned that some evidence was not presented and that it was purposely omitted. She alleged that the outcome of the trial was unjust and that it undermined and neglected her right as a woman for protection from sexual and physical violence.

The complaint subcommittee reviewed the complainant’s letter and ordered and reviewed the transcript of the proceeding. Following their investigation, they submitted a report to a review panel.

The review panel reviewed the complainant’s letter, the transcript and subcommittee’s report. The panel noted that initially the judge had before him a charge of sexual assault in which the complainant was the chief witness for the Crown Attorney, as well as a charge of assault. As the accused was being arraigned on the charge of sexual assault, the judge noted that the offence was alleged to have occurred in another geographic jurisdiction. The panel noted that the *Criminal Code* does not permit a judge from one territorial jurisdiction to hear matters that occurred in another jurisdiction unless there has been an application brought to change the location of the trial. No such application had been brought in this case.

With respect to the complainant’s allegation that the subject judge hindered justice by refusing to hear the sexual assault charge on the basis that it was not within his jurisdiction, the panel could understand why this decision of the judge was a significant disappointment and upsetting to the complainant. However, the judge’s application of the law in making his decision was not a matter of judicial conduct within the jurisdiction of the Ontario Judicial Council. It was a legal matter beyond the jurisdiction of the Council.

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With respect to the trial that proceeded on the second charge that took place within the territory where the judge had the legal authority to hear the matter, the review panel noted that the complainant was critical of evidentiary rulings made by the judge, she was unhappy with the manner in which she was cross-examined and she was upset that evidence she felt was helpful to her position was not introduced by the Crown Attorney. The review panel noted that the concerns about the judge had to do with the rules of evidence and procedure that are binding upon the trial judge and if he makes an error in applying these rules it could potentially be the subject matter of an appeal and not within the jurisdiction of the Ontario Judicial Council. In relation to the complainant's concerns regarding the Crown Attorney, these were also outside of the jurisdiction of the Council.

Finally, the complainant alleged that the judge made her evidence as brief as possible, that he kept interrupting her and that he was influenced and biased. The panel found that the transcript showed there was no support for those allegations. With respect to the allegation that the judge was not paying attention during the trial, the panel noted that the judge gave oral reasons immediately following the completion of the evidence and the submissions of counsel. His reasons were brief but cogent and clearly demonstrated he was alert to the issues and the evidence. The panel found no evidence to support the allegation that the judge was inattentive.

In the result, the review panel dismissed this complaint for the reasons set out and closed the file.

### ***CASE NO. 17-028/12***

The complainant had been involved in a lengthy, acrimonious family law case against a former spouse regarding access to his son. He had pursued a contempt proceeding in the Superior Court of Justice. Although an order was made that access to his son continue pursuant to a Superior Court of Justice order, he was not able to see his son. Sometime later, child protection proceedings were commenced by the Children's Aid Society alleging that the child was at risk of emotional harm due to the acrimonious relationship between the parents and difficulties surrounding the access issue. At a subsequent trial in the child protection proceeding, the child was found in need of protection and the father's access was restricted and supervised with the recommendation that the father obtain a psychological assessment. The parties could not reach an agreement regarding

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an appropriate assessor. Subsequently the complainant obtained a psychological assessment of his own; however, the assessor did not have full access to all information regarding the access issue.

The matter came before the subject judge as a Status Review Application pursuant to the *Child and Family Services Act*, and subsequently the father requested further visits with his son. The judge, after adjourning to allow the child's lawyer to obtain further instructions from the child, ordered a single supervised visit with the father to take place at the Society's offices with terms that the visit not be recorded by the father.

The subject judge, after hearing a further motion brought by the father, ordered that the father have supervised access to the child on terms acceptable to the child, to be worked out with the assistance of the Children's Aid Society. He later dismissed the complainant's motion to dismiss the child protection proceedings, and a further motion he brought to dismiss the proceedings because there was an "open file" in the Superior Court of Justice.

Subsequently, the complainant was charged under the *Criminal Code* for offences related to the Children's Aid Society and these matters came before the subject judge for a scheduled pre-trial.

Later, the child protection proceedings were terminated with no further court ordered involvement.

The complainant alleged that the subject judge had acted "unprofessionally" at several of his court hearings, and that his conduct had resulted in his son being "terrorized by agencies associated with the justice system, and his relationship with me negatively affected." He suggested that the actions of the subject judge, and also of other judges involved in his cases, had violated his rights and the rights of his son.

The complainant asserted that the subject judge was clearly biased in favour of the Children's Aid Society and abused the administration of justice and the best interests of children. He alleged that the judge continually supported the position of the Society and "allowed the CAS to continue harassing me and my son and violating our rights without accepting and giving proper weight to the evidence before him." He said that the judge also dismissed two of the complainant's motions simply because he did not understand them.

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The complainant questioned why the judge had not allowed him to record the proceedings, and also why he was also not allowed to record a court-ordered supervised access visit with his son. He alleged that the judge refused to question why unqualified Children’s Aid Society workers were improperly “allowed to practice social work.”

He further alleged that the judge, together with counsel for the Children’s Aid Society claimed to be victims and arranged to have him arrested. He said that they also fabricated grounds for an “illegal” search warrant enabling police to search his home and seize his computers.

He also complained that the judge had failed to recuse himself from the scheduled pre-trial and continued pre-trial in the criminal proceeding despite his requests that he do so. He considered it “illegal and improper” that the judge continued to preside over any court proceeding that involved him or his family.

The investigating complaint subcommittee reviewed numerous transcripts in the child protection proceedings. They also examined the criminal Informations setting out the charges against the complainant. After concluding the investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed the subcommittee’s report, correspondence from the complainant, and a transcript of a motion in the family law proceedings where the complainant appeared before the judge, as well as the transcripts of the criminal pre-trial.

After its review of the materials, the review panel found that the judge did not act improperly or in a biased fashion when he presided over the various motions and proceedings involving the complainant. The judge was often instructive but firm in directing the complainant to restrict his arguments to relevant and meaningful information the judge required in order making his decision.

It was noted that the complainant, at more than one court attendance, properly asked permission to record the proceedings. He was not prevented from doing so by the judge. The judge did, however, remind the complainant that there was a prohibition against anyone publishing or making public any information that would have the effect of identifying the child, or the child’s parents or members of the child’s family pursuant to s.45(7) of the *Child and Family Services Act*.

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The review panel found no indication that the judge did not appropriately exercise his discretion to dismiss the complainant's motions to have the child protection proceedings dismissed or adjourned to the Superior Court of Justice. In the particular jurisdiction, child protection applications were properly within the jurisdiction of the Ontario Court of Justice as it was not a Unified Family Court site.

In the criminal proceeding the complainant sought to have the judge recuse himself from the matter, claiming that both the judge and the Children's Aid Society were the identified victims in this matter. The judge disagreed with this characterization and provided reasons why he considered it appropriate that he continue to preside at the pre-trial. Arrangements were made for another judge to hear the trial of the matter.

The review panel observed that the complainant was obviously unhappy with the decisions made by the judge in the family and criminal proceedings. The panel noted that the complainant's position that the decisions were incorrect was more properly the subject of an appeal or appeals, and was not a matter within the jurisdiction of the Ontario Judicial Council.

The review panel found that the criminal Informations alleged to have been signed by the judge were in fact signed by two police officers, not the judge.

The review panel also noted that the complainant was upset and frustrated by his inability to see his son under terms and conditions that he considered appropriate. However, the court record showed that there was no evidence that the judge acted inappropriately in the conduct of these proceedings.

For all the reasons set out above, the review panel dismissed this complaint and closed the file.

### ***CASE NO. 17-029/12***

The complainant was tried and convicted by the subject judge on charges of being unlawfully in a dwelling house and assault, arising out of a domestic dispute. The complainant was represented by counsel at the trial.

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The complainant made the following allegations to the Ontario Judicial Council:

- 1) The judge made incorrect rulings on the admissibility of evidence about the character of a witness.
- 2) The judge erred in finding that the complainant did not have a lawful excuse to be in the dwelling house.
- 3) The complainant felt that the judge should have had a reasonable doubt on the evidence.
- 4) The judge refused to allow the defence counsel to question the complainant and “took a position of what I felt was extreme prejudice and discriminatory practice” by continuously preventing defence counsel from making his legal submissions.
- 5) There was a miscarriage of justice and a reasonable apprehension of bias.

In summary, he alleged that the judge was negligent and unprofessional.

The complaint subcommittee reviewed the letter and ordered and reviewed the transcript of the proceedings. Following the investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed the letter of complaint, the transcript and the subcommittee’s report.

The review panel noted that the first four allegations all related to legal matters and if the complainant felt that there were errors made by the judge, the proper remedy was through an appeal in the courts. Those matters were outside the jurisdiction of the Judicial Council.

The review concluded that the complainant believed that there was prejudice, discrimination, bias and a miscarriage of justice because the judge disagreed with the arguments presented in his defence and entered a conviction. The panel found that these allegations related to how the judge assessed the evidence and the legal decisions of the judge and were outside of the jurisdiction of the Council. There was no evidence that His Honour was unprofessional or negligent. On the contrary, the transcript showed that he was professional and there was no evidence of negligence.

For the reasons noted, this complaint was dismissed as outside the jurisdiction of the Ontario Judicial Council and the file was closed.

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### ***CASE NO. 17-030/12***

The complainant, a lawyers' association, alleged that the judge failed to conduct proceedings in a judicial manner. The complainant referred to a number of court cases as illustrations of His Honour either not appreciating or failing to apply the basic principles required of his judicial position.

The complainant was asked for particulars about the complaint. The complainant sent a further letter naming further cases in support of allegations that the judge's conduct gave rise to a reasonable apprehension of bias. The letter set out a number of allegations including concerns about the judge's judicial temperament, his treatment of unrepresented persons, and his failure to consider counsel's submissions.

The investigating complaint subcommittee reviewed the correspondence from the complainant. The subcommittee ordered and reviewed the transcripts of cases referred to by the complainant. As well, the subcommittee requested and reviewed the appeal decisions of those cases and appeal decisions, where available, relating to cases over which His Honour presided that were released in the last five years.

The subcommittee invited the judge to respond to the complaint and reviewed his response. After concluding its investigation, the subcommittee provided a report to the review panel. The review panel carefully reviewed the correspondence from the complainant, the subcommittee's report, information about each of the cases and appeal decisions, and the response from His Honour.

The review panel did not question the outcomes of the decisions in any of the cases heard by His Honour. The panel noted that disagreement with a decision can be pursued through the appellate forum. However, the panel also observed that a pattern of conduct can impact on public confidence in a judge, in the judiciary in general and in the justice system. As a result, justice may not be seen to be done.

The review panel was concerned by the negative perception held by the complainant in relation to the judge. After reading His Honour's response to the complaint, it appeared to the review panel that he may not fully appreciate the concerns and the impact on the confidence in the judiciary and in the administration of justice that had resulted.

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The complaints process through the Judicial Council is remedial in nature such that through the review of and reflection upon one's conduct, improvements can be made. The review panel decided that the appropriate disposition was to refer the complaint, pursuant to section 51.4(17)(c) of the *Courts of Justice Act*, to the Chief Justice for discussion with the objective of precluding another incident of this nature from occurring and restoring public confidence in the administration of justice and the judiciary. The review panel referred the matter on the condition that His Honour was prepared to participate in a course of education as agreed upon with the Chief Justice.

The Chief Justice identified remedial education programs for the judge to attend that were designed for judges including sessions on writing and delivering judgments, dealing with self-represented litigants, and assessing credibility. After the judge attended the programs, Her Honour met with him and reviewed with him the expectations of members of the public and the legal profession of the high standards of conduct expected of judges. The Chief Justice also provided His Honour with additional educational material.

After reviewing the report from the Chief Justice, the review panel observed that His Honour intended to apply the lessons learned through the complaints process and from participation in the educational programs. After receiving confirmation that the disposition had been implemented, the review panel closed the file.

### **CASE NO. 17-031/12**

The complainant was involved in a lengthy, high conflict custody/access proceeding with his ex-spouse regarding access to his child. A final court order granted the mother sole custody of the child. The father was granted overnight access to the child as well as holiday times. However, following the order the father had not been able to see the child on any regular basis.

The matter was case managed by the subject judge over the course of two and a half years. An early motion before the judge dealt with the mother's request to travel outside the country with the child. Most of the appearances related to the complainant's continuing inability to visit with his child. Supervised access was ordered and an order made for the involvement of the Office of the Children's Lawyer. Both parties were dissatisfied with the

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recommendations contained in the report from the Office of the Children’s Lawyer. The assessor commented on the high level of conflict between the parents.

The matter came on for hearing before another judge. He made an order for joint custody. He also determined the child was potentially at risk of harm due to the conflict between the parents and ordered the Children’s Aid Society to become involved. He ultimately made a final order for limited access by the complainant father with police enforcement and also cancelled the passport for the child. He ordered that the proceedings be stayed. Both parties were precluded from bringing any further motions unless by mutual consent.

The complainant first wrote to the Council while the matter was still ongoing before the subject judge. He requested that the matter be heard before a different judge. In accordance with the Council’s policy, a file was not opened at that time as the matter was still before the court. If the complaint raises allegations of conduct about a judge 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 ensures that any investigation by the Council is not interfering or perceived to be interfering with any on-going court matters.

The allegations at that time were:

- 1) The judge was unprofessional in openly criticizing an existing order made by another judge restricting travel with the child. The subject judge made a face to indicate disapproval with that order.
- 2) Two duty counsel refused to assist him, stating that they had to deal with the judge every day.
- 3) The judge was biased and had made a decision before hearing from him. He alleged that it was due to his gender and religious beliefs. The judge acted punitively towards him in ordering costs on a motion in a higher amount than the amount asked for the mother’s counsel. She said to him, “Don’t smirk, don’t smirk.”
- 4) The mother had been totally supported by the system to deny him any meaningful lasting relationship with the child.
- 5) He expressed concern that the judge was “clearly biased” for her own unprofessional, personal reasons.

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- 6) The judge tried to order him to get a lawyer, even though he didn't have the financial means to do so. She was, therefore, obviously biased towards unrepresented citizens in the court system.

After the case finished in court, in a second letter, the complainant expressed the following concerns:

- 1) The case had dragged on for three and a half years in court.
- 2) At the first hearing the judge had ordered the courtroom cleared for an unexplained reason.
- 3) The mother often didn't attend court or was late to court, without any consequences.
- 4) The subject judge insinuated that sexual or physical abuse had occurred when no such accusation had been made by the mother.
- 5) The judge intimidated his lawyer by yelling at him on various occasions.
- 6) The discouraged his lawyer from representing him, telling him: "don't encourage him to go to court."
- 7) The judge refused to let him speak in court even after he had fired his lawyer.
- 8) The judge commented that if he got custody, the child would run away in the middle of the night, a comment that the mother often repeated in later attendances.
- 9) The judge criticized another judge's order regarding travel, and suggested that the mother should not have any travel restrictions.
- 10) He was required by the judge to give consent twice for the mother to travel abroad, even though that was not the reason they were in court.
- 11) and 12) He complained that the subject judge defended the mother's action of leaving the country for a third time without permission by saying that the mother might have been worried that he would not agree. He referred to a Law Society of Upper Canada Discipline Committee report about the subject judge while still a lawyer. As a result of that report, the complaint alleged that the subject judge was encouraging illegal behaviour.

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- 13) The subject judge never reprimanded the mother for not attending at the access centre intake, or appointments with the OCL lawyer, or not abiding with the court ordered access centre visits.
- 14) In a motion by the mother seeking permission to travel, the judge made it clear the mother would be allowed to travel even before the complainant had made his submissions. Costs were ordered against the complainant without explanation even though the mother's counsel had only asked for a lesser amount.
- 15) The judge ignored the Office of the Children's Lawyer, the psychologist and recommendations from the Children's Aid Society, and delayed the case further by sending the parties and child for more therapy.
- 16) The judge continued to cut back his visitation despite recommendations from the Office of the Children's Lawyer, the psychologist and the Children's Aid Society and then refused to make a decision saying, "I am not going to order for visitation today."
- 17) The judge insisted that the visits be held at a supervised access centre, despite the reports stating there was no reason for supervision.
- 18) When his counsel tried to move the access from supervised to unsupervised visits, the judge was oblivious to the most fundamental rule of law that any order should be in the best interests of the child.
- 19) The judge, while still a lawyer, had written a booklet that contained a suggestion that a judge might alter a transcript when approving it for publication. The complainant expressed concern that the judge might alter the transcripts in this case to favour the judge's position.
- 20) The judge was clearly biased against men and as a lawyer had represented only women with a "specialty in sexual abuse."
- 21) The judge was known as an active member of the women's movement and could not act as an unbiased judge when dealing with men, and in particular, with his case.
- 22) The judge's biases were well known at that court location. Other men were frustrated in their cases, as well.

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- 23) The complainant's lawyer quit the case, indicating that he would be jeopardizing other clients' cases if he continued to defy the judge.
- 24) The judge was a feminist and could not be unbiased.
- 25) When setting the matter to trial, the judge inappropriately expressed concern that this would upset the mother's lawyer.
- 26) The judge would not allow the complainant to use the words "parental alienation"; however, another judge, who dealt with the case later, found that it was a clear case of "parental alienation".
- 27) The judge was responsible for adding to his child's stress level and denying the right to a relationship with her father. The judge refused to make a decision based on the facts and recommendations of various professionals and instead sent the child to various other counsellors. The judge supported the mother in her efforts to alienate the complainant from his child.

The complaint subcommittee ordered and reviewed numerous transcripts of the proceedings before the judge. The subcommittee also reviewed the transcript of the trial proceeding before another judge who made a final order in the matter. Following the investigation, the committee submitted a report to the review panel.

The review panel reviewed the complainant's letters, the transcripts that were reviewed by the complaints subcommittee and the committee's report.

With respect to the complainant's concern that the judge might have an opportunity to alter any of the transcripts, the review panel noted that transcripts are not normally provided to judges for editing purposes. Further, the transcripts of court the proceedings ordered and considered by the Council were ordered according to the Council's procedures, with specific instructions that the transcripts not be edited in any way. As well, there was no evidence that the transcripts in this case had been edited.

The review panel found that the complainant made a number of general comments that might be categorized as "character flaws" or biases of the judge, and her reputation at the court house. He alleged that various lawyers did not want to appear before the judge because she was biased or they were intimidated by her. No specific names were provided. The complainant alleged that the Law Society of Upper Canada had dealt with

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a complaint when she was a lawyer and found that she encouraged illegal activity by her client. The subcommittee reviewed the report of the Law Society of Upper Canada on the matter and found that on the contrary, the Committee of the Law Society had concluded the complaint was not proven.

The review panel determined that none of these general accusations were corroborated or supported by evidence in any way. They were dismissed by the review panel as unsubstantiated and irrelevant allegations.

The review panel found that the transcripts showed that throughout the course of a long, emotionally charged court proceeding, the judge treated both parties in a respectful, unbiased and professional manner. She attempted, on many occasions, to warn the parties that their continued conflict was hurting their child. She expressed her impression that both parties were responsible for the conflict. She warned the parties that proceeding to a contested hearing could be devastating to the parties and the child. She attempted, by way of the involvement of the Ontario Children’s Lawyer, to make referrals to agencies to assist the family in resolving the access issue. She granted leave for the complainant’s counsel to arrange a case conference with another judge if the parties wished to obtain another opinion about the case. There was no indication that the judge was biased against the complainant or that she unduly favoured the mother. There was also no evidence that the judge intimidated counsel or the parties in any way. Nor was there evidence that she insinuated that sexual or physical abuse had occurred or that she yelled at his lawyer.

The transcript showed that at one point in the case, two motions were before the court, one by the mother to enable her to travel with the child over Christmas to see relatives, and a motion by the father to dismiss the mother’s motion and require her to surrender the child’s passport. The judge gave clear reasons for allowing the mother’s motion. She stated that the mother had recently traveled out of the country on at least two occasions and had returned. She ordered that the mother be at liberty to travel with the child out of the country without the father’s consent for up to three weeks. She expressed concern that “travel permission” orders, without specific terms for the duration of the trip, could cause problems for both parties. She also made it clear that the father’s main motion to reinstate access would be dealt with as soon as possible. The review panel noted that it was within the judge’s discretion to order costs in excess of the amount claimed by the mother’s counsel. The panel observed that the complainant may not have agreed with

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the judge's decision to allow the mother to travel, but the proper way to proceed on that matter was through legal remedies in the courts. Review of the correctness of a judge's decision is outside the jurisdiction of the Council.

The transcript showed that at a case conference, the judge ordered the involvement of the Office of the Children's Lawyer and ordered that access occur at the supervised access centre so that notes could be kept of the child's reactions and behaviours. She directed the mother to be encouraging about access, and advised the complainant to use a softer approach with the child.

At a later case conference, the report of the Office of the Children's Lawyer was available for review. The parties agreed that the father's access would be increased to unsupervised access. The judge cautioned the parents that each of them had to accept responsibility for the conflict and suggested that the access be increased in "baby steps" to avoid upset to the child.

With respect to the allegation that the judge would not allow the complainant to use the words "parental alienation", the panel found that the transcripts showed at one appearance, he told Her Honour that he had a video of his daughter "being alienated". She expressed concern about the effect of videotaping on his daughter, cautioned him against it and urged him to seek the advice of his lawyer. At a later stage in the proceedings, she explained that alienation does not result in a change in custody of the child in every case.

At a subsequent court appearance, the judge found that the mother had intentionally delayed and been non-co-operative in arranging counselling for the child. She ordered a short adjournment of the matter to monitor compliance by the mother with the court order.

The transcripts showed that sometime later, the complainant's visits with the child at the access centre had been cancelled. The judge expressed concern regarding the child's apparent strong alliance to her mother. She expressed sympathy to the complainant's predicament but cautioned him that if the matter proceeded to trial at this time it might be disastrous for the child and the child might run away. The review panel observed that she was expressing this concern as a result of the conclusions in the child therapist's report. At this appearance, the complainant attempted to fire his lawyer in the courtroom. The judge cautioned the complainant that this might be a mistake in such a difficult case. The complainant's lawyer requested that he remain on the record

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until he had an opportunity for further discussions with his client. The judge noted that such discussion should take place outside of the courtroom and stated that she was not removing him from the record yet.

At the next court attendance, the father suggested that access simply be expanded immediately to access every weekend. The judge commented that she understood that the father was frustrated and would likely eventually just bring a motion seeking custody of the child or proceed to trial. Further orders were made regarding counselling.

The transcript of a subsequent court appearance showed that the access issue and the issue of counselling remained unresolved. The judge reluctantly concluded that the matter must proceed to trial. With respect to the allegation that she told the complainant not to smirk, the transcript showed that she did tell him “not to smirk” but that the comment appeared to be made in the context of her observing the complainant’s reaction when she said she did not think trial was a good place for this case to go for the family and for the child. The panel found that this was not judicial misconduct.

The review panel could see from its review of the transcripts that the complainant was obviously frustrated, and emotionally devastated by the lack of progress in attempting to see the child. However, the panel found that there was no evidence to support the allegations that the judge acted in a biased manner or in an inappropriate or unprofessional way. The panel determined that the transcripts showed that the judge attempted to proactively case manage this difficult matter in hopes of resolving the access issue without permanent emotional harm to the child. They found no evidence of improper conduct on the part of the judge.

After its careful review of the allegations made by the complainant and the transcripts, the review panel concluded that there was no evidence of judicial misconduct. The complaint was dismissed and the file was closed.

#### ***CASE NO. 17-032/12, 17-033/12 AND 17-034/12***

During the course of a family court case, the parties appeared before three different judges [Justice A, Justice B and Justice C]. The complainant sent a letter of complaint in relation to all three judges.

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Several years prior to filing his complaints, the complainant was the Respondent/father in a custody/access court case regarding his young son. The Applicant/mother had obtained an *ex-parte* order granting her temporary custody of the child and a temporary restraining order against the Respondent. At that time, the Respondent had been arrested and charged with domestic assault.

When the matter returned to court before Justice A, it was noted that the Respondent had only been served the day before the court date. The parties agreed that the matter be adjourned to allow the Respondent to retain a lawyer and file his materials. The temporary order continued.

An interim order was later made by Justice A granting the complainant access to his son and subsequently increasing his access to his son.

The following year, the Applicant brought a motion before Justice B to vary the order and the judge reduced the Respondent's access in response to the Applicant's concerns that the child was sleepy and performing poorly in school after the mid-week overnight visit, and also on the basis of the recommendations contained in the report of the Office of the Children's Lawyer.

A final order was made by Justice B granting the complainant on-going weekly access on the same terms, as well as alternate weeks in the summer and equal time at Christmas and March break.

Subsequently, the complainant brought a Motion before Justice C to change the access order. He sought to increase the weekly access. Justice C declined to change the order, concluding that a material change in circumstances had not been proven by the complainant. Her Honour dismissed the motion and ordered that the complainant pay costs. The Complainant commenced an Appeal of that order but subsequently withdrew it for personal reasons.

The complainant advised that in two years later, his ex-spouse's boyfriend was charged with sexual assault, sexual exploitation and sexual interference against his son.

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#### ***The Allegations Made by the Complainant:***

In his letter to the Council, the complainant said that the three judges before whom he appeared mishandled his case and he made the following allegations against the three judges.

#### **Justice A:**

The complainant alleged that Justice A did not allow him to make any submissions. His claims were summarily dismissed as not relevant. He alleged that he was told that his parenting had no relevance to the matter. The judge ignored his claim that he was the primary caregiver. This taught him: “that if you are a father, who is the primary parent, you are treated with no respect or equality whatsoever. You are nothing more than a lazy man who refuses to work.” He alleged that the judge looked at him with disdain and frustration and said, “He ought to be happy with the access I gave him.”

#### **Justice B:**

The complainant alleged that the subject judge “took away” his extra access time to his son and based it on a letter from his kindergarten teacher and an out- dated report from the Office of the Children’s Lawyer.

#### **Justice C:**

He alleged that the Justice “C” was “..facilitating a culture of discriminatory conduct encouraged and nurtured by all of the Judges at this Ontario Court of Justice location.” In his view: “no man can get a fair hearing at this Family Court. The practices and policies at this court location do not align with the meaning of justice, allow for fair and equal treatment, or represent what is best for the children.”

He further alleged that this Court: “has a culture of discrimination against fathers like me and the relationship we are seeking to maintain with our children.”

He maintained that his son received nothing but inequities from the judges who seemed to encourage the parties to take up arms in an adversarial position to prolong simple matters. He contended this attitude led to the abuse of his son.

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The complainant, an African American, alleged that many of the judges' doctrines arose from a conscious choice to discriminate, and that their subtle stereotypical conduct and treatment have led to a bias that has resulted in unfair outcomes. He alleged that he was subjected to intentional racism and differential treatment at this court location.

He further alleged that he has befriended a number of fathers who have had matters at this court location. He stated: "time and time again I saw my friends' cries for justice and equality being totally disregarded and the Judges' dismissive verdicts being handed out to them."

The complainant asked that the Council: "not turn a blind eye on the inequities that Black fathers and their children suffer" at this court location. He indicated that he intended to request that his future court matters be transferred to the Superior Court of Justice.

The complainant alleged that during his motion to change the final order, Justice C did not allow him to complete his full submissions. He alleged that he was treated in a discriminatory way.

### ***Investigation, Findings and Conclusions:***

Following its review of the complainant's correspondence, the subcommittee carefully reviewed the transcripts of each of the court proceedings. Following the investigation, the subcommittee submitted its report to a review panel.

The review panel reviewed the complainant's letter setting out the complaints, the transcripts of the proceedings and the subcommittee's report to them. The review panel made the following observations and findings:

### **Justice A:**

The review panel found no evidence that the complainant was precluded by Justice A from making representations. The parties had already agreed to adjourn the matter to allow the complainant to file materials and retain counsel. The complainant was assisted by Duty Counsel who made submissions. The issue of service on the complainant was dealt with by the judge who confirmed he had only been served the day before the hearing. There was some discussion as to whether or not the Office of the Children's Lawyer should be appointed at that time. The judge stated that the evidence of the Respondent

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needed to be reviewed first as well further information from the Children’s Aid Society investigation before such a decision could be made. At no time was the complainant’s parenting discussed or commented on.

With respect to the allegation that this judge looked at the complainant with disdain and frustration and said: “He ought to be happy with the access I gave him”, the review panel found that the transcript showed that no such comment was made by the judge. The panel found no evidence of frustration on the part of the judge. The judge was polite and respectful to both parties during the appearance. There was no indication in the transcript of bias, prejudice or unfair treatment.

### **Justice B:**

At the hearing of this motion, both parties were represented by counsel. Each made full submissions on the issue of variation of the access order. The judge had read all the filed materials, and took time to read some additional affidavits that had not been correctly filed in the court file.

The transcript showed that the judge gave reasons for varying the order. The judge explained that interim access orders often require changes or “fine tuning.” The judge felt that the order should be child-focused. Based on some reported behaviours of the child, and on the recommendations set out in the report of the Office of the Children’s Lawyer, the judge concluded that the access order should be changed. The judge adjourned the issue of summer access to another motion date as the parties had been unable to reach agreement on that issue.

The review panel observed that the judge was respectful, and explained her decision. There was no indication of bias, prejudice, stereotyping or unfair treatment by the judge. The panel noted that if the complainant did not agree with the judge’s decision, that was a matter more appropriately pursued through other legal remedies, such as an appeal, and is not within the jurisdiction of the Council.

### **Justice C:**

The review panel found that the transcript showed that the judge was polite and helpful to the complainant. The judge asked him if he wished the assistance of Duty Counsel. The

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judge explained the order of the proceeding and advised him that the filed materials had been read. The judge also explained to him that the onus was on him to demonstrate that there had been a material change in circumstances since the date of the final order. The judge also explained that he could only make arguments based on the filed affidavits.

The judge provided an oral ruling outlining the reasons for refusing to vary the order. The judge considered it to be in the child's best interests that the existing order continue. The complainant did not agree with the judge's decision and had attempted to appeal it. The correctness of a judge's decision is not a matter within the jurisdiction of the Ontario Judicial Council.

In its review of the transcripts, the review panel did not find any evidence of prejudice, bias or unfair treatment of the complainant by any of the three judges. There was no support for the complainant's allegations of bias towards him as an African American. As a result, the review panel dismissed this allegation as unfounded.

For the reasons noted, the review panel dismissed the complaints in relation to all three judges and closed the files.

### **CASE NO. 18-007/12**

The complainant was the father of a youth who appeared before the subject judge on a hearing held under section 31 of the *Youth Criminal Justice Act* to determine whether he should be released into the community under the care and custody of a responsible person. After considering the submissions of the defence counsel and the Crown Attorney, the judge rejected the family member proposed as a responsible person, and determined that for the safety and protection of the public, it was in the public's best interest to continue the youth's detention.

In his complaint to the Council, the complainant alleged:

- 1) It was many months to hold the young person in custody without a trial. "To me it seems like she is convicting him prior to trial, which seems odd, yelling at him and making judgments before the disclosure."
- 2) The judge had asked the family to come back with a plan, and when they did, the judge was confused, refusing everything. The judge did not accept the

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arrangements that the complainant and his wife had made for their son to attend school, to volunteer, to have a family member accompany him, and to take an anger management course as was requested by judge at an earlier court appearance. The complainant stated in his letter, “To us, it looked like she played a game with us by telling us to do the plan for the next court date.” She had made her mind up from the beginning and was not going to release him.

- 3) The judge proceeded with the bail hearing and made an order for the detention of the young person even though there had not been full disclosure.
- 4) The judge seemed incompetent and the complainant requested a review of the judge’s history on how she handles youths.

The complaint subcommittee ordered and reviewed the letter of complaint and the transcript of the proceedings. Following the completion of the investigation, the committee submitted a report to a review panel.

The review panel read the complainant’s letter, the transcript and the subcommittee’s report. The panel found that the transcript showed that the bail issues were thoroughly canvassed before the subject judge and that full reasons were given by the judge setting out the rationale for her decision. In her reasons, the judge reviewed the history of the matter and addressed many of the issues that gave rise to the complaint. The review panel found no evidence to support the allegation of incompetence or “yelling” by the judge.

The review panel noted that a bail hearing usually comes at a time when there is still outstanding disclosure. Full disclosure would be necessary for a trial but not for a bail hearing. The information necessary for the proper conduct of a bail hearing was available to the defence counsel. The panel further noted that the youth’s defence counsel did not make an objection that the hearing ought not to proceed until there was further disclosure. The review panel determined that this allegation was unfounded.

In relation to the allegation that the judge had predetermined the outcome before the bail hearing commenced, the review panel observed that the transcript showed a thoughtful review and analysis of the proposed release plan and a clear statement of where the plan fell short. The review panel found that the reasons demonstrated that the judge did not predetermine the issue but judged the case based on the evidence presented before her. The review panel dismissed this allegation as unfounded.

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In relation to the complainant's concern that the judge detained the youth in custody for months before the trial would proceed, the review panel noted that if the complainant disagreed with the judge's decision to continue the youth's detention, or with how she weighed the evidence in this case, the proper remedy would have been to appeal the judge's decision. As the Council does not have the jurisdiction to review or change a judge's decision, this allegation was dismissed as outside of the jurisdiction of the Council.

For the reasons noted, the review panel dismissed the complaint and closed this file.

### ***CASE NO. 18-008/12***

The complainant was the defendant on a criminal harassment charge who appeared before the subject judge who found her guilty. The complainant appealed the subject judge's decision and the appeal was dismissed.

She alleged that the judge said that she lived at a particular location which was not correct, that he saw no significance in important facts, and that the entire argument of the defence was squashed by the judge's inability to see the circumstances of events within a proper context. She alleged that the judge failed to see that the victim had a motive to go to the police and then blatantly covered this up by saying the police had province-wide authority. She also alleged that the judge showed bias, and his findings were fabricated and insulting.

She expressed her disagreement with his findings of credibility and his findings on the evidence, and alleged that his interpretation of the witnesses' credibility was sexist. She stated that the judge would not let the victim answer questions posed by the complainant's lawyer, believed the evidence of the police officer, twisted the defence argument and failed to listen to anything that the complainant had to say.

She asserted that this trial was a complete miscarriage of justice. In addition, the complainant had concerns relating to the appeal judge. On behalf of the Council, the Assistant Registrar advised the complainant where to file a complaint about the appeal judge if she wished to do so.

The subcommittee reviewed the complainant's letters, and ordered and reviewed the transcripts of the trial. As well, the subcommittee reviewed the judge's decision and the appellate decision. Following the investigation, the subcommittee submitted a report to a review panel.

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The review panel reviewed the complainant's letters and the judgment of the judge, the appeal decision and the report from the subcommittee.

The panel noted that the appellate decision stated:

“The trial judge’s conclusions were amply supported by the record before him. To a large extent, the appellant’s contentions are based on challenges to the credibility findings made by the trial judge. I can detect no error in the manner in which he approached the evidence of any of the witnesses at trial.”

The review panel found that the complainant’s allegations related to findings of credibility were findings of fact determined by the trial judge. The panel noted that these were matters that were within the jurisdiction of the trial judge and were not matters of judicial conduct within the jurisdiction of the Judicial Council.

In addition, the review panel noted that other allegations were not substantiated by the court record or constituted a misunderstanding or misinterpretation of the record. For example:

- ◆ There was no evidence to support bias by the subject judge.
- ◆ There was no evidence to support the suggestion that his findings about the police were fabricated or insulting as suggested by the complainant.
- ◆ It was suggested that the subject judge would not let the victim answer questions posed by the complainant’s lawyer. On one occasion only, the trial judge did say “do not answer that question” but it was in the context of an objection being raised by the Crown Attorney, so the judge stopped the witness until submissions could be made.
- ◆ It was suggested that the subject trial judge twisted the complainant’s (defendant’s) evidence to conclude that she feared that the victim was trying to reconcile with her ex-husband. The complainant’s agent made the same submission at trial so this was not something created by the trial judge. He was responding to the submission.
- ◆ It was suggested that the judge didn’t let the victim answer questions. The transcript showed that on one occasion the trial judge simply said that witnesses were not expected to answer legal questions.

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- ♦ It was suggested that the judge fabricated evidence. There was no evidence of fabrication by the judge or that the findings to which the complainant referred had any bearing on the judgment.
- ♦ Reference was made to “boilerplate arguments” of the trial judge being supported by the appeal judge. This point was not raised on appeal and a reading of the trial judgment and the appeal judgment refuted this allegation.

The review panel dismissed this complaint as unfounded and outside of the jurisdiction of the Ontario Judicial Council and closed the file.

### ***CASE NO. 18-009/12, 18-010/12, 18-011/12, AND 18-012/12***

The conduct of the judge in this criminal proceeding was the subject of four complaints: Files 18-009; 18-010/13; 18-011/12 and 18-012/12. Three of the complainants resided at the same address. One complainant had the same last name as the defendant and indicated in his second letter to the Council that he was aware that other letters had been written to the Council about this matter. One complainant testified at the criminal proceeding. The case arose in a domestic context. The charges arose out of an incident between the defendant and his wife.

The letters were received prior to the disposition of the criminal trial. The complainants were informed that the Council’s policy is that if the complaint raises allegations of conduct about a judge 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 matter.

When the criminal proceeding was completed, the complaints were investigated.

#### **File 18-009/12**

The complainant was the mother of the defendant in the criminal matter and she testified at the trial.

This complainant alleged that when they went to the courtroom before the proceedings were to commence, the defendant’s lawyer came out of the courtroom and said, “This is

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not good, this judge hates me. We had a shouting match one time and it was even in the [local newspaper]. I wasn't shouting and I had to raise my voice to be heard. She won't listen to me, she talks over me." The complainant alleged that the lawyer's demeanour changed and she became very stressed, unsure of herself and appeared defeated.

The complainant further alleged that the judge talked over the lawyer and was very unwilling to listen. She said that the judge gave professional courtesy to the Crown Attorney. She suggested that the judge should be excused from the case, which was ongoing at the time the letter was written, because she could not be impartial. She alleged that the atmosphere in the courtroom was very tense and extremely unprofessional. She felt that the case was not fairly heard and the judge was unprofessional.

#### **File 18-010/12**

This complainant stated that when she attended the appropriate courtroom before the proceedings were to start, the defence lawyer went into the courtroom ahead of them and when counsel came out to speak to the client, she said it was not good and that the judge hated her. The complainant alleged that: counsel also said that she and the judge had a shouting match on a previous occasion and that it had been written about in the local newspaper; "she was not shouting, but the judge was and she had to raise her voice to be heard over the judge", the judge would not listen to her; and, that she talks over her and she picks at everything she says or does. The complainant further stated in her letter that the lawyer's demeanour changed. She became very stressed, unsure of herself and appeared defeated. The complainant alleged that when the proceedings commenced, the lawyer was correct in her assessment of how she would be treated. The complainant alleged that the judge interrupted the lawyer at every opportunity, spoke down to her very rudely and was absolutely horrendous in her treatment of the lawyer. She alleged, "It was obvious that it was affecting the way the lawyer could present her case, and I do not believe the proceedings have been fair to this point".

The complainant further alleged that "the tone that the judge used with the defence lawyer was condescending and negative. "I found her to be rude, angry and mean towards the [redacted name of the lawyer...] The complainant also alleged that the judge was rolling her eyes and snorting with raised eyebrows many times at things that were said by the defence lawyer, and many of these times, she would then make eye contact with the

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Crown Attorney as if they were sharing a private joke about the defence lawyer. She alleged that, “There was nothing impartial about her behaviour. The atmosphere in the courtroom was very tense and extremely unprofessional.”

### **File 18-011/12**

This complainant also alleged that the defence counsel expressed her concern when she found out that the judge was the same judge with whom she had a “shouting match in court” on a previous occasion. He stated that it was so extreme that it made the newspaper.

The complainant alleged that once the proceedings commenced, it was very obvious that the judge disrespected the defence counsel. He alleged that the judge demonstrated a rude, angry attitude toward the lawyer; she showed very little respect for her; she was short with her and rudely interrupted her on many occasions. He alleged that the judge showed the lawyer very little respect and “proved that she was less than professional”. He also alleged that the judge was very courteous and professional to the Crown Attorney – a distinct and very obvious difference.

This complainant stated that the unprofessional and closed-minded attitude displayed in the courtroom “only further traumatized our complex and extreme feelings going into court.”

He stated that the judge should have stepped down from the case and that the alleged domestic situation should not have gone this far. This complainant hoped that the matter could be reheard in a more professional court.

### **File 18-012/12**

This complainant, who was a relative of the defendant in the criminal case in which the judge presided, stated in his letter, “there seems to be a predilection for attacking defence attorneys, and for ridiculing a defendant with expressions of disbelief, copious head-shaking and enough eye-rolling to do a teenager proud.” He stated, “That the defendant had undergone emotional trauma and is still in the process of recovery seems to be of no concern. Both the defendant and his attorney were subjected to such treatment that at times they seemed quite unable to communicate points that may have been relevant”.

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The complainant alleged that the judge placed the defendant in a position worthy of mockery. He stated that, “My concern is the ‘over-the-top behaviour’ displayed in the courtroom. Such as comments on pitching a balky computer out the window. Threatening the most dire of consequences on the slightest provocation. Sadness (or disappointment) plainly visible on the judge’s face when it was discovered that the plaintiff (sic) was lying. Shock when it became clear that the defendant has a responsible job. Seeming to take pleasure in the discomfiture of both the defendant and his counsel.” He alleged that the Crown Attorney was not subjected to the same treatment. He alleged that this is not the first trial at which defence attorneys have been selected for verbal attack by this judge. He stated that another incident could be “googled” which involved another lawyer whom he named.

This complainant expressed the view “that this kind of extreme insensitivity, aggressiveness and maybe even maliciousness is not uncommon in the human being, but most of us are expected to curb the tendencies.

This complainant wrote a second letter, two months later, indicating that the criminal matter had concluded. He also stated that he was aware that other letters have been written about this matter and that he thought from the reactions of the judge, that they may have been made known to her. He stated that he suspected that the judge had a concern about the competency of the defence attorney and that this may have been an influence “in the courtroom performances to which I was an astonished witness”.

### ***The Investigation and Disposition***

The complaint subcommittee retained independent counsel to interview the defence counsel about the events that took place. The independent counsel spoke to defence counsel who advised that she did not recall the judge being inappropriate during the course of the trial and she indicated that the judge’s conduct during the trial did not interfere with her presentation of the defence case.

The complaint subcommittee read the transcripts of the trial and listened to the audiotape. The subcommittee was of the view that a response from the judge should be requested. A response was received from Her Honour and reviewed by the subcommittee.

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In her response, the judge responded by accepting that her conduct was inappropriate. She stated, “It would be too simplistic an explanation to suggest that this was a bad day, as nothing justifies rudeness, impatience and unfairness in the courtroom, but I do assure you that this style is not my common practice.” The judge expressed her sincere apology to you through the Council at having failed the justice system. Her Honour also stated she would take the Council’s comments and the complainants’ comments to heart and would modify her behaviour to ensure that such a breach does not occur in the future.

Following its investigation, the complaint subcommittee submitted a report to a review panel. The review panel reviewed the letters of complaint, the transcripts of the proceedings, the request for a response from the judge and the judge’s response.

One complainant referred to another defence attorney who was reported by the media to be the subject of comments by the judge. The information source was Google. The focus did not appear to be directly related to the complaint being addressed before the Council.

With respect to comments by two complainant’s that the judge should have excused herself from the case as soon as she saw who the lawyer was, the review panel noted that a judge’s decision as to whether he or she will recuse herself from a case is a matter of judicial discretion that is outside of the jurisdiction of the Ontario Judicial Council.

The review panel noted that the complaints process through the Council is remedial in nature and through the review of one’s conduct, improvements are made as to how situations and individuals are treated and handled in the future. The review panel observed that the judge’s response demonstrated that she fully understood and appreciated how her comments and manner left a negative impression with the complainants of Her Honour as a judge, and of how justice is administered. Her Honour expressed her genuine apology and dismay at having failed the justice system. She also undertook to modify her behaviour so that a similar experience would not occur in the future.

The review panel took into consideration the fact that the judge sought through the Council to communicate her sincere apology to the complainants.

The review panel noted that two complainants expressed concerns about eye-rolling on the part of Her Honour. The panel found that the investigation showed that the judge had a medical condition that could explain why it appeared that she was rolling her eyes.

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After considering all of the information gathered through the investigation, the review panel concluded that the judge learned from the complaints. The panel determined that no further action was required. The complaint files were closed.

### ***CASE NO. 18-014/12***

The complainant, a lawyer, appeared before the subject judge for his client’s sentencing on a criminal matter. The complainant arrived twenty minutes late for court.

The complainant, in his letter, said that he was surprised to see the judge looking at him “angrily, aggressively and was giving me dirty looks as well, as she was absolutely not looking comfortable to see me in the court.” He indicated that the unprofessional attitude of the judge frustrated and upset him. He said that he apologized for being late but the judge continued to be aggressive when looking at him and to give him dirty looks. He alleged that when he was responding to an argument by the Crown Attorney, the judge yelled at him and stated in a loud voice, “She (Crown) did not ask about this.” He alleged that the judge was discriminating because he was a lawyer from a visible minority but he remained polite. He indicated that it looked like the judge was not ready to accept his right to exist in the court and represent his client. He said that the judge suddenly raised her voice and unilaterally said there was a solicitor and client breakdown, removed him from the record and ordered him to leave the court.

The complaint subcommittee ordered and reviewed the transcript of the proceeding. When they completed the investigation, the committee submitted a report to a review panel.

The review panel reviewed the letter of complaint, the transcript and the subcommittee’s report.

The review panel noted that the transcript showed that this was not the first time in the course of the proceedings that the complainant had been late. The transcript also showed that the complainant’s client was very upset that his lawyer was not present when the case was called. The review panel found that the judge acted professionally and appropriately and did not appear to be angry or aggressive towards anyone in the courtroom. This allegation was dismissed as unfounded.

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The transcript confirmed that the judge clearly understood the evidence that was before her and, although the judge did interrupt the complainant during his sentencing submissions, it was to correct the fact the complainant was misquoting the Crown Attorney. During the proceeding, the complainant did not raise any objection to the judge's understanding of and clarification of the evidence.

Further, the transcript revealed that the judge became concerned that the accused may not be getting proper advice about the sentencing process and the implications for him. She suggested to the complainant that the matter be adjourned to ensure that the accused had proper advice and would understand the legal implications of the sentencing. The complainant began to tell the court, when referring to his client, "...he does not listen to me. Whenever I try to explain...". The judge interrupted to prevent the complainant from breaching solicitor and client privilege and said, "If you are satisfied there is a breakdown, I am happy to remove you off the record." The complainant then responded, "Yes, Your Honour, you can remove me off the record because he's...he wanted to talk to the court himself." The judge did not unilaterally remove the complainant from the record or order him from the courtroom, as was alleged by the complainant. This allegation was dismissed by the review panel as unfounded.

With respect to the allegation of discrimination, the review panel noted that there was no evidence in the transcript to suggest that the judge treated anyone differently in the courtroom. Specifically, there was no evidence in the transcript that the judge was biased in any way towards the complainant because he was from a visible minority. On the contrary, the review panel found that the judge conducted herself in a fair and unbiased manner and there was no evidence of judicial misconduct. This allegation was dismissed as unsupported by the evidence.

For the reasons noted, the complaint was dismissed and the file was closed.

#### **CASE NO. 18-016/13**

The complainant was a Respondent mother in a custody/access dispute with the Applicant father which had continued over five years. The parties had a daughter. The matter had been scheduled for trial but was taken off the trial list after the presiding judge determined the matter should be resolved. A temporary order for access to the father had been made

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previously and all financial issues were finalized. The parties had been unable to agree on the issue of Christmas access and this issue was adjourned by the parties on at least five occasions. The matter came back to court after the parties received a notice from the Trial Co-ordinator that the matter must precede to a next step. The matter came before the subject judge for a Settlement Conference.

The complainant had filed her own Settlement Conference brief, but elected to re-hire her previous solicitor several days before the hearing to assist her. The Applicant father's solicitor had filed a brief with an Offer to settle all outstanding access issues, and also requested that the terms of this Offer be incorporated into a final court order pursuant to Rule 17(8) (b) of the *Family Law Rules*.

The complainant arrived 50 minutes late for the scheduled Conference. Her lawyer had advised the judge that she would be late. The matter was finalized at the conclusion of the Conference after the judge made a final order granting the complainant mother sole custody of her daughter with specified access to the Applicant father.

The complainant alleged that the judge's conduct was improper and unprofessional. She said that the judge was rude, arrogant and condescending in his treatment of her. She offered as examples the following:

- ◆ The judge did not allow her to apologize for being late but immediately scolded her and commented: "well you don't show up late for court and get other people to drop your kids off at school when you're scheduled in court, it's not an excuse."
- ◆ Her lawyer was arguing with the judge but hardly getting a word in.
- ◆ When the complainant attempted to explain that the child was anxious and was being assessed by a doctor, the judge again scolded her and insulted her by saying that she, as her mother, should know why her child was anxious. The judge theorized: "the anxiety is coming from you and you not getting along with the biological father."
- ◆ The judge blamed her for the five years of litigation, pointing to the box of documents and telling her that it was shameful it had gone on for so long.
- ◆ The judge told the Applicant father to be careful of her because it was clear she wished he would just disappear and that she had no respect for him as a father.

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- ◆ She was never given the chance to prove that she felt her daughter was blessed to know her biological father, and that she only wanted what was best for the child; the judge simply made a conclusion and an assumption of who she was without giving her a standing chance to prove otherwise; his actions were completely biased.
- ◆ The judge scolded her for firing her lawyer and rehiring her two days before the Settlement Conference and never allowed her the opportunity to explain why.
- ◆ The judge asked both the Applicant and the Respondent what each wanted for Christmas access, expressed an opinion, and then asked the Applicant what he wanted and gave it to him.
- ◆ The judge berated her lawyer and sarcastically asked her how long she had been practising family law and told her to get her facts straight.
- ◆ The judge accused her lawyer of not knowing her material or being prepared and said to her: “nice to see that you read through the paperwork”.
- ◆ After many condescending, sarcastic remarks and insults, the judge made a final order, stating he saw no reason why not to.
- ◆ When the opposing lawyer brought up the fact that the mother could subsequently return the matter to the court in another jurisdiction, and she confirmed she did not wish the matter to remain in the present jurisdiction, the opposing lawyer commented: “that’s because she doesn’t like you, your honour;” the judge smiled at her and included in the endorsement that the present court would at this time retain jurisdiction.
- ◆ The judge ordered that on long weekends, the child would be with her father and wouldn’t be going to church; the complainant found this comment to be disrespectful as the judge should have ordered that the child go to church as she does every Sunday with her family.
- ◆ The judge gave the Applicant more than he was asking for.

The complainant concluded: “I feel that I have been disrespected, insulted, unheard and bullied by the judge. A judge should be an unbiased adjudicator between two opposing views making determination based on the facts and arguments on both sides. The way he treated me was rude, arrogant and condescending.”

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The investigating complaint subcommittee read the letter from the complainant and the transcript of the Settlement Conference that gave rise to the complaint.

The panel observed that the court record showed that the judge was very proactive in successfully bringing to a conclusion a matter that had been before the courts for many years.

Most of the issues had been resolved excepting the issue of Christmas access, summer access, the return time following access on Sundays evenings, and whether or not access should be extended to Monday evening on statutory holidays, The Respondent mother had also recently moved and not provided full information about a new address and school to the Applicant father.

The panel observed that the transcript showed that the judge was curt with the complainant when she arrived 50 minutes late to the conference. The panel noted that he should have allowed her an opportunity to explain her lateness. He did question her as to why she had re-hired her previous lawyer only days before the scheduled conference, meaning that there was no lawyer with whom the opposing counsel could negotiate with.

The complainant's lawyer had already asked, on behalf of her client, that the father's access time be reduced and not overnight pending completion of a psychological assessment of the child's reported anxiety. The child was on a waiting list to see further professionals.

The panel noted that the judge correctly questioned this rationale for limiting the father's access. He expressed his view that the mother's request to limit access "for a couple of months until a report was received" was inappropriate. He theorized that the child's anxiety might be caused by emotional upheaval and disruption resulting from the conflict between the parties. He suggested that if the parties resolved all outstanding issues and "made peace" then the child might be at peace as well.

The panel noted that the judge did not place blame solely on the complainant for the length of the litigation. He looked to both parties to explain why the matter had taken so long, and urged them to finally resolve the matter for the sake of their child.

The judge did impress upon the Respondent mother that he would likely place the biological father's right to access first over deference to the routine of the mother, her present spouse and their children to prepare for a Sunday evening church service. Later

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on he asked the Applicant father to concede on the issue of returning the child later on Sundays because it seemed important to the complainant and her family that they all get ready for church and go together. The Respondent agreed.

Some discussion took place regarding Christmas plans. The judge asked each party to confirm their preferences and asked which day was the most important day for each family to celebrate. He expressed his view that attempting to split the holiday on Christmas Day often led to difficulties and asked them to think about the potential for disappointment and a ruined holiday because of that arrangement. He asked them to think about the child's interests first and suggested the child could enjoy two separate Christmas celebrations over the full holiday period from school. The final order made by the judge reflected his view regarding a reasonable sharing of the Christmas holiday. The review panel noted that he had the discretion to do so.

The panel observed that the judge expressed concern that the mother was connecting the child's anxiety and reported aggression at school to her impression the child did not want to go back and forth on access visits. He impressed upon her that suggestion the access be cut back was not helpful to overall settlement and "sent a negative message" to the other party that he had a less important role in the child's life.

He encouraged both parties to try to make peace with each other rather than make matters worse. He suggested that to do that each party would need to compromise and be fair to the other. He was firm and direct in expressing his concern that the matter had gone on for far too long and needed to end for the sake of the child. He suggested that the most appropriate thing to do would be to make a final order that could be varied by either party in the future if a material change occurred.

The transcript showed that the judge commended the complainant on getting professional help for the child but expressed concern it might be too long to wait for professionals to provide opinions about the child's anxiety. He opined that the present access schedule was not very intrusive, with very few changes over the course of a week.

The judge again commended both parties on having the ability to adjourn the court proceeding and resolve some issues themselves. He cited as important examples the agreed upon change to the pick-up location, the proper use by both parties of a communication book, and the fact they were not arguing or disagreeing about matters in the presence of the child.

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The judge discussed summer holidays with the parties. The judge provided reasons why he deemed it reasonable that the parties simply divide the summer into two weeks periods with each parent commencing on a future date.

The panel found that the court record confirmed that the judge berated the Respondent's solicitor for improperly asking for an order that the parties speak civilly to each other. He complimented the parties that such a clause was unnecessary in their case. He also refused to include a police assistance clause as requested by the Respondent.

The parties discussed the jurisdiction issue as the complainant had only recently re-located to a different jurisdiction. The transcript showed that it was the Respondent's lawyer who commented "they don't like me in (redacted name of other court location)." The judge heard submissions on the issue and determined that the present court would retain jurisdiction over the matter until a future date. He felt it appropriate that the court that knew the parties well should retain jurisdiction.

The review panel found that in the context of trying to resolve the case, the court record showed that the judge was curt, blunt, and critical at times, but he directed his comments to both parties. At times, the judge resorted to sarcasm in an effort to bring about a resolution. The panel observed that candid discussion, open expression of judicial opinion about various issues, and the crafting of meaningful settlements involving compromise by both parties, are all part of the dynamics of a successful family Settlement Conference. The panel noted that the judge in this matter had discretion to make a final order as notice had been given by the Respondent that a final order was being sought. He did so but only after both parties had been asked to compromise on various issues.

The review panel observed that the complainant may be unhappy with the outcome of the Conference and the terms of the final order that was made. The panel noted that those matters involve judicial decision-making and could be the subject matter of an appeal but are not within the jurisdiction of the Council.

The review panel concluded there was no judicial misconduct and dismissed this complaint and closed the file.

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### **CASE NO. 18-018/12**

The complainant was the Respondent in a custody/access and jurisdictional dispute with his ex-spouse regarding their two children. The Applicant mother had obtained a temporary without prejudice order without notice to the complainant, granting her custody of the children. He was to have no access pending a further court order. A temporary restraining order was also made prohibiting certain forms of contact between the parties. The matter was to return to court on the date when the temporary orders would expire.

The return of the matter had to be re-scheduled due to court scheduling difficulties. The judge was advised that the complainant had commenced a custody proceeding in another country and a Hague application seeking the return of the children to that country. He had just retained a lawyer to represent him in the Hague application who was unavailable until a future date. He sought an adjournment of the mother's application to a date after the completion of the Hague application. The judge made a further temporary without prejudice order that the Respondent mother would have custody of the children. She granted the complainant supervised access to the children under certain terms. The restraining order was vacated and an order made that the parties only communicate by email and not be within 100 metres of each other's address pending the next court date.

On the next return date both parties appeared without counsel. The complainant advised the court that his Hague application had been commenced in the Superior Court of Justice. There were no filed materials from the complainant before the court. The matter was adjourned.

The complainant alleged that the judge's conduct was "rude and dismissive" of him throughout both attendances before her. He said that the judge made him feel bullied and not worthy of her attention or consideration. He also alleged that the judge showed, by her behaviour, that she viewed the complainant to be unworthy of her attention and that she clearly favoured counsel for the Applicant mother. He alleged that the judge showed complete disregard for the *Principles of Judicial Office*.

With respect to one date, the complainant alleged that the judge:

- 1) Refused to consider his argument that the previous order had expired and dismissed his position without consideration;

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- 2) Inappropriately instructed the complainant to bring the Hague application in the Ontario Court of Justice and bullied him into thinking it should be brought there;
- 3) Rudely responded to him when he asked for clarification about a question she had asked of him;
- 4) Favoured the opposing lawyer and made inappropriate remarks about the complainant retaining counsel and devalued his ability to negotiate with his spouse's lawyer himself; and,
- 5) Belittled him and tried to embarrass him when he asked why her "halfway point" between the Applicant's request for access was not a true midway position;

With respect to the second proceeding, he alleged that the judge:

- 1) Continually cut him off and chastised him that he had not yet filed his Hague application despite the fact that she was aware his solicitor had only returned to work two days before that court date. She was unreasonable in her attitude and was not considering facts;
- 2) Berated him and incorrectly blamed him for continually requesting adjournments when he did not request a single adjournment;
- 3) Refused to listen to his arguments that he could bring the application in Superior Court of Justice and was wrong in law on the issue; and,
- 4) Refused to allow him to make any statements about the Hague application, misinterpreted the law and dismissed his position on the matter.

The complaint subcommittee reviewed the letter from the complainant and the transcripts of the court proceedings. The subcommittee provided a report to the review panel on its investigation.

The review panel read the complainant's letter, the subcommittee's report and the two transcripts. The panel found that the record showed that the judge was polite, engaged and professional to both parties throughout both court attendances. There was no evidence in the record that she berated or bullied the complainant. The panel noted that she was firm when the complainant interrupted her or spoke out of turn. This was not misconduct. A presiding judge has the responsibility to control the court process. The

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panel found no instances during which she belittled him or made inappropriate remarks about him or the positions which he put forward.

The review panel observed that the transcript showed that during the first court appearance, the judge was concerned that the complainant should have appropriate access to his children. She raised the issue of access pending adjournment, and was prepared to make an order despite the fact the complainant had not filed materials. She explained to both parties that a number of factors would be considered by the court when hearing of The Hague application, and expressed her opinion that such an application should be heard in the Ontario Court of Justice. She explained that she could not determine credibility as no materials had been filed by either party on the issue of access and pre-existing arrangements, but then invited the parties to attempt to negotiate a temporary arrangement pending the next court date. When the parties were unable to agree, Her Honour determined an arrangement that she considered to be in the children's best interests. The transcript showed that she did not state she would "split the access down the middle" between the two proposed schedules, but stated she would "saw it off" and ordered access three times a week. She agreed that her order was not a true mid-way point between the two proposals. The panel noted that it was within her discretion to order terms that she deemed appropriate. She expressed hope that the complainant, once he had legal representation and had filed materials, could negotiate more complete terms of access. The transcript showed that Her Honour was patient with the complainant despite his interruptions but she did warn him to stop.

The panel observed that the transcript showed that at the second court appearance, the judge asked about the status of the complainant's Hague application and confirmed that his new lawyer had all of the relevant information from the court file. She expressed concern that no notice of the application had yet been received. Both parties agreed that the matter be further adjourned.

The panel found that there was no evidence that the judge was rude, dismissive or that her conduct was bullying. There was no evidence that Her Honour demonstrated complete disregard for the *Principles of Judicial Office*, or that she viewed the complainant to be unworthy of her attention or that she favoured the opposing party.

With respect to allegations raised by the complainant about the judge's interpretation of

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the law and her decisions on particular matters in the case, the panel noted that these were matters of judicial decision-making which are outside of the jurisdiction of the Council. The Council has no discretion to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint without further investigation if it falls outside of the Judicial Council's jurisdiction.

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

#### **CASE NO. 18-019/13**

This complaint involved a criminal case where the complainant's former partner and father of her younger children was charged with threatening death and breach of an undertaking. On both charges, the complainant was the alleged victim. The complainant suggested that she was denied a fair or impartial hearing.

The particulars of the complaint included:

- ◆ An allegation that the judge allowed the defence counsel to badger her.
- ◆ An allegation that the judge used the fact that she had complained to the Law Society of Upper Canada about the defendant's family law lawyer against her.
- ◆ An allegation that the judge used the fact that she was self-represented in the family law case against her.
- ◆ An allegation that the judge said she was "ludicrous for believing I was in danger" and made her out to be unreasonable for being in fear.
- ◆ An allegation that the judge used the accused's demeanour in court and that people shouldn't be judged by their ability to appear meek and mild.
- ◆ An allegation that the judge used "*W.D.*" as a reference for his decision, ignored the Crown Attorney's strong case and "allowed the truth to fail."

The complaint subcommittee requested and received transcripts of the trial. Following its investigation, the subcommittee prepared a report and submitted it to a review panel. The review panel reviewed the transcript of the judge's reasons for judgment, the complainant's letter, and the subcommittee's report.

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The review panel found that that transcript showed that the complainant didn't like being asked questions about certain things, including her affidavits in the family court proceedings. However, the review panel did not find that there was support for the allegation that manner in which she was questioned appeared to be badgering.

The review panel noted that the review of the judgment showed that the judge, in reviewing the cross-examination of the complainant, did refer to the fact that she complained to the Law Society of Upper Canada about the defendant's lawyer. He noted it as an example of her heightened sensitivities and taking less than thoughtful action. On the point of whether the judge "used this evidence against her", as alleged, the panel noted that a trial judge is responsible for assessing the facts and drawing his or her own conclusions and a judge's decisions on the facts relate to matters of law outside of the jurisdiction of the Judicial Council, rather than matters of conduct.

With regard to the allegation that the judge basically used the fact that the complainant was self-represented in the family law case against her, the transcript of the judgment revealed that he specifically did not do this. The judge noted that it was unfortunate that the complainant didn't have a lawyer to help guide her through the family case but he specifically stated that he made no comments about the fact that you did not because he didn't know why she did not have a lawyer.

With regard to the allegation that the judge said she was "ludicrous for believing I was in danger" and made her out to be unreasonable for being in fear, the review panel observed that the complainant may be referring to the evidence about her fear that she would be rammed off of a bridge. The transcript showed that rather than saying it was ludicrous, the judge rationalized in a reasonably kind way why the complainant perceived the things she reported.

In regard to the allegation that the judge used the accused's demeanour in court and the complainant's assertion that people shouldn't be judged by their ability to appear meek and mild, the panel noted that the judge did refer to the defendant's demeanour in this way but he specifically discounted this as a way of judging credibility.

With regard to the allegation that the judge used "W.D." as a reference for his decision, ignored the Crown's strong case and "allowed the truth to fail", the subcommittee observed that the case *R. v. W.(D.)*, [1991] 1 S.C.R. 742 is a decision of the Supreme Court of Canada on assessing guilt based on the credibility of witnesses in a criminal trial. It is a case judges

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are required to use in assessing credibility. As well, the panel noted that making the findings of credibility was a responsibility entirely within his jurisdiction as a trial judge.

The review panel concluded that, as noted above, their investigation showed that some aspects of the complainant's allegations about the conduct of the judge were unfounded. In all remaining respects, the panel concluded that the complaint was about matters concerning evidence and findings of fact. These were matters within the jurisdiction of an appeal court to consider and not within the jurisdiction of the Ontario Judicial Council. The review panel dismissed this complaint and closed the file.

### ***CASE NO. 18-020/13***

The complainant was an Aboriginal woman from a First Nations community. She attended court in support of witnesses at a criminal trial. She was also present to offer the witnesses the use of a sacred Eagle feather in affirming the truth. She indicated in her letter that the Eagle feather was held sacred among her people. Initially, the judge would not permit the witness to affirm that she would tell the truth using the Eagle feather. After receiving information about the practice from the Crown Attorney, the judge permitted the witness to use the Eagle feather to affirm the truth.

The complaint stated:

- 1) The Eagle feather is not acknowledged in the criminal and federal courts as sacred or binding as an oath.
- 2) The act of taking the oath under the Eagle feather should not be the subject of legal argument every time a First Nations member is asked to take an oath to tell the truth.
- 3) It is a travesty that this issue should even arise and receive an insensitive response to a basic human right of the First Nations people.

The complaints subcommittee considered the complainant's letter and submitted a report to a review panel.

The review panel reviewed the complainant's letter and the subcommittee's report. The review panel requested that a transcript be ordered of the portions of the court proceeding

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dealing with the discussions of the swearing of the witness. The transcript was ordered and reviewed by the review panel.

The panel observed from the transcript that the judge was respectful even though he had never encountered a situation in which a witness wished to use an Eagle's feather when sworn in. The issue was canvassed, the law was sought, submissions were made and the judge allowed the witness to be sworn with the feather.

The panel determined that the focus of the complaint was that the judge had no knowledge of the sacred practice of swearing a witness in with the Eagle's feather. The panel noted that in a situation where the judge was not familiar with the practice, he took appropriate steps to understand it and did make a decision that to allow the witness to be sworn in by the Eagle feather in accordance with the witness's beliefs. The panel concluded that the judge acted appropriately and noted that the Council's jurisdiction is limited to the review of the conduct of judges. The requirements for swearing or affirming the truth were matters of law and procedure that were outside of the jurisdiction of the Ontario Judicial Council.

The review panel dismissed this complaint as out of its jurisdiction and closed the file.

The review panel informed the Chair of the Education Secretariat for the Ontario Court of Justice that it appeared that not all judges were aware of the practice of the First Nations people of using the Eagle feather to affirm the truth in court, and of the importance of the practice to the First Nations people. The panel suggested to the Chair that the topic might be considered for inclusion in a future education program.

### **CASE NO. 18-021/13**

The complainant appeared before the subject judge for a trial on a charge of sexual assault. The judge found the complainant guilty and sentenced him to 45 days jail, probation and she issued a weapons prohibition for ten years. He successfully appealed and was subsequently convicted and sentenced by another judge after a second trial. This complaint related to his allegations about the first trial judge.

The complainant alleged that:

- ◆ His human rights were compromised. The complainant commented that he felt that he was unjustly sentenced for something he did not do. He believed that his human

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rights were compromised - he lost his job, he could not find another one, and he could not get a passport so he could not attend his sons' soccer games or take his family on a trip;

- ♦ The judge was openly obvious about her dislike of his lawyer throughout the entire trial. She continuously rolled her eyes and was sarcastic with him throughout; and,
- ♦ The judge gave her judgment the same day that the trial ended, and in doing so she did not follow the three steps set out in the Supreme Court of Canada decision in *R. v. W.(D.)*, (a decision which guides judges on how to analyze evidence in cases where there are competing versions of the events). On this basis, he had successfully appealed and been granted a second trial.

The Registrar, on behalf of the Council, wrote to the complainant to explain the jurisdiction of the Council and that the Council could not change the decision in his case.

The complaints subcommittee ordered and reviewed the transcripts of the trial, submissions and sentencing. One member of the subcommittee listened to the audiotape of defence counsel's submissions because this was where the most interactive dialogue took place between the judge and defence counsel. The audiotape revealed that the judge was polite and professional. When the subcommittee concluded their investigation, they submitted a report to the review panel.

The review panel reviewed the complainant's letter of complaint, the subcommittee's report and the transcript of the submissions before the subject judge.

The review panel noted that there was nothing in the transcript to suggest that the judge was anything but professional throughout. There was nothing to suggest that the judge disliked the complainant's lawyer. The panel observed that the judge was anxious to obtain an accurate record of the evidence and there was extensive discussion about getting the audiotape to listen to before some submissions could be made. While the transcript did not permit the review panel to comment on the allegation that the judge continuously rolled her eyes, the panel noted that there was nothing in the transcript to suggest that the judge ever spoke sarcastically to defence counsel.

With respect to the allegation that the sentence had resulted in a violation of the complainant's human rights, the review panel noted that the sentence imposed and impacts resulting from it related to matters of law that were outside of the jurisdiction of the Council.

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Finally, in the review panel's opinion, the judge was entitled to render her decision on the same day after hearing submissions. The fact that she did not follow the steps in *R. v. W.(D)*. was a matter of law that was the subject of the appeal which resulted in a new trial. It was a matter beyond the jurisdiction of the Council.

For the reasons noted, the review panel dismissed this complaint and closed the file.

### **CASE NO. 18-022/13**

The complainant was convicted by a justice of the peace at a trial on a charge of speeding. His appeal of the conviction was heard by the subject judge. The complainant alleged that the appeal judge shouted at him and that he was biased by his friendship with the judicial officer who conducted the trial. He alleged that the judge said he knew the justice of the peace personally and trusted his judgment. He alleged that he told the judge that the appeal cost him \$150 for a transcript and that the police officer made numerous errors in his testimony and the judge chose to brush the whole issue off. The complainant said that he told the judge he was running a kangaroo court and that the judge started shouting at him. The complainant said he then asked the judge not to yell at him, the proceeding ended there, and he packed up and left the courtroom.

He set out the facts of the incident that led to the charge and said that the officer made a number of errors at the trial. He enclosed the transcript of the trial, and stated that he had issues noted on it that he had intended to raise at the appeal that never happened.

The letter of complaint and the transcript and audio recording of the appeal proceedings were ordered and reviewed by the subcommittee. Following their investigation they submitted a report to a review panel.

The review panel reviewed the complainant's letter, the appeal transcript and the review panel's report to them. The review panel noted that the appeal transcript showed that the complainant took strong exception to being convicted and maintained that the justice of the peace had erred by not accepting his evidence given at trial. The subject judge advised that he had read the trial transcript and reviewed the ten pages of reasons given by the justice of the peace. The judge noted that the trial was held before an extremely experienced justice of the peace who gave a lengthy explanation of the reasons for his conclusion at the end of the trial. The review panel also noted the complainant appeared

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to conclude from that comment that the subject judge was a friend of the justice of the peace and that he ruled against the complainant solely because of that friendship. The panel observed that the evidence was contrary to the conclusion of the complainant. The transcript showed that the judge was simply pointing out to the complainant that the justice of the peace considered all of his arguments carefully and gave fulsome reasons for dismissing them and entering a conviction. The panel found no evidence of bias or of judicial misconduct by the subject judge in making those observations.

The review panel observed that the complainant, following this exchange, the complainant had objected that the justice of the peace had not been at the scene of the incident, and the judge explained that courts do not deal with matters on that basis. Following this exchange, the complainant told the judge that he found the appellate court to be a “kangaroo court”. The judge became upset at this characterization and raised his voice to the complainant and forcefully said the following:

“Judge: Just because he had a difference of opinion, you are not coming before me and telling me....

(Complainant): Don’t get angry with me, please.

Judge: You are not coming before me and telling me that our court system is a mockery. Shame on you for saying that.”

Immediately after this exchange, the judge lowered his voice and continued in a calm and measured manner.

In the review panel’s opinion, the words of the complainant were insulting to the court and amounted to a contempt of court. The panel observed that the transcript showed that the judge did not allow this to detract him from hearing the appeal. The appeal proceeding did not end there, as alleged by the complainant. The transcript showed that the complainant then argued that the police officer’s testimony was not close to what had happened. He also argued that he was not treated fairly at the trial.

The judge delivered oral reasons which directly addressed the issues raised by the complainant and found that there was no error in law made by the justice of the peace. The review panel found there was no judicial misconduct on the part of the judge and dismissed this complaint as unfounded.

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With respect to the complainant's disagreement with the outcome of his trial, the review panel noted that was a matter of judicial decision-making outside of the jurisdiction of the Council.

### **CASE NO. 19-001/13**

The complainant filed a complaint about the judge who presided over her daughter's trial on a charge of public mischief. The daughter had alleged that a male party had sexually assaulted her. The girl was found not guilty of the offence of public mischief. However, the complainant alleged that the judge showed a lack of integrity and impartiality, that the judge made inappropriate comments and that the judge showed complete insensitivity during her daughter's trial. The complainant stated that the judge deliberately went out of her way to insult, degrade, demean and bully her daughter in her closing comments. The complainant stated further that friends and family were at the trial and they were disgusted by the judge's negative statements about her daughter. She indicated that people made comments to her about the judge's obvious bias toward police, the Crown Attorney and the male accused of sexual assault, and they said that they would never voluntarily contact police after seeing what was done to a young rape victim.

She disagreed with the judge's conclusion that sexual intercourse was consensual. She said that the accused had repeatedly changed his story of when and where he obtained consent, and she alleged that bias on the part of the judge tainted the trial; and the conclusion of consent could not have been reached without bias or outside influence. The complainant also objected that even though the judge found that the accused told the truth, she also picked which of his stories she would believe. The complainant questioned how the judge could decide the truth given that there were contradictions.

The complainant further stated that the judge praised the police, even though some interviews with her daughter were disallowed due to violations of the *Charter* and the *Youth Criminal Justice Act*.

The complaints subcommittee reviewed the letter of complaint and ordered and reviewed the transcripts of the trial held on two dates. The subcommittee also ordered and reviewed the transcript of the further submissions and the judge's decision on a subsequent date. Following the completion of their investigation, the complaints subcommittee submitted a report to a review panel.

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The review panel reviewed the letter of complaint, the complaint subcommittee's report and the transcript of the judge's Reasons for Judgment.

The panel observed that the transcript showed that the judge commended the police for investigating the matter thoroughly and obtaining a production order to obtain certain evidence. The review panel found that there was nothing inappropriate in Her Honour's comment commending the police for a thorough investigation and for obtaining a production order. Her comments were based upon the evidence before her during the trial. With respect to the complainant's information that evidence was not allowed as a result of violations of the *Charter* and the *Youth Criminal Justice Act* and that the Crown Attorney only entered one interview of her daughter into evidence, the review panel noted that the Crown Attorney has the authority to determine what evidence he or she will put forward in a case.

After its review, the panel found that the investigation showed that the judge made no inappropriate comments. During the trial the judge was very quiet, only interrupting when she did not hear something or she needed clarification. After reviewing the results of the investigation, the review panel found that there was no basis to the allegation that the judge showed complete insensitivity during the girl's trial. Nor was there evidence to support the allegation that the judge went deliberately out of her way to insult, degrade, demean and bully the girl in her judgment. There was nothing in the record that demonstrated that the judge showed a lack of integrity or impartiality or that outside influences impacted on her judgment.

With respect to the complainant's allegation that the judge appeared to pick and choose which parts of a witness' testimony she believed, and the complainant's disagreement with the judge's conclusions about the evidence, the panel noted that decisions by a judge on the evidence are matters of judicial discretion and judicial decision-making which are outside of the jurisdiction of the Council. The Council has no discretion to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint without further investigation if it falls outside of the Judicial Council's jurisdiction.

The review panel found that there was no evidence of misconduct by the judge and dismissed this complaint and closed the file.

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### **CASE NO. 19-002/13**

The complainant was involved in a high conflict family law proceeding before the judge.

At one appearance, the judge dealt with the issue of costs and heard the mother's motion which requested, among other things, an order that the father be precluded from further participation in the proceedings. The mother also asked that he be precluded from making submissions on costs (which was not granted by the judge). The complainant made many allegations regarding the judge's conduct on two occasions.

The complaints subcommittee reviewed the letter of complaint and a transcript which was included with the letter. The subcommittee ordered and reviewed the transcripts of the two appearances before the judge. They also ordered the audio recordings, and a member of the subcommittee listened to them. Following their investigation the subcommittee submitted a report to a review panel.

The review panel reviewed the complainant's letter and a report from the complaint subcommittee that included quotes from the transcripts.

The review panel made the following findings in relation to the complainant's allegations:

- 1) The judge demonstrated prejudice against him:

The review panel noted that this was a general allegation without any details or basis to support it. The review panel found that the investigation showed that there was no evidence of any prejudice on the part of the judge.

- 2) The judge verified discussions during a settlement conference would be "taboo" and then allowed the mother's counsel to use those discussions in argument:

The review panel noted that investigation showed that when the applicant's counsel started to indicate what another judge had said during a settlement conference, the judge advised that discussions during a settlement conference were taboo. Her Honour asked for submissions regarding any informal or formal offers to settle. When the applicant's counsel indicated what offer to settle was presented by the applicant at the settlement conference, the judge did not object (and

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neither did the complainant's counsel). The panel noted that reference to offers to settle is not prohibited in the context of a costs motion:

- 3) The judge allowed argument by the mother's counsel but refused to hear from the father's counsel on issues related to credibility:

The review panel determined that the investigation showed that the judge did not refuse to hear from the father's counsel, who spoke at length during the proceeding. The panel concluded that this allegation was unsupported by the record.

- 4) The judge indicated that joint custody and shared custody are interchangeable terms and stated that the father was being "anal" about his concern that the mother was using the terms interchangeably in the proposed minutes of settlement:

The review panel noted that the transcript showed that original wording during the proceedings was "joint custody" and the mother changed it to "joint and shared custody" in the proposed Minutes of Settlement. The father objected. The review panel noted that the transcript showed that the judge did say that the complainant was being anal about the use of the terms. However, the panel also observed that this was in the context of trying to have the complainant accept that there is no legal difference between the terms "joint custody" and "joint and shared custody". The judge explained in the context of the proceedings, the meaning of the legal terms. The panel found this was not misconduct.

- 5) The judge verbally assaulted the complainant's counsel by yelling unwarranted, demeaning and belittling accusations, going so far as to accuse the lawyer of being the complainant's puppet:

The review panel noted that the review by the subcommittee member of the audio recording showed at no time did the judge "yell" during the proceeding. The judge stressed her words for emphasis at times, but at no time did she raise her voice. The panel observed that the transcript showed that she did make remarks about the lawyer being like a puppet of his client. While the panel noted that some of Her Honour's comments could be perceived as rude, the comments had to be viewed in the

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circumstances of this case. The investigation showed that the judge showed considerable patience and was trying to focus the complainant and his ex-wife on the issues that needed to be resolved, and to help to resolve the conflict in the best interests of the children. The panel found that this was not misconduct on the part of Her Honour.

- 6) The judge verbally assaulted the father by yelling unwarranted, demeaning and defamatory accusations at him, including her conclusion that defending himself against the accusations was “nonsense” and there were “psychological problems” with him:

As noted above, the panel noted that the investigation showed that the audio recording showed that the judge at no time “yelled” at the complainant.

On the date referred to by the complainant, in her reasons for her ruling, the judge was explaining to the parties how important it was for the sake of the children that the parties take the bigger view of the situation rather than focus on petty details. She was observing that if the complainant was so unable to do so, it may be indicative of larger problems on his part that may require counselling. The panel noted that some comments by Her Honour could be perceived to be rude but concluded that the comments had to be viewed in the circumstances of this case. The judge was trying to focus the complainant and his exwife on the issues that needed to be resolved and to resolve the conflict. The panel found that this was not misconduct on the part of Her Honour.

The complainant also alleged that the judge did not allow a fair and equitable hearing of both parties. With respect to those allegations, the review panel found as follows:

- 1) Her Honour summarily dismissed his affidavit responding to the Applicant’s motion with the statement, and said he was petty:

The review panel noted that the judge’s decision regarding what weight to give a particular affidavit was not a question of judicial conduct but of law, and thus outside of the jurisdiction of the Ontario Judicial Council. The Council has no discretion to act on complaints that do not fall within

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its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint without further investigation if it falls outside of the Judicial Council's jurisdiction.

- 2) The Applicant's affidavit contained a number of false accusations against him. The documentation and recorded actions leading up to a particular date demonstrate beyond a reasonable doubt the actions of Her Honour were prejudicial towards him, improper and unprofessional:

The review panel noted that the complainant's reference to the contents of the Applicant's affidavit and Her Honour's assessment of the evidence were not allegations of judicial misconduct. The review panel found that these related to matters of judicial decision-making which are outside of the jurisdiction of the Council. The Council has no discretion to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint without further investigation if it falls outside of the Judicial Council's jurisdiction.

- 3) The judge's order for him to falsify Government of Canada documents was totally unwarranted. Despite presenting fully completed passport applications in court as required by the order, Her Honour refused to consider them, changed the requirements of that order and forced him under threat of contempt to apply his signature to falsely swear to the truthfulness of two blank passport applications for the children:

The review panel noted that the investigation showed that both parties prepared passports applications for the children listing themselves as the "applicant" and asking the other party to sign as "other parent." Neither party would sign as the "other parent", so the passport issue was before the subject judge. The judge acknowledged that the order did not specifically direct the father to sign the mother's application; however, she noted that he ought to have followed the spirit of the order and signed the application given that the children resided with their mother. The judge ordered the complainant to sign blank passport applications, which he did. In so signing, according to the wording of the application, the father would be declaring that that child was

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a Canadian citizen, he was the parent and the statements made in the application were true. In the opinion of the review panel, signing the blank passport application did not constitute the falsification of a document, as alleged. The children were Canadian citizens and he was a parent. The information to be filled in was undisputed: name, address, description of the children, etc. Furthermore, the mother had already provided the complainant with completed applications; the complainant did not bring them with him to the proceeding, resulting in the judge ordering him to sign the blank forms that were there, so that the passports for the children could be obtained. The review panel noted that this was not judicial misconduct.

The review panel noted that the complainant acknowledged in his letter that the judge went to great lengths to explain how the law and her role in family law were to protect the best interests of the children. The investigation showed the comments by Her Honour about which you raised concerns were in relation to the complainant's actions in relation to particular matters in the proceeding (such as the joint versus joint and shared custody issue, and obtaining passports for the children) and her efforts to get resolution on some of the issues. The panel could see that she was frustrated with the complainant's continued focus on his dispute with the mother, rather than focusing on the best interests of the children.

The complainant alleged that the judge disregarded her own words and then defamed him, and destroyed his character. The panel found that there was no support for these allegations.

With respect to an allegation by the complainant that the judge imposed financial burdens on him he could not meet, the panel noted that a judge's decisions on costs, child support and section 7 awards related to decisions made in the course of Her Honour's duties, not allegations of judicial misconduct. These were matters of judicial decision-making which were outside of the jurisdiction of the Council. The Council has no discretion to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint without further investigation if it falls outside of the Judicial Council's jurisdiction.

For all the reasons noted, the review panel dismissed this complaint and closed the file.

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#### **CASE NO. 19-003/13**

The complainant was a defendant in an Assessment Hearing and was concerned that a judgment was issued against him in his absence. He filed a complaint about the judge who issued the judgment.

The complaints subcommittee ordered and reviewed the contents of the court file, as well as the judge's Endorsement relating to this matter. When the subcommittee completed the investigation, they submitted a report to the review panel.

The review panel reviewed the letter of complaint, the judge's Endorsement and the subcommittee's report. The review panel noted that the complainant's disagreement with the judgment made by the judge in his absence related to a decision made in the course of the judge's duties, not allegations of judicial misconduct. This was a matter of judicial decision-making which was outside of the jurisdiction of the Council. The Council has no discretion to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint without further investigation if it falls outside of the Judicial Council's jurisdiction. The review panel dismissed the complaint as outside of its jurisdiction and closed the file.

#### **CASE NO. 19-004/13**

The complainant wrote to the Council about his criminal trial before the judge. He included facts about the case and diagrams of the area where the offence took place. He alleged unnecessary and unwarranted police harassment and targeting. He complained about the quality of the legal representation he received. He also provided a description of the evidence at his trial on a charge of refusing a breathalyzer. He indicated that the judge, reading out his decision, announced out loud (while smiling at the young female officer) that he knew the officer was telling the truth by the look on her face when asked a question by the defence lawyer. He alleged that this comment alone should have been grounds for a mistrial and for disqualification of this judge from this trial or any other. The judge found the complainant guilty and sentenced him to a period in jail which the complainant alleged was "justified by digging up two ancient bogus convictions to tack on to the "evidence".

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The complainant stated that, “Any judge who claims that he/she can tell if a person is telling the truth by the look on his/her face should not be sitting as a judge.”

Upon receipt of the complaint, the Council wrote to the complainant advising him that the Council has no jurisdiction to review the conduct of the police or of lawyers, and information was provided to him regarding the appropriate offices where he could pursue those concerns.

The complaint subcommittee reviewed the correspondence from the complainant, the transcript of the trial and the judge’s Reasons for Judgment and Reasons for Sentence. The subcommittee provided a report on its investigation to the review panel.

The review panel reviewed the initial letter from the complainant and the enclosures sent with it, the transcript of the Reasons for Judgment and the report from the complaint subcommittee.

The panel found that the investigation showed that the judge made no inappropriate comments. The panel noted that in his complaint, the complainant expressed his disagreement with how the judge assessed the evidence and decided the case. The panel found that the allegations related to matters of judicial decision-making which are outside of the jurisdiction of the Council, not matter of judicial misconduct. The Council has no discretion to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint without further investigation if it falls outside of the Judicial Council’s jurisdiction. The review panel dismissed the complaint as outside of its jurisdiction and closed the file.

### **CASE NO. 19-005/13**

The complainant was a justice of the peace who rendered a decision in a Provincial Offences trial on charges under the *Highway Traffic Act*.

The complainant’s decision was appealed and heard by the subject judge. The appeal was granted and acquittals were entered on the charges which were appealed.

The complainant stated in his letter to the Judicial Council that the judge’s judgment on appeal was not forwarded to him and he learned of the appeal decision through a third party. He indicated that there were other persons who had read the trial transcript and

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who did not conclude that the trial had been unfair. As well, the complainant had been made aware by others of an error in law that he had made during the trial that could have led to a different result in the trial. That error in law was not referenced by the appeal judge in her reasons for overturning the convictions.

He stated that the reasons of the appeal judge shocked him. His view was that the criticism of him was direct, personal and unrestrained. He believed that it could only be read as a finding that he displayed appalling bias, breached his oath of office and deliberately ignored the law. He indicated that the reasons embarrassed and disheartened him, and he felt that the results must have been intended. He also referenced a commentary in the Canadian Judicial Council's *Ethical Principles for Judges* which state:

It is, of course, often necessary for judges to make findings of credibility and to rule on the propriety of others' conduct. However, judges should avoid making comments about persons who are not before the court unless it is for the proper disposition of the case. For example, irrelevant or otherwise unnecessary comments in judgments about a person's conduct or motives ought to be avoided.

The complaints subcommittee ordered the transcript of the trial held before the complainant and the transcript of the lawyers' submissions and his Reasons for Judgment. As well, the subcommittee ordered and reviewed the transcript of the appeal proceeding and the judge's Reasons for Judgment. Following its investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed the complainant's letter, the transcript of the lawyers' submissions and the complainant's Reasons for Judgment, and the transcript of the appeal proceedings and Reasons for Judgment of the judge.

With respect to the complainant's comments on the trial over which he had presided, whether there was an error in law that could have been referenced by the appeal judge which was not mentioned as a reason for overturning the convictions, and the reasons that were provided by the appeal judge, the review panel noted that these constituted disagreement with how the appeal judge assessed and determined the matter being appealed before her.

With respect to the reference by the complainant to the *Ethical Principles for Judges*, the panel noted that the *Commentaries on Judicial Conduct* issued by the Canadian Judicial

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Council clarifies that the particular commentary to which the complainant referred was in relation to the judicial duty that requires judges to make critical findings of credibility on the conduct of a litigants or witnesses. The principles and the commentaries are advisory guidelines for judges. The panel found that the advice set out in the commentary which the complainant referenced was not directed at the scrutiny of judges that is done in the course of their duty to decide appeals on trials brought before them in relation to proceedings presided over by other judicial officers. The panel found that the comments made by the judge were comments made within her judicial discretion in the course of deciding the appeal.

The review panel concluded that in this case, the allegations related to matters of judicial discretion made in the course of the judge's duties, not allegations of judicial misconduct. Matters of judicial decision-making are outside of the jurisdiction of the Council. The Council has no discretion to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint without further investigation if it falls outside of the Judicial Council's jurisdiction. The Council dismissed the complaint as outside of its jurisdiction and the file was closed.

### **CASE NO. 19-009/13**

The complainant appeared before the judge on charges of assault with a weapon and was found not criminally responsible on account of a mental disorder. The complainant was remanded to an acute care facility pending a disposition of the Ontario Review Board. Subsequently, the Ontario Review Board held a hearing and remanded him to a secure health care facility.

The complainant alleged that the judge forced him to sign papers under duress while he was in jail. He said his lawyer told him that they would bring him back every day to court until he signed the paper until he signed the paper. He stated that he could not read as he was not permitted to have glasses. With his letter of complaint, the complainant included correspondence that showed after he was committed by the Ontario Review Board to a secure health facility; the complainant submitted a complaint to the Law Society of Upper Canada about the judge. He told the Law Society that before His Honour was appointed a judge, he had promised to get the complainant a Canada Pension Plan disability pension but His Honour didn't file medical records in time.

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The complainant wrote a second letter to the Judicial Council, indicating that he had complained about his criminal lawyer to the Law Society of Upper Canada because he was forced under duress to sign papers which he couldn't read without glasses.

A letter was sent by the Assistant Registrar to the complainant asking him to provide details about the allegation that he was forced under duress to sign the papers. The complainant responded with a letter in which he alleged that before the judge was appointed to the Bench, he had worked for the law firm where the complainant's Ontario Review Board lawyer worked. The complainant believed this was illegal and a conflict of interest.

The complaint subcommittee reviewed all of the correspondence received from the complainant. The subcommittee also requested and reviewed the transcript of the court proceedings of the complainant's court appearance before the judge. Information was also requested from court staff about any papers which the complainant may have signed. Court staff provided a list of court appearances, including the date when there was a determination of not criminally responsible. The subcommittee noted that court staff indicated that there were no papers for the accused/complainant to sign. When the subcommittee completed its investigation, it provided a report to the review panel.

The review panel reviewed the correspondence received from the complainant, the letter sent to him providing an opportunity to send more details, the information provided by court staff, the transcript of the court appearance and the report from the subcommittee.

With respect to the allegations about the judge prior to his appointment, the review panel found that those allegations were outside of the jurisdiction of the Council. The Council's jurisdiction is limited to the conduct of judges while they hold office.

After considering all of the information obtained during the investigation, the panel concluded that the allegations arose from and were related to the complainant's disagreement after the fact with having been found not criminally responsible. This was a matter of judicial decision-making which was outside of the jurisdiction of the Council. The Council has no discretion to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint without further investigation if it falls outside of the Judicial Council's jurisdiction.

The Council dismissed the complaint as outside of its jurisdiction and closed the file.

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### **CASE NO. 19-012/13**

The complainant had a trial and was convicted on a charge of criminal harassment. He filed a complaint about the trial judge. In his letter to the Council, he stated that he had appeared before the judge unrepresented and had asked for an adjournment because he had dismissed his lawyer. The request was refused by the judge and the complainant stated that he was not able to properly represent himself. The complainant appealed the conviction and the appeal was dismissed. The complainant alleged that he was not treated fairly.

The complaints subcommittee ordered and read the transcript of the summary conviction appeal and the appeal judge's reasons for judgment. Following their investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed and considered the complainant's letter, the subcommittee's report, and the reasons for judgment in the complainant's summary conviction appeal. The review panel noted that the complainant was represented by a lawyer on the appeal and there was no argument that he was treated unfairly by the trial judge. The reasons of the appeal judge showed that the only grounds of appeal pursued in argument were that the trial judge erred in convicting the appellant on the basis that the record did not support the finding of guilt, and that the Crown Attorney had failed to prove the elements of the offence. The appeal judge found that there was ample evidence to support the trial judge's finding that the complainant was guilty of the offence as charged and the appeal was dismissed.

The review panel concluded that in his letter, the complainant was expressing his disagreement with how the judge assessed the evidence and made decisions in the case. The panel found that the allegations related to decisions made in the course of the judge's duties, not allegations of judicial misconduct. These were matters of judicial decision-making which are outside of the jurisdiction of the Council. The Council has no discretion to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint without further investigation if it falls outside of the Judicial Council's jurisdiction. The review panel dismissed the complaint as outside of the Council's jurisdiction and closed the file.

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### **CASE NO. 19-013/13**

The complainant was the victim of a criminal charge of assault laid against her former fiancée. The defendant entered a guilty plea to the charge. In her letter to the Council, she stated that she had spent considerable time on the preparation of her Victim Impact Statement, which resulted in her reliving the struggles and personal feelings that she felt prior to the assault, and the fear and anguish she felt after the assault.

The complainant stated that she attended the court with the intention of having the judge read her Victim Impact Statement and to observe the guilty plea. She stated that she was astounded at the attitude of the judge. She said that when the judge skimmed through her Victim Impact Statement, he said, “This woman has too many problems” and then he refused to read her Victim Impact Statement. She indicated that she felt once again victimized and held guilty for the assault, and this was very disturbing to her and increased her sense of feeling worthless. Her impression was that the judge felt that she was insignificant and not worthy of the court’s time. The complainant requested a judicial review of the sentencing by an impartial legal authority. She believed that the sentencing was wrong as she had no say in the matter.

The subcommittee reviewed the transcript of the guilty plea and sentencing and reviewed the Victim Impact Statement which had been filed with the court. Following the conclusion of their investigation, the complaints subcommittee submitted a report to a review panel.

The review panel reviewed the letter of complaint, the transcript of the guilty plea and sentencing, the complainant’s Victim Impact Statement and the subcommittee’s report.

The review panel noted that one of the purposes of sentencing is, where possible, to provide reparation for harm done to victims or to the community. There are provisions in the *Criminal Code* which require the court to consider Victim Impact Statements. As well, victims may present their statement to the sentencing judge describing the harm done to, or loss suffered by, the victim arising from the commission of the offence. The degree of harm caused to the victim by the crime is often taken as an aggravating factor on sentence.

Although the complainant felt that the judge had refused to read her Victim Impact Statement, the review panel found that the transcript showed that he read through it and then had it filed as an exhibit on the sentencing.

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# Case Summaries

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With respect to her recollection that the judge said, “This woman has too many problems”, the review panel found that the transcript showed that His Honour said that the Victim Impact Statement went far beyond the assault before the court and he noted that the complainant had “many concerns and troubles in her life, but this is not the kind of allegation that I can ascribe to being the cause of all of those concerns”. The panel observed that these comments were made by the judge as part of his decision about how he must apply the law on the use of Victim Impact Statements. The review panel noted that the issue of whether His Honour correctly considered the Victim Impact Statement related to a decision made in the course of his duties, not allegations of judicial misconduct. This was a matter of judicial decision-making outside of the jurisdiction of the Council. The Council has no discretion to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint without further investigation if it falls outside of the Judicial Council’s jurisdiction.

The transcript also showed that there was no evidence that he said anything to re-victimize the complainant, that he held her guilty for the assault or said anything to contribute to her feelings of worthlessness. The panel concluded that these allegations were not supported by the evidence.

For all of the reasons set out above, the review panel dismissed the complaint and closed the file.

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**APPENDIX B**

**PRINCIPLES OF  
JUDICIAL OFFICE**

## Principles of Judicial Office

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

# PRINCIPLES OF JUDICIAL OFFICE

## **PREAMBLE**

A strong and independent judiciary is indispensable to the proper administration of justice in our society.

Judges 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 judges to be honourable and worthy of its trust and confidence.

The judges 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 judges of the Ontario Court of Justice and set out standards of excellence to which all judges 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 judges 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 judges in the performance of judicial duties and in the conduct of judges' personal lives.

# Principles of Judicial Office

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## **PRINCIPLES OF JUDICIAL OFFICE**

### **1. THE JUDGE IN COURT**

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

*Commentaries:*

Judges should not be influenced by partisan interests, public pressure or fear of criticism.

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

1.2 Judges have a duty to follow the law.

*Commentaries:*

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

1.3 Judges will endeavour to maintain order and decorum in court.

*Commentaries:*

Judges 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 JUDGE AND THE COURT**

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

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

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

## APPENDIX B

# Principles of Judicial Office

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2.4 Judges have a duty to maintain their professional competence in the law.

*Commentaries:*

Judges should attend and participate in continuing legal and general education programs.

2.5 The primary responsibility of judges is the discharge of their judicial duties.

*Commentaries:*

Subject to applicable legislation, judges 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 the judges' primary duty to the court.

### **3. THE JUDGE IN THE COMMUNITY**

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

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

*Commentaries:*

Judges must not participate in any partisan political activity.

Judges must not contribute financially to any political party.

3.3 Judges must not abuse the power of their judicial office or use it inappropriately.

3.4 Judges are encouraged to be involved in community activities provided such involvement is not incompatible with their judicial office.

*Commentaries:*

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



