

ONTARIO JUDICIAL COUNCIL

IN THE MATTER OF a complaint respecting the Honourable
Justice Marvin A. Zuker

BEFORE The Honourable Robert A. Blair, Chair
 Court of Appeal for Ontario

The Honourable Justice Deborah Livingstone

Mr. Mark Sandler

Ms Jocelyne Côté-O'Hara

COUNSEL Douglas Hunt, Q.C. and Andrew D. Burns, Presenting Counsel

Philip M. Epstein, Q.C. and Sheila Gibb, Counsel to Justice Zuker

REASONS FOR DECISION

On September 29, 2006, the Ontario Judicial Council referred a complaint regarding the conduct or actions of the Honourable Justice Marvin A. Zuker to the Council for a hearing, pursuant to ss.51.4(18) and 51.6 of the *Courts of Justice Act*. The complaint was laid at the instance by Mr. Harry Kopyto.

It was alleged that Justice Zuker had conducted himself in a manner that is incompatible with the due execution of the duties of his office. Particulars of the complaint are set out in Appendix “A” to the Notice of Hearing, marked as Exhibit 1 on this Hearing.

The matter has proceeded by way of an Agreed Statement of Facts, marked as Exhibit 2 and made an Appendix to this decision.

Justice Zuker admits that his conduct as described in the Agreed Statement of Facts constitutes judicial misconduct pursuant to the *Courts of Justice Act*. In essence, the misconduct is that Justice Zuker made deletions and additions to the transcript of a child protection application Hearing before him on July 29, 2005 at which the mother of the children sought permission to have Mr. Kopyto act as her agent and represent her in the proceedings. Justice Zuker dismissed that request, exercising his discretion under Rule 4(1)(c) of the Family Law Rules, as he was entitled to do.

In some instances, the deletions and additions marked by Justice Zuker that were incorporated into the final released transcript went beyond mere corrections of grammar, spelling and typographical errors. In particular, from the complainant's perspective, he removed reference to Mr. Kopyto being adversarial. Justice Zuker has acknowledged that such changes were inappropriate.

There is a wealth of evidence before us that Justice Zuker has served the public with great distinction as a member of the community as a judge for almost 29 years. He is well respected by his fellow judges and counsel who appear before him for his legal scholarship, patience, objectivity and wisdom. In particular he has shown a continuing concern for the best interests of children in his capacity as a Family Court judge.

In his statement today he has apologized publicly for his conduct and is prepared to do so in writing to Mr. Kopyto and the affected litigant following this Hearing. No further order is therefore needed in that regard.

It is evident that this matter has already taken a significant toll on Justice Zuker, in part because of its public nature and in large measure because of Mr. Kopyto's continuing efforts to have him charged criminally. The transcript changes were not done surreptitiously and the changes would have been apparent to anyone attending the hearing.

We are persuaded in all the circumstances that this kind of misconduct will not re-occur, and we accept that Justice Zuker did not make the alterations for any ulterior motives.

Accordingly, we find that the misconduct – which, given the admissions we are bound to find— is not of the type to attract the more serious sanctions permitted under s. 51.6(11) of the *Courts of Justice Act*.

As we have noted, there is no need to order an apology, as Justice Zuker has done so publicly here today and has indicated his willingness to issue a written apology immediately following this hearing. In our view, in all of the circumstances, a warning under s. 51.6(11)(a) is sufficient to serve the interests of preserving public confidence in and respect for the judiciary, and that the public can continue to have full confidence in Justice Zuker’s integrity and ability to carry out his duties as a judge, notwithstanding what his counsel acknowledges was a temporary “slip from grace”.

DATED at the City of Toronto, in the Province of Ontario, May 23, 2007.

The Honourable Justice Robert A. Blair

The Honourable Justice Deborah Livingstone

Mr. Mark Sandler

Ms Jocelyne Côté-O’Hara