

OJC



TWENTY-FIFTH ANNUAL REPORT

2019-2020

**ONTARIO
JUDICIAL COUNCIL**

ISSN 1206-467X



The Honourable George R. Strathy

CHIEF JUSTICE OF ONTARIO
Co-Chair, Ontario Judicial Council



The Honourable Lise Maisonneuve

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



ONTARIO JUDICIAL COUNCIL

October 9, 2020

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

Dear Minister:

It is our pleasure to submit the Annual Report of the Ontario Judicial Council concerning its twenty-fifth 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, 2019 to March 31, 2020.

Respectfully submitted,

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

Lise Maisonneuve
Chief Justice
Ontario Court of Justice



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INTRODUCTION

The period of time covered by this Annual Report is April 1, 2019 to March 31, 2020.


The Ontario Judicial Council investigates complaints made by members of the public and organizations about the conduct of provincially-appointed judges and determines the appropriate disposition. In addition, it approves the continuing education plan for provincial judges. The Council has also approved criteria for continuation in office and standards of conduct developed by the Chief Justice of the Ontario Court of Justice called the *Principles of Judicial Office*.

The Judicial Council may make an order for accommodation of the needs of a judge who, because of a disability, is unable to perform the essential duties of judicial office. Such an order may be made to the extent necessary to enable him or her to perform those duties. 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 383 provincially-appointed judges, including full-time and *per diem* judges 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 at 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 2019, the population was approximately 14.56 million. In an average year, judges of the Court deal with over 230,000 adult and youth criminal cases and approximately 13,000 new family law proceedings. The Court holds sittings at approximately 130 locations across Ontario, ranging from large courthouses in cities to fly-in locations in northern Ontario.

The Ontario Judicial Council received 27 new complaints in its twenty-fifth year of operation, and carried forward 21 complaint files from previous years. Of these 48 complaints, 37 files were completed and closed before March 31, 2020. Information about the files that were completed and closed is included in this Report. Eleven complaint files were carried over into the next year of operation.



We invite you to find out more about the Council by reading this Annual Report and by visiting the Council's website at www.ontariocourts.ca/ocj/ojc/. The website contains the Council's current policies and procedures, information about ongoing and prior public hearings, the *Principles of Judicial Office*, the Continuing Education Plan and links to the governing legislation.

1. COMPOSITION AND TERMS OF APPOINTMENT

The *Courts of Justice Act* sets out the membership of the Ontario Judicial Council and terms of appointment:

- ◆ the Chief Justice of Ontario (or designate from the Court of Appeal for Ontario)
- ◆ 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 Ontario 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 Ontario, 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 public hearings regarding the conduct of a particular judge and chairs all proceedings dealing 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.

The judges appointed by the Chief Justice, the lawyer appointed by the Law Society of Ontario, 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 twenty-fifth year of operation (April 1, 2019 to March 31, 2020) was as follows:

Judicial Members:

CHIEF JUSTICE OF ONTARIO

The Honourable George R. Strathy(Toronto)
Co-Chair

CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

The Honourable Lise Maisonneuve(Toronto)
Co-Chair

ASSOCIATE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

The Honourable Peter J. DeFreitas(Toronto)

REGIONAL SENIOR JUSTICE

The Honourable Justice Patrick J. Boucher (Sudbury)



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

The Honourable Justice Howard Borenstein.....(Toronto)
(Until January 5, 2020)

The Honourable Justice Peter K. Doody (Ottawa)
(Effective February 7, 2020)

The Honourable Justice Lise S. Parent..... (Brampton)
(Until September 25, 2019)

The Honourable Justice Manjusha Pawagi.....(Toronto)
(Effective September 26, 2019)

Lawyer Members:

DESIGNATED BY THE TREASURER

Mr. Christopher D. Bredt.....(Toronto)
Borden Ladner Gervais LLP
(Until May 23, 2019)

Mr. Malcolm Mercer, Treasurer(Toronto)
Law Society of Ontario
(Effective May 24, 2019)

LAWYER MEMBER APPOINTED BY THE LAW SOCIETY OF ONTARIO:

Mr. David M. Porter(Toronto)
McCarthy Tetrault
(Until August 16, 2019)

Mr. Christopher D. Bredt.....(Toronto)
Borden Ladner Gervais LLP
(Effective October 30, 2019)



Community Members:

Mr. James Dubroy (Ottawa)
JAMES R. DUBROY LTD
(Until May 5, 2019)

Mr. Mauro Di Giovanni.....(Bradford)
Police officer (retired). Director of Customer Success, McKalian Sensors Inc.
(Effective June 20, 2019)

Ms. Melikie Joseph, MSW, RSW(London)
Family Liaison Officer
Southwestern Ontario Military Family Resource Centre

Ms. Judith LaRocque.....(Hawkesbury)
Government of Canada (retired)

Mr. Victor Royce(Thornhill)
Retired. Former President and CEO of Rolex Canada
(Effective June 20, 2019)

Members – Temporary

During the period covered by this report, the following judges 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 Janet M. Simmons.....(Toronto)

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 judges of the Ontario Court of Justice were appointed by the Chief Justice to serve as temporary members of the Ontario Judicial Council to fulfill the requirements of the legislation:

The Honourable Justice Michael J. Epstein (Kitchener)

The Honourable Justice Philip Downes(Toronto)

The Honourable Justice Marc Bode..... (Thunder Bay)

During the period covered by this report, the following lawyer was designated by the Treasurer of the Law Society of Ontario to serve as a temporary member of the Ontario Judicial Council to fulfill the requirements of the legislation:

Ms. Jacqueline Horvat.....(Toronto)
Spark LLP

3. ADMINISTRATIVE INFORMATION

Office space 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.

In the twenty-fifth year of operation, the staff of the Ontario Judicial Council and the Justices of the Peace Review Council consisted of a registrar, one counsel and deputy registrar, two assistant registrars and an administrative assistant as follows:


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

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

Ms. Michelle M. Boudreau – Assistant Registrar

Ms. Ana M. Brigido – Assistant Registrar

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



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

Ms. Darlene Ferreira – Administrative Assistant
(September 25, 2018 until March 22, 2019)


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 and approve continuing education plans for the judges;
- ◆ to consider applications by judges under section 45 for orders for accommodation of needs arising from disabilities to enable them to perform their judicial duties; 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 on 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 to seek a legal remedy through the court, such as an appeal.

The legislation that governs the Judicial Council establishes a complaint process that is generally private and confidential in the stages of investigation and determination of the appropriate disposition. If a hearing is ordered, the process becomes public, unless the hearing panel orders that there are exceptional circumstances to warrant a private



hearing. The confidential and private nature of the complaint process required by the *Courts of Justice Act* is intended to achieve a balance between the accountability of judges for their conduct and the constitutionally protected value of judicial independence.

Procedural Amendments


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. As a means of informing the public about the complaints process, the Council must make the rules available to the public. The Council has established procedural rules for the complaints process which are posted on its website.

In 2019-2020, the Council made a procedural amendment to formalize its historical practice of generally conducting hearings in Toronto. Prior to this, the Procedures did not contain specific rules governing the location of hearings. The amendment established a default rule providing that hearings would be conducted in Toronto, and set out factors a hearing panel may consider if a party brings a motion for a change in venue.

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

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

For example, a hearing panel may be considering as a possible disposition ordering a judge to take specified measures, such as receiving education or treatment, as a condition of continuing to sit on the bench. It may be, however, that a review panel has already referred a previous complaint(s) about the judge to the Chief Justice with a condition that the judge undergo treatment or education to address the same (or similar) type of




conduct. Disclosure of the prior disposition may assist the hearing panel in assessing whether a more serious disposition is warranted to change or sufficiently address the judge's behaviour, and to preserve or restore public confidence in the judiciary.

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

- a) There are similarities between the previous conduct and the misconduct before the Panel;
- b) The misconduct that is the subject of the complaint in the hearing cannot be said to be the result of a momentary lapse of judgment or out of character;
- c) The judge has had previous opportunities to learn from dispositions imposed to address previous complaints and has again demonstrated inappropriate conduct; and/or
- d) The judge was invited to respond to the previous complaint, and in his or her letter of response indicated that he/she recognized that the conduct was inappropriate, expressed remorse or regret for the conduct and undertook to refrain from such conduct in the future. Another complaint is then received alleging similar conduct.

Accordingly, an amendment was made to provide that where there has been a finding of judicial misconduct, Presenting Counsel shall file with the hearing panel the judge's disposition history other than dismissed complaints.

The Council considered that complainants may not understand that, in accordance with the principles of procedural fairness and natural justice, disclosure to a judge who is the subject of a complaint must include a copy of the complaint letter. An amendment to the Procedures was made to reflect the historical practice that, where a judge has been invited to respond to a complaint, he or she will be provided with a copy of all materials under consideration by the investigating complaint subcommittee, including a copy of the complaint, any court transcripts, any transcripts of witness interviews, and the disposition history of the judge other than dismissed complaints.



The Council noted that in the past, the Procedures did not require Presenting Counsel to file the letter(s) of complaint at a hearing. Unless the letter(s) was filed as an exhibit at a hearing, the Registrar was not able to provide information contained in the letter of complaint to the media or the public. As well, complaint letters often contain information relevant to the impact of the impugned conduct on public confidence in the judiciary and the administration of justice. This is an important factor for a hearing panel to consider in deciding whether a judge has engaged in judicial misconduct. The Council noted that in cases where a hearing has been ordered, filing the complaint letter as an exhibit is consistent with transparency in the hearing process.


The Procedures were, therefore, amended to require that the complaint letter be filed as an appendix to the Notice of Hearing filed as an exhibit at the hearing, with the name of the complainant(s) redacted, subject to any order of the hearing panel. If there are allegations in the letter of complaint that are not part of the alleged conduct ordered by a review panel to a hearing, those allegations must be redacted in the copy of the letter of complaint attached to the Notice of Hearing.

An amendment was made to reflect the Council's practice that in the normal course, summonses for OJC hearings are issued and signed by the Registrar. The Procedures also clarify to the parties that if there is a question of relevancy, the Registrar does not issue a summons and the requesting party must bring a motion to have the Panel determine whether a summons should issue.

The current version of the Procedures that includes the amendments discussed above is posted on the Council's website on the webpage "Policies and Procedures" at www.ontariocourts.ca/ocj/ojc/policies-and-procedures/.

Format of the Annual Report

In 2019, legislation was passed that eliminated the requirement of tabling the Annual Report in the legislature (*Bill 100, Protecting What Matters Most Act (Budget Measures), 2019*). The law now provides that the Judicial Council must, between 15 and 30 days after submitting its annual report to the Attorney General, publish the report in English and French on its website.



The Council considered feedback from readers of the Annual Report that they prefer the electronic version and no longer use the print version. Accordingly, the Council passed a motion to approve continuing to publish the Annual Report on the Council’s website in a design/look consistent with its historical format and to discontinue having print copies produced by an external vendor.

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

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. The continuing education plan is developed by the Chief Justice in conjunction with the Education Secretariat. Pursuant to subsection 51.10(1), the education plan must be approved by the Judicial Council.

In 2019, a mentoring program was added to the Education Plan.

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/.

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 hearings decisions are posted on the website when released. Further, the Annual Reports are included on the website 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 <https://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 judicial conduct.

7. PRINCIPLES OF JUDICIAL OFFICE

The Chief Justice of the Ontario Court of Justice is 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 Ontario Court of Justice. The document was then submitted to the Ontario Judicial Council for its review and approval in the second year of the Council’s operation, as required by subsection 51.9(1) of the *Courts of Justice Act*.

The *Principles of Judicial Office* serve as a guide to assist judges in addressing ethical and professional dilemmas. They may also serve to inform the public of the reasonable expectations of how judges should conduct themselves in performing judicial duties and in their personal lives. A copy of the *Principles of Judicial Office* is attached as Appendix “C” to this Annual Report and is posted on the Council’s website at <https://www.ontariocourts.ca/ocj/ojc/principles-of-judicial-office/>.

In 2005, the Chief Justice, together with the Ontario Conference of Judges, proposed to the Judicial Council that the Canadian Judicial Council’s *Ethical Principles for Judges* form part of the ethical standards governing the conduct of judges of the Ontario Court of Justice. The Judicial Council agreed. Therefore the *Ethical Principles for Judges* form part of the ethical standards for judges of the Ontario Court of Justice.

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 Patrick J. Boucher, Regional Senior Justice of the North East Region, was appointed to act as the Judicial Council's representative on the Judicial Appointments Advisory Committee during the period covered by this report.


9. THE COMPLAINTS PROCEDURE

Any person may make a complaint to the Judicial Council about the conduct of a provincially-appointed judge. Complaints must be made in writing. The governing legislation does not provide for the Judicial Council to act on anonymous complaints or to initiate general 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. A letter of acknowledgement is sent to the complainant, informing him or her that a complaint file is being opened or providing information set out in the paragraphs below.

All correspondence is reviewed to determine whether or not the complaint is within the jurisdiction of the Judicial Council. If a complaint relates to a participant in the justice system other than a provincial judge, staff of the Judicial Council will refer the complainant to the appropriate agency or office where the complainant's concerns may be pursued. For example, if an individual has concerns about his/her lawyer, the police, a Crown Attorney or court staff, the complainant is referred to the appropriate office of authorities with jurisdiction to address such complaints.

If the complaint raises allegations of conduct about a judge arising from a court proceeding that is still ongoing the Council will not generally commence an investigation until that court proceeding and any appeal or other related legal proceedings have been completed. This is to ensure that any investigation by the Council is not interfering or perceived to be interfering with any ongoing court matters.

If the complainant expresses dissatisfaction with a decision that has been made by a judge, the letter of acknowledgment will advise 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 is set out below. A more detailed outline of the Judicial Council's procedures can be found on the Judicial Council's website at: <https://www.ontariocourts.ca/ocj/ojc/policies-and-procedures/>.

A) Investigation and Review of Complaints


Complaints are assigned to a two-person complaint subcommittee of the Judicial Council for review and investigation. The complaint subcommittee, comprised of a provincially-appointed judge (other than the Chief Justice of the Ontario Court of Justice) 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 or perception of bias or conflict of interest between a member of the Council and the judge.

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., complaints about a judge's decision or decision-making, such as findings of credibility,) 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(s) of the court 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, for example, by conducting interviews with witnesses.

The subcommittee may also decide to request a response from the judge to the complaint. If a response is requested, a copy of the complaint, the transcript (if any), and the 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 complaint.

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.

Interim Recommendations

The investigating complaint subcommittee will consider whether the allegation(s) warrants making an interim recommendation of suspension or re-assignment. Under section 51.4(8) of the *Act*, the committee may make an interim recommendation to the Regional Senior Justice where the judge presides that the judge be non-assigned work or reassigned to another court location pending the final disposition of the complaint.

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

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

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



Where a complaint subcommittee is considering making an interim recommendation, depending upon the particular circumstances, it may (but is not required to) provide the judge an opportunity to make written submissions before making its decision.

Particulars of the factors upon which the complaint subcommittee's interim recommendation is based are provided to both the Regional Senior Justice receiving the interim recommendation and to the judge.


The Procedures of the Council recognize that an exception to the general requirement of confidentiality in the complaints process is warranted where an interim recommendation of suspension has been made and the complaint has been referred to a hearing. In such circumstances, once the Notice of Hearing has been filed and the complaints process has become public, the Council's website informs the public that the judge has been suspended or has been reassigned to a different location as a result of an interim recommendation, pending the final disposition of the complaint.

Of files closed in this reporting year, no judges were suspended or reassigned to another court location after complaint subcommittees made interim recommendations pending the final disposition of complaints.

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. A review panel will review the complaint, the report of the investigating complaint subcommittee and all of the relevant materials considered by the subcommittee. If the subcommittee recommends any disposition other than a dismissal, the materials will include the response from the judge who is the subject of the complaint.

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. With the objective of facilitating an objective, neutral consideration of the complaint, the review panel members are not informed of the identities of the complainant or the subject judge.



Complaint 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 do 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. Of the six persons who consider each complaint, at least half of the members are not judges (subsection 51.4(18)).

The review panel may decide upon the following dispositions:

- ◆ dismiss the complaint;
- ◆ refer it to the Chief Justice of the Ontario Court of Justice, and if the subject judge agrees, impose conditions (for example, counselling, remedial education) on a decision to refer the complaint;
- ◆ 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 supported by the evidence gathered during the investigation;
or,
- ◆ the actions or comments of the judge do 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 about conduct may not be referred for mediation in the following circumstances:

- ◆ 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 of the Courts of Justice Act

Hearing panels are made up of four persons who have not been involved in the complaints process up to that point. The Chief Justice of Ontario, or his designate from the Court of Appeal for Ontario, chairs the hearing panel. A judge of the Ontario Court of Justice, a lawyer member and a community member also sit on 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. Where such criteria are met, 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 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.

The Judicial Council engages external 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 Presenting 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.

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.

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, following 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:

- ◆ 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 complainant and to the judge. A judge may waive notice of the disposition of a complaint if it is being dismissed and no response was requested from the judge by the Council. In accordance with the legislation and the Procedures of the Judicial Council, if the Council decides to dismiss the complaint, brief reasons will be provided in the letter sent to the complainant.

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: www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c43_e.html

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 legal costs 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 lawyer's statement of account to support the request.

The Judicial Council may make a recommendation to the Attorney General that a judge be compensated for his or her legal costs, and indicate the amount of compensation recommended. 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. Three 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 27 complaints in its twenty-fifth year of operation, and carried forward 21 complaint files from previous years for a total of 48 open files. Thirty-seven files were addressed and closed during the period covered by this Report. Eleven complaint files remained open at the end of the reporting period and were carried over to the next reporting year (2020-2021).

Of the 37 files closed during the 2019-2020 period, 25 were opened in that reporting year. Eleven of the files were opened in 2018-2019. One was opened in 2016-2017. In the latter case, after the file was opened, the Council learned that the court case that gave rise to the complaint was still before the courts. In accordance with the Council's procedures, the investigation was held in abeyance pending the conclusion of the court proceedings, and then proceeded.



Of the 37 files that were closed during the period covered by this Report, 20 arose from proceedings under the *Criminal Code*, ten arose from family court proceedings, three raised allegations about judges' conduct outside of court, and four arose from Provincial Offences appeals.

Two of the 37 complaint files closed during the period of time covered by this Report were dismissed on the basis that they were found to be outside the jurisdiction of the Council. This occurred because the complaints related to the complainants' dissatisfaction with how a judge assessed the evidence, the result of a trial or with a judge's decision, but did not contain allegations about judicial conduct. Judicial decision-making is outside the jurisdiction of the Council. If a person disagrees with a judge's decisions, the proper way to proceed is by pursuing legal remedies in the courts, such as an appeal. The absence of any allegations about judicial conduct meant that these complaints were outside the jurisdiction of the Judicial Council.

Thirty-two of the 37 files closed were dismissed by the Council on the basis that they contained allegations of misconduct that were unfounded or the actions or comments of the judge did not amount to judicial misconduct. The complaints included allegations such as improper behaviour (e.g., rudeness, belligerence, yelling), lack of impartiality, conflict of interest or some other form 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. The review panels concluded that the investigation showed that the evidence could not support a finding of judicial misconduct.

Two complaints were referred to the Chief Justice. A review panel will refer a complaint to a Chief Justice where the majority of the panel is 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.

In one case, the complaint file was administratively closed due to a loss of jurisdiction when the judge left office. The Council only has jurisdiction while a person is in judicial office.

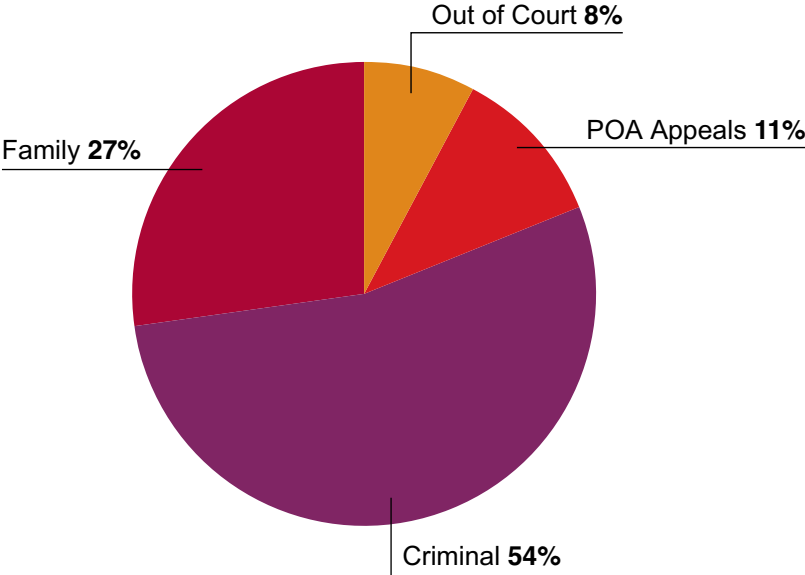
Eleven complaint files remain open to be carried over into the 2020-2021.

DISPOSITIONS ON FILES CLOSED IN 2019-2020

DISPOSITION	NUMBER OF CASES
Dismissed – Out of Jurisdiction	2
Dismissed – unfounded, not judicial misconduct, etc.	32
Referred to Chief Justice	2
Loss of jurisdiction	1
Hearing	0
TOTAL	37

TYPES OF CASES CLOSED IN 2019-2020

TYPES OF CASES CLOSED IN 2019-2020	
Criminal Court	20
Family Court	10
Other – Outside of Court	3
Provincial Offences Appeal	4
TOTAL	37

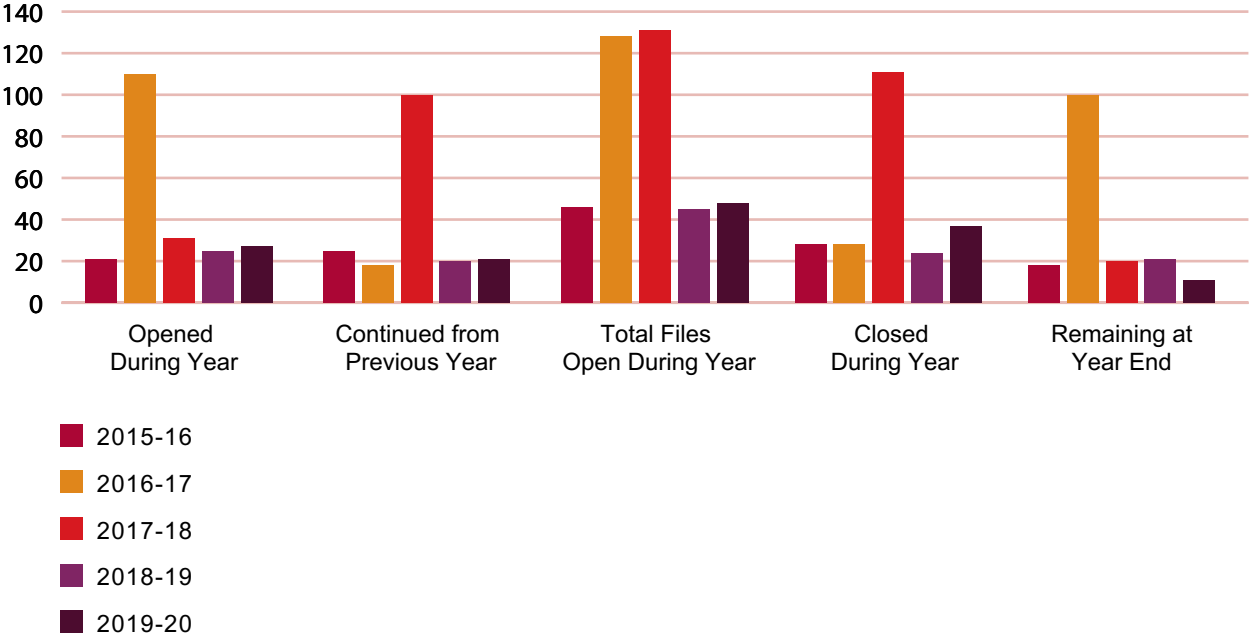


CASELOAD IN FISCAL YEARS

FISCAL YEAR	15/16	16/17	17/18	18/19	19/20
Opened During Year	21	110	31	25	27
Continued from Previous Year	25	18	100*	20	21
Total Files Open During Year	46	12	131	45	48
Closed During Year	28	28	111*	24	37
Remaining at Year End	218	100	20	21	11

* 81 complaints addressed by the hearing about the conduct of Justice Zabel took place in August 2017. The decisions in hearings can be found on the Council’s website at <https://www.ontariocourts.ca/ocj/ojc/public-hearings-decisions>.

* 81 complaints received about the conduct of one judge arising from one incident were ordered to a hearing that took place in 2017. Information about the hearing can be found on the Council’s website at <http://www.ontariocourts.ca/ocj/ojc/public-hearings/>



DISPOSITIONS IN FORMAL HEARINGS IN 2019-2020

There were no hearings completed during 2019-2020. At the time when this Report was written, one hearing was ongoing in relation to a complaint about the conduct of the Honourable Justice Donald McLeod.

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 that has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct. Updates on the hearing are available on the Council's website under the link "Public Hearings" at <https://www.ontariocourts.ca/ocj/ojc/public-hearings/>.

Decisions made in relation to each of the hearings are posted on the Council's website on the Public Hearings Decisions page at: <http://www.ontariocourts.ca/ocj/jprc/public-hearings-decisions>.

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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 two digits indicating the calendar year in which the file was opened (e.g., file no. 25-001/19 was the first file opened in the twenty-fifth year of operation and was opened in calendar year 2019).

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

CASE NO. 23-007/17

The complainant was charged with a criminal offence and appeared before the subject judge for a trial. In his letter to the Council, the complainant indicated that, following the conclusion of his wife's evidence, but before any defence evidence was called, defence counsel and the Assistant Crown Attorney were called into chambers. Following the in-chambers meeting, the court recessed for lunch.

The complainant said that during the lunch recess, his lawyer reported that the judge said he did not believe the wife's evidence, but also did not believe that the complainant was innocent of other actions towards other people described by the wife. His Honour allegedly advised counsel that if the complainant planned to continue with the trial, "he may not be pleased with the outcome." The complainant stated that his lawyer told him that she had "never heard of or experienced a demand like this from a judge in her whole career".

The complainant further alleged that his lawyer told him that "to continue this farce of a trial" would require a further retainer. The complainant alleged that for this reason, he had no choice but to accept the peace bond offered by the Assistant Crown Attorney.

The complainant concluded that His Honour was unprofessional and should have weighed the evidence and applied the law, not expressed "his personal opinions or liberal agenda". The complainant also indicated that he is a yarmulke-wearing Jew, and that the judge must be anti-Semitic, as the complainant could think of no other reason to explain the judge's "illogical behavior".

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The complaint subcommittee read the complainant's letter and ordered and reviewed the relevant portion of the court transcript. The subcommittee noted that there was no court record, such as a transcript, available of the meeting in chambers.

The subcommittee instructed the Registrar to write a letter to the Assistant Crown Attorney for further information. The defence lawyer representing the complainant could not be located. The Assistant Crown Attorney provided a written statement setting out further information about the alleged events. The subcommittee invited the judge to respond in writing to the complaint and reviewed the response received from the judge. After concluding its investigation, the subcommittee provided a report to the review panel.

The review panel reviewed the complaint letter, the report from the subcommittee on its investigation, excerpts from the trial transcript, the written statement from the Assistant Crown Attorney regarding the in-chambers meeting, and His Honour's response to the complaint.

The review panel observed that the transcript showed the following dialogue took place in the courtroom after the in-chambers meeting:

CROWN COUNSEL: Good afternoon, Your Honour. As Your Honour is aware, the Crown all but closed its case at the close of proceedings this morning in the matter of [the complainant]. Having considered, as it is my duty to do, the ongoing reasonable prospect of conviction, as well as the public interest in the matter, I have turned my mind to these things and my friend and I have come to an agreement, as well respecting the rights of the victims under the *Victims Bill of Rights Act*, to provide input to recommended conditions on a peace bond that would, upon the signing of the bond, lead to the withdrawal of the criminal charges.

THE COURT: I am very pleased to hear about this resolution.

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DEFENCE COUNSEL: Your Honour, there are conditions that have been provided to the Court and I have reviewed them with Mr. [name of the complainant], as well as the consequences of breaching a Court Order and he is prepared to voluntarily enter into the peace bond.

Thereafter, the specifics of the peace bond were discussed and the Court continued:

THE COURT: All right. I don't think I have any questions and I want to commend counsel for putting their heads together and working this out. Mr. [name of the complainant], I can tell you, you would not have wanted to read a lot of what I would have written if I were forced to have listened to all of the evidence and provide a decision of my own volition.

The review panel noted that a judge must be mindful of whether his or her comments and conduct could give rise to the perception that he or she has prejudged the outcome of a case before all evidence has been heard. Judges should be, and be seen to be, detached, open-minded and free from any bias or favour toward a particular outcome. Pursuant to the *Principles of Judicial Office*:

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

Commentary:

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

The review panel noted that in her statement to the subcommittee, the Assistant Crown Attorney indicated that His Honour called the lawyers into chambers and talked with them about the question of how persons who were referred to in the evidence, but not directly part of the charge before the court, could be protected. In her letter to the complaint subcommittee, the Assistant Crown Attorney indicated that while she shared His Honour's concern about protecting the other persons referenced in the evidence, she was slightly uncomfortable during the conversation. She alleged that His Honour may have used words to the effect that, "it could be wise" for the complainant to take the insurance against conviction if the Crown should offer a peace bond.

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The review panel noted that, in an adversarial system, the parties decide on the evidence to be called and the legal arguments to be made. A judge is to remain above the fray, providing an independent and impartial assessment of the facts and how the law applies to those facts once all evidence has been called.

The review panel observed that the transcript of the court proceeding showed that after the matter resumed in court and counsel indicated that the accused would enter into a peace bond, His Honour stated: “I can tell you, you would not have wanted to read a lot of what I would have written if I were forced to have listened to all of the evidence and provide a decision of my own volition”.

The review panel observed that in the judge’s response, he explained that in the unusual circumstances, all parties had concerns about the collateral facts relating to safety concerns about other persons. His Honour indicated that while he believed a resolution of the case was in the best interests of justice, and he raised the question of whether a resolution could be reached, he did not put pressure on either party. His Honour said that he did not prejudge the outcome of the trial, and “took pains” to make it clear that he had not decided the case in either party’s favour.

The review panel noted that His Honour acknowledged that initiating a mid-trial chambers discussion with counsel in the absence of the public can be inherently problematic. His Honour expressed regret that the complainant felt that justice was not done and perceived that the judge was unprofessional.

The review panel noted that perceptions of fairness and transparency in court proceedings affect public confidence in the integrity and impartiality of the judiciary. In the leading case on judicial conduct, the Supreme Court of Canada provided a general description of the conduct expected of a judge and the importance of being seen to be impartial and objective:

[110] Accordingly, the personal qualities, conduct and image that a judge projects affect those of the judicial system as a whole and, therefore, the confidence that the public places in it. Maintaining confidence on the part of the public in its justice system ensures its effectiveness and proper functioning. But beyond that, public confidence promotes the general welfare and social peace by maintaining the rule of law...

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

Therrien v. Minister of Justice et al., [2001] 2S.C.R.3 at para. 110 to 111

Based on its review of the materials provided by the subcommittee, the review panel found no evidence to support the conclusion that His Honour was anti-Semitic, or that he coerced or pressured the complainant into accepting a peace bond.

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

The review panel decided that the appropriate disposition was to refer the complaint to the Chief Justice for discussion pursuant to section 51.4(18)(c) of the *Courts of Justice Act*. The Ontario Judicial Council's Procedures state that, "if the majority of the members of the review panel conclude that referring the complaint to the Chief Justice of the Ontario Court of Justice is a suitable means of informing the judge that the judge's conduct was not appropriate in the circumstances that led to the complaint; the conduct complained of does not warrant another disposition; and, there is some merit to the complaint, the review panel shall refer the complaint to the Chief Justice of the Ontario Court of Justice."

The Chief Justice met with His Honour, and after the meeting, Her Honour provided a written report to the review panel.

The review panel observed that His Honour took the complaint and the meeting with the Chief Justice very seriously. The review panel observed that the report showed that His Honour better appreciated the importance of having any comments about a case made on the record and, the importance of refraining from conversations about a case in the absence of the parties.

The review panel noted that His Honour recognized why his comments in court near the end of the proceeding were perceived to be inappropriate. The review panel concluded

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that His Honour fully appreciated the importance of all parties being aware of any communication regarding a proceeding. His Honour undertook that in the future, he would not speak to counsel in chambers during a trial, except as permitted by the criminal rules that guide proceedings.

The review panel observed that His Honour had learned through his experience with the complaints process, and that he had undertaken to strive in the future to meet the high standards expected of a judge.

The complaints process was completed and the file was closed.

CASE NO. 23-027/18

The complaint was submitted by a senior lawyer on behalf of himself and numerous other persons. Various individuals submitted documents to the Council in support of the complaint, including members of the Criminal Defence Bar and the Crown Attorney's Office, employees of the Ministry of the Attorney General working in the same court location as the subject judge, and officers of the local police force. The persons indicated that they regularly appeared in court before and/or assisted Her Honour.

The Council also received letters and emails alleging that staff employed in the youth and adult probation office, and organizations and individuals involved in the adult diversion program encountered difficulties with the subject judge. The materials provided to the Council were not from these groups.

Further, there was an allegation that the health of a former court staff employee was affected by the judge's behavior to the extent that a medical of leave of absence was required. It was alleged that at the end of the leave, the staff person requested to be assigned to a court location in which was the subject judge did not preside.

The letter from the senior lawyer indicated that several individuals were reluctant to come forward with details given their fear of reprisal from the justice in question.

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The subcommittee was mindful of all of the allegations raised in the letters and emails provided by the complainants as it reviewed the court records of the proceedings. In summary, the complainants alleged that:

- ◆ The conduct of the judge resulted in counsel not accepting retainers for matters in the court over which the judge in question presides;
- ◆ The judge demonstrated a “*draconian approach*” and a lack of respect for those appearing before her, be it an accused, witness or counsel;
- ◆ The behaviour of the judge bordered on abusive conduct, including chastising or criticizing counsel and others to the point that individuals in the courtroom begin to laugh;
- ◆ In scheduling matters, the judge required counsel to schedule trial dates even in the face of counsel’s pre-existing commitments;
- ◆ The judge in question required an accused to appear personally notwithstanding the filing of a Designation of Counsel form;
- ◆ The judge in question appeared before a meeting of the Municipal Council in an area where the judge presides. The complainant alleged that this appearance was not conduct becoming of a judge;
- ◆ The judge engaged in abusive conduct which was regularly exhibited towards all parties, whom were shown little respect;
- ◆ The judge displayed an obvious lack of reasonableness, compassion or understanding in the matters before the court;
- ◆ The judge engaged in constant harassment of witnesses and bullying of counsel, thereby demonstrating a general lack of civility; and
- ◆ The judge tried to force Duty Counsel to assist a self-represented accused, who did not qualify financially for Legal Aid, with a guilty plea. When Duty Counsel refused the judge’s efforts in this regard, the judge then sought the assistance of another Duty Counsel, and insisted that counsel assist the litigant.

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The complainants alleged that concerns regarding this particular judge had existed for several years and had created a perceived crisis in the administration of justice in the region.

The complaint subcommittee carefully reviewed:

- ◆ Letters and emails related to allegations about court proceedings that spanned a three-year period, along with a transcript summary and a disclaimer submitted by the complainants;
- ◆ Transcripts involving numerous court proceedings extending over a four-year period, including all of the proceedings referenced by the complainants (some of which included multiple appearances by accused);
- ◆ Minutes related to a Municipal Council meeting of a municipality in the jurisdiction in which the judge presides; and
- ◆ Newspaper articles related to the Municipal Council meeting referenced in the above Minutes.

Further, one member of the subcommittee listened to the audio recordings of all of the court proceedings relating to allegations of bullying, harassment, abusive conduct, incivility and a lack of respect by the judge toward those who appeared before her in court.

The subcommittee noted that some transcripts were provided by the complainants but could not be cross-referenced to any specific allegation in the complainants' correspondence. These transcripts were, however, also reviewed by the subcommittee.

The subcommittee carefully reviewed all the materials submitted and the court records of each of the proceedings about which allegations were raised. As is the Council's practice, the subcommittee obtained unedited certified transcripts of the proceedings. The transcripts were not provided to the subject judge to review for grammatical, typographical or other errors.

The subcommittee also wrote to the senior lawyer to request that he confirm whether there were any other court proceedings upon which he and the other complainants relied in support of their complaint. Any additional transcripts and materials submitted by the complainants were reviewed in their entirety by the subcommittee.

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Some complainants indicated an interest in being interviewed about their personal perceptions of the judge in question. The *Courts of Justice Act* provides that the subcommittee shall conduct such investigation as it considers appropriate. After its review of the full transcripts and audio recordings, which provided an objective record of what occurred, the subcommittee determined that further investigative steps were not justified.

When the subcommittee completed its investigation, it provided a report to a review panel.

The review panel reviewed all correspondence received from the complainants, including letters and emails, as well as all enclosures provided by the complainants. The review panel reviewed the subcommittee's report and excerpts of numerous transcripts provided by the subcommittee. The review panel also reviewed the Minutes of the Municipal Council meeting and other materials related to the judge's appearance before the Municipal Council. Following its review and consideration of the materials before it, the review panel accepted the findings of the subcommittee.

The court records of the various proceedings indicated that the judge conducted the court matters in a manner that could be described as firm and direct. The expectations of the judge were made clear to counsel. The court records did not support the allegations that the manner in which the judge conducted matters in court was unfair, prejudicial to the accused, or disrespectful to counsel, members of the police or court staff.

The transcripts of the court proceedings and the audio recordings reviewed did not support the allegations that the judge demonstrated a "*draconian approach*", "*bullying*", "*harassment*" or a lack of respect for those appearing in her court, or that her conduct bordered on "*abusive*".

The review panel noted that throughout its review of all of the court records, the subcommittee remained mindful of the allegations raised by a former court clerk about how the judge treated people in the courtroom and of the allegations that Her Honour did not always take a recess or a proper lunch break. The court clerk did not identify any specific dates or court proceedings in support of these allegations. The subcommittee found no evidence in the court records of the judge treating staff poorly or of Her Honour not taking recesses or lunch break. The review panel accepted that there was no support in the court records for the allegations that the judge treated court staff inappropriately.

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The court records indicated that the judge took a no-nonsense, business-like manner in the courtroom, and exercised judicial discretion with a view to reducing and/or avoiding unnecessary delay. The manner and decisions appeared to reflect active oversight by the court to have cases proceed in a timely manner.

With respect to the allegation that Her Honour engaged in conduct unbecoming of a judge by appearing at a Municipal Council meeting, the review panel noted that in these circumstances, there was no risk that such activity could lead to perceptions that the judge was not impartial or had a conflict of interest in cases over which she may preside. Rather, the judge provided her views in order to promote access to justice.

Following its review and consideration of all of the allegations and the results of the subcommittee's investigation, the review panel concluded that the evidence would not support a finding of judicial misconduct. The review panel dismissed the complaint and the file was closed.

CASE NO. 23-031/18

The complainant was a lawyer who said that he had “the displeasure of appearing” before the subject judge. The complainant said that the Crown Attorney in the courtroom was a new appointment, “lacked experience”, and had no knowledge of the Crown brief. The complainant indicated that for those reasons, the complainant offered assistance to the judge to explain why they were moving the Information for his client to another courtroom.

The complainant alleged that “in over 20 years of appearing before judges, I can say without reservation, I have never been subjected to such a rude, unprofessional interaction with a justice”. With his complaint, the complainant included a copy of an excerpt of the transcript and of the audio recording of the proceeding.

The investigating complaint subcommittee reviewed the letter of complaint, as well as the relevant portion of the proceeding provided by the complainant. The subcommittee also listened to the audio recording of the proceeding.

As part of its investigation, the subcommittee invited the judge to respond to the complaint. The subcommittee received and reviewed the judge's response. The subcommittee noted that in his response, the judge explained that court commenced at 9:30 a.m. and after

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one matter was completed, he was informed that nothing further was ready to proceed. His Honour took a recess and remained waiting in chambers until court resumed at 11:09 a.m. When court resumed, a guilty plea proceeded. The judge indicated that while the Crown Attorney was reciting the facts on the guilty plea, the complainant interrupted the ongoing guilty plea to converse with the Crown Attorney. His Honour said that the complainant did not ask the Court for permission to interrupt the ongoing matter. His Honour indicated that he was waiting for the continuation of the facts on the guilty plea when the Crown Attorney asked him to transfer another matter to the guilty plea court.

The judge said that he then asked the Crown Attorney why they would move the matter to another court when he had been waiting in chambers for over an hour to work. In his response, the judge explained that he was trying to convey to the Crown Attorney that this was not the most appropriate use of judicial resources, and the complainant then intervened. His Honour indicated that he told the complainant that he was asking the Crown Attorney. The Crown Attorney had started to speak when the complainant again interjected. His Honour acknowledged that he then, in a raised tone, told the complainant that he was speaking with the Crown Attorney, asked the complainant to sit down and told the Crown Attorney to go ahead and continue his remarks. His Honour said that rather than sitting down and permitting the judge to continue his dialogue with the Crown Attorney, the complainant again intervened. The judge acknowledged that in a more raised tone, he told the complainant that he was not hearing from him, but from the Crown Attorney.

The subcommittee noted that the audio recording of the proceedings showed that court was recessed until 11:09 a.m. When court resumed, the guilty plea proceeded. From the audio recording, it appeared that while the court was hearing the facts from the Crown Attorney in support of the guilty plea, the complainant approached the Crown Attorney and whispered that his client's case should be moved to another court.

The subcommittee observed the following dialogue in the court transcript:

CROWN ATTORNEY: Sorry, if we could traverse the Info for Mr.- the [redacted name] matter, I understand its gonna be a guilty plea that's gonna be entered next door and counsel is prepared. So, this may take some time, so if we could just put that on the record in the meantime....

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- THE COURT: Why are we moving things when I'm sitting in chambers for over an hour? Help me with that?
- COMPLAINANT: I can help you Your Honour.
- THE COURT: No. No. I'm asking the Crown.
- CROWN ATTORNEY: Well, well....
- COMPLAINANT: We need a – we need a judge that ...
- THE COURT: Sir, I asked the Crown. I didn't ask you. Now please sit down. Go ahead [redacted name of the Crown Attorney].
- COMPLAINANT: Excuse me Your Honour. With all due respect....
- THE COURT: I told you to sit down and I want you to sit down.
- COMPLAINANT: I'm happy to sit down.
- THE COURT: I'm not hearing from you, I'm hearing from [redacted name of the Crown Attorney].
- COMPLAINANT: Thank you. I'll – I'll ask for a copy of the transcript.
- THE COURT: Please do.

After completing its investigation, the subcommittee provided a report to the review panel.

The review panel reviewed the letter of complaint, the transcript of the proceeding, the judge's response and the report from the subcommittee.

The review panel accepted the findings of the subcommittee that the audio recording showed that the judge raised his voice when speaking with the complainant only after the complainant interrupted his conversation with the Crown Attorney.

The review panel accepted the subcommittee's finding that court record reflected the judge's frustration with being asked by the Crown Attorney to traverse a matter to another court room after the judge had spent an hour in chambers in a very busy courthouse waiting until the Crown Attorney had a matter that was ready to proceed. In his response,

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the judge explained that he was attempting to convey to the Crown Attorney that “...in this day and age of limited judicial resources that this was not the most appropriate use of those resources.”

The review panel observed that the judge explained in his response that he had not intended to be disrespectful or rude to the complainant; he spoke to the complainant in a direct, forceful manner because the complainant persisted in interfering with the judge’s attempt to speak directly with the Crown Attorney about the use of judicial resources. The review panel could see that the judge had reflected upon his conduct and recognized that he should have maintained a measured tone in his comments to the complainant.

The review panel noted that it creates an undesirable atmosphere if a judge is abrupt or rude to counsel.

The review panel observed the judge undertook that in the future he would be aware of the tone of his comments in the courtroom.

The review panel noted that the *Principles of Judicial Office* require that judges endeavor to maintain order and decorum in court. The commentary to Principle 1.3 states that “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.”

The review panel concluded that the standard embodied in the commentary to Principle 1.3 of the *Principles of Judicial Office* was met in this case. The judge raised his voice to stop the complainant from interrupting him. The review panel concluded that the conduct did not undermine public confidence in the judge’s ability to carry out his duties, nor did it amount to judicial misconduct.

The review panel dismissed the complaint and the file was closed.

CASE NO. 24-004/18

The complaint arose in the context of family law proceedings. The complainant father brought a motion before the subject judge for an order rescinding the restraining order preventing him from having access to his adult children, two of whom were autistic. The judge dismissed the motion following oral argument.

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The complainant alleged that the judge did not have the authority to deny his motion given the substantial evidence before the court in his favour. He disagreed with Her Honour’s determination that his children continued to require the court’s protection, and stated that she “willfully and deliberately deprived him of [his] rights as a Canadian citizen to have full access to [his] children”.

In the materials enclosed with his complaint letter, the complainant also alleged that Her Honour was not impartial and was biased against him because of his race and gender. He concluded that the judge should be removed from his case and be “disrobed”.

A complaint subcommittee reviewed the letter of complaint and ordered and reviewed transcripts from two court appearances before the judge relating to the complainant’s motion. The subcommittee also reviewed the various materials enclosed with the letter of complaint, including affidavits filed on the motion, the judge’s endorsement and the complainant’s response to Her Honour’s decision. The subcommittee also reviewed other relevant documents from the court file, as well as the complainant’s correspondence with the Judicial Council regarding the judge. After completing its investigation, the subcommittee provided a written report to the review panel.

The review panel reviewed the letter of complaint and the materials enclosed with the complainant, the transcript of the court appearance in which the motion was argued and decided, and the report of the subcommittee.

The review panel could see from the materials that the judge had thoroughly reviewed the parties’ materials and evidence and had considered each side’s position prior to making a decision.

The review panel observed that the judge’s assessment of the evidence, including the credibility of parties and/or witnesses and her ultimate decision on the motion, were matters of judicial decision-making outside the jurisdiction of the Judicial Council. The Council’s legislated jurisdiction is limited to the conduct of judges. Judges have decision-making independence in accordance with the *Constitution Act, 1867*. The Council has no discretion to act on complaints that do not fall within its jurisdiction. The review panel noted that higher courts have the jurisdiction to determine if a judge has committed an error in interpreting or applying the law.

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The review panel noted that the subcommittee found no evidence to support the allegations that the judge “willfully or deliberately” deprived the complainant of his rights, or that she failed act as an impartial adjudicator. Nor did the subcommittee find any support for the allegation that Her Honour demonstrated bias against the complainant because of his race and/or gender.

The review panel concluded that the record did not support the allegations of misconduct, and the allegations about Her Honour’s decision-making were outside the jurisdiction of the Council. The complaint was dismissed.

CASE NO. 24-007/18

This complaint was filed by a police association on behalf of one of its member police officers who appeared as a witness in a criminal court on a *Charter* application before the subject judge. Counsel for the accused brought a pre-trial motion seeking a stay of proceedings based on the way the accused was treated by the police on the night of his arrest. The trial judge stayed the charges due, in large part, to his finding that the officer violated the accused’s *Charter* rights.

In the letter of complaint, it was alleged that the subject judge was biased against the officer because of a conflict between the officer and the judge’s wife that had occurred in relation to a community matter some years prior. The complainant said that prior to raising this issue with defence counsel and the Crown Attorney, the judge excused the officer from the courtroom, thereby preventing the police officer from being able to hear the discussion or “respond to the accusations that would follow”. The complainant alleged that His Honour was in no position to remain impartial, and should have recused himself from the case.

The complainant alleged that His Honour made comments on the record that suggested he had a pre-conceived notion about the officer. The complainant indicated that in staying the charges against the accused, the judge “took aim” at the officer “because he was angry at him for causing his wife so much grief years earlier”. The complainant alleged that the judge was motivated by personal bias when he referred in his decision to the officer as a “bully” and stated that the officer’s actions against the accused constituted “cruel and unusual treatment”.

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Finally, the complainant alleged that the judge highlighted his own personal bias against the police by stating, in his reasons for judgment, “The defendant said he felt he was treated like an animal, and he was, and that he no longer trusts the police, a perception that I’m beginning to share”. The complainant alleged that this comment calls into question the judge’s impartiality in any case involving police witnesses.

The subcommittee reviewed the letter of complaint and the enclosures provided by the complainant, including excerpts of the court transcripts. The subcommittee ordered and reviewed the full transcript of the pre-trial motion, excerpts of transcripts of the trial and the transcript of the judge’s Reasons for Judgment. Following its investigation, the subcommittee provided a written report to the review panel.

The review panel reviewed the letter of complaint, the excerpts of the transcripts provided by the complainant, the report of the subcommittee, a portion of the transcript of the pre-trial motion, and the transcript of His Honour’s Reasons for Judgment.

The review panel observed from the transcripts that the evidence in the case centred on a video recording taken at the police station capturing the police’s interaction with the accused and the time he spent in a holding cell before his release the following day. The evidence showed that the officer was responsible for the accused on the night of his arrest.

The review panel observed that on the second day of the application for a stay of the proceedings, the Crown Attorney called the officer to testify. The transcript showed that following the morning recess, the judge asked the officer to leave the courtroom and notified the parties of an incident between the officer and the judge’s wife years before:

“This was a long time ago, but as I sat here, I remembered that my wife had an interaction with Officer [name redacted] ... She wasn’t very happy. I heard about it for quite a while. It doesn’t personally involve me and Officer [name redacted]. I just thought everyone should know that that had occurred at some time. It’s not my intention to recuse myself unless someone gets really bent out of shape, but it, I think, needed to go on the record. It doesn’t present any difficulty to defence, I’m sure.

...

...And I don’t have a settled belief in [the] officer’s honesty, plus everything’s on video. Problem for you, Mr. [Crown Attorney]?”

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The review panel noted that the judge was obligated to raise the issue with the parties, which he did. At that point, under the law it was up to the parties to decide whether they wished to bring a motion to ask the judge to recuse himself from the case. The review panel observed from the transcript that the Crown Attorney indicated he had no objection to the judge continuing with the trial and was confident in the judge’s ability to decide the case based on the evidence, but he asked for an opportunity to discuss the issue with the police officer. The judge agreed to this request, noting that it had been more than a decade since the incident and that he himself hadn’t been involved in the dispute. Before leaving the courtroom, the judge asked the Crown Attorney to mention to the officer that “it doesn’t have to do with me not trusting his testimony. It has to do with appearances.”

After a brief recess, the Crown Attorney stated that he had spoken with the officer and that the officer had no problem continuing before the judge. Thereafter, the parties completed the evidence on the application.

The review panel noted that His Honour’s interpretation and application of the law regarding recusal was a matter of judicial decision-making outside the jurisdiction of the Council. Judges have decision-making independence in accordance with the *Constitution Act, 1867*. The Council’s legislated jurisdiction is limited to the conduct, not decisions, of judges. If a party believed that the judge made an error in law in failing to recuse himself, the proper remedy would be to seek redress through the courts, such as filing an appeal.

The review panel found nothing improper about His Honour asking the officer to be excused while he raised an issue with counsel. Witnesses who are testifying are generally asked to step down and leave the courtroom when matters arise that may need a decision to be made by the judge. The review panel observed that once the officer stepped out of the courtroom, the judge addressed the potential conflict and gave counsel a recess to consider their positions. His Honour indicated that the Crown Attorney should raise the issue with the officer, which the Crown Attorney did. The Crown Attorney then reported that neither he nor the officer had concerns with continuing the hearing before the judge.

The review panel found no evidence in the transcript to suggest that His Honour would not have heard a recusal application if counsel chose to bring one. The review panel determined that the record did not support the allegation that the judge “used his influence

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to downplay his own prejudice” or in any way prevented the Crown Attorney from bringing a motion for recusal. The judge gave both counsel an opportunity to consider the matter, and neither party brought a motion for the judge to remove himself from the case.

Further, the review panel accepted the finding of the subcommittee that there was no evidence to support the allegation that the judge’s decision to stay the charge was motivated by any personal bias against the officer. The review panel observed that the transcript of the judge’s Reasons for Judgment indicated that His Honour’s decision was based on a careful consideration of the evidence before him.

The review panel observed that the subcommittee reported that the Crown Attorney played more than three hours of video evidence and called four police officers to testify, including the officer referred to in the complaint. The review panel noted that while the judge accepted some of the evidence of the police witnesses, he determined that the evidence of the particular officer referred to in the complaint was not credible in light of what was shown on the video and the officer’s own “illogical, implausible explanations” and refusal to “answer direct, understandable questions” in cross-examination.

In reviewing the judge’s Reasons for Judgment, the review panel noted that virtually all contact between the officer and the accused was captured on video. The review panel observed that the judge found that the evidence showed that the police left the accused, who suffered from mental health issues and a serious disease that required prescribed medication to manage pain, naked in a cell for over several hours. The evidence also showed that the officer physically assaulted the accused, removed the blanket and mattress from his cell, screamed at the accused and refused to take steps for him to have medical assistance.

The review panel also noted from the materials that the Crown Attorney conceded that such conduct constituted a violation of the accused’s *Charter* rights. The review panel noted that the judge’s decision that the *Charter* violations justified a stay of proceedings was a matter of judicial decision-making outside the jurisdiction of the Council.

Finally, the review panel found that the judge’s comment that the accused “...no longer trusts the police, a perception that I’m beginning to share” did not suggest a broader bias against the local police service, as alleged. The review panel noted that the comment arose in the context of the judge’s consideration of the evidence and his findings based upon the evidence:

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“The defendant says every time he watches the video it causes pain in his heart. Quite frankly, it does for me too. I admire the police. I always have. It’s a tough job. But in these days, it’s a tough job with decent pay and benefits. And as tough as it may be, they asked to be police officers and if they asked to be police officers, they have to put up with things that they might find to be disagreeable. That it’s a difficult job is no excuse for the type of behaviour that took place that night. The defendant said he felt he was treated like an animal and he was, and that he no longer trusts the police, a perception I’m beginning to share.”

The review panel concluded that the comment, when read in the context of the reasons in their entirety, did not disclose a general bias against the local police service, but was grounded in the judge’s findings on the application before him.

The review panel concluded that the allegations of misconduct were not supported by the record, and the allegations regarding His Honour’s decision-making were outside the Council’s jurisdiction. The complaint was dismissed and the file was closed.

CASE NO. 24-008/18

The complainant was a court clerk. In her letter to the Council, she alleged that on a particular day, the subject judge kept the criminal courtroom going until after 1:00 p.m. and His Honour did not give staff a morning recess or lunch break that day. The complainant, who had a medical condition, alleged that by this time, she was having difficulty reading and typing because her hands were shaking. She indicated that she informed His Honour that staff had not taken a lunch break, and she asked if the court could recess because it was 1:15 p.m.

The complainant indicated that His Honour denied her request and said he wanted to continue with the plea that was before the court. The complainant felt she “wouldn’t be able to keep going”, given that each guilty plea took approximately 30 minutes. Therefore, she told His Honour that she would have to use the washroom if the court would not recess. The complainant alleged that His Honour permitted her to go, but “kept everyone waiting in the courtroom while [she] walked out to the use the washroom”.

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Further, she alleged that, as she was leaving the courtroom, the judge said to her, “and you watch your tone with me”. The complainant stated that she felt “shocked, angry, upset and humiliated” by His Honour’s conduct. She alleged that, upon leaving the washroom, she was met by another court reporter who had witnessed this exchange and was “disgusted by [the judge’s] actions”. The complainant indicated that she had to quickly compose herself “as there was a court room full of people waiting for me to return and do the next guilty plea”.

The complainant said that the court did not recess for lunch until 1:45 p.m., and His Honour asked staff to return by 2:15 p.m. to start up again. She stated that she did not have time to eat lunch, as she had to complete the sentencing paperwork for the last guilty plea. The complainant indicated that she left the courtroom at 2 p.m. and, after delivering the paperwork to the court office, quickly ate some nuts and went back to the courtroom to set up for the 2:15 p.m. start of the afternoon tier.

The complainant said that she had no morning or lunch break, and was humiliated “before a packed courtroom when [she] was forced to ask for a washroom break”. The complainant felt she had been denied her human rights.

She alleged that His Honour often worked during the lunch recess, and required staff to return early from their breaks. She stated that it was not uncommon for clerks and court reporters to go without a morning recess in His Honour’s courtroom.

The complaint subcommittee read the letter from the complainant and obtained and reviewed the transcript of the proceedings. The subcommittee obtained the audio recording and listened to the relevant excerpts of the proceedings. The subcommittee invited the judge to respond to the complaint and reviewed His Honour’s response. After completing its investigation, the subcommittee provided a written report to the review panel.

The review panel reviewed the complaint letter and the report from the subcommittee on its investigation, as well as the relevant excerpt from the transcript of the proceedings. The subcommittee read the response received from the judge.

The review panel noted that the subcommittee found that the court record showed that the court had taken two morning recesses prior to the complainant’s request for a washroom break. The panel was not aware, however, whether the complainant was required to,

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and did, remain in court during those breaks to complete her tasks. The panel noted the following exchange in the transcript between the complainant and His Honour:

- COURT CLERK: ... And Your Honour, we have been without an actual morning break and it's a quarter after 1:00.
- THE COURT: I'm aware of the time, let's get going. We'll do this and we'll take the lunch break.
- COURT CLERK: Then I'm just going to need a minute to get up and go to the washroom because while we had breaks ...
- THE COURT: Go ahead and come back.
- COURT CLERK: Thank you.
- THE COURT: And I would ask you to mind your tone.

The review panel noted that the subcommittee found that the audio recording showed that the complainant's tone toward His Honour, and his tone towards her, were measured and reasonable. However, the review panel noted that court staff have an important role in the administration of justice, carrying out responsibilities that are essential to support the judiciary in their work. Regardless of whether the Court took breaks earlier, it appeared to the review panel that His Honour's comment to the complainant lacked the appropriate degree of dignity and respect that a judicial officer should accord to staff working in his or her courtroom.

The review panel was of the view that a judge must be mindful of whether his or her comments would be perceived as respectful and judicious. As indicated in the preamble of the *Principles of Judicial Office*, judges must "recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society place in the men and women who have agreed to accept the responsibilities of judicial office."

The review 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 in the courtroom are all important elements of how a judge is perceived by

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members of the public. A judge has a unique role as exemplar and guardian of dignity and respect in the courtroom.

The review panel noted that, in His Honour's response to the complaint, he unreservedly apologized for his comment to the complainant, and regretted his conduct and that his words or conduct caused her "shock, anger, upset and humiliation". He also indicated that had he been aware that the complainant had a physical condition that required accommodation, he would have immediately granted her request for a lunch break.

While the review panel appreciated that His Honour expressed remorse for his conduct, it remained concerned by what may have been perceived as an arrogant and belittling attitude toward the complainant in open court. The panel also noted that His Honour's conduct gave rise to the perception by the complainant, and perhaps others, that he did not consider the requirements of court staff when conducting court.

The review panel observed that judicial officers must balance their obligation to process matters in a timely and efficient manner with their obligation to respect the rights and role of court staff. As paragraphs 2.1 and 3.1 of the *Principles of Judicial Office of the Ontario Court of Justice* provide: "Judges should approach their judicial duties in a spirit of collegiality, cooperation and mutual assistance" and "maintain their personal conduct at a level which will ensure the public's trust and confidence."

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. As the Supreme Court of Canada observed in *Therrien (Re)*, 2001 SCC 35, [2001] 2 S.C.R. 3, at paragraph 111:

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

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

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The review panel decided that the appropriate disposition was to refer the complaint to the Chief Justice for discussion, pursuant to section 51.4(18)(c) of the *Courts of Justice Act*. The Ontario Judicial Council's Procedures state that, "If the majority of the members of the review panel conclude that referring the complaint to the Chief Justice of the Ontario Court of Justice is a suitable means of informing the judge that the judge's conduct was not appropriate in the circumstances that led to the complaint; the conduct complained of does not warrant another disposition; and, there is some merit to the complaint, the review panel shall refer the complaint to the Chief Justice of the Ontario Court of Justice."

The Chief Justice met with the judge and discussed the concerns about his conduct, as well as the high standard of conduct expected of a judicial officer. The review panel observed that His Honour recognized that he had been overly focused on managing the docket and the cases, and he allowed himself to become impatient with how matters were proceeding. He allowed his impatience to affect how he reacted to the complainant and acknowledged that he acted thoughtlessly and without consideration of court staff.

The review panel noted that His Honour had taken the complaints process seriously and had genuinely reflected upon his conduct. His Honour better appreciated the important role of court staff in the courtroom and in the justice system. Through the complaints process, His Honour was more mindful of the need to ensure that staff are treated with respect, and that they should be given a proper amount of time for lunch and morning and afternoon breaks. He also better understood that staff are often required to continue doing paperwork while others have a break from court.

The review panel observed that His Honour intended to be more thoughtful about his comments, and more aware of how his words and actions may be perceived by persons in the courtroom. The review panel was satisfied that His Honour would endeavour to uphold the level of dignity and respect expected of the judiciary.

The complaints process was completed and the file was closed.

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CASE NO. 24-010/18

The complainant represented himself during a family law case involving a dispute over child support payments relating to expenses for his daughter’s university tuition, extracurricular activities and other items. In the midst of the court case, the complainant filed a 35-page letter of complaint with the Judicial Council against the presiding judge, accompanied by a binder of exhibits alleging 13 discreet allegations of judicial misconduct including breach of trust, libel, gender bias, and allegations that the judge acted unethically and maliciously resulting in numerous unfair and illegal court orders. In subsequent letters of complaint, the complainant alleged that the judge had a conflict of interest, had manipulated court records, had “some degree of personal contact with the applicant”, was guilty of malicious prosecution and “writing unlawful child support orders.”

Council staff informed the complainant of the Council’s policy not to commence an investigation until a case is completed. This approach prevents the Judicial Council’s investigation from interfering with, or from being perceived as interfering with, any ongoing proceedings. The complainant responded by letter criticizing the Council’s policy and the handling of his complaint and requested the immediate return of his material.

A subcommittee considered whether the complaint should be immediately investigated and determined that no investigation should take place until the litigation had concluded. When the court matter was completed, a file was opened and the investigation proceeded.

The complaint subcommittee reviewed the material filed by the complainant, and ordered and reviewed the transcripts of the appearances before the judge and the judge’s reasons for his decisions. When the subcommittee completed its investigation, it provided a report to a review panel.

The review panel reviewed the correspondence from the complainant, enclosures that he included with his letters, excerpts from the court transcripts, the judge’s reasons for his decisions, and the subcommittee’s report.

The review panel observed that in his correspondence to the Council, the complainant appeared to be attempting to revisit issues argued during the case. His allegations included that the judge failed to enforce strict compliance with the rules regarding the

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filing of documents, improperly assessed the evidence, incorrectly calculated amounts owing and failed to apply the law. These were all issues of judicial decision-making not judicial conduct. Accordingly, these matters were outside the jurisdiction of the Council.

Judges have decision-making independence in accordance with the *Constitution Act, 1867*. The Council's legislated jurisdiction is limited to the conduct of judges. If a person is of the view that a judge erred in his or her rulings or decision, a higher court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

With respect to the allegations regarding the judge's conduct, the review panel accepted the findings of the complaint subcommittee that a review of the transcripts and rulings demonstrated that the judge was fair, attentive and patient with both parties. The review panel observed that the transcript showed that the judge took time at the outset of a proceeding to clarify the issue before the Court with the parties, and, on a subsequent hearing date, to explain the court process. His Honour accurately summarized the issues to be decided, and he allowed both parties to make submissions.

The review panel concluded that there was nothing in the record to suggest the judge had predetermined the outcome of the hearing, demonstrated bias of any kind, acted unethically, engaged in a breach of trust, libelled anyone, demonstrated gender bias, conflict of interest or acted maliciously. Examples of His Honour's interactions with the parties during each of the court appearances were contained in excerpts of the transcripts attached to the subcommittee's report. None of the conduct-related allegations raised by the complainant in his letters and materials were borne out by the transcripts, all of which were reviewed in full by the subcommittee, or the judge's rulings.

The review panel dismissed the complaint as there was no evidence to support the allegations of judicial misconduct. The allegations related to judicial decision-making were outside the Council's jurisdiction.

CASE NO. 24-012/18

The complaint arose from a criminal proceeding in which the complainant was charged with sexual assault. The complainant appeared before the subject judge for a preliminary inquiry.

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In his letter to the Council, the complainant alleged that on the second day of the preliminary inquiry, the judge fell asleep while a witness (the alleged victim of the sexual assault) was giving evidence. The complainant alleged that because His Honour fell asleep, he missed “crucial pieces of evidence”, namely that the witness said she consented to the sexual activity and then recanted.

The complainant indicated that while the judge was asleep, everyone in the courtroom, including defence counsel, a detective and the Assistant Crown Attorney, tried to rouse the judge. The complainant alleged that these persons “made all kinds of noises like calling him...dropping pens on the desk, coughing really loud...trying all and every way to wake him up...to no avail.”

The complainant stated that although he was eventually acquitted of the charge, the conduct of the judge during the preliminary inquiry was disgraceful and unprofessional.

The complaint subcommittee read the letter from the complainant, and ordered and reviewed the transcripts from the two-day preliminary inquiry, as well as the audio recording of the second day of the hearing. In addition, the subcommittee retained independent investigative counsel to interview two witnesses who were present during the proceeding: the Assistant Crown Attorney and the detective that investigated the sexual assault allegations. The subcommittee reviewed transcripts of those interviews. The subcommittee then provided a report on its investigation to a review panel.

The review panel reviewed the letter of complaint, the report of the subcommittee, and the transcripts of the proceedings before the judge.

The review panel observed from its review of the court transcripts that His Honour appeared to be attentive to the evidence, proactive in ensuring proper questions were being put to the witness, and had a clear understanding of the evidence that was being presented. The review panel noted that the transcripts did not indicate that anyone attempted to call out to the judge in an effort to wake or rouse him during the proceedings.

The review panel observed that the subcommittee listened to the audio recording of the second day of the preliminary inquiry, when it was alleged that the judge had fallen asleep. The review panel noted that the subcommittee heard no evidence of any noises in the courtroom that were allegedly made to rouse the judge, such as pens being dropped, people speaking about the judge falling asleep, or loud coughing.

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Further, the review panel found no evidence in the court transcripts that the witness admitted that she consented to the sexual activity and then recanted, as alleged by the complainant. The review panel noted that, at one point, the witness said she consented to the complainant removing her clothes, but with the assistance of an interpreter, she quickly clarified that in fact she had not consented. It was clear that the witness, who was from a country other than Canada, had difficulty understanding the question in the way it was first put to her.

The review panel also noted from its review of the interviews conducted by investigative counsel that neither the detective nor the Assistant Crown Attorney said that the judge fell asleep during the proceedings. The review panel observed that during her interview with investigative counsel, the Assistant Crown Attorney said that on one occasion during the proceedings, it appeared the judge may have closed his eyes for a few moments but she did not believe that he was sleeping. The Assistant Crown Attorney also explained that in her experience appearing before the judge, he would often keep his head down and look at his notes.

The review panel observed the Assistant Crown Attorney's statement in her interview that:

His Honour was quite attentive during that hearing because he had on a number of occasions interjected with respect to defence counsel's questions when he thought they weren't fairly phrased to the complainant...I also have a recollection of the exit judicial pre-trial when defence counsel and I were in chambers with His Honour and His Honour actually quoted the complainant's testimony back to us in his commentary on the case.

After its review of the materials, the review panel accepted the findings of the subcommittee that the judge was attentive throughout the proceedings, intervened when necessary, and demonstrated a clear understanding of the evidence. The review panel noted that even if His Honour closed his eyes for a brief moment during the proceedings, this did not have an impact on his level of engagement in the hearing. The review panel determined that the allegations were not supported by the evidence, and dismissed the complaint.

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CASE NO. 24-013/18

The complaint arose in the context of contentious family law proceedings. The parties were involved in long-standing litigation regarding issues of custody and access. The parties agreed to Minutes of Settlement and a final order was issued on consent. Three years later, the matter was returned before the court on a Motion to Change the final order. The complainant was the party responding to this motion. The complainant raised, in her response, the issue of the jurisdiction of the court to address the claims of the opposing party.

In her letter to the Judicial Council, the complainant alleged that even though she was successful on the jurisdictional issue, the subject judge attempted to “*steer the resolution of the matter in a way that he desired*” rather than addressing the legal issue. She alleged that His Honour’s written reasons and comments in court demonstrated a failure to treat the parties equally, disrespect for her, and bias in favour of the opposing party.

The complainant stated that while His Honour accepted and agreed with her legal position, he made the following “concerning comments” in his written reasons:

[The complainant]’s resort to s.22 of the C.L.R.A. to effectively reset the litigation to square one at a location, [redacted location], a place far more distant from both parties’ residences than [redacted location], is telling in many respects. Evidently, [the complainant] has not grown weary of the litigation. She is clearly prepared to make many more trips to Court, albeit in [redacted location], before this case will be ready for trial. All the while, subliminal messages will likely be imparted to [the child] to dissuade his attendance at access visits with [the father]. Instead of fostering a healthy relationship between [the father] and [the child], [the complainant] is content to allow the litigation to drag on, when she, as the custodial parent, enjoys the tactical advantage of shaping [the child]’s attitudes toward his father.

The complainant alleged that there was no evidence before the Court upon which the above comments could be based: “We did not have a hearing and therefore [His Honour] did not have any opportunity to assess the credibility of [the father] before choosing to blindly accept his version of events”. She further asserted that, when delivering his oral

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reasons, the judge stated that the opposing party “may not have won the battle, but he can still win the war”. The complainant stated that such comments were unprofessional and demonstrated His Honour’s bias.

She continued that during a subsequent court appearance, the judge “disparaged” her again while delivering oral reasons by stating: “While I sympathize with [the father]’s efforts to play a greater role in [the child]’s life, which I truly do wish [the complainant] would come to appreciate as a blessing, not a curse...”. The complainant indicated that His Honour “consistently demonstrated...that he believed that [she] was impeding the relationship between [her son] and [his father]”.

The complainant concluded that the comments made by the judge, in his written decisions and during court appearances, amounted to bias and prevented him from acting as an impartial adjudicator.

The complaint was assigned to a complaint subcommittee of the Judicial Council. The subcommittee members reviewed the letter of complaint and ordered and reviewed documents from the court record, including His Honour’s Reasons for Decision on two separate occasions. The subcommittee also reviewed the transcripts of the proceedings before the subject judge. The subcommittee then provided a report on its investigation to a review panel of the Council.

The review panel reviewed the letter of complaint, the report of the subcommittee, the transcripts of the two appearances when the judge gave his oral reasons for his decisions, and His Honour’s written Reasons for his decisions.

The review panel noted from its review of the materials that the judge was addressing two litigants involved in a long-standing and high conflict custody and access battle. The review panel observed that the transcripts and Reasons of the judge showed that, in support of his reasons for his decisions, His Honour set out in detail the context of the litigation, which included a description of the actions of both parents throughout the litigation. The review panel noted that His Honour made comments about the conduct of both parties during the litigation, not only the complainant’s conduct. The review panel accepted the finding of the subcommittee that there was no evidence to support the allegation that the judge demonstrated bias against the complainant.

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The review panel further noted that the *Family Law Rules*, the framework under which courts must address family law proceedings, mandates a presiding judge to address each case on several levels, including settlement possibilities. Rule 17(4) provides: “*The purposes of a case conference include, (a) exploring the chances of settling the case; ... (c) exploring ways to resolve the issues that are in dispute...*”

The review panel accepted the findings of the subcommittee that the transcripts of the proceedings and His Honour’s reasons for his decisions demonstrated that he was, in the context of a high conflict proceeding, exploring with and encouraging two entrenched litigants to consider options other than continuing in an adversarial process. The review panel accepted the finding of the subcommittee that there was no basis for the allegation that the judge was “... *attempting to steer the resolution of the matter in a way that he desired rather than addressing the legal issues before the Court.*” The review panel noted that in the context of family law proceedings, presiding judges are required to explore with the parties ways to resolve the issues in dispute in a just and expeditious manner.

Further, the review panel noted that *The Children’s Law Reform Act* requires the Court to determine all issues involving children according to what is in the child’s best interest. Family law jurisprudence establishes the principle that children should have contact with both parents within the ambit of what is considered to be in their best interests. The review panel determined that, given the best interest criterion, His Honour’s comment, “*while I sympathize with Mr. [complainant]’s efforts to play a greater role in [the child’s] life, which I truly wish Ms. [complainant] would come to appreciate as a blessing, not a curse...*” was not inappropriate. The review panel noted that the comment must be considered in the context of his statutory obligations to determine the best interest of the child.

The review panel concluded that the evidence did not support a conclusion that His Honour acted in a biased or prejudicial manner in the proceedings. The review panel determined that there was no judicial misconduct and dismissed the complaint.

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CASE NO. 24-014/18

The complainant father was involved in family court proceedings with his children's maternal grandparents, who sought access to the children following their mother's death. The complainant appeared before the subject judge on two motions filed by the maternal grandparents.

The parties appeared before the judge on the grandparents' motion requesting the involvement of the Office of the Children's Lawyer (OCL). The complainant opposed the motion.

In his letter of complaint to the Judicial Council, the complainant alleged that the judge disregarded his submissions and those of his counsel, and that His Honour's decision was thereby prejudiced. The complainant also alleged that the judge ignored his concerns and evidence regarding the children's sense of anxiety surrounding the grandparents' access. He stated that His Honour reprimanded him for disclosing the behavior he observed in his children, and suggested that His Honour accused him of falsifying those observations.

Following the appearance, His Honour released a written decision granting the grandparents' motion. During the following month, the parties appeared again before the judge on the grandparents' motion requesting that the OCL investigator conduct an observational visit with the children.

The complainant alleged that during this appearance, the judge admonished him for describing his children's emotions, reprimanded him for discussions he had with the OCL investigator and failed to consider his evidence. The complainant further alleged that His Honour was biased against him in ordering costs of \$500 to be paid "in an unreasonable time frame (seven calendar days)".

The complaint subcommittee reviewed the letter of complaint and ordered and reviewed the transcripts from the motions before the judge. The committee also reviewed the judge's written decision issued on the first motion, and listened to the audio recording of the second appearance. At the conclusion of its investigation, the subcommittee provided a written report to the review panel.

The review panel reviewed the letter of complaint, the report of the subcommittee, and the transcripts of the two appearances referred to in the complainant's letter.

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With respect to the appearance for the grandparents' motion requesting involvement of the OCL, the review panel observed from the transcript that the judge actively listened to the parties and gave both sides an opportunity to put their positions before the court. In particular, the review panel noted that His Honour permitted the complainant to speak at length about an issue raised by the opposing party.

The review panel observed that the transcript indicated that His Honour kept an open mind throughout the proceeding and appeared to consider the positions taken by both parties. Further, the review panel found no evidence in the transcript to support the allegation that the judge suggested the complainant had falsified his observations about the children.

The review panel noted that the subcommittee carefully considered His Honour's written decision on the grandparents' motion. The review panel noted that the subcommittee reported that the judge referenced the parties' conflicting evidence in his decision, which confirmed that he did not ignore the complainant's submissions, as alleged. The review panel noted that the decision of the judge and his reasons for his decision, including his comments on the actions of the complainant, were outside the jurisdiction of the Council. If the complainant was of the view that the decision was not fair to him, the proper way to proceed was through remedies in the courts, such as an appeal.

With respect to the next appearance before the judge, the review panel observed from the transcript that His Honour ordered that the complainant was "prohibited from attempting to influence [the OCL investigator's] decision whether to conduct an observation visit or not." The review panel noted that prior to making this order, His Honour reviewed and considered the complainant's evidence, noting the following:

"But what is clear to me from these materials is that you've put your two cents in about what the children want, about their fears, about their - all sorts of things that you've said. And that may very well be; but nobody should be influencing her about the way that she should be doing her investigation. Full stop."

The review panel accepted the findings of the subcommittee that while the judge's language was direct and to the point, he did not admonish nor reprimand the complainant, or treat him in a disrespectful manner, as alleged. The review panel also observed from the subcommittee's report that His Honour did not raise his voice or use a demeaning tone when speaking to the complainant.

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The review panel noted that the subcommittee's report indicated that the judge used a calm, respectful tone throughout this proceeding and, in particular, when discussing his prior ruling, which the complainant appeared to dispute, and the fact that he had already considered the complainant's arguments against the involvement of the OCL and addressed them in his written decision on the grandparent's motion.

With respect to the complainant's allegation about the costs order, the review panel observed that His Honour entertained submissions on costs from both parties and decided that the complainant should pay \$500 in costs to the grandparents. The review panel noted that the determination of costs is a legal decision within the discretion of a judge. His Honour's decision to award costs against the complainant, the amount ordered and the time to pay, were all matters of judicial decision-making outside the jurisdiction of the Council. If the complainant disagreed with how the judge applied or interpreted the law, the proper way to proceed was through remedies in the courts, such as an appeal.

The review panel concluded that the court record did not support the allegations of misconduct, and the allegations about His Honour's decision-making were outside the jurisdiction of the Council. The complaint was dismissed.

CASE NO. 24-015/18

This complaint arose in the context of family law proceedings, namely a contested hearing between a grandparent seeking custody of a child from the child's biological mother.

The complaint alleged that a fair hearing of the request for custody did not occur due to the presiding judge's conduct.

Specifically, the complainant alleged that:

- a) The judge did not permit responses to questions asked by the Court. The judge interrupted the complainant during her attempts to respond in order to tell her about a previous case heard;
- b) The judge dismissed the complainant's concerns that the mother could not properly care for the child due to drug use. The complainant alleged that the judge's response to the concern was to indicate that the use of cannabis was going to be legal in Canada in the near future;

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- c) The judge delegated his decision making role. The judge “...never made a decision that day but rather let the Respondent mother make the decision.”;
- d) The judge “basically told the Respondent mother to drive ‘high’ ...” while in a caregiving role; and,
- e) The judge did not review any material filed or considered any information the complainant provided in support of the request for custody.

The complainant alleged that, for these reasons, the judge did not act in the best interest of the child who was the subject of the proceedings before the Court.

The subcommittee reviewed the correspondence from the complainant and the transcript of the court proceeding. After completing its investigation, the subcommittee provided a report to a review panel.

The review panel reviewed the subcommittee’s report, the correspondence from the complainant, and the transcript of the proceeding. The review panel observed that this matter involved a high conflict custody battle between the mother and the complainant. Furthermore, there was a court proceeding regarding the child between the mother and the father.

A. Allegation: Presiding judge not reviewing materials

The transcript of the proceedings included the following:

THE COURT: I, one thing I didn’t get in reading the materials, Mr. [counsel for the mother], is how does this get triggered, like what prompts, what prompt the – Is it, is it Mister, is it the new partner’s arrival or is that – That’s what, that’s what Missus...”

THE COURT: Okay. Now, before you go further, I’m just looking through the file, there’s another continuing record and endorsement record and I take it that’s in the action, a parallel action brought originally by Mrs. [mother] against Mr. [father].”

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THE COURT: I had, I had read that, but I, I wasn't you know, sometimes you can read something and not get a big picture, if you will. But I guess what, really that's the, the coming to light in these allegations, if I could put it that way...

MR. [counsel for the mother]: And I can—

THE COURT: ... is what kind of put the match to the tinderbox.”

The review panel concluded that a review of the transcript did not support the allegation that the judge had not reviewed the materials before the Court prior to determining the motion.

B. Allegation: Presiding judge's focus on recounting a past case

The transcript confirmed that the presiding judge never referenced a specific case or cases. Rather, the presiding judge addressed, in general terms, that a grandparent merely having concerns for his or her grandchild may not satisfy the legal threshold required for the Court to grant an order removing custody of a child from a parent.

With respect to the allegation that the presiding judge did not focus on the case before the court, the review panel noted that the transcript did not support the allegation.

C. Allegation: Presiding judge asked the mother if the complainant should have access with the grandchild

Following its review of the transcript, the review panel found that it did not support the allegation that the Court raised the issue of access with the mother.

The transcript showed that there was a discussion between the judge and the mother's counsel on the issue of the complainant's relationship with the grandchild. Counsel for the mother indicated that he was prepared to discuss with his client, the mother, the issue of access between the grandchild and the complainant. The review panel observed that the mother stated in open court, “I'm not open to do that.”

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D. Allegation: Presiding judge did not permit the complainant to address the court

The transcript showed that the judge addressed the complainant directly. The review panel noted that the judge sought input from the complainant by asking, "...But anyways, let me hear then from [the complainant], and you don't need to stand, Ms. [the complainant]. So you're – Tell me, why, where does this claim for custody come from?..."

Further in the proceedings, the review panel observed that counsel for the mother objected to the statements made by the complainant to the Court and asked the court to not give any consideration to the statements. The judge indicated "No, we're dealing with a layperson so..." The judge stated later that there was an awareness of the rules of hearsay.

The review panel found that the transcript did not support the allegation that the judge did not permit the complainant to address the Court. Rather, the review panel found that the transcript supported the conclusion that the judge was sympathetic to the complainant, and permitted the complainant to express all the concerns regarding the mother's ability to care for the child, permitted the complainant to describe the relationship with the child and tried to assist the complainant in understanding why the claim for custody would not succeed.

E. Allegation: Presiding judge basically telling the mother to drive "high" with children in the car

The transcript revealed that the complainant raised, in addressing the court, the belief that the mother had consumed drugs. The review panel observed the following exchange in the transcript:

MS. [Complainant]: And the odour in that house, she had just consumed drugs, smoked up drugs.

[. . .]

THE COURT: Yeah.

MS. [Complainant]: Several times, [the child] –

THE COURT: Let me ask you about that. Supposing it is marijuana...

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MS. [Complainant]: Yes.

THE COURT: ...you know the laws in Canada are imminently going to change and I don't necessarily think it's a good thing, but maybe it's a, accommodating reality. A lot of people are using marijuana.

MS. [Complainant]: Yes.

THE COURT: And so there's going to be laws on what you can do when you're using marijuana. Even the CAS will acknowledge now that just having used marijuana or even something stronger, as long as it's not at an addictive level, is not going to cause them to become involved in, in apprehending the child and placing the child in care. So where does that leave you if you – And the, the other point I would note about your material is that you'd have to prove that, like, you know, mom, mom may have her views about what you smelled or what, what was going on, but even if – Let's assume it was marijuana....”

The review panel found that the court record did not support the allegation that the judge told the mother to drive high with the children.

The review panel accepted the findings of the subcommittee that the transcript showed that the judge was fair, patient, and acknowledged that the complainant sought custody of the child out of a genuine belief that safety concerns existed. Further, the transcript showed that the judge, aware that the complainant was a self-represented litigant, attempted to explain the legal requirements to be considered when the Court is asked to grant an order changing custody.

The review panel concluded that the evidence did not support the allegations. The transcript showed that the judge gave consideration to the complainant's concerns and comments. The review panel dismissed the complaint and the file was closed.

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CASE NO. 24-016/18

The complainant appeared before the judge on six occasions in relation to a criminal charge for failure to respect a court order. The appearances involved applications regarding outstanding disclosure, an order for counsel to cross-examine the complainant's former spouse, as well as an application under section 11(b) of the *Charter* arguing delay in the trial proceeding. On the last appearance, the judge granted the section 11(b) application, which he brought on behalf of the complainant, and entered a stay of proceedings in respect of the criminal charge.

The complainant was self-represented for each of the appearances in question. He sent several letters to the Council, alleging twenty-three instances of misconduct on the part of the judge.

The subcommittee reviewed the correspondence and materials submitted by the complainant, and ordered and reviewed transcripts of all of the court appearances before the judge. In addition, one of the members of the subcommittee listened to the audio for each court appearance. When the subcommittee concluded its investigation, it provided a report to a review panel.

The review panel read the letters from the complainant and the relevant materials that he submitted. The review panel reviewed the report from the subcommittee and excerpts of each of the transcripts of the court appearances. The allegations are grouped together below.

Allegations 1, 2 and 17:

His Honour made repeated statements that the complainant was not able to represent himself:

His Honour told the complainant to contact Legal Aid and tell them that the judge said he needed a lawyer, "suggesting he held some sway with Legal Aid".

"[The judge] knew I had exhausted all of my appeals and had been repeatedly contacting Legal Aid ...and they had repeatedly refused my attempts but he would not listen."

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His Honour forced him to represent himself despite medical evidence that he was unable to do so.

His Honour “faked justice to support his predetermined conclusion” that the trial was going ahead, despite his concerns of the complainant’s ability to effectively defend himself.

The review panel accepted the findings of the subcommittee that the complainant maintained on many occasions that he was not medically able to effectively represent himself and the judge made similar observations. During one appearance, as shown over five pages of the transcript, the complainant described the history of his applications and appeals regarding Legal Aid Ontario (“Legal Aid”), continuously interrupting the judge.

This review panel accepted the subcommittee’s finding that the questions posed and recommendations made by the judge regarding the complainant’s self-represented status and Legal Aid were appropriate and in response to the complainant’s self-reported medical condition. Although the judge told the complainant to tell Legal Aid that the judge said “he really needed a lawyer on this case”, this statement was made to assist the complainant rather than to exert undue influence on Legal Aid. Judges often sign orders requiring Legal Aid to appoint and pay for counsel, and his statement must be taken in this context and the overall context of the litigation and the complainant’s particular condition.

When it was clear that legal representation was not forthcoming, the judge continued on with the issues of disclosure and delay. He assisted the complainant, however, in this endeavour, and the requests he made of the complainant were reasonable.

The review panel accepted the finding of the subcommittee that these allegations were unfounded and should be dismissed.

Allegations 5 – 10, 12 and 23

His Honour refused to allow him to respond to the Crown Attorney’s false claims regarding disclosure; falsely claimed that the Crown Attorney had provided disclosure: “He did this to support the repeated claims of the Crown”. The judge tried “to falsely claim for the record that it is my own fault because I did not do what he told me to do and that Disclosure is OVER”.

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His Honour advised him that he did not know what disclosure he had and that he had not reviewed the disclosure properly.

His Honour repeatedly bullied and intimidated him to make him accept that he had received disclosure.

His Honour intended to dismiss the “fake” disclosure motion quickly, away from the public.

His Honour blamed the complainant for his refusal to “listen/do anything about the withheld disclosure”.

His Honour refused to provide him with transcripts to “deprive” him of the withheld disclosure “that would be exposed on these transcripts”.

His Honour altered the transcript of one of the proceedings.

His Honour forced him to proceed to trial without disclosure and without any regard for the 30-month delay since his arrest.

The review panel observed that disclosure was the main issue at all but two of the court appearances. The decision of the judge on the disclosure application was a matter outside the jurisdiction of the Council. Judges have decision-making independence in accordance with the *Constitution Act, 1867*. The Council’s legislated jurisdiction is limited to the conduct of judges. If a person is of the view that a judge erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

The review panel noted that the subcommittee reported that the judge was mindful of the self-represented status of the complainant, and was proactive in ensuring the Crown Attorney responded to the disclosure issues raised by the complainant. The review panel accepted the findings of the subcommittee that its review of the transcripts revealed that the judge patiently and carefully considered the position of the complainant, as well as the response of the Crown Attorney prior to making his ruling. The judge ordered copies of the transcript of the proceeding (during which a prior judge made orders about disclosure in the case) and ensured a copy would be available for the Crown Attorney and the complainant.

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The review panel noted that a member of the complaint subcommittee reviewed the audio recording of each proceeding and each transcript, and found no support for the allegation that the judge altered the transcript of a proceeding.

The review panel concluded that these allegations were outside the jurisdiction of the Council and the allegations regarding conduct were without merit.

Allegations 4, 11 and 21

His Honour forced him to attend a disclosure motion and section 11(b) application, and permitted the Crown Attorney not to file any materials with the court.

His Honour deceived him by suggesting that he would protect the complainant's rights, while trying to move the trial ahead, 30 months after his arrest.

His Honour brought a section 11(b) application on his behalf, as "another tick of [sic] his list to get me to a trail [sic] as he claims he is doing me a favour when he is clearly paving the way to find me guilty without disclosure".

The review panel observed that the *Criminal Code* permits a judge to order the absence of the accused from his or her own proceeding. The review panel noted that the decision of the judge to require the complainant to attend for these applications was a matter of judicial decision-making outside the jurisdiction of the Council. Additionally, jurisprudence requires judges to identify possible defences and *Charter* issues for self-represented parties. By bringing the disclosure and 11(b) applications on behalf of the complainant, the judge was discharging this duty.

The subcommittee reported that its review of the transcripts showed that the judge required the Crown Attorney to serve the complainant with its responding materials and file them with the Court.

The review panel concluded that these allegations should be dismissed as being outside the jurisdiction of the Council and otherwise without merit.

Allegations 13 and 22

His Honour appointed 486.3(4) Counsel to his case without telling him why.

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Multiple 486 court orders were made by surprise having never been served or filed in court any applications for this”.

His Honour engaged in a secret hearing with three other lawyers

[The judge] claimed it was a 486 appointment “as if I had no right to know about this hearing or attend”.

The issue of the appointment of counsel under section 486 of the *Criminal Code* to cross-examine a Crown witness was discussed many times during the court appearances. Section 486 of the *Criminal Code* recognizes that a victim of sexual or domestic abuse may be afraid of the person accused of assaulting him or her, and provides for the appointment of a lawyer so that a self-represented accused will not personally cross-examine the witness. An order had been previously made by another judge and counsel had been appointed to cross-examine the former spouse of the complainant. Subsequently, an order was made by the previous judge removing the lawyer from the record due to a breakdown in the relationship with the complainant (caused by the complainant filing with the Law Society of Ontario a complaint about the lawyer).

The subcommittee reported that on several occasions the judge explained to the complainant why section 486 counsel was required to conduct the cross-examination of the complainant’s former spouse. The transcript of one appearance showed that the judge requested the assistance of Duty Counsel to ensure he or she would help the complainant if he was unable to find counsel on his own. The case was adjourned to allow the complainant to find counsel of his choice. On the subsequent attendance, the complainant said that he had not taken and would not take steps to retain section 486 counsel. The judge then advised the complainant that the Court and Crown Attorney would take steps to ensure section 486 counsel was appointed and that he would be contacted by counsel after that time.

During the subsequent appearance, the complainant alleged the judge had a secret meeting with the Crown Attorney and another lawyer. The Crown Attorney indicated that the judge had signed the order under section 486 appointing counsel, which had been ordered on the record. The judge then advised the complainant “that’s a different issue, [complainant], that’s not a secret hearing.”

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The review panel concluded that these allegations were unfounded and should be dismissed.

Allegation 16

His Honour covered up evidence regarding statements made by a CAS lawyer.

One of the transcripts showed that during a court appearance, the complainant provided a document to the judge for his review. The complainant told the judge that the document was purportedly a transcript of a conversation that was recorded between a lawyer appointed by the Office of the Children's Lawyer ("OCL"), allegedly chosen by the Children's Aid Society ("CAS"), and his daughter. The complainant alleged the OCL lawyer encouraged his daughter to lie about her mother, used profanities throughout their conversation and encouraged the child to use the same profanities. The complainant referred to publishing this document online and the judge recommended that he not publish anything without first speaking to a lawyer.

The review panel concluded that this allegation was unfounded and should be dismissed.

Allegations 18, 19 and 20

His Honour failed to respond to the complainant's request that he recuse himself.

His Honour talked off the record, claiming the recorder was not working.

His Honour threatened the complainant with contempt of court.

The review panel accepted that findings of the subcommittee that its review of the relevant portion of the transcripts showed there was no support for these allegations.

Allegations 3, 14 and 15

His Honour engaged in a campaign of bullying, intimidation and mocking of the complainant's health issues.

His Honour taunted him after he indicated he felt sick and wanted to go home.

His Honour repeatedly told the complainant to stop talking.

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The subcommittee found no evidence of the judge engaging in bullying or intimidation of the complainant. To the contrary, the judge, on many occasions, let the complainant go on at length, as shown by the transcripts, on subjects that were not pertinent to the issues at hand.

From its review of the subcommittee's report and the excerpts of the transcripts, the review panel found that the complainant throughout the proceedings had difficulty respecting directions from the Court. The complainant at each appearance interrupted the Court and the Crown Attorney, almost continuously. The interruptions were often unrelated to the issues that were being discussed, and would accordingly unnecessarily increase the length of the court appearance. The judge was frequently required to ask the complainant to stop interrupting.

One subcommittee member listened to the audio of each appearance. The subcommittee member reported to the review panel that the complainant spoke over the judge and the Crown Attorney, raising his voice to be heard. The complainant frequently yelled when addressing the Court.

The transcripts and audio recording showed that the judge's response to this behaviour varied. On occasion, he raised his voice over the complainant so that he could regain control of the proceeding. The judge took many breaks. He allowed the complainant to remain seated so that he would be more comfortable. Despite having to raise his voice, the judge remained calm and spoke in an even, respectful tone.

On five dates, the court appearances lasted hours, and in some cases, an entire day. The review panel was of the view that the judge's response to the complainant's behaviour must be interpreted in the full context of the entire proceedings. For example, on one date, the judge tried to focus on the issues that were to be briefly reviewed that day. He had added this appearance to another court list so that he could check-in on the status. The judge indicated as much, saying this should be a twenty-minute appearance and he tried to focus the complainant on the issues. The complainant then interrupted and spoke about other issues as shown in the transcript. The appearance took approximately ninety minutes because of these interruptions. On another date, the audio showed that the complainant spent much of the appearance speaking in a very loud, angry voice. The judge empathized with him because the complainant said that he was not feeling well.

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The judge remained calm throughout the appearance. One example of the manner of the complainant is below:

[THE CROWN] I haven't personally reviewed them, so I'm not in a position to assess whether they're relevant or clearly irrelevant. As I indicated earlier this morning, my preference is always to over disclose and provide material that's clearly irrelevant, rather than pull evid...

[THE COMPLAINANT] Since when are MDT logs not relevant?

[THE CROWN] May I please finish, sir?

[THE COMPLAINANT] I'm sick of you...

THE COURT: That's enough.

[THE COMPLAINANT] ...and the shit you're pulling on me in this court.

THE COURT: That's – that's enough. That's enough. That's enough. That's enough.

[THE COMPLAINANT] Don't you dare attack me.

THE COURT: That's enough. You heard me. That's contempt in the face of this Court. I will not have either of you yelling, right? I know I raised my voice once or twice this morning. We're not gonna do that. We're just not gonna do that. All right? You have the logs now, sir. Right? You can review them at home, on your own computer, and I will see you on the date set for the 11(b) reasons. Understood?

The subcommittee member who reviewed the audio of the above exchange reported that it was clear that the judge only raised his voice as loud as was necessary, after four warnings, in order to stop the complainant from continuing to act out.

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The review panel found that some words of the judge were inappropriate but recognized that in the context of the full trial and the persistence of the complainant's conduct, the comments were understandable. Examples are set out below:

- ◆ At an appearance to complete the disclosure application, toward the end of the hearing, after being interrupted by the complainant, the judge said: "I'm not gonna go down this rabbit hole much longer because I'm running out of time and I've been holding down a case all day for this scintillating discourse."
- ◆ On the date set for the hearing of the 11(b) application, the complainant interrupted the proceedings from the outset, making it very difficult for the judge to address the 11(b) application. The complainant continued to question the court about disclosure, and the form disclosure would take. After several interruptions by the complainant and his refusal, disclosed over several pages of the transcript, to let the judge move on to the merits of the 11(b) application, the judge said: "You are the definition of difficult" and "I'm dealing with irrationality, I accept that". As the interruptions continued, the judge asked the complainant to write down his questions and stop interrupting the proceedings. Rather than follow this direction, the complainant continued to interrupt, the judge responded, "You don't sir, you're not nearly as insightful as you think you are."
- ◆ The interruptions by the complainant continued and the judge explained to the complainant that he was looking after the complainant's best interests and the complainant would have to try as hard as he can to behave himself. In particular, the judge stated, "And I don't mean to be demeaning; I mean you will be given a chance to talk. You may not be given a chance to talk if you keep interrupting, because you will have said everything you have to say already, and I'm not gonna hear it twice." Despite this clear instruction from the judge, the complainant continued to argue for another page of the transcript until the judge took a recess.
- ◆ During one appearance the following dialogue occurred:
[THE COMPLAINANT]: And I'm in a lot of pain. Okay?
THE COURT: So am I. So am I.
[THE COMPLAINANT] Yeah, really? You're mocking me now too?

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- THE COURT: Yeah, I am. No I'm not mocking you. I'm just – my patience...
- [THE COMPLAINANT]: Well, maybe you should take some morphine and find out how it feels.
- THE COURT: No, I – look, I – I – I don't, you know, I – I actually am very, you know, I'm sensitive to the fact that you're struggling and I know that it'll be difficult for you to represent yourself, and I know that it's hard for you [sic] focus, I am sensitive to that. I mean, and – and I – and I will confess, I, you know I do find it very frustrating dealing with you, and it takes every given effort I have to just try to keep things calm and – and productive. That's what we're doing here, I mean that's what this exercise is all about. This whole exercise, man, is about me trying to make sure that you're [sic] rights are observed, and you know, I know you don't necessarily believe that, but y – you have to trust me, that's what it's about. All right, I mean I do – I do have your interests at heart and – and I am looking out for your *Charter Rights* [sic], I'm obliged to do so. And you're just gonna have to leave that to me, it's my job.

The review panel noted that the conduct of the judge must be reviewed in the context of the entire proceeding. Although the judge did show some frustration and loss of patience, the transcripts confirmed that he was primarily calm, polite and used a respectful tone during the various appearances. The review panel concluded that, when considered in the context of all of the proceedings, and in light of the particular challenges the complainant posed by his inability or refusal to follow direction from the court, the comments of the judge did not amount to judicial misconduct.

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

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CASE NO. 24-017/19

The complaint arose from a media report about a sentencing hearing after a guilty plea in a criminal matter during which the subject judge was reported to have used language that the complainant characterized as “disrespectful, rude, and condescending.” Specifically, the complainant pointed to the following comment made by the judge: “they [the Supreme Court of Canada] want judges to shut up and do what the lawyers want.”

The complainant stated that His Honour’s language was disrespectful to counsel and the Supreme Court of Canada, and called into question perceptions about his independence as a judge. The complainant said that the judge’s comments implied that the Crown Attorney and defence counsel controlled the courtroom and could dictate what sentence should be imposed.

The complainant alleged that the judge made other “ill stated” comments in the proceeding, but none were as “serious as the disparaging remarks he made in reference to the [Supreme Court of Canada].”

The complaint was assigned to an investigating complaint subcommittee for investigation, consisting of a judge and a community member. The subcommittee reviewed the letter from the complainant and the media article, as well as the transcript of the guilty plea, the lawyers’ submissions on sentence and His Honour’s oral reasons for sentence. When the subcommittee completed its investigation, it provided a report to a review panel.

The review panel reviewed the letter from the complainant, the Victim Impact Statement, the subcommittee’s report, the media article, and the transcript.

The review panel observed that in applying the principles of sentencing, the judge explained the law governing the deference judges must give to joint sentencing submissions:

That takes me to the *Anthony-Cook* decision by the Supreme Court of Canada in 2016. It tells me that I must accept what the lawyers tell me to do on a joint submission, unless their submission, if I accepted it, would bring reasonable informed members of the public to believe that our criminal justice system has completely disintegrated, so that means completely fallen apart, lost all confidence in our criminal justice system. The Supreme Court of Canada... said...we know that we have set the test “undeniably high”, and they basically

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said we have set it that high because we want judges to basically shut up and do what the lawyers tell them, because there is a whole bunch of reasons behind accepting joint submissions. You know, for example, the lawyers have the file, the court doesn't have the file, the lawyers do. They know all the strengths and weaknesses of the file, so they are in a better position to determine when it makes sense to reach an agreement. So they trade certainty for uncertainty, because trials can be very unpredictable.

A After reviewing the entire transcript of the guilty plea and the judge's reasons for sentence, the review panel concluded that His Honour's language was not "disrespectful, rude [or] condescending", as alleged. The review panel observed that throughout the judge's reasons for sentencing, he appeared to be speaking directly to the offender and used plain language to explain his reasons for imposing the particular sentence. The phrase "...shut up and do what the lawyers tell them..." appeared to reflect the judge's attempt to use plain language to explain the deference rule, rather than an attack on the Supreme Court of Canada's direction in *R. v. Anthony-Cook*.

The review panel observed that the media report about the case provided a summary of the proceedings without sufficient context. The review panel concluded that when the passage was read in the context of the sentencing reasons as a whole, it became clear that the judge was attempting to use plain language to explain legal concepts to the offender.

The review panel observed that the transcript did not support the allegation that there were other "ill stated" comments made by the judge throughout the proceeding.

The review panel dismissed the complaint on the basis that there was no judicial misconduct and the file was closed.

CASE NO. 24-019/19

The complainant requested that the judge "be appropriately disciplined for repeatedly misrepresenting his role in the creation of a memorial award at [redacted name of a school]". She further alleged that "someone who would make these misrepresentations may go so far as to make similar misrepresentations on their judicial application".

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The complainant alleged that the judge “repeatedly held out that he alone created the award to honour his [relative]”. The complainant asserted that this was untrue and indicated the award came about after collaboration with the legal community-at-large.

The complainant concluded her letter by stating “credit for the award belongs to the community-at-large and no one individual”. The complainant hoped the Council could “help set the record straight and have the judge cease with his misrepresentations”.

The complainant included the following materials:

- ◆ an article about the subject judge from the [redacted name of the school] (which the complainant seemed to be referring to as a biography) which concluded as follows: “In his final year at [redacted name of the school], he established the [redacted name of his relative] Memorial Award to assist students who exemplify the character of his distinguished [relative]”.
- ◆ A document from a reception for the Award;
- ◆ A publication that described the judge as someone who organized the scholarship for students in the honouree’s name;
- ◆ A local article which stated that the Award “was established earlier this year by students and alumni of the [redacted name of the school]”;
- ◆ A second local article which also states that the Award “was established earlier this year by students and alumni of the [redacted name of the school]”.

The complaint subcommittee reviewed the letter from the complainant, along with the enclosures that she provided. The subcommittee instructed the Registrar to write to the complainant to request additional information on the locations, dates and circumstances in which the judge held out that he alone created the award. The complainant wrote back that she did not have the exact information requested but did provide the same three articles that she had included with her complaint letter. The complaint subcommittee invited the judge to respond to the complaint and he provided a response. When the subcommittee completed its investigation, it provided a report to a review panel.

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The review panel reviewed both of the letters received from the complainant and the enclosures that she provided. The review panel reviewed the letter of response received from the judge and the report from the complaint subcommittee.

The review panel observed that the information received from the complainant showed that many individuals and organizations lent their support for the creation of the Memorial Award. However the material provided by the complainant to substantiate her allegations did not appear to have been drafted by the subject judge, nor did they appear to have been approved by the judge.

The review panel observed from the judge's response that he was shocked and saddened by the complaint. The review panel accepted the information received from the judge that he never took sole credit for the creation of the award and had "always spoken of and given credit to the complainant as the one responsible for the beginnings of the award". He also stated "while speaking of the award, I have also made a point of thanking my classmates as key contributors in the creation of the award".

The review panel observed that the examples provided by the complainant did not quote the judge and were not written by him. The review panel concluded that the judge should not be held responsible for how the media decided to represent him in their publications regarding his involvement with the award.

The review panel observed that in his response, the judge confirmed that "in my judicial application I indicated that I was co-founder of the award which is accurate". The judge expressed hope that, in his reply, the complainant would see that he had not forgotten her or anyone else's contribution to this award.

The review panel concluded that there was no basis to conclude that the judge indicated that he alone was responsible for creating the award or that he falsely claimed such in his judicial application. The complaint was dismissed and the file was closed.

CASE NO. 24-020/19

The complainant was the victim of assaults committed by her ex-boyfriend. The trial was heard before the subject judge. Both the complainant and the accused testified. The accused was found guilty. The case was adjourned for sentencing and a pre-sentence

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report was prepared. Prior to the sentencing hearing, the complainant read out her Victim Impact Statement in the courtroom. In that statement, she said she did not want to attend court any further, she could not afford the sick days from work and it was draining in every respect to be in court near her abuser.

The complaint arose from what occurred during the sentencing proceeding. The complainant, a legal professional, said that she attended the sentencing hearing at the request of the subject judge. She said that what she experienced at the sentencing was “devastating”. She alleged that:

- ◆ The judge commended the accused for finally admitting what he had done;
- ◆ The judge had her be at court with her abuser at the sentencing;
- ◆ The judge complimented the accused for paying restitution to the victim; and,
- ◆ The judge unduly focused on the accused’s mental health at the expense of the victim.

The complaint subcommittee reviewed the letter from the complainant and ordered and reviewed the transcript of the sentencing proceeding, including the judge’s reasons for sentence. When the subcommittee completed its investigation, it provided a report to a review panel.

The review panel read the complainant’s letter, the subcommittee’s report and the transcript of the sentencing proceeding, including the judge’s reasons for sentencing.

The review panel noted that the transcript of the reasons for sentencing showed that the evidence informed the judge that the accused suffered from mental illness and was not properly taking his medication at the time of the events that led to the criminal charges. The judge, in thorough reasons for the sentence, found the accused’s mental health played a central role in the commission of these offences. It was a factor that the judge took into account in determining the appropriate sentence. The judge also said that the accused’s mental health did not diminish the impact of the offences on the victim or excuse or justify his assaultive behaviour. The judge noted that, since the offence, the accused had been taking extensive counselling and was properly medicating himself and had made considerable progress. Further, the accused admitted to the probation officer, who prepared the pre-sentence report, that he was physically and verbally abusive to the complainant, and he accepted responsibility for his actions and was remorseful.

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The review panel could understand the complainant's perspective. In her letter of complaint, she wrote that the accused only admitted to what he had done after the complainant testified and was cross-examined. She questioned how the judge could commend his actions in front of the victim.

The review panel noted that the judge's remarks related to factors that were legal and factual issues to be considered by a judge in the context of determining a fit sentence for domestic assaults. The judge referred to other factors also considered to be relevant under the law, including the impact on the victim, the accused's background, his lack of record, his mental health and what he had done since this offence to address his mental health, which the judge found was centrally connected to these offences. His Honour then balanced the various considerations, referred to case law and sentenced the accused.

In his extensive reasons, the judge noted that the accused was not entitled to the mitigation that would have followed if he entered guilty pleas.

With respect to the judge's request to the Crown Attorney to have the complainant present for the sentencing, the review panel noted that the pre-sentence report informed His Honour that the accused admitted his abusive behaviour, apologized for it and expressed remorse for his actions. The review panel noted that in practice, judges sometimes request having a victim in the courtroom so that the victim can personally hear that the accused has apologized and expressed remorse for his actions. The transcript showed that the judge acknowledged the "very detailed and insightful victim impact statement detailing the significant impact [the accused's] actions have had on her emotional health and financial statement" and he understood that no sentence would undo what had happened to the complainant. However, His Honour expressed his hope that the complainant would be able to move forward in her life. It appeared to the review panel that he may have hoped that the opportunity for the complainant to hear about the accused's apology and remorse in person might be a helpful step for her on her healing journey.

The review panel observed that the complainant wrote that "the pursuit of advocating for mental health is an important one for someone in [the judge's] position but should not be coming at the expense of a victim." The review panel noted that the mental health of an accused, especially when causally related to the offence, as the judge found to be the case here, is a relevant factor that a judge is required by law to consider on sentencing. It was that context in which the judge was referring to the accused's mental health. The

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transcript showed that there were numerous times when the judge also highlighted the horrific abusive behavior inflicted on the complainant. The judge said: “This finding in no way reduces the seriousness of the accused’s conduct towards the complainant and it does not excuse or justify his assaultive behavior towards the complainant.”

With respect to the allegation that the judge complimented the accused for paying restitution to the victim, the review panel found nothing in the reasons for sentence where the judge complimented the accused for paying the fees or referred to it as anything resembling a nice gesture.

The review panel found that the judge’s reasons were thoughtful, balanced and carefully considered throughout. The judge’s comments to the accused, in the context of the finding that his serious mental health issues were a factor in the offences, were not inappropriate. The review panel concluded that there was no misconduct and the complaint should be dismissed. The file was closed.

CASE NO. 24-021/19

The complainant was the alleged victim in a Youth Justice Court sexual assault trial over which the subject judge presided. The complainant alleged that she consented to various sexual activities with the accused but was not prepared to engage in intercourse. She alleged the accused had intercourse with her without her consent. The accused testified that intercourse did not occur. Ultimately, the judge found the accused not guilty.

In her letter to the Council, the complainant indicated that she was not complaining about the outcome of the trial; she accepted that there was not enough evidence to convict the accused, as it was her word against his “and he lied”. The complainant expressed concern, however, about the comments made by the judge regarding her evidence about the alleged assault.

The complainant stated:

“I will assume [Her Honour] received no training on the impacts of traumatic situations otherwise she might have understood the ‘fight, flight, or freeze’ response that occurs when a person encounters a dangerous situation. Yes, I stayed with my assailant after I was assaulted. It’s easy to tell me what

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I should have done, because I've had that conversation with myself many, many times, but hindsight is 20/20. At the time, I didn't understand what had happened nor did I know how to respond."

The complainant alleged that the judge said her story was "illogical" because the complainant did not leave the scene after she was purportedly assaulted. She claimed that the judge thought her version of events was invalid because Her Honour would not have acted in the same way had she been in the same situation. The complainant said she couldn't understand how the judge "so heartlessly discredited my story on the basis of it being convoluted".

The complainant continued that Her Honour "made me appear foolish in front of my assailant who knows he is guilty." She stated, "I was hounded with so many mortifying questions". The complainant concluded that she hoped "the next sexual assault trial [the judge] has ends with her thinking about the circumstances from a trauma victim's point of view".

The complaint was assigned to a complaint subcommittee for review and investigation. The subcommittee reviewed the letter of complaint and the transcript of the trial proceedings before the subject judge.

The complainant and the accused were the only two witnesses to testify at the trial. The subcommittee noted that the judge intervened extensively during the complainant's examination, and asked her invasive questions of a sexual nature, including questions about the complainant's prior sexual history that, if adduced by the parties, would have been the subject of a formal application under section 276 of the *Criminal Code*.

The subcommittee further observed from the transcript that, in rejecting the complainant's evidence, the judge relied on a combination of factors, including that:

- (a) the complainant did not disclose the alleged assault to the police until about a year after the alleged events. The judge was quite troubled by the complainant's delayed disclosure of this assault for two reasons. First, because of the judge's view that the delayed disclosure impacted the complainant's memory since she told the court about two items she did not tell the police. Second, the

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judge expressed concern that the complainant spoke to a counsellor before disclosing the assault to the police. The judge believed the counsellor would have had a duty to report the abuse.

- (b) the judge expressed amazement that the complainant considered sexual intercourse more personal or intimate than the other sexual activity she consensually engaged in; and,
- (c) the complainant engaged in other sexual activity after the alleged assault occurred rather than saying “no” and telling the accused to take her home.

The subcommittee observed that the stereotypical view of the way a truthful complainant reacts to a sexual assault have long been discredited by appellate courts: *R. v. A.B.A.*, 2019 ONCA 124. Reliance upon stereotypical views about how victims of sexual assault would or should behave is an error of law: *R. v. A.R.J.D.*, 2018 SCC 6, [2018] 1 S.C.R. 218, at para. 2, aff’g 2017 ABCA 237, 55 Alta. L.R. (6th) 213.

In this case, the transcript indicated that the judge may have rejected the complainant’s evidence based on such discredited myths.

The subcommittee observed that improper questions and comments stemming from adherence to rape myths that are rooted in gender bias and that were long ago discredited and denounced by the courts have been found to constitute judicial misconduct: *In the Matter of Section 65 of the Judges Act, R.S., 1985, c. J-1, and of the Inquiry Committee convened by the Canadian Judicial Council to review the conduct of the Honourable Robin Camp of the Federal Court: Report of the Canadian Judicial Council to the Minister of Justice* (Canadian Judicial Council, March 8, 2017).

There is a requirement that judges apply the law and that they inform themselves of the law. As the *Principles of Judicial Office* for judges of the Ontario Court of Justice provides:

- 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.

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The subcommittee invited the judge to respond to the complaint and reviewed the judge's response. The subcommittee observed from her response that the judge expressed deep regret for causing the complainant anguish and for her poor choice of words during the trial. Her Honour apologized for her conduct and said that she did not intend her remarks to be perceived as reflecting negatively on the complainant. She also accepted full responsibility for "entering into the fray" and for asking the complainant questions that caused her to feel any embarrassment.

After completing its investigation, the subcommittee reported to a review panel.

Before the complaints process was completed, the Council received information that the subject judge no longer held judicial office. As a result, the Council lost jurisdiction to proceed and this file was closed.

CASE NO. 24-022/19

The complaint arose from a family law proceeding. The complainant and his former spouse appeared before the subject judge for several various case conferences and a settlement conference. In his letter of complaint, the complainant alleged that the subject judge engaged in the following:

1. "Proposition to commit fraud (obstruction of justice)
2. Abuse of power and violation of the *Family Law Rules*
3. Judicial bullying
4. Abuse of power and judicial revenge
5. Prejudice
6. Tampering with witness testimony
7. Lying on the bench (lack of integrity)
8. Endorsement of fraud committed by the other party".

The allegations primarily related to the judge's conduct during a motion filed by the complainant to change a child support order. However, the complainant also alleged "judicial bullying and underhanded tactics" on the part of the subject judge during other appearances.

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The complaint was assigned to a complaint subcommittee of the Judicial Council. The subcommittee members reviewed the letter of complaint and ordered and reviewed transcripts from all of the proceedings in the case before the judge. One of the members of the subcommittee also listened to portions of the audio recording from the hearing on child support.

After carefully reviewing the transcripts and portions of the audio, the subcommittee provided a detailed report on its investigation to a review panel of the Council. The review panel reviewed the complaint letter and the report of the subcommittee.

The review panel noted that the subcommittee did not find any evidence to support the complainant's allegations of misconduct. For example, the review panel observed from the subcommittee's report that the transcripts did not support the allegation that the judge "bullied" the complainant into agreeing to a higher amount of child support, or that Her Honour committed a "fraud and obstruction of justice" by encouraging the complainant's former spouse to obtain a medical note suggesting she could not work.

The review panel noted that the materials indicated that the temporary amount of child support was arrived at on consent; further, the judge told the complainant's former spouse that she would need to produce a medical note to substantiate her claim that she could not work due to her daughter's medical needs. The review panel accepted the subcommittee's finding that there was nothing in the transcript to support the complainant's allegation that the judge encouraged the complainant's former spouse to refrain from working.

With respect to the complainant's allegation that the judge attempted to "ambush him with questioning" during the motion to change, the review panel accepted the findings of the subcommittee that the transcript showed that although Her Honour advised the parties that she would normally rule on the motion based on the written materials filed, she allowed the complainant to cross-examine his former spouse for 30 minutes on her materials. The judge asked duty counsel to assist the complainant in this regard and gave the parties 40 minutes to prepare. During that time, the complainant chose not to get advice from duty counsel who was present and available to assist him.

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Finally, the review panel noted that the subcommittee found no evidence to support the allegations that, during the hearing on child support, the judge:

1. “Unilaterally supported the other party in a prejudicial fashion;
2. Continued to bully him;
3. Tampered prejudicially with the witness;
4. Used an intimidating voice;
5. Ruled in his favour only because he pointed out she had favoured the other party, acted fraudulently and with prejudice to him; and
6. Admitted to illegally helping the other party.”

For example, the review panel observed that the report of the subcommittee showed that the majority of the hearing consisted of the complainant’s cross-examination of his former spouse. The review panel noted from the materials that the judge permitted the complainant to cross-examine for a longer period of time than was initially ordered, and that she intervened only to move the matter along on and refocus the cross-examination on the sole issue before the court, namely child support. Despite these directions, the complainant continued to ask questions about access.

The review panel observed from the subcommittee’s report that the judge also tried to focus the complainant on the issue of child support prior to his submissions, but she nevertheless let him make his full and lengthy submissions.

With respect to the allegation that the judge used an intimidating voice, the review panel accepted the findings of the subcommittee that when the judge attempted to focus the parties, she spoke in an even, respectful tone. The subcommittee observed that the materials indicated that Her Honour’s tone was also respectful when she made her rulings on the issues of child support and costs. Although the judge was firm when required, she was also complimentary to the parties and encouraged them to work together as parents.

Finally, the review panel observed from the materials that the judge ordered child support in accordance with the Federal Child Support Guidelines and, after hearing from both parties on the issue of costs, made a ruling in favour of the complainant. The review panel noted that the judge’s decisions on child support and costs were matters outside the jurisdiction of the Council. If the complainant disagreed with how the judge applied or interpreted the law, the proper way to proceed was through remedies in the courts, such as an appeal.

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The review panel accepted the findings of the subcommittee and concluded that the allegations of misconduct were not supported by the evidence. The complaint was dismissed, and the file was closed.

CASE NO. 24-023/19

The complaint arose from a criminal trial in which the complainant and his co-accused were tried before the subject judge. On the fourth day of the trial, the Crown Attorney asked that the charges be dismissed due, in part, to missing disclosure. Through counsel, the complainant agreed to enter into a peace bond and the judge dismissed the charges.

In his complaint to the Judicial Council, the complainant alleged that the judge committed judicial misconduct by allowing the trial to proceed knowing that the complainant had not been provided with disclosure and by threatening to issue a bench warrant in response to his being late for court. The complainant stated that the judge's conduct demonstrated racial bias and asked that she "...be removed from the courts as a judge immediately."

The complaint was assigned to a complaint subcommittee of the Judicial Council. The subcommittee members reviewed the letter of complaint and the transcripts of the proceedings before the subject judge. The subcommittee then provided a report on its investigation to a review panel of the Council.

The review panel reviewed the complaint, the report of the subcommittee, and the transcript from the last day of the trial during which the judge dismissed the charges against the complainant.

With respect to the allegation that the judge allowed the trial to proceed despite the fact that the complainant was not provided with full disclosure, the review panel observed that Crown Attorneys, not judges, are constitutionally responsible for disclosing all relevant information to the defence. In this case, the complainant and his co-accused were both represented by counsel at the trial. The review panel noted that defence counsel did not bring a *Charter* application on the basis of the missing disclosure.

In any event, the review panel observed that Her Honour's decision to allow the trial to proceed was a matter of judicial decision-making outside the jurisdiction of the Council.

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Judges have decision-making independence in accordance with the *Constitution Act, 1867*. The Council's legislated jurisdiction is limited to the conduct, not decisions, of judges. If a party believes that a judge made an error in law, the proper remedy would be to seek redress through the courts, such as filing an appeal.

With respect to the allegation that the judge engaged in judicial misconduct by threatening to issue a bench warrant against the complainant for being late to court, the review panel observed from its review of the materials that the judge was clearly frustrated with the complainant's repeated tardiness during the trial.

The complainant was late to arrive to court on the first day of trial. The complainant was late again on the third day of trial, and the judge reminded him of the importance of being on time for court and asked him to be more respectful of everyone's time. When the complainant and his co-accused were both late for court on the last day of trial, the judge told counsel that she was considering issuing a bench warrant but was reluctant to do so as it might disrupt the trial.

When the complainant and his co-accused eventually appeared, the judge reminded them again of the importance of attending court on time:

In any event, they're here now. And very disrespectful to show up late. I recognize there are – there were subway complications, and I accept that, but this is not the first time that this has happened. You're wasting valuable court time. It's an important process. You both were facing very serious allegations, and one would have thought that you'd be here on time. Now having said that, I accept your counsel's explanation that there were complications with the subway. You're here now, and I understand that everyone's ready to proceed in some way. So thank you, you can both be seated.

The review panel found nothing improper in the tone or content of the judge's remarks that suggested she acted inappropriately in admonishing the complainant for his late arrival. The review panel accepted the findings of the subcommittee that, throughout the trial, the judge was respectful toward the complainant and his lawyer. The review panel did not find anything in the materials to support the allegation that the judge demonstrated racial bias against the complainant at any point in the proceedings.

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The review panel concluded that the allegations of misconduct were not supported by the evidence. The complaint was dismissed.

CASE NO. 24-025/19

The complainants submitted a letter of complaint regarding the judge who presided over their criminal trial. The complainants were represented by counsel at trial. The complainants alleged that the judge:

- ◆ Demonstrated “bias”, “bigotry”, “discrimination” and “hatred” toward them throughout the proceedings;
- ◆ Made findings on the evidence that were contradictory, incorrect, biased and unprofessional;
- ◆ Fabricated facts to justify his “biased behaviour and decision”;
- ◆ Interrupted and took over the defence’s cross-examination of Crown witnesses to prevent the witnesses from contradicting themselves, protect “criminals”, “confuse and distract the Defence lawyer” and get the defence “off track”;
- ◆ Abused his power as a judge;
- ◆ Paired up with the Prosecution and ganged up on [female complainant name];
- ◆ Made “inappropriate jokes and comments” to Crown witnesses; and,
- ◆ Mocked the complainants’ lawyer in an attempt to embarrass and distract the defence.

The subcommittee reviewed the correspondence from the complainants, the transcripts of the trial and the Reasons for Decision of the judge. One member of the subcommittee also listened to the audio recordings of the proceedings. The subcommittee also invited the judge to respond to the complaint, and reviewed the response received from the judge. After completing its investigation, the subcommittee provided a report to a review panel.

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The review panel reviewed the subcommittee's report, the correspondence from the complainants, excerpts from the transcripts of the trial provided by the subcommittee, the transcript of the judge's Reasons for Judgment, the response received from the judge and the decision on the appeal to the Court of Appeal for Ontario.

The review panel noted from the subcommittee's report that the first portion of the complaint letter detailed the complainants' concerns regarding the judge's assessment of the evidence and findings regarding witness credibility and reliability, as well as the findings of fact. The review panel concluded that these were all matters outside the jurisdiction of the Council. The proper way to proceed if the complainants disagreed with those matters was through an appeal. The review panel noted that the complainants had pursued an appeal which was dismissed.

The review panel noted that in its review of the transcripts of the trial, the subcommittee found many instances where the judge intervened, almost entirely during the Crown Attorney's case.

The review panel accepted the findings of the subcommittee that many of these interventions were decisions by the judge on the relevance of evidence. The judge appeared to intervene to direct the questions away from irrelevant issues or matters that had already been discussed. The review panel noted that this is an important function of a trial judge, and must be considered in the context of a lengthy trial that was scheduled to take several days. A judge is expected to try to keep a trial focused on the relevant information.

The review panel accepted the subcommittee's findings that in delivering his judgment, the judge was very respectful and appropriate. The judge explained the process to the complainants. When the case was adjourned to enable counsel to prepare for sentencing, the judge took significant steps to ensure the complainants would not worry about a possible jail sentence while waiting for the sentencing date. His Honour advised counsel he had no intention of imposing a jail sentence.

Following its review of the subcommittee's report and excerpts of the transcripts, the review panel was concerned by comments made by the judge that appeared to be inappropriate and gratuitous. The review panel was concerned that his remarks and demeanour during the trial left the complainants with the impression that he did not exhibit the level of decorum and propriety expected of a presiding judge.

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The review panel observed that the court record suggested that the judge engaged with Crown witnesses during their testimony in an informal, familiar and joking manner, particularly the alleged victim of the assault, and his spouse, who were both lawyers. The review panel noted that when defence counsel called its case, the judge's demeanour appeared to change, and he exhibited a more formal, detached and reserved tone.

The review panel was concerned that the judge's demeanour and remarks during the trial gave rise to the complainants' perception that he was not a neutral or objective adjudicator, and that they did not receive a fair trial. Examples are below:

THE COURT: ... Thank you sir. Thanks for your patience, thanks for arriving, thanks for testifying.

A. Thank you.

THE COURT: It's kind of good for a lawyer to get in the box and be cross-examined every now and again.

A. I suppose, eh?

THE COURT: You know.

A. Humbling experience.

THE COURT: Yes, you'll be a little more sympathetic the next time you cross-examine.

A. There you go.

THE COURT: I still remember that today, as [indiscernible] cross-examined as an articling student on a warrant and it just – never forget it. Anyways, have a safe trip home sir.

A. Thank you.

The review panel observed that such comments can give rise to the perception that lawyers are treated differently from other witnesses.

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The complainants alleged:

“when Crown witness [redacted] was asked a question about the types of alcohol consumed at a party, the judge inappropriately and ironically interrupted with a tasteless joke regarding alcohol and judicial notice.”

“If Judge [name] was doing his job correctly, he would never make any jokes at the trial, specifically jokes about judicial notice; instead he should have carefully taken judicial notices.”

The transcript showed the following exchange during the cross-examination of the alleged victim’s spouse by defence counsel:

Q. Okay. Do you remember that there was a bottle of gin, do you remember that?

A. I don’t recall seeing gin.

Q. Yes.

A. But I do recall seeing Caesars, Blood Mary Caesars.

Q. Right. And these Bloody Mary Caesars would have been made by someone; do you recall someone making the Caesars, or...

A. I don’t recall who was making them.

Q. Okay, that doesn’t matter. What about the vodka; did you – do you recall whether or not there was – there was vodka at the party?

A. It – there very well may have been, they – they – they may had the full bar, but to be honest with you, I was only focused on what I was drinking.

The Court: That’s what you make a Caesar with, counsel.

Defence: Sorry, Your Honour?

A. Well, we had a pregnant...

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The Court: You can't have a Caesar without...

A. We had...

The Court: ...vodka.

A. Well that's not quite...

Defence: Well, that's what I'm trying to get at, Your Honour.

A. That's not quite true, because some...

The Court: I can't take judicial [sic] of much, but you can't make a Caesar without vodka.

The review panel observed that on a subsequent occasion during this witness's cross-examination, the judge interrupted the examination to remark that he, like the witness, was an Anglophone lawyer, who was not fluent in French:

Q. Right. And she's verbalizing these observations to whom?

A. Just generally to the -to the -to the guests that were in -on -on the property line at the party.

THE COURT: But not to the anglophone lawyer from [City]?

A. Apparently not.

THE COURT: Right. Which I am one as well, so...

A. Oh, okay, so you understand...

THE COURT: ...I know how you feel.

A. My pain.

THE COURT: Yes.

The review panel observed that this exchange may be perceived as a judge empathizing with a witness while she is giving evidence.

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The transcript also showed that, at approximately 4:45 p.m., the judge adjourned the trial until the following day. In doing so, the judge appeared to express sympathy for the witness, who would have to remain in the city where the matter was being heard in and miss another day of work:

THE COURT: Another hour. Well, I'm sorry, we're –there's only so much I, you know –there's only so much we can do. Your respective law firms are going to have to cut you some slack.

A. I appreciate that.

THE COURT: All right. If they whine too much, just say I'm under subpoena. I mean, I don't think I have a choice...

The review panel noted that during the continued cross-examination of this witness the following day, the witness referred to a “grassy knoll”, and the following exchange occurred:

THE COURT: Did you say grassy knoll?

DEFENCE: I think that's how she described it, your Honour?

THE COURT: Oh, did she?

A. I read a lot.

THE COURT: I –you know, all of a sudden I'm having...

[Crown counsel]: It's a different grassy knoll.

DEFENCE: Probably not a knoll.

THE COURT: ...I'm having Kennedy flashbacks. We know, we all know what we're talking about.

The review panel observed that the judge interrupted defence counsel's cross-examination to make a popular culture reference to the assassination of former U.S. President, John F. Kennedy. The review panel further observed that such interruptions were perceived by the complainants as an attempt to embarrass and distract the defence.

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The review panel was concerned that, viewed cumulatively, the judge's comments during the trial were perceived by the complainants, and perhaps others present in the courtroom, as inconsistent with the appearance of dignity and impartiality required of a judicial officer.

The review panel noted that the judge's decision on the evidence did not reflect a lack of impartiality. The review panel observed that the Court of Appeal for Ontario found the judge's reasons to be fair and balanced.

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

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

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

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

111. The public will therefore demand virtually irreproachable conduct from anyone performing a judicial function. It will at least demand that they give the appearance of that kind of conduct. They must be and must give the appearance of being an example of impartiality, independence and integrity.

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What is demanded of them is something far above what is demanded of their fellow citizens.

The review panel observed that because judges hold positions of considerable authority, they are expected to conduct themselves according to high standards of professional conduct. Judges must perform the duties of their office impartially, independently and with integrity. The Preamble of the *Principles of Judicial Office* states:

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

The Principles also state:

1.1 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.

1.3. 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.

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

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The review panel noted that public perceptions of the administration of justice can be affected by the demeanour and comments of a judge in the courtroom, including:

- ◆ Where a judge appears to interact differently with witnesses called by the Crown Attorney as compared to those called on behalf of the accused;
- ◆ interrupts defence counsel during a cross-examination on matters that may be perceived as peripheral; or
- ◆ makes inappropriate jokes or remarks while a witness is giving evidence.

It is important that all parties who appear before judicial officers, including accused persons, perceive that they are being heard by an impartial and objective adjudicator who is able to keep an open-mind prior to making a decision. Where a judge makes comments that could be perceived as expressing sympathy or familiarity toward a witness during his or her testimony, this may create the impression that the judge is biased in favour of the witness and has prejudged the case. It may also negatively affect the perceived dignity and professionalism of the judicial officer. Justice must not only be done, it must be seen to be done.

The review panel noted that the response from the judge to the complaint showed that the judge had reviewed the court transcripts, and carefully had reflected upon the complaint and his conduct. The review panel could see that the judge recognized that comments made by him during the trial were thoughtless and ill-advised. He realized that these kinds of comments may impact negatively on the perception of the court and the fairness of proceedings. The review panel observed that the judge was embarrassed by his conduct and undertook to avoid such comments in the future.

After carefully considering the allegations and the results of the investigation, the review panel concluded that some allegations made by the complainants related to judicial decision-making and were outside the jurisdiction of the Council.

Other allegations were not supported by the transcripts, including allegations that the judge fabricated and twisted evidence, was biased and showed “unbelievable discrimination and hatred”, lacked integrity, “was protecting criminals”, “bullied and tortured the complainants”, and had a possible conflict of interest “to protect the criminals and justify the corrupt police investigation”.

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As set out above, the review panel had concerns about some of the judge's comments and attempts at humour. The review panel determined that although the comments did not amount to judicial misconduct, the comments needed to be brought to the attention of the judge. The complaints process is remedial. The review panel was satisfied that the judge had learned from the complaints process. The judge appreciated that he must conduct himself in a way that ensures that his comments and demeanour do not negatively affect the perceptions of the administration of justice. The review panel accepted His Honour's undertaking that he would not repeat such comments in the future.

The review panel dismissed the complaint. The file was subsequently closed.

CASE NO. 25-001/19

The complainant pleaded guilty to one count of criminal harassment before the subject judge and received a suspended sentence and probation. He was represented by counsel throughout his guilty plea.

In his letter of complaint, the complainant said that he thought that after hearing the background to the criminal harassment charge the judge would impose, at worst, a conditional discharge. He alleged that the suspended sentence imposed was unfair and demonstrated the judge's bias in favour of the police.

Before imposing sentence, the judge allowed the complainant to read a lengthy statement providing the complainant's explanation of the events leading up to the criminal harassment. The complainant alleged that a past altercation with the victim – a now retired police officer – was the source of his post-traumatic stress disorder (PTSD) and led to his losing his home and career.

According to the complainant, his failed attempts to receive compensation for this past injustice and to have the victim criminally charged has prevented him from moving forward with his life. He explained that at the time of the offence, his PTSD was severe. He admitted that he called the victim and threatened to show up at the victim's home and kill himself in front of the victim if he did not receive financial compensation.

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The complainant asked the Judicial Council to reprimand the subject judge for his “obvious bias”, order a new trial with a different judge, have the victim arrested, and he recommended “an investigation into the protectionism in the judicial system in Ontario.”

In the letter acknowledging receipt of his complaint, Council staff acknowledged the complainant’s expressions of suicidal thoughts and provided him with resources to support people suffering with mental health issues.

The complaint subcommittee reviewed the letter of complaint and the transcript of the proceeding before His Honour. When it concluded its investigation, the subcommittee prepared a report for the review panel.

The review panel observed from the transcript of the proceeding that the subject judge heard submissions from both Crown and defence counsel, and allowed the complainant to read a lengthy statement outlining his version of events leading up to the criminal charge. It was clear to the review panel that the judge carefully considered the complainant’s statement in his reasons for sentence, stating: “I was mindful of the suggestion that it was important to give you an opportunity today to express your views, to perhaps encourage the opportunity for closure.”

His Honour also explained how he arrived at the sentence, noting that the complainant did not have a previous record and that he was seeking treatment for mental health issues. However, the judge observed that the complainant did not express any remorse for his conduct, which was serious, and appeared to take the view that his actions toward the victim were justified.

The review panel concluded that ultimately the complainant was unhappy with the sentence imposed by the subject judge, which was a matter of judicial decision-making outside the jurisdiction of the Council. It found no support in the transcript for the allegation that His Honour demonstrated bias or favouritism toward the police.

The review panel noted that the complainant’s allegations regarding other members of the justice system, and the justice system itself, were outside the jurisdiction of the Judicial Council.

This complaint was dismissed on the basis that the allegation of bias was not supported by the evidence, and the remaining allegations, including those about His Honour’s decision-making, were outside the jurisdiction of the Council. The file was closed.

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CASE NO. 25-003/19

The complainant in this matter was acquitted by a justice of the peace of the provincial offence of unlawfully causing any material, substance or thing to be deposited on public land. The prosecution appealed that decision to the subject judge who allowed the appeal, entered a conviction and imposed a fine.

The complainant alleged that the judge “made up facts” to support his decision on appeal and that the “justification for his decision was based on his own untrue statement of fact”. The complainant further alleged that the judge “shows complete and absolute bias in his decision and no regard for the written law or true established fact and obviously collaborated with Crown”.

The complainant also questioned whether the judge and a lawyer employed by the Ministry of Natural Resources who “works alongside [the prosecutor]” were related, as they shared the same last name.

He further alleged the case involved a particular area of law and should have been heard before a judge of the Superior Court of Justice.

The complaint subcommittee read letters from the complainant, and ordered and reviewed the transcript of the appeal and the Reasons for Judgment issued by the judge. The subcommittee invited the judge to respond to the allegation that he may be related to a lawyer who worked at the same Ministry as the trial prosecutor. The judge provided a response. After completing its investigation, the subcommittee submitted a report to a review panel of the Council.

The review panel reviewed the complaint letters, the judge’s Reasons for Judgment, the judge’s response to the complaint, and the subcommittee’s report.

The review panel accepted the finding of the subcommittee that the transcript showed no basis for the allegations of bias, no regard for the written law, collaboration with the Crown or “made up facts”.

The review panel noted that if the complainant believed that there were errors in law or in the way the judge assessed the evidence, these would be matters relating to the judge’s decision within the jurisdiction of an appeal court. Judges have decision-making

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independence in accordance with the *Constitution Act, 1867*. The Council’s legislated jurisdiction is limited to the conduct of judges.

Similarly, the review panel found that the jurisdiction or the proper forum for an appeal was a legal issue outside the jurisdiction of the Council.

With respect to the complainant’s question as to whether the judge was related to a lawyer who worked at the Ministry of Natural Resources “alongside” the prosecutor, the review panel accepted the information received from the judge that he did not know the lawyer who happened to have the same last name. The judge indicated that to the best of his knowledge, he had never met nor even heard of the lawyer in question.

The review panel concluded that there was no evidence that supported the allegations and dismissed this complaint. The file was closed.

CASE NO. 25-004/19

The complainant was charged with driving while suspended. Following a trial before a justice of the peace, she was convicted and ordered to pay a fine of \$1,000. Her licence was also suspended for six months by the Ministry of Transportation.

The judge who was the subject of the complaint presided at complainant’s appeal. On the day set for the hearing of the appeal, many cases, including the complainant’s, were argued.

In her letter of complaint, the complainant indicated that she was upset by Her Honour’s conduct during the appeal, and by her conduct and demeanour throughout the day’s proceedings. The complainant alleged that the judge had “an unhappy and rude demeanour” when dealing with the matters before her, and that she was not knowledgeable about the “procedure of the courtroom”. She stated that the judge continually “asked the prosecution about the process and if what she was doing was right or wrong”.

The complainant further alleged that she witnessed “a racist situation in the courtroom” when a woman “who could speak perfect English...was told that she must speak in Tamil because they had already arranged an interpreter”. The complainant questioned why a woman who could speak perfect English should be made to speak Tamil in the courtroom.

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With respect to her own appeal, the complainant stated that the judge cut her off and told her to sit down. She indicated that she had a lot more to say but Her Honour was not willing to see her evidence or hear the remainder of her appeal. She commented that she spent a lot of money on the transcript and took a day off work but was not permitted to speak for five minutes even though her appeal was scheduled for thirty minutes.

The complainant also asserted that a gentleman with a similar case to hers was ordered to pay a \$300.00 fine while she was ordered to pay \$1,000.00. She alleged that Her Honour did not take her circumstances into account but was sympathetic to the circumstances of this gentleman which she felt was unfair.

The complaint was assigned to a complaint subcommittee of the Judicial Council. The subcommittee members reviewed the letter of complaint and the transcript of the day's proceedings before the subject judge. The subcommittee then provided a report on its investigation to a review panel of the Council. The review panel reviewed the complaint, the report of the subcommittee, and the transcript of the proceedings pertaining to the complainant's matter.

With respect to the allegation that the judge was not knowledgeable about the "procedure of the courtroom", the review panel agreed with the findings of the subcommittee that the questions asked by the judge during the proceedings were about process related to matters upon which the judge sought clarification, such as the process by which the Ministry of Transportation would be informed that an appeal had been dismissed. The review panel agreed that such questions were entirely proper.

The review panel also accepted the subcommittee's finding that there was no support for the allegation that Her Honour appeared "unhappy or rude" throughout the day's proceedings. Based on its review of the materials before it, the review panel could see that the judge was considerate, polite and repeatedly expressed her sympathy for the complainant's situation.

With respect to the allegation about a "racist situation in the courtroom", the review panel observed from the subcommittee's report that the judge explained why the woman who appeared before the court was asked to use a Tamil interpreter rather than speak English. Her Honour explained that the interpreter had been specifically requested, and

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she wanted to avoid the risk that the woman not be able to understand all of what was being said or asked. The review panel found nothing that the judge did or said could be reasonably seen as racist.

With respect to the complainant's appeal, the review panel found no basis for the allegation that the judge was not willing to see her evidence or hear the remainder of her appeal. The review panel observed from the transcript that it appeared the complainant initially only wanted to appeal her sentence. When the judge asked whether she was abandoning her appeal against conviction, the complainant stated that she wanted to read a letter to the Court, and "restart the whole process" of appealing both her conviction and sentence.

The review panel observed from the transcript that Her Honour agreed to hear the complainant's appeal against both conviction and sentence after the court took a break and addressed other matters. The judge read the complainant's letter and allowed her to file it in evidence even though it was not filed in advance of her appeal. The review panel found no support for the allegation that the judge cut the complainant off and did not permit her to speak for "five minutes". To the contrary, the review panel noted that the transcript showed that she made submissions, during which the judge appeared engaged and asked questions.

Following these submissions, Her Honour gave reasons for dismissing the appeal on conviction, namely, that the justice of the peace did not err in finding that the complainant's explanation that she deliberately did not check her mail and therefore did not know that she was a suspended driver was not a defence in law.

With respect to the appeal against the fine imposed and the allegation that the judge was more sympathetic to a gentleman in a similar situation, the review panel accepted the subcommittee's findings that the judge dealt with each case on its own merits. The review panel observed from the materials that the gentleman in question was a homeless person and had difficulty accessing his mail. He also had no previous convictions. In contrast, the evidence showed that the complainant chose not to pick up her mail and had two previous convictions.

The review panel observed that when the judge asked the complainant for submissions regarding the \$1,000 fine imposed at trial, she responded, "I guess \$1,000.00 is fine".

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The review panel concluded that the allegations of misconduct were not supported by the evidence. The complaint was dismissed and the file was closed.

CASE NO. 25-006/19

The complainant was the adult daughter of the judge's neighbours.

Two years prior to the incident that gave rise to the complaint, the complainant alleged that she and her fiancé were in her parent's backyard with her two dogs. She stated that when her dogs began barking, the judge's wife approached the fence between the two properties and yelled, "kill that fucking thing." The complainant indicated that since that time, she was uncomfortable visiting her parent's home and "...felt intimidated by the judge and his authority."

She indicated that she had been involved in a fire and sustained serious injuries resulting in Post-Traumatic Stress Disorder. The complainant said that her dogs helped with her recovery and were her "therapy".

The complaint arose from a day when the complainant indicated that she was in her parent's backyard with her mother, her fiancé and her dogs. She alleged that when her dogs began barking the judge, who was in his own backyard, approached the fence. She stated that her fiancé greeted the judge by saying, "Good morning Sir, how are you?" to which the judge responded, "I would be better if your dogs didn't bark".

The complainant stated that she approached the fence and said to the judge:

Where do you want me to let my dogs pee? What do you want me to do with my dogs? Are we not allowed to have dogs next door to you? Do you not think maybe if you don't like dogs you should move out of a family neighborhood considering there are dogs on both sides of your home?

She alleged the judge responded by saying, "...you have a big mouth." The complainant stated that her mother then stepped forward and said, "why do you only get mad at us? My kids are allowed to bring their dogs to my home. We hear the dogs on the other side of you barking all the time." The complainant alleged that the judge retorted, "...shut your mouth."

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The complainant stated, “it is very scary that a man like this is judging the character of others and reprimanding people for their errors.”

The complaint subcommittee reviewed the letter of complaint and prepared a report on its investigation for a review panel. The review panel reviewed the complaint and the report of the subcommittee. The review panel then requested that the complaint subcommittee send a letter to the judge inviting him to respond to the allegations in the complaint. The review panel reviewed His Honour’s written response to the complaint.

In considering His Honour’s response, the review panel noted that the judge expressed remorse for how he handled his interactions with the complainant and her mother. He indicated that despite “some provocative language from the complainant and her mother”, he should have not allowed his “frustration and emotions to get the better of” him. His Honour stated:

I regret my comments, and apologize for them. I have undoubtedly learned from this experience. It will not be repeated. I should add that it does not represent, in any way, how I comport myself in court or in my relationships with those involved in the administration of justice.

As part of his response, the judge also provided background information regarding his wife’s longstanding and very serious fear of dogs. His Honour provided information about a previous incident when one of the complainant’s dogs charged the backyard fence, badly frightening his wife. The judge also provided information about his relationship and his wife’s relationship with the complainant and her parents (the judge’s neighbours).

The review panel noted that the judge accepted responsibility for his conduct and expressed regret for the events leading to the filing of the complaint. The review panel accepted that His Honour would strive to better handle his frustration and emotions in the future.

The review panel observed that consideration of complaints about judges’ out of court conduct must strike a balance between the requirements of judicial office and the reality that judges are regular people with private lives. As stated in the *Ethical Principles for Judges* issued by the Canadian Judicial Council, judges “have private lives and should enjoy, as much as possible, the rights and freedoms of citizens generally.”

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The review panel noted that there was no information to suggest that His Honour attempted to use his judicial position in any way in his interactions with the complainant and her mother. Considering the context of the dispute and His Honour's response to the complaint, the review panel concluded that the judge's comments did not rise to the level of judicial misconduct, and that no further action was required.

The complaint was dismissed and the file was closed.

CASE NO. 25-007/19

The complainant was involved in acrimonious divorce proceedings with his ex-wife. He was subsequently charged with assaulting his ex-wife's new boyfriend. The complainant appeared before the subject judge for his trial on the assault charge.

In his letter of complaint to the Judicial Council, the complainant alleged that the subject judge had a conflict of interest because she was the spouse of his ex-wife's lawyer in the family proceedings. The complainant alleged that the judge would have known about him before his trial date due to his communications with her spouse in the divorce proceedings.

The complainant indicated that, at the start of the trial, his lawyer asked to speak with the judge in chambers. The complainant said that at first, Her Honour didn't see any reason why but then she reluctantly agreed. He said that upon returning from chambers, the judge indicated that "she may or may not have a conflict of interest" and therefore she was recusing herself from the case. The matter was put before another judge and the Crown Attorney withdrew the charge.

The complainant alleged that the fact that the subject judge and her spouse both worked at the same courthouse was itself a conflict of interest, and that because of the relationship between the judge and her spouse, local lawyers would not represent him. He also asserted that the judge "crossed the line with her intimidation".

The complaint was assigned to a complaint subcommittee of the Judicial Council. The subcommittee members reviewed the letter of complaint and the transcript of the proceedings before the subject judge. The subcommittee then provided a report on its investigation to a review panel of the Council.

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The review panel reviewed the complaint, the report of the subcommittee, and the transcript of the proceeding before the subject judge.

The review panel observed from its review of the materials that the lawyer indicated in the courtroom that an issue had arisen and he requested that counsel meet with Her Honour in chambers. Her Honour indicated, “Certainly, I will meet you in chambers.” Court then took a brief recess. After the recess, the judge thanked counsel and indicated that she had made arrangements to have the matter heard by a different judge in another courtroom.

The review panel noted that it appeared that during the discussion in chambers, counsel raised the potential conflict of interest with the judge and she responded appropriately by removing herself from the case. The review panel did not find any evidence of intimidation on the part of the judge, as alleged. Finally, the review panel observed that the fact that a judge and a lawyer are spouses and work at the same courthouse is not, in itself, a conflict of interest.

The review panel noted that a Crown Attorney has the authority to decide whether to withdraw a charge before a plea is entered. There was no evidence that the Crown Attorney decided to do so because the subject judge would not be hearing the case.

The review panel concluded that the allegations of misconduct were not supported by the evidence. The complaint was dismissed.

CASE NO. 25-008/19

The complainant appeared before the subject judge for a trial on a charge of breach of probation for which he was found guilty.

In his letter, the complainant stated that “it is his belief that the Judge came to the verdict as a result of bias toward the Crown and that the statements made indicate prejudice.” He alleged that the judge stated on the record that her finding was based on fact. He expressed the view that “a factual interpretation of the evidence is not adequate for a trial decision.”

He said that another judge acquitted him on multiple counts of the same criminal charge and the evidence was about the same. He indicated that the other judge based his verdict not only on a factual interpretation of the evidence, but also on the interpretation of the law.

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He also objected that the judge not only found him guilty, she also put him on probation again. He was already subject to an order of probation.

He indicated that the judge did not mention approximately fourteen other complaints that the complainant had made about other persons, including a complaint about the Probation and Parole Services. He stated: “my conclusion is that the judge is an agent of corruption by the Provincial Court of Ontario and the Crown Attorney’s Office at the Ontario Provincial Court.”

The complaint subcommittee read the correspondence from the complainant and ordered and reviewed the transcript of the trial, the judge’s reasons for her decision and the sentencing. The subcommittee directed Council staff to write a letter to the complainant to request additional information in relation to the complainant’s allegations of bias, corruption and prejudice. The complainant provided no additional information. The subcommittee directed Council staff to write a second letter to the complainant to request additional details in relation to his allegations. No response was received.

When the subcommittee completed its investigation, it provided a report to the review panel.

The review panel reviewed the letters from the complainant, the correspondence sent to him by Council staff, the subcommittee’s report, and the transcript of the judge’s Reasons for Judgment and of the sentencing.

The review panel accepted the findings of the subcommittee that the transcript showed that the judge was patient with the complainant, asking him several times whether he needed time to read materials. The judge also repeatedly tried to give the complainant disclosure, but he would not accept or review it. The judge even took care to inquire whether the complainant was aware of a shelter in the vicinity of the court and ensured that he was able to return to jail in order to collect his belongings. The subcommittee found no evidence in the transcript to support the complainant’s allegations of bias, prejudice or corruption.

The review panel observed that the complainant disagreed with how the judge interpreted the law, her decision to find him guilty and her decision to put him on probation. The review panel noted that these were matters of judicial decision-making outside the jurisdiction of the Council. Judges have decision-making independence in accordance with the

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Constitution Act, 1867. The Council’s legislated jurisdiction is limited to the conduct, not decisions, of judges. If a party believes that a judge made an error in law, the proper remedy would be to seek redress through the courts, such as filing an appeal.

The review panel concluded that there was no support for the allegations about the judge’s conduct and the judge’s decisions were outside the jurisdiction of the Council. The complaint was dismissed and the file was closed.

CASE NO. 25-010/19

The complainant was convicted of assault of his former spouse. He had representation during the trial but was self-represented on one day after the trial when he requested an order that he could have the digital recordings of the trial.

The complainant alleged that the trial judge’s lack of impartiality during the trial amounted to judicial misconduct. The complainant pointed to the judge’s treatment of his application to access the digital recording of the trial proceedings, the judge’s response to his request for an opportunity to retrieve his belongings from the family home and the fact that the judge was newly appointed and “was not far enough removed from the Prosecution side of the Court.”

The complainant also alleged that there was no evidence that he injured his wife, because it did not happen.

He alleged that the testimony of his ex-spouse was believed by the judge and he himself was “without the benefit of being heard.” He further stated that the witnesses at trial were allowed to sit together with friends in a closed room.

The complainant also alleged that the judge refused to hear his application for permission to retrieve personal property and documents from the home he shared with his former spouse. The complainant alleged that “he tried to ask the judge to be able to go home and pick up his personal documents and/or tag property, information that the judge IGNORED by refusing to hear!”

He alleged that when he requested a digital copy of the trial, the judge’s manner was intimidating and the manner in which the judge treated him led a defence attorney to step forward to help. He alleged that the judge aggressively rejected the defence attorney’s

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help, and the attorney “cowered” back to sit down. The complainant alleged that the judge may have believed that a mistake was made, she was having trouble accepting it, and therefore she used her judicial power to make it as difficult as possible to appeal.

With respect to his request for a digital recording of the trial, the complainant questioned whether it was a conflict of interest and of concern that he had to, in any way, request approval, have costs impacted and other challenges associated with the pursuit of an appeal by and from the judge who found him guilty.

When the complaint was received, the complainant’s case was still before the courts. Council staff informed him that the Council’s Procedures provide that if a complaint raises allegations of conduct arising from a court proceeding over which the subject judge is presiding, the Registrar shall advise the complainant that the Judicial Council does not generally investigate such complaints until the court proceeding and any appeal thereof, or other related legal proceedings, have been completed. This approach prevents the Judicial Council’s investigation from interfering with, or from being perceived as interfering with, any ongoing proceedings. The complainant was told that he could contact the office after the court proceedings were fully concluded, and an investigation could proceed at that time.

After the complainant confirmed that the court case was completed, the complaint was assigned to a complaint subcommittee. The complaint subcommittee reviewed the letter of complaint. The subcommittee also ordered and reviewed all of the trial transcripts, as well as the Reasons for Judgment and sentencing. The subcommittee also ordered and reviewed the transcript of the appearance in which the complainant requested an order that he should have a copy of the digital recording of the trial. When the subcommittee concluded its investigation, it submitted a report to the review panel.

The review panel reviewed the correspondence from the complainant, the subcommittee’s report, the transcript of the judge’s reasons for her decision on the trial, the transcript of the sentencing and the transcript of the appearance dealing with the complainant’s request for a copy of the digital recording of the trial.

The review panel accepted the subcommittee’s finding that there was no evidence the judge displayed any bias in favour of the prosecution or that she failed to remain impartial. The transcript of the judge’s reasons for her decision to find the complainant guilty demonstrated that the judge was even-handed and respectful in approaching

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all witnesses, including the complainant and his ex-spouse. Both the reasons for the decision and the reasons for sentencing were given in substantial detail, including why the judge deemed some evidence to be more convincing than others.

The complainant questioned why the witnesses at trial were allowed to sit together with friends in a closed room. The witnesses, who were the complainant's daughters, were in a separate room for some of the proceedings prior to giving testimony. The subcommittee reported that the transcript showed that there was no suggestion by defence counsel of collusion or inappropriate contact amongst the witnesses.

The review panel observed that the transcript showed that the judge spent considerable time on the complainant's request for the digital recordings. It became clear that the complainant was unfamiliar with the requirements of s.136 of the *Court of Justice Act* which govern access applications. The judge outlined the obligations for the complainant in some detail so there would be no misunderstanding. The judge also clarified that the complainant could not share the information on the digital recordings with any third party, including a lawyer. The judge decided that should the complainant wish in the future to consult a lawyer on the question of whether he should file an appeal, he would be required to return to the Court for a variation of that order. In answering a question from the complainant, the judge confirmed that the obligations were not retroactive, but rather would begin as soon as the digital recordings were received. The review panel found that the judge also explained to the complainant that appeals are usually filed on the basis of the transcripts, not the digital recordings and that should the complainant wish to pursue an appeal he would incur additional costs in that regard.

A defence lawyer on recess from another trial offered help by sharing her experience and suggested a common practice in other courts, namely "that an exception be worked in that he can show a licensed lawyer for the - strictly for the purposes of discussing the merits of an appeal." The judge did not pursue this course of action but did not respond in an intimidating or aggressive manner. The judge clearly and politely explained that while she was prepared to agree to the release of the recordings, a real concern still existed with the use the complainant would make of these recordings.

The review panel found that there was no evidence that the judge acted inappropriately in addressing the complainant's application for a copy of the digital recording.

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Finally, the review panel noted that the transcript revealed that the complainant misunderstood the appellate process. The review panel noted that a trial judge is not required to approve a person’s appeal, nor does the trial judge have any control over the costs of filing an appeal. The judge correctly informed the complainant that transcripts would be needed if he sought to proceed with an appeal and there was a cost for transcripts.

The review panel concluded that the allegations related to conduct were unsupported by the evidence. The allegations about how the judge assessed the evidence and her decisions were matters of judicial decision-making outside the jurisdiction of the Council. The complaint was dismissed and the file was closed.

CASE NO. 25-011/19

Prior to his appointment to the bench, the subject judge was the complainants’ lawyer in a civil case brought against the complainants in the Superior Court of Justice. The judge was appointed to the bench before the court case was argued. After his appointment, the remaining lawyers of his law firm decided that they could not continue to represent the complainants and referred them to new counsel.

The complainants, who retained another lawyer, lost at trial and were ordered to pay costs to the plaintiff. The complainants appealed to the Court of Appeal for Ontario where they lost and were ordered to pay further costs to the plaintiff.

After the Court of Appeal for Ontario dismissed their appeal, the complainants sent an “offer to negotiate” to the judge, arguing that the legal advice and services he provided resulted in them losing their court case. They were seeking to have him pay them for their “damages”. The judge’s former law firm responded to the complainants in writing, setting out the firm’s views on the complainant’s assertions about the court case and the legal services provided to them.

The complainants stated:

The crux of our complaints against [the judge] is not based on his incompetence as our former lawyer. The majority of those items (C1 to C40) served as evidence and context to support our complaints of his misconduct as an active

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judge. Instead our complaints point out his professional misconduct and unethical behavior when as a judge, he vehemently denies the occurrence of his misdeeds, even in the face of evidence...His misconduct is plain to see by his refusal to admit the truth and take responsibility for the damages we suffered under his care.

They asserted that “in his reply to the complainants’ correspondence, the judge basically dismissed any responsibility for his misdeeds. The later conduct is unbecoming of an honourable and ethical judge.”

They indicated that they were seeking a substantial amount of money for damages, in part for alleged pain and suffering and for the loss of enjoyment of repairs being done to their house. “And the damages are largely in part because as a judge, he did not provide any evidence to support his claim. Instead he denied any misconduct when he had his old firm send us an intimidating letter.” They also wanted an apology from the judge.

The Registrar wrote a letter to the complainants explaining the Council’s lack of jurisdiction to give them the payment of damages they sought, and explaining that there appeared to be no allegations of judicial misconduct that would be within the jurisdiction of the Council. Upon receipt of the Registrar’s letter, the complainants wrote another letter pursuing their complaint.

The complaint was assigned to a complaint subcommittee of the Judicial Council. The subcommittee members reviewed the letter of complaint and enclosures provided by the complainants. The subcommittee then provided a report to a review panel of the Council.

The review panel reviewed the complaint, the materials provided by the complainants and the subcommittee’s report.

The review panel noted that the conduct of a judge prior to his or her appointment is not generally under the jurisdiction of the Council. There may be an exception if a judge was under an obligation to disclose material information during the application process to become a judge, and failed to do so. The review panel noted that applicants for judicial office on the Ontario Court of Justice are asked the following question:

Q. 7. Please disclose any matter that you reasonably and objectively feel might adversely reflect on the Ontario Court of Justice.

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The review panel observed that the judge was appointed to the Bench before the complainants' trial began. The review panel concluded that advice and/or legal services provided by His Honour while he was a lawyer representing the complainants were solicitor and client privileged, and did not constitute a matter that he should have disclosed during the application process to become a judge.

With respect to the allegation about the judge's response to the complainants' "offer to settle", the review panel noted that after a judge has been appointed to the Bench, he or she is entitled to respond to an offer to settle from a former client or to have the former law firm respond.

The law firm's letter, responding to the complainants' correspondence was neither inappropriate nor a matter that supported a finding any finding of judicial misconduct. Rather, it was a step taken by a law firm in response to a civil dispute with a former client. The actions and response of the law firm were matters outside the jurisdiction of the Council.

Finally, the Judicial Council had no legal authority to intervene in the complainants' efforts in relation to their claim for damages.

The review panel dismissed this complaint as it was out of the Council's jurisdiction.

CASE NO. 25-012/19

The complainant represented herself in court on various criminal charges. She appeared before the subject judge for four judicial pretrial hearings in relation to the charges.

The complainant alleged that the subject judge discriminated against her based on race, gender, religion, creed, age and financial status. The complainant also alleged that the judge conspired with the prosecution and police, was unable to make decisions, lacked the knowledge and skills to administer justice, and dealt with the complainant's legal issues in a disrespectful manner. Finally, the complainant alleged that the judge assigned herself to the pretrial hearings and that if she (the complainant) failed to comply with the judge's directions at the pretrial hearings, she would be "going to jail".

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The complaint subcommittee reviewed all of the correspondence from the complainant and the enclosures that she provided. The subcommittee ordered and reviewed each of the transcripts of the appearances before the subject judge. After completing its investigation, the subcommittee provided a report to a review panel of the Judicial Council.

The review panel reviewed the correspondence from the complainant and the report of the subcommittee. The review panel accepted the subcommittee's findings that the transcripts did not support any of the complainant's allegations. The subcommittee found that the transcripts showed that the judge encouraged the complainant to hire a lawyer and to contact Legal Aid Ontario regarding her application for financial assistance. The transcripts also showed that the judge went to great lengths to encourage the Crown Attorney to withdraw the charges against the complainant, while at the same time demanding that the Crown fulfill its disclosure obligations.

The review panel accepted the subcommittee's findings that the record showed that the judge was fair, respectful and patient throughout her dealings with the complainant. The review panel also accepted the subcommittee's findings that the judge took time to explain the trial process to the complainant, canvassed trial issues including *Charter* motions raised by the complainant and tried to identify the number of witnesses the complainant wished to call if the matter went ahead.

With respect to the allegation that Her Honour "assigned herself" to the case, the review panel observed that it is common practice for a judge to seize herself of a matter in order to follow-up on outstanding issues and confirm whether the Crown Attorney intends to proceed with the case.

The review panel concluded that there was nothing in the record to substantiate the complainant's allegations of misconduct, including that the judge demonstrated bias. The review panel dismissed the complaint on the basis that the allegations were unsubstantiated. The file was closed.

CASE NO. 25-013/19

The complainant appeared before the subject judge for trial on two charges of domestic assault against his now former wife. The judge acquitted the complainant of the charges and ordered that he enter into a common law peace bond.

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In his letters of complaint to the Council, the complainant alleged that the judge was not impartial, made numerous errors in assessing the evidence, made incorrect findings on the evidence and failed to consider various pieces of evidence, including that his former wife had committed perjury by bringing false accusations against him.

The complainant also complained that the judge “left the matter unresolved”; the complainant was acquitted but his wife was not charged with making false allegations. He requested that the Council have another judge assess the evidence and determine the guilty party.

The complaint subcommittee reviewed the letters of complaint, including correspondence between the complainant and Council staff, and the transcript of the judge’s Reasons for Judgment and Sentence. After completing its investigation, the subcommittee provided a report on its investigation to a review panel.

The review panel reviewed all the materials considered by the subcommittee, and the subcommittee’s report. The review panel was of the view that the Reasons for Judgment and Sentence were comprehensive and did not reflect or suggest a lack of impartiality on the part of the judge.

The review panel observed that the subject judge reviewed the factual and legal issues in the case and concluded that, while she preferred the wife’s evidence over the complainant’s, the question in a criminal trial is not whose evidence is preferred but whether the Crown Attorney has proven guilt beyond a reasonable doubt. The judge found that the Crown Attorney had not established guilt beyond a reasonable doubt and acquitted the complainant of the charges.

Further, the review panel observed that the errors alleged by the complainant related to Her Honour’s assessment, apprehension and/or evaluation of the evidence.

Accordingly, they arose in the context of the judge’s decision-making function and were therefore outside the jurisdiction of the Judicial Council. The review panel noted that judges have decision-making independence in accordance with the *Constitution Act, 1867*.

It is important to maintain the distinction between legal errors and allegations of judicial misconduct. Maintaining that distinction is essential to ensure the public’s right to an independent judiciary while balancing the need for accountability and to correct legal errors.

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Further, the review panel observed that the Judicial Council does not have jurisdiction to have a new judge review the evidence in the complainant's matter and make a finding. The complainant was previously advised that if a person disagrees with a judge's assessment of the evidence or application of the law, he or she would need to pursue a remedy (if available) through the courts, such as filing an appeal.

The review panel concluded that the allegations primarily related to the judge's decision-making, which were outside the jurisdiction of the Council, and the allegations that could be said to relate to conduct were not supported by the evidence. Accordingly, the review panel dismissed the complaint and closed the file.

CASE NO. 25-014/19 AND 25-015/19

The complainant was involved in a family law dispute with his ex-partner (the "respondent") regarding access to their 17-year-old daughter. The complainant alleged that his daughter was the victim of parental alienation.

He appeared before the two subject judges, "Justice A" and "Justice B", in the course of these proceedings.

Allegations against "Justice A"

The complainant alleged that Her Honour exhibited gender bias, heavy handedness, unprofessional conduct and a potential conflict of interest. In particular, the complainant alleged that during a case conference, Her Honour made inappropriate comments that demonstrated bias, and wrongfully determined that "this was not a parental alienation case", thereby preventing him from filing a motion on the issue of reunification counselling. He claimed that Justice A demonstrated a "lack of competence in the nature and severity of parental alienation".

The complainant further alleged that there was a potential conflict of interest because Her Honour and the respondent had similar first and middle names. The complainant referred to research to support his view that the judge had more positive feelings toward the respondent because of the similarity in their names. It was his position that this posed a conflict of interest.

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During the proceedings, the complainant requested that Justice A recuse herself from the case, and the matter was transferred to Justice B.

Allegations against “Justice B”

The complaint appeared before Justice B for a trial management conference, during which he was self-represented. Justice B encouraged the parties to settle, but agreed to set a motion date for the complainant’s parental reunification motion.

The complainant alleged that, in a “deliberate act of malice and a completely inappropriate demonstration of power”, Her Honour subsequently vacated his parental reunification motion. The complainant alleged that, in doing so, Justice B contradicted herself “100%” and that Her Honour’s justification for her decision was a “convenient and nonsensical repositioning” and a “coordinated strategy” with Justice A. The complainant stated that Her Honour only “pretended” that the motion would occur in order to help “broker a deal” between the parties.

The complainant concluded that the whole process was biased, manipulative and vindictive. He stated: “the truth is, there was collusion between the two justices, the case was never going to be heard in court, it was never going to go anywhere. This was a sadistic power game, likely in retaliation for [his complaint against Justice A] ...”.

The complainant alleged that the Ontario Court of Justice “did everything possible to avoid justice”.

Investigation by Subcommittee and Decision of Review Panel

The subcommittee reviewed the complainant’s correspondence and the materials he enclosed, his correspondence with Council staff, and the transcripts and endorsements for each court appearance before the subject judges. Upon concluding its investigation, the subcommittee prepared a report for the review panel.

File 25-014/19

The review panel reviewed the subcommittee’s report, including all of the complainant’s correspondence. With respect to Justice A, the review panel accepted the findings of the subcommittee that Her Honour’s comments at the case conference, while perceived by

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the complainant to be “heavy handed”, were an appropriate reflection of the judge’s views on the case.

The review panel observed that it is within a judge’s authority during a case conference to raise potential issues about a party’s position and offer his or her views of the case. The subcommittee reported that there was nothing inappropriate about Her Honour’s comments. Her comments on parental alienation were based upon her views of the facts of the case before her and the law, and did not show a lack of competence in the nature and severity of parental alienation.

The review panel also observed that Her Honour’s decision to decline the complainant’s request for a motion for reunification therapy and her views of the facts and how the law on parental alienation applied to those facts were matters of judicial decision-making outside the jurisdiction of the Council. Judges have decision making independence, pursuant to the *Constitution Act, 1867*. Further, the review panel noted that the subcommittee found no evidence to support the allegation of a conflict of interest due to the similarities in names between Justice A and the respondent. Nor did the subcommittee find any support in the transcripts for the allegations of gender bias.

File 25-015/19

With respect to the allegations against Justice B, the review panel accepted the findings of the subcommittee that there was no support for the allegation that Justice B acted with malice or an “inappropriate demonstration of power” in vacating the complainant’s parental reunification motion.

The subcommittee reported that the judge took the time to go through the pleadings with the parties to ensure the proper issues for trial were identified. While doing this, the judge agreed with the complainant that it would be a good idea to have counsel appointed for the child. When counsel for the respondent spoke about the delay this would entail, the judge stated, “Well, I’m not sure representation comes with delay and I might be able to pull some strings...to get representation appointed fast.” The review panel noted that while the judge could have chosen her words more carefully to explain that judges normally provide additional details about the case to the Office of the Children’s Lawyer (“the OCL”), her comment did not constitute misconduct. In some cases, judges provide details to help the OCL determine whether appointing a lawyer is merited, and whether

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it should be expedited. Later during the conference, the judge explained that she would write details about her recommendation in the order. The review panel was satisfied that when considered in the full context, the judge’s remark did not mean the judge recommended doing something outside of the normal course.

Moreover, the review panel observed from the materials that Justice B made changes to her schedule to accommodate the complainant’s motion and set timelines for the parties to deliver materials for the motion.

With respect to the allegation that Justice B only “pretended” that the motion would occur in order to help “broker a deal” between the parties, the subcommittee reported that the transcripts did not support this allegation. The review panel noted, however, that one of the roles of a family judge is to encourage parties to resolve their disputes through settlement rather than litigation, particularly in cases involving custody and access.

With respect to the allegation that Her Honour’s reason for vacating the motion was a contradiction and “convenient and nonsensical repositioning”, the review panel observed from the subcommittee’s report that Justice B concluded that even if the complainant was successful on the motion, there would not be enough time to successfully implement reunification therapy. The judge referred to the *Family Law Rules* and the direction they provide regarding the proper use of judicial resources.

The review panel determined that the decision of Justice B to dismiss the motion constituted an exercise of judicial discretion, based on her assessment of the facts, the applicable law and the *Family Law Rules*. This was a decision reviewable by an appeal court, not the Judicial Council. The Council does not have jurisdiction over a judge’s decision-making authority.

The review panel noted that both judges were careful to explain the tight timelines involved in the complainant’s motion and the possibility that a decision would not be issued before his daughter turned 18 years of age. The review panel observed that when someone turns 18, the court typically loses jurisdiction to make orders regarding custody and access. Further, both judges encouraged resolution discussions to assist the parties in resolving the case before the child turned 18 years of age. The review panel accepted the findings of the subcommittee that there was no evidence of collusion between Justice A and Justice B.

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The review panel determined that the substantive and procedural decisions made by the two judges fell outside the jurisdiction of the Council, and the allegations of judicial misconduct were not supported by the evidence. The review panel dismissed both complaints and the files were closed.

CASE NO. 25-016/19

The complainant was a party in a family law proceeding before the subject judge. There were ten (10) pre-trial hearings, known as conferences, and one trial, which was presided over by a different judge (who was not the subject of this complaint).

The complainant made numerous allegations about the pre-trial judge, alleging that the judge:

- a. Had an abusive attitude, and intimidated clients;
- b. was discriminating, stubborn and sexist;
- c. was unprofessional in decisions;
- d. misinterpreted the law, and did not consider real documents;
- e. made decisions on perceptions and displayed a destroying attitude;
- f. did not allow the Respondent to speak, cutting the Respondent off;
- g. refused to connect the Respondent to one of the teleconferences; and,
- h. used bad tactics and poor communication.

The complainant also complained about one of his lawyers. Complaints about lawyers do not fall within the jurisdiction of the Ontario Judicial Council. The complainant was referred to the Law Society of Ontario, as the body that has the jurisdiction to deal with complaints about lawyers.

At the time when the complaint about the judge was received, the complainant's matter was before the courts. The Council's Procedures provide that if a complaint raises allegations of conduct arising from a court proceeding over which the subject judge is presiding, the Registrar shall advise the complainant that the Judicial Council does not generally investigate such complaints until the court proceeding and any appeal thereof, or other related legal proceedings, have been completed. This approach prevents the Judicial Council's investigation from interfering with, or from being perceived as interfering with, any

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ongoing proceedings. The complainant was informed of this provision in the Procedures and that he could contact the Council's office again when the court case was fully concluded.

When the complainant confirmed that the case was no longer before the courts, the complaint was assigned to a complaint subcommittee for investigation.

The subcommittee reviewed the complainant's letter, court endorsements and the transcripts for all the attendances. Following its investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed correspondence to and from the complainant, the complaint subcommittee's report and relevant excerpts of transcripts that were appended to the complaint subcommittee report.

The complaint subcommittee reported to the review panel that the complainant's ex-wife brought a motion to prevent the complainant from leaving the city with their children. She alleged the complainant planned to move out of the country with the children prior to the start of school.

The complainant was served for the court appearance, but he appeared only later in the day. Counsel for the ex-wife advised the court he had told her that he would not be attending court. The judge therefore made an interim order sharing residence of the children between the parents, as well as an order for costs.

When the complainant later appeared, the judge explained to him that he had to file responding materials. The judge provided the parties with another date to argue the motion, and gave the complainant until that time to file his materials.

The judge learned during this appearance that the complainant and his ex-wife received a divorce after being recently separated. It appeared to the review panel that this may have raised credibility issues for both parties, given a divorce normally issues twelve months or more after separation.

On the next scheduled date before the judge, the mother asked that the paternal grandmother not have contact with the children and that the Office of the Children's Lawyer (OCL) become involved for the children. The complainant brought a motion to return to a 60/40 arrangement whereby the children would spend 60 per cent of the time with him.

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The judge told the complainant they had ten minutes to deal with the issue of whether she should change her temporary order. The review panel observed that it is not uncommon for a judge to limit the time allotted for each case on a list, otherwise lists can become difficult to complete. The complainant consented to an order appointing the OCL.

The judge extended the time for the complainant to file responding materials regarding the main application.

The judge expressed concern that the parties had lied in a Superior Court of Justice affidavit in order to get a divorce prior to being separated for one year. The judge stated:

...you go ahead. You lied about when you were separated because you were just separated, and you can't get a divorce until you've been separated for a year. You lied. You both did. Both of them. They both lied, I know that, so I have a lot of concern in this case.

The judge asked the complainant if he had anything else to say before she moved on to the mother's counsel to respond to concerns raised by the complainant.

The judge declined to change the order, ordered that the OCL be involved, and explained to the parties what would need to be done for the next court date.

The complaint subcommittee reported to the review panel that the complainant attended with counsel on the following court date, as did his mother. The complainant's ex-wife attended without counsel. Counsel advised the court that the parties had arrived at a final consent order. The ex-wife appeared for an uncontested trial.

The ex-wife requested sole custody with access to the complainant and his mother at her discretion. She also asked that income of \$100,000 per year be imputed to the complainant and that child support be adjusted accordingly (this was an increase from the amount set in the previous order).

It appeared that the complainant had moved out of the country. The judge granted final orders on everything except the child support. Her Honour gave the complainant some time to respond to the issue of imputed income.

On the next scheduled court date all the parties had counsel at this attendance. The complainant participated by teleconference. The review panel noted that parties can appear by teleconference only with the consent of the presiding judge. The complaint

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subcommittee reported that the transcript showed that the parties could not reach an agreement on support and access and accordingly the case was adjourned for a settlement conference. The judge also dismissed a motion by the grandmother because there was no jurisdiction to hear her motion.

The parties attended the settlement conference with counsel. The complainant attended by phone because he had new employment out of the country. The subject judge encouraged the mother to agree to a reduced amount of child support, the parties took a break to discuss it, and they arrived at a temporary consent order on the amount of child support.

On the following court date, counsel attended, as well as the mother. The complainant attended by telephone once again. The judge noted the lawyers could not simply avoid a settlement conference by filing a confirmation advising that it could not be resolved and requesting a hearing date. The judge correctly pointed out that only a judge can waive the necessity of a settlement conference. She was not prepared to waive the settlement conference, and accordingly set a new date. The judge chose a date that accommodated the fact the complainant continued to reside out of the country. She also provided guidance to counsel on how to get a video link for the complainant from his location in order to save money.

The parties were represented by counsel at the next appearance. The complainant attended by telephone. The complainant asked that child support be based on the level of income which was the basis for the original order. The judge recommended that the complainant's ex-wife agree on a temporary basis to a reduction of the child support. She recommended the parties return on a subsequent date and review the complainant's actual income, and the child support would then be adjusted retroactively. The complainant's ex-wife consented to an interim order basing child support on the annual income upon which the prior order was based.

The parties were represented by counsel at the next scheduled court date. The complainant attended by telephone. Counsel for the complainant advised the court his client was no longer employed because his work permit was denied. Portions of the application were blacked-out, and the judge was concerned about proper disclosure of the reason for his inability to work. The complainant asked that support be based on a

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lower level of income, which contradicted his statement that he was unemployed. His brief indicated he was returning to Ontario, but the complainant told the judge that he had no money to return and needed to first work until he could get the money to travel.

The judge pointed out these contradicting positions and indicated that the case could not be resolved. She accordingly ordered trial of the issue of income, child support and access. She canvassed the evidence for trial with counsel and set a day aside. She indicated that the complainant could participate by video from his location out of the country. At one point she asked the complainant to stop interrupting, and it appeared the complainant became offended.

On the next appearance, new counsel appeared for the complainant. New counsel did not have the file and indicated he was not available on the date set for trial. The judge pointed out that the matter was quite old and was ready for trial. She stated that switching counsel should not delay the trial. However, with the consent of other counsel, the judge agreed to change the trial dates to accommodate new counsel and confirmed the complainant would attend the trial by videoconference.

The review panel observed that the judge did not connect the complainant by teleconference because the matter was simply on the list that day to confirm the trial date, which is something the clerk, not the judge, would normally address. Given that the new lawyer was late for assignment court, the judge addressed the matter on her list.

On a further date, the matter proceeded to trial before a different judge, who is not the subject of this complaint. The only issue counsel asked the court to determine was child support. The complainant appeared by videoconference. He stated that he always had problems hearing the subject judge when he appeared by teleconference. It appears the trial judge's microphone was turned off. When the trial judge discovered this, and turned it on, the complainant indicated he could hear the judge.

When the evidence was completed, the trial judge asked counsel to try one more time to resolve the matter. The judge offered to find another judge to assist them. After a recess, counsel filed Minutes of Settlement, resolving the matter on a final basis.

The review panel agreed with the findings of the complaint subcommittee that the pre-hearing conference judge was clear in her language and direction, but accommodated the complainant in terms of late filings, resolution discussions and his teleconference/

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video conference attendances. When it became clear that further conferences would not resolve the case, she ordered the matter to a trial before another judge. The review panel noted that finality is important in family court proceedings, and sometimes only a trial will assist in finalizing a case, as it did in the present case.

The review panel concluded that the allegations made by the complainant were not supported by the court record. There was no evidence to support the allegations of misconduct. As a result, the review panel dismissed the complaint and the file was closed.

CASE NO. 25-017/19

The complainant pleaded guilty to criminal harassment, failing to comply with an undertaking, breach of recognizance and failing to appear in court. The charges arose out of a domestic dispute between the complainant and his former spouse. The complainant's lawyer argued for a time-served sentence considering the complainant's lack of a criminal record and significant mental health issues. The Crown Attorney sought the equivalent of a 30-day sentence. Both lawyers agreed that probation was appropriate.

The subject judge imposed a sentence of seven days jail in addition to time served and two years' probation.

In his letter to the Council, the complainant made various allegations against the subject judge, including that she committed legal errors, did not follow due process, and threatened that if he did not plead guilty to all charges, he would be imprisoned for a further 7-14 years. The complainant asked the Council to revoke Her Honour's "status as a judge immediately", review all decisions and rulings made by her, "void all judgments made by the judge", order a formal apology from the judge and compensate the complainant for damages caused by "...this fraud judge."

The complaint subcommittee reviewed the complainant's letter and the transcripts and endorsements of the proceedings before the subject judge. Upon completion of their investigation, the subcommittee submitted a report to a review panel. The review panel reviewed the subcommittee's report, the letter of complaint and the transcript of Her Honour's Reasons for Sentence.

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The review panel accepted the subcommittee's finding that the allegation that the judge threatened the complainant with additional jail time if he did not plead guilty was not borne out by the transcript. The subcommittee reported that, after listening to counsels' submissions, Her Honour reserved judgment and returned the next day to give oral reasons for sentence.

The review panel observed from its review of the transcript that Her Honour's Reasons for Sentence were thoughtful and appropriate; they balanced the complainant's personal circumstances with the serious nature of the offences and the need for specific deterrence.

The review panel also noted that a significant portion of the complainant's allegations related to Her Honour's alleged legal errors. The review panel observed that Her Honour's decisions and rulings in the complainant's case, including how she assessed the evidence and sentenced the complainant, were matters of judicial decision-making outside the jurisdiction of the Judicial Council. Judges have decision-making independence in accordance with the *Constitution Act, 1867*. If the complainant felt that Her Honour improperly applied the law or assessed the evidence, the proper route would have been to pursue a remedy, if available, through the courts, such as an appeal.

The review panel concluded that the allegations of misconduct were not supported by the evidence, and the allegations with respect to Her Honour's decision-making were outside the Council's jurisdiction. The review panel dismissed this complaint and closed the file.

CASE NO. 25-018/19

The complainant appeared before the subject judge on a motion related to his appeal of a red-light camera offence. The complainant argued that the ticket he received had been altered by the issuing police officer and stated that the justice of the peace who convicted him failed to provide proper reasons for finding him guilty. The complainant alleged that the judge who heard his motion on appeal committed judicial misconduct by dismissing his appeal "...based on [the] colour of my skin and not my case that was before him."

The complaint subcommittee read the letter of complaint and ordered and reviewed the transcript of the motion. After completing its investigation, the subcommittee provided a report to a review panel.

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The review panel read the letter of complaint, the transcript of the motion and the subcommittee's report.

The review panel found that the transcript showed that after listening to the complainant's arguments and hearing from the prosecutor, the judge dismissed the motion. When the complainant stated that he had not yet finished his submissions, the judge gave him an opportunity to do so. The complainant refused the judge's offer. The transcript showed that the judge treated the complainant with courtesy and respect throughout the hearing. The review panel found nothing in the transcript demonstrating any bias by the judge towards the complainant. There was no support for the allegation that the judge based his decision on the colour of the complainant's skin. The judge provided reasons for dismissing the motion that showed that the judge based his decision on the case before him.

The review panel dismissed the complaint on the basis that there was no evidence to support the allegations of judicial misconduct.

CASE NO. 25-019/19

The complainant complained about seven judges before whom he had appeared with respect to a family law proceeding that was before the courts for years. Of those seven judges, four were judges of the Superior Court of Justice whose conduct was outside the jurisdiction of the Ontario Judicial Council. The complainant was referred to the Canadian Judicial Council to pursue his complaints about those judges. His complaint about one judge of the Ontario Court of Justice had previously been investigated and dismissed.

The complainant alleged that all seven judges engaged in racist conduct. The complainant alleged that "there are no black, Asian, Middle-Eastern or Indian judges" and asked for the Council's consent to have the "Human rights organizations investigate this 'GROUP' for their clearly racist conduct."

This complaint arose from an appearance by the complainant before a judge of the Ontario Court of Justice on a Refraining Motion (a motion which seeks an order that the Family Responsibility Office refrain from suspending the complainant's driver's licence). The complainant alleged that His Honour "came unprepared, had no knowledge of what

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was going on and without explanation he ordered I pay” the full amount of support arrears. He alleged that in addition, the judge ordered he pay \$200 in court costs of the Family Responsibility Office, even though that agency was not seeking any costs.

The complaint subcommittee read the complainant’s letter and ordered and reviewed the transcript of the appearance. After completing its investigation, the subcommittee provided a report to a review panel.

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

The review panel found that none of the complainant’s allegations were supported by the evidence.

The matter before the judge was the complainant’s Refraining Motion to determine whether there should be an order that the Family Responsibility Office refrain from suspending his driver’s licence. The transcript showed that the judge asked the complainant to have a seat while the judge read the complainant’s material. The judge did not hear from the parties until he had read the material.

The judge did not order the complainant to pay the support arrears. The order to pay support had been made by a previous judge. The judge explained clearly in his oral reasons why the complainant had not made out his case for a refraining order to delay the Family Responsibility Office from enforcing the costs order.

The judge then asked counsel for the Family Responsibility Office whether that agency was seeking costs. Counsel said yes and asked for \$200.00, which the judge granted. The transcript showed that the complainant was not correct in stating that the agency was not seeking costs.

The transcript showed that the judge was courteous throughout, referring to the complainant as “sir,” and gave him an opportunity to make his submissions, including asking at the end if there was anything else he would like to add. There was no comment or conduct that could be construed in anyway as racist.

The complainant felt very strongly that he should not have to pay the support arrears costs award made by the previous judge. The review panel noted that if a person disagrees with a decision made by a judge, the way to proceed is through remedies through the courts.

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The allegation about the racial composition of the bench is not a matter within the Council's jurisdiction. The Council's mandate is to investigate complaints of misconduct related to a particular judge.

The review panel concluded that there was no evidence that the judge in this proceeding acted inappropriately in any way. The review panel dismissed the complaint and closed the file.

CASE NO. 25-021/19

The complainant was charged with two counts of breach of probation. The charges arose as a result of a probation order allowing the accused to live at home with his parents, subject to their consent. The breach of probation occurred when the complainant refused to leave the family home when asked to do so by his mother.

At trial, Crown counsel called no evidence and indicated that it was not in the public interest to proceed with the prosecution. Accordingly, the judge acquitted the complainant of the charges.

In his letter to the Council, the complainant stated that the judge said that his charges would be withdrawn and that the trial process was "just a formality". The complainant alleged that the judge allowed a witness to testify but did not allow the complainant to cross-examine the witness. The complainant alleged that the judge also permitted the Crown Attorney to make statements in relation to what the witness said, which "amounted to slander". The complainant stated that that judge did not state his name and "proper trial process was not adhered to; it was an exercise in obstructing justice".

The complainant further alleged that the judge did not ask the complainant's permission for Duty Counsel to "attend/witness" the proceeding and make statements on the record.

At the time when the complaint about the judge was received, the complainant's matter was before the courts. The Council's Procedures provide that if a complaint raises allegations of conduct arising from a court proceeding over which the subject judge is presiding, the Registrar shall advise the complainant that the Judicial Council does not generally investigate such complaints until the court proceeding and any appeal thereof, or other related legal proceedings, have been completed. This approach prevents the

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Judicial Council's investigation from interfering with, or from being perceived as interfering with, any ongoing proceedings. The complainant was informed of this provision in the Procedures and that he could contact the Council's office again when the court case was fully concluded.

When the complainant confirmed that the case was no longer before the courts, the complaint was assigned to a complaint subcommittee for investigation.

The complaint subcommittee reviewed the letters from the complainant, the Information, and the transcript of the proceeding before the judge. Upon completion of its investigation, the subcommittee provided a report to the review panel.

The review panel reviewed the report of the subcommittee, the letters from the complainant and the transcript of the court proceeding. The review panel observed from the subcommittee's report and the court transcript that the judge did not make the comments attributed to him by the complainant.

The transcript showed that, contrary to the complainant's allegations, His Honour did not permit a witness to testify at the proceeding. Rather, the Crown Attorney called no witnesses to give evidence under oath. He asked the complainant's father, who was in the body of the court, to provide background information regarding the events that led to the charges of breach of probation, and the plan in place to allow the complainant to return to the family home. The review panel observed that the complainant did not raise any objections in court to the information provided by his father. The Crown Attorney asked that the charges be dismissed, and the judge found that the complainant was not guilty.

With respect to the complainant's allegations about Duty Counsel, the review panel observed from the transcript that the complainant's defence counsel attended the proceeding and informed the court that the complainant had terminated his retainer, and that counsel was making an application to be removed from the record. Defence counsel informed the judge that it was anticipated that the Crown Attorney would be calling no evidence and would be requesting that the charges be dismissed. Defence counsel volunteered to assist as a friend of the court if the complainant wished him to do so.

The judge made it very clear that it was up to the complainant to decide whether to avail himself of that assistance. The judge asked the complainant if he agreed to let defence counsel assist him in this respect, and the complainant declined such assistance.

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Accordingly, the judge stated that defence counsel would stay sitting down and the complainant was free to consult with him or not. The judge also confirmed that the complainant would be representing himself.

The judge did state the complainant's name. The review panel noted that it is not common practice for the judge to state his or her own name.

The review panel concluded that there was no evidence to support the allegations that proper trial process was not adhered to, that the judge acted inappropriately, that the judge did not permit the Crown Attorney to make statements that amounted to slander or that there was any obstruction of justice. The review panel found that the allegations were not supported by the evidence and dismissed the complaint.

CASE NO. 25-022/19

The complainant appeared before His Honour on three *Provincial Offences Act* appeals in relation to convictions under the *Highway Traffic Act*. One of his appeals was allowed and the others were denied.

The complainant alleged that the judge who heard his case conspired with the prosecutor to have him convicted based on a law that did not exist. He pointed to the judge's Order that he not record the proceedings on his phone as proof of the conspiracy. He alleged that the judge "threatened [him] not to record or else he would not hear [his] case." He also alleged that the judge called the police constable to check on whether the complainant's recorder was on.

He asked the Council to initiate criminal charges against the judge.

The subcommittee reviewed the letter of complaint and ordered and reviewed the transcript of the proceedings before His Honour. When the subcommittee concluded its investigation, it submitted a report to the review panel.

With respect to the complainant's desire to record the proceedings on his cellular phone, the review panel noted His Honour denied this request, pursuant to section 136 of the *Courts of Justice Act*. The review panel observed that His Honour's ruling in this regard and his interpretation or application of the *Act* were matters of judicial decision-making outside the jurisdiction of the Council.

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The review panel also noted that the judge explained his decision for not allowing the hearing to be recorded, and addressed the complainant's desire to have a record of the proceedings by ordering that a copy of the official court transcript be prepared and provided to him.

The review panel found no evidence to support the allegation that the judge threatened the complainant in any way. The transcript showed that after His Honour denied the complainant's request to record the proceedings, a court officer asked the complainant if she could look at his phone to ensure that he was not recording. The complainant strongly resisted this request. His Honour explained that the court officer was just doing her job to keep order in the court, and that she would have a very brief look at his phone. His Honour stated that once the device was off, the court could proceed with the complainant's applications.

The review panel concluded that there was no evidence that the judge acted inappropriately in deciding the complainant's matters or that he conspired with the Crown Attorney to convict him based on a law that did not exist. Rather, the Crown Attorney explained that although the by-law under which the complainant had been convicted had been repealed, that repeal occurred about seven months after the offence had occurred. The by-law was in effect at the time when the ticket was issued.

The review panel noted His Honour's findings in relation to the complainant's conviction and his decision on appeal were matters of judicial decision-making outside the Council's jurisdiction. The review panel noted that His Honour was prepared to grant the complainant's appeal in respect of the amount of the fine and asked the Crown Attorney if the fine could be decreased. However, the complainant did not wish to proceed on this basis and maintained that he should not have been convicted.

The review panel concluded that the allegations concerning His Honour's rulings and decisions, including his interpretation and application of the law, were outside the jurisdiction of the Council, and the allegations of misconduct were not supported by the evidence. The complaint was dismissed and the file was closed.

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

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.

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

Principles of Judicial Office

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.