OJC

FIFTEENTH ANNUAL REPORT

2009 – 2010

ONTARIO JUDICIAL COUNCIL

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ISSN 1206-467X

The Honourable Warren K. Winkler

CHIEF JUSTICE OF ONTARIO

PRESIDENT OF THE COURT OF APPEAL
FOR ONTARIO

Co-Chair, Ontario Judicial Council

The Honourable Annemarie E. Bonkalo

CHIEF JUSTICE
ONTARIO COURT OF JUSTICE

Co-Chair, Ontario Judicial Council

ONTARIO JUDICIAL COUNCIL

May 2, 2011

The Honourable Chris Bentley
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 fifteenth 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, 2009 to March 31, 2010.

Respectfully submitted,

Warren K. Winkler
Chief Justice of Ontario
President of the Court of Appeal for Ontario

Annemarie E. Bonkalo
Chief Justice
Ontario Court of Justice

TABLE OF CONTENTS

Introduction 7

1) Composition and Terms of Appointment 8

2) Members 9

3) Administrative Information 11

4) Functions of the Judicial Council 12

5) Education Plan 13

6) Communications 13

7) Principles of Judicial Office 13

8) Judicial Appointments Advisory Committee 14

9) The Complaints Procedure 14

10) Notification of Disposition 19

11) Legislation 19

12) Compensation for Legal Costs Incurred 19

13) Summary of Complaints 19

Appendix A – Case Summaries ..... A - 23

Appendix B – Education Plan ..... B - 85

Appendix C – Principles of Judicial Office ..... C - 97

INTRODUCTION

The period of time covered by this Annual Report is from April 1, 2009 to March 31, 2010.

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

The Ontario Judicial Council had jurisdiction over approximately 329 provincially-appointed judges, including full-time and *per diem* judges, and two masters during the period of time covered by this Annual Report.

The Ontario Judicial Council received 42 complaints in its fifteenth year of operation, as well as carrying forward 30 complaint files from previous years. Of these 72 complaints, 50 files were closed before March 31, 2010. Twenty-two complaints remained open to be carried over into the sixteenth year of operation. Information about the 50 files that were completed and closed is included in this Report.

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

1. COMPOSITION AND TERMS OF APPOINTMENT

The Ontario Judicial Council includes:

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

The Chief Justice of Ontario or another judge of the Court of Appeal designated by the Chief Justice chairs all proceedings dealing with complaints against particular judges that deal with applications to accommodate 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.

2. MEMBERS – REGULAR

The membership of the Ontario Judicial Council in its fifteenth year of operation (April 1, 2009 to March 31, 2010) was as follows:

Judicial Members:

CHIEF JUSTICE OF ONTARIO

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

CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

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

ASSOCIATE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

The Honourable Peter D. Griffiths ..... (Ottawa/Toronto)

REGIONAL SENIOR JUSTICE

The Honourable Robert G. Bigelow ..... (Toronto)

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

The Honourable Justice Lucy C. Glenn..... (Chatham)
(until August 9, 2009)

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

The Honourable Justice Eileen S. Martin..... (Welland)
(effective August 10, 2009)

Lawyer Members:

Treasurer of the Law Society of Upper Canada

W. A. Derry Millar, Weir Foulds LLP……..…….……... (Toronto)

LAWYER DESIGNATED BY THE TREASURER OF THE LAW SOCIETY OF UPPER CANADA

J. Bruce Carr-Harris, Borden Ladner Gervais LLP ……..…… (Ottawa)
(until August 17, 2009)

Kim Bernhardt, Grant and Bernhardt …….…….…… (Toronto)
(effective August 17, 2009)

Community Members:

William Blake ……..…….. (Ottawa)
Retired Police Officer, Ottawa Police Service

Gloria Connolly …….....……(Barrie)
Section Manager, Bell Canada; Teacher, Georgian College, Retired

Delores Lawrence, O. Ont..... (Markham)
NHI Nursing and Homemakers Inc.
(effective February 17, 2010)

Ravinder (Ray) Sharma ……..... (Richmond Hill)
Founding Partner at Extreme Venture Partners; Chairman at Xtreme Labs

Mila Velshi …….…… (Toronto)
Independent Associate, Able Travel
(until August 7, 2009)

Members – Temporary

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

Justice of the Superior Court of Justice – either a master or a provincial judge who presides in "Small Claims Court", as the case may be.

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

Masters

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

Judges

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

Subsection 49(3) of the *Courts of Justice Act* permits the Chief Justice of the Ontario Court of Justice to appoint a provincial judge to be a temporary member of the Ontario Judicial Council to meet the quorum requirements of the legislation with respect to Judicial Council meetings, review panels and hearing panels. During the period covered by this report, the following judges of the Ontario Court of Justice were appointed by the Chief Justice to serve as temporary members of the Ontario Judicial Council when required:

The Honourable Justice Jeff Casey ……..…….... (Toronto)

The Honourable Justice Jean-Gilles Lebel ……..… (North Bay)
(effective June 12, 2009)

The Honourable Justice Claude H. Paris ……..……... (Toronto)

3. ADMINISTRATIVE INFORMATION

Separate office space adjacent to the Office of the Chief Justice in downtown Toronto is utilized by both the Ontario Judicial Council and the Justices of the Peace Review Council. The proximity of the Councils' office to the Office of the Chief Justice permits both Councils to make use of clerical and administrative staff, as needed, and computer systems and support backup without the need of acquiring a large support staff.

Councils' offices are used primarily for meetings of both Councils and their members. Each Council has a separate phone and fax number and its own stationery. Each has a toll-free

number for the use of members of the public across the province of Ontario and a toll-free number for persons using TTY/teletypewriter machines.

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

Marilyn E. King, LL.B. – *Registrar*

Ana M. Brigido – *Assistant Registrar*

Thomas A. Glassford – *Assistant Registrar*

Janice C. Cheong – *Secretary (effective July 27, 2009)*

May Wan-Reis – *Acting Secretary (until July 26, 2009)*

4. FUNCTIONS OF THE JUDICIAL COUNCIL

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

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

The Judicial Council does not have the power to interfere with or change a decision made by a judge. If a person believes that a judge made an error in assessing evidence or in making a decision, the proper way to proceed is through other legal remedies, such as an appeal.

5. EDUCATION PLAN

The Chief Justice of the Ontario Court of Justice is required by section 51.10 of the *Courts of Justice Act* to implement, and make public, a plan for the continuing judicial education of provincial judges and the education plan must be approved by the Judicial Council, as required by subsection 51.10(1). The continuing education plan was developed by the Chief Justice in conjunction with the Education Secretariat. The most recent continuing education plan was approved by the Judicial Council on March 10, 2010. A copy is included in Appendix B of this Report and can be found on the Council's website at **www.ontariocourts.on.ca/ojc/en/**.

6. COMMUNICATIONS

The website of the Ontario Judicial Council continues to include information regarding the Council as well as information about any upcoming hearings. Copies of "Public Hearings Decisions" for public hearings are posted on the website when released and all of the publicly available Annual Reports are included in their entirety.

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

7. PRINCIPLES OF JUDICIAL OFFICE

The Chief Justice of the Ontario Court of Justice was empowered to establish "standards of conduct for provincial judges" by section 51.9 of the *Courts of Justice Act*. A document entitled, "Principles of Judicial Office" was prepared by the Judicial Conduct Subcommittee of the Chief Judge's Executive Committee in consultation with the Judges' Association and the judges of the court. The document was then submitted to the Ontario Judicial Council for its review and approval in the second year of Council's operation, as required by subs. 51.9(1) of the *Courts of Justice Act*. "Principles of Judicial Office" is a guide to assist judges in addressing ethical and professional dilemmas. It may also serve in assisting the public to understand the reasonable expectations which the public may have of judges in the performance of judicial duties and in the conduct of judges' personal lives. A copy of the Principles of Judicial Office is attached as Appendix "C".

8. JUDICIAL APPOINTMENTS ADVISORY COMMITTEE

A member of the Ontario Judicial Council serves on the provincial Judicial Appointments Advisory Committee as its representative. During the period covered by this Annual Report, the Honourable Justice Lucy Glenn was appointed by the Judicial Council to act as its representative on the Judicial Appointments Advisory Committee until August 9, 2009. Following the completion of Justice Glenn's term on the Judicial Council, the Judicial Council appointed the Honourable Justice Eileen Martin to replace Justice Glenn in acting as the Council's representative on the Judicial Appointments Advisory Committee.

9. THE COMPLAINTS PROCEDURE

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

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

A brief outline of the complaints process follows below. A more detailed outline of the Judicial Council's procedures can be found on the Judicial Council's website at:
www.ontariocourts.on.ca/ojc/en/.

A) Investigation and Review of Complaints

The complaint is assigned to a complaint subcommittee for review and investigation. A complaint subcommittee of Judicial Council members, comprised of a provincially-appointed

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

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

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

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

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

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

B) Dispositions of Review Panels

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

two complaint subcommittee members are aware of the identity of the complainant and the judge who is the subject of the complaint. Complaint subcommittee members who participated in the investigation of the complaint do not sit on the review panel or in a subsequent hearing. Similarly, review panel members who dealt with a complaint's review or referral will not participate in a hearing of the complaint, if a hearing is ordered. By the end of the investigation and review process, all decisions regarding complaints made to the Judicial Council will have been considered and reviewed by a total of six members of Council – two members of the complaint subcommittee and four members of the review panel.

Under subsection 51.4(18) the Council (or a review panel thereof) may decide upon the following dispositions:

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

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

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

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

- 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.

Proceedings, other than hearings to consider complaints against specific judges, are not required to be held in public.

C) Hearings Under Section 51.6

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

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

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

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

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

After a hearing, under subsection 51.6(11) the hearing panel of the Council may dismiss the complaint (with or without a finding that it is unfounded) or, if it finds that there has been

misconduct by the judge, it may impose one or more sanctions or may recommend to the Attorney General that a judge be removed from office.

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

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

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

D) Removal from Office

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

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

11. LEGISLATION

The official version of the *Courts of Justice Act,* which governs the work of the Ontario Judicial Council is posted on the government's e-laws website at **www.e-laws.gov.on.ca/**. A link to the e-laws website is also available on the Judicial Council's website at: **www.ontariocourts.on.ca/ojc/en**.

12. COMPENSATION FOR LEGAL COSTS INCURRED

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

The Judicial Council must make a recommendation to the Attorney General that a judge be compensated, indicating the amount of compensation. Pursuant to section 51.7(7) of the *Act*, the Council's order for compensation may relate to all or part of the judge's costs for legal services and must be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services. The Attorney General is required to pay compensation to the judge if such a recommendation is made.

13. SUMMARY OF COMPLAINTS

The Ontario Judicial Council received 42 complaints in its fifteenth year of operation, as well as carrying forward 30 complaint files from previous years. Of these 72 complaints, 50 files were closed before March 31, 2010. Three files closed were from the thirteenth year (2007-2008).

Twenty-six of the files closed were from the fourteenth year (2008-2009) and 21 were from the fifteenth year (2008-2009).

Of the 50 files that were closed during the period covered by this Report, 21 arose from proceedings under the *Criminal Code*, 17 arose from family court proceedings, five related to the conduct of a judge outside of court, four arose from matters in Small Claims Court, two related to a *Provincial Offences Act* appeal and one related to a Master.

Ten of the 50 complaint files closed by the Ontario Judicial Council during the period of time covered by this report were dismissed on the basis that they were found to be outside of the jurisdiction of the Council. This occurred if a complainant expressed dissatisfaction with the result of a trial or with a judge's decision, but the complaint contained no allegation of misconduct. While the decisions made by the trial judge in these cases could be appealed, the absence of any alleged misconduct meant that the complaints were outside of the jurisdiction of the Judicial Council.

Thirty-six of the 50 files closed were dismissed by the Council on the basis that they contained allegations of misconduct that were unfounded or that did not amount to judicial misconduct. The complaints included allegations such as improper behaviour (e.g., rudeness, belligerence, etc.), lack of impartiality, conflict of interest or some other form of bias. The allegations contained in each of these files were reviewed and investigated in each case by a complaint subcommittee before a decision was made.

The review panel referred two judges arising from three complaints to the Chief Justice of the Ontario Court of Justice. Two of the complaints related to one judge and the same court proceeding. Pursuant to subsection 51.4(18) of the *Courts of Justice Act*, a review panel will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where a majority of the review panel are of the opinion that the conduct complained of does not warrant another disposition and that there is some merit to the complaint. A majority of the members of the review panel must also hold the opinion that a referral to the Chief Justice is a suitable means of informing the judge that his or her course of conduct was not appropriate in the circumstances that led to the complaint. A review panel may recommend imposing conditions on their referral to the Chief Justice where a majority of the members of the review panel agree that there is some course of action or remedial training of which the judge could take advantage and the judge agrees. The Chief Justice of the Ontario Court of Justice provides a written report afterwards to the Council. Following her meetings with each judge in these two instances, the Chief Justice provided a written report to the review panel. After reviewing the Chief Justice's reports, the review panel was satisfied that the matters had been appropriately addressed and the files were closed.

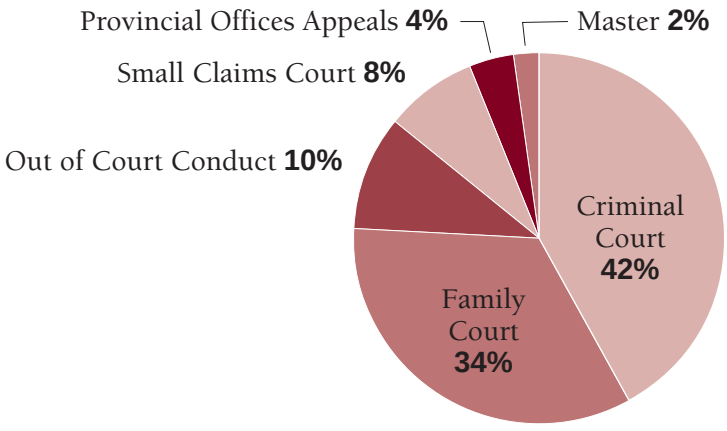
In one case, a judge retired, resulting in the Council losing jurisdiction over the judge. The file was administratively closed.

Twenty-two complaints remained open to be carried over into the sixteenth year of operation. Of those 22 files, one file was from Year 14 (2008-2009) and 21 were from Year 15 (2009-2010).

TYPES OF CASES CLOSED IN 2009/10

TYPES OF CASES	
Criminal Court	21
Family Court	17
Other – Outside of Court	5
Small Claims Court	4
Provincial Offences Appeal	2
Master	1
TOTAL	50

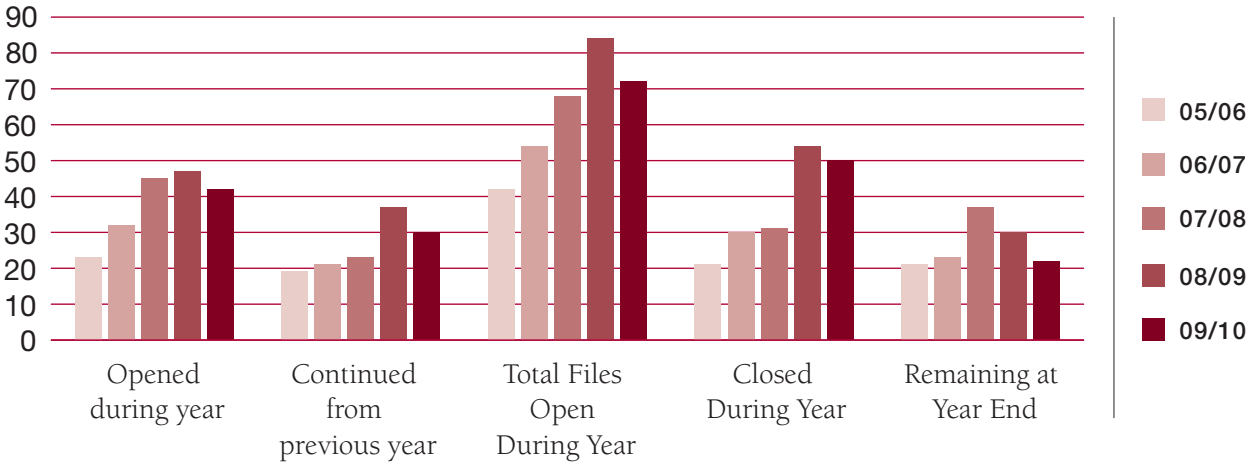
TYPES OF CASES CLOSED IN 2009/10



CASELOAD IN FISCAL YEARS

FISCAL YEAR	05/06	06/07	07/08	08/09	09/10
Opened during year	23	32	45	47	42
Continued from previous year	19	21	23	37	30
Total Files Open During Year	42	54	68	84	72
Closed During Year	21	30	31	54	50
Remaining at Year End	21	23	37	30	22

CASELOAD IN FISCAL YEARS



APPENDIX A

CASE SUMMARIES

Files are given a two-digit prefix indicating the year of the Council's operation in which they were opened, followed by a sequential file number and by two digits indicating the calendar year in which the file was opened (i.e., file no. 15-001/09 was the first file opened in the fifteenth year of operation and was opened in calendar year 2009).

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

CASE NO. 13-007/07

The complainant in this matter was the Respondent/father in a family law proceeding before the subject judge. The complainant brought a motion for contempt against the Applicant in order to enforce his rights to access. The Applicant brought a cross-motion to suspend the complainant's access. The judge was the "Case Management Judge" who would keep control of the file until the matter would be tried by another judge. The parties had numerous appearances before the subject judge over a three year period.

Neither motion was argued until eight months later. At that time, the Applicant's motion to vary access on a temporary basis was argued. The complainant's contempt motion was left by the judge to be dealt with at trial.

The complainant alleged that:

1) The judge was biased in favour of the mother.
2) The judge repeatedly ignored the rules of procedure by granting motions without proof of service, proper notice or a case conference being completed.
3) Perjury was acceptable to the Ontario Court of Justice and to the judge in question. Further, the judge relied on hearsay evidence.
4) The judge effectively shut down the complainant and, as a result of her orders, he had not seen or spoken to his children in over fifteen months.
5) With a self-represented litigant, the judge should have taken extra care to ensure that justice was served; however, the opposite occurred.
6) The judge did not deal with the complainant's motion for contempt, even though she did grant the mother's motion to suspend his access.

The complaint subcommittee reviewed and conducted an investigation into this complaint. They submitted their report to a review panel.

The review panel reported that numerous transcripts of the appearances were ordered and reviewed. They also reported on the following:

1) The panel could not conclude that the court held a bias either against the complainant or in favour of the Applicant. The judge's criticism of the parental conflict was directed at both parties and her concern was in relation to the negative impact that this had on their children. It was clear that the judge was troubled that the daughter and the son were distressed because of the conduct of their parents. The fact that she gave the complainant additional time to get involved in a therapeutic program involving the Applicant and the children was evidence that she was not biased against him. The complainant may not have appreciated that the judge was motivated by the best interests of the children, rather than favouring one parent over the other.

2) Although the rules of procedure are set out in the *Family Law Rules*, a judge has discretion regarding their application and enforcement. For instance, rule 3(5) allows a judge to lengthen or shorten a time period that is set out in the rules and rule 2 (5) mandates the court to actively manage cases. In this regard, this rule speaks of the need for the court to identify the issues at an early stage and encourage and facilitate the use of alternatives to the court process. Rule 1(8) provides that a court may deal with a failure to follow the rules by making any order that it considers necessary for a just determination of the matter. Further, given that this proceeding dealt with the issue of access to children, the question of the best interests of the child was central to all considerations by the court. While a lawyer would no doubt have been aware of these provisions, the complainant was unrepresented and probably was not. This may have contributed to the complainant's perception that he was not being treated according to the law, but this would not be considered to represent misconduct.

3) There was no indication that the judge found perjury to be acceptable. Further, the truth of any relevant allegations would have been sorted out at the time of trial. The fact that hearsay might have been relied on at an interlocutory stage of a proceeding is allowable under the *Family Law Rules*.

4) The review of the transcript showed that it was not true that the judge prohibited the complainant from all contact with his children. Rather, the complainant chose not to see them under the conditions that were put in place by the court. If an error was made by the judge regarding the limitations on his access (and the review panel did not suggest that that was the case), the complainant's remedy would have been to appeal the decision.

5) The complainant may have been self-represented, however, a judge cannot be counsel for the self-represented. These types of motions are complicated and it may not be possible to

fully explain every step of each proceeding, especially when (as in this case) there appeared to be serious issues that required immediate intervention. Further, she repeatedly tried to explain the most central issue in the case to the complainant: no matter who was at fault, domestic conflict had a highly negative impact on his children and they should not be exposed to it.

6) Although the judge heard argument of the Applicant's motion to vary access on a temporary basis but left the father's motion for contempt to be dealt with at trial, this was understandable given the evidence regarding the mental health concerns of the children. Since the outcome of the motion to vary access could reasonably be expected to impact the outcome of the motion for contempt, it was not improper to deal first with the motion to vary access. Given the presenting mental health allegations regarding the children, there was nothing improper in immediately varying the father's access on a "without prejudice" temporary basis.

The review panel noted that there was a lengthy delay during which time the complainant's access with his children was largely suspended, on the request of the Applicant, before all the merits of the motion were considered and argued. However, the review panel reported that it appeared that the complainant contributed to the delay by refusing to engage in the therapeutic process that the judge had ordered. It was not misconduct on the part of the judge to ask that the complainant become involved in family therapy and to request a report regarding the status of the children and the progress of the parents to be made available to the court before an informed decision on interim access was made.

Accordingly, the review panel concluded that there was no evidence of judicial misconduct on the part of the judge and dismissed this complaint.

CASE NO. 13-009/07

A complaint was filed with the Ontario Judicial Council by a Regional Senior Justice relating to one of the judges in his region. It came to his attention that the subject judge had been charged contrary to Section 253 (a) of the *Criminal Code of Canada*.

A complaint subcommittee comprised of a judicial member and a community member of the Council was actively investigating this complaint when, through the Office of the Chief Justice, information was received advising that the subject judge had retired from the bench.

The judge's retirement resulted in a loss of jurisdiction by the Ontario Judicial Council to continue its review and investigation and this file was administratively closed.

CASE NO. 13-040/08

The complainant was a party in a family court proceeding before the subject judge. He brought a motion before the Ontario Court of Justice to vary the terms of a separation agreement that he and his wife entered into. In this proceeding, he asked the court to reduce the amount of his unpaid child support arrears and to order his former wife to pay him child support for a period of time when he claimed that his daughter had lived with him. He also asked that the court order his former wife to start paying him spousal support even though the separation agreement stated that neither spouse would ever have to make such payments to the other. At the time the agreement was signed, each of them had been financially independent.

At the time this motion to vary first came before the Ontario Court of Justice (OCJ), there were ongoing lawsuits that had been brought by the complainant in the Superior Court (SCJ). The proceeding in the OCJ dealt with the questions of child and spousal support, as well as child support arrears.

The subject judge gave oral reasons for her decision in which she explained why she did not grant him spousal or child support, but she did reduce his child support arrears, though not to the extent that the complainant had requested.

The complainant alleged that either the judge (who was female) was incompetent or she deliberately ignored and reinvented facts in order to render a pre-determined, gender-biased and discriminatory decision favourable to his ex-wife. In support of this position, the complainant stated that:

1) The judge ruled against giving him child support for the time the child was with him, although his ex-wife was eligible for child support when she cared for the child under the same circumstances.

2) The judge ignored the fact that his ex-wife caused the material change in his income when she ruled that he was ineligible for spousal support.

3) The judge ignored a Superior Court ruling even though she had previously ruled that the civil matter was relevant.

4) When the judge ruled on the issue of costs, she extended the time lines for the ex-wife's lawyer to make written submission and had failed to take into account his ex-wife's flawed offer to settle that had been submitted and then withdrawn – all of which benefited his ex-wife.

The complainant also alleged that the subject judge was responsible for inflating the number of court appearances from three to ten.

The complaint subcommittee reviewed the transcripts of seven court appearances, the oral reasons for judgment, conducted their investigation and submitted a report to a review panel.

The review panel noted that there was nothing in the transcripts to support the allegation of gender bias on the part of the judge. They also noted that the materials reviewed did not support the allegation that the judge was incompetent. The panel advised that the complainant did not agree with the outcome of the case, and therefore appeared to conclude that the judge must have been incompetent or displaying gender bias in order to have made the decisions that the complainant believed were unfair.

The review panel found that there was no justification for the complainant to claim that the judge was responsible for inflating the number of court appearances. They noted that a number of the court appearances were required as part of the normal case management of the proceeding. In addition, they noted that early on, the judge expressed the need to wait for the outcome of the Superior Court proceeding relating to the wife's transfer of the shares before dealing with this matter in the Ontario Court of Justice. The review panel observed that it was evident from reading the transcript of the judge's decision that, rather than ignoring the Superior Court's decision (as was suggested by the complainant), it played a role in how the subject judge decided this case in the Ontario Court of Justice.

Lastly, they noted that it is within the discretion of a judge to set or reset timelines for the filing of documents and assess the issue of costs. If the judge made any errors in assessing the evidence or determining any of the issues (and the complaint subcommittee did not suggest that she did), the proper way for the complainant to proceed was through an appeal.

For the reasons noted the review panel dismissed this complaint.

CASE NO. 14-007/08

In the matter before the subject judge, the complainant was charged with breaking into the home of the victim, uttering threats, breach of probation for communicating with the victim and violating a conditional sentence which prohibited the complainant from having contact with the victim. A trial was held on the threatening charges, and the complainant was convicted. He entered pleas of guilt to the other charges.

The Crown made an application to have the complainant declared a dangerous or long-term offender. The Crown and defence retained psychiatrists. At the conclusion of the application and sentencing hearing, the complainant received a lengthy penitentiary sentence and was declared a long term offender, subject to a term of ten years supervision following his release from custody. Throughout the sentencing proceedings, he was detained in custody.

During the period when the dangerous/long-term offender hearing was ongoing, court staff gave the subject judge two letters written by the complainant. The complainant alleges that he had written to these letters to another judge who had sentenced him on unrelated other charges. The subject judge read them and forwarded the letters to counsel for the complainant and the Crown.

The complainant alleged that:

1) The judge erroneously ruled that the victim was traumatized by the break-in and that, because of this, the judge was prejudiced against the complainant.

2) The judge was guilty of misconduct because he read two letters written by the complainant to another judge and forwarded them to his lawyer and the Crown.

The complaint subcommittee ordered and reviewed the transcripts of the proceedings and requested a response from the subject judge relating to the complaint that he had opened, read and forwarded the two letters. Upon completion of their investigation, the complaint subcommittee submitted their report to a review panel.

In relation to the complainant's first allegation relating the judge's ruling on the evidence, the review panel reviewed the complaint subcommittee's report and the reasons for judgment on the threatening charges. They noted that if the judge made any errors in assessing the evidence or in determining any of the issues (and the review panel did not suggest that he did), the proper way for the complainant to proceed would have been through an appeal. The review panel found no evidence of bias or prejudice towards the complainant by the judge.

In relation to the complainant's second complaint, the review panel reviewed the complaint subcommittee's report and the judge's response concerning the two letters. The review panel noted that the first letter was not addressed to a judge by name, and the subject judge believed that the first letter sent by the complainant was intended for him when it was brought to his attention by the court office. There was no envelope with the letter. The letter bore the simple salutation "Dear Sir". Because of the contents of the letter, the judge became concerned about the complainant's mental health. The judge then forwarded these letters to counsel for both the Crown and defence with the expectation that it would be considered by the psychiatrists retained by both parties. The review panel also advised that it is improper for an accused person to write to a judge who is presiding over his trial, and that in such circumstances, a judge is required to bring the letters to the attention of the Crown and the defence. The review panel determined that there was no evidence of inappropriate conduct on the part of the subject judge in his handling of the letter.

The review panel noted that the second letter received by the subject judge came in an envelope

addressed to another judge. Because of the manner in which the letter was addressed and because of the contents of the letter, the subject judge believed the letter was intended for him even though it was addressed to another judge. The judge provided copies to counsel for the complainant and Crown. The review panel found that even though the second letter was addressed to another judge, it reasonably raised the same concerns as to the complainant's mental health as did the first. The review panel found that, in the particular circumstances, the subject judge reasonably but mistakenly believed that, like the first letter, this letter was also intended for him. The review panel found no evidence of any misconduct on the part of the judge with respect to the second letter. In their opinion, the subject judge acted appropriately in forwarding copies to both counsel. The panel also noted that it appeared that at no time did counsel ever advise the subject judge that these letters were not intended for him.

The review panel indicated that if the complainant had a concern about the impact of these letters on the sentencing decision made in his case, the proper way to proceed was through an appeal, not through a complaint to the Judicial Council.

For the above reasons, the review panel dismissed this complaint.

CASE NO. 14-011/08

The complainant was the plaintiff in a Small Claims Court matter. He was a respondent on a motion before the subject judge where he appeared by teleconference.

The complainant alleged that the judge made fun of him and made cynical remarks about him. The complainant also alleged that the judge acted as a 'team' with the opposing side against the complainant. Further, he advised that the judge awarded costs to the defendant without proof or justification for the costs.

The investigating complaint subcommittee ordered transcripts and audiotapes; however, none were available, as such motions are not routinely recorded. The subcommittee requested a response from the judge, and, because there was no independent record of these proceedings, a response from the lawyer who represented the defendant. Following their investigation, the subcommittee reported to the review panel.

The review panel reported that the judge and the lawyer who was present did not support the allegations of the complainant and there was no independent record of the events. The review panel advised that in light of the complainant's version of events and the version of events from the others who were present at the motion, with no independent record, the panel was not able to make a determination with respect to the allegations. As to the matter relating to costs,

the review panel advised that the proper way for the complainant to proceed on this issue was through an appeal. This was a matter outside of the jurisdiction of Council.

For the reasons noted, the complaint was dismissed.

CASE NO. 14-012/08

The complainant was a defendant in a Small Claims Court matter. The plaintiff in the matter, a lawyer, sometimes sat as a Deputy Judge in the jurisdiction. The complainant wrote to the Judicial Council in relation to a settlement conference before the subject judge. The complainant appeared by teleconference. At the settlement conference, the complainant made a motion the matter should not be heard in that jurisdiction on the basis that an appearance of bias could result, arising from the position of the plaintiff. The judge granted the motion, ordering that future proceedings in the action should be presided over by a judge or deputy judge from another county.

The complainant alleged that the judge was unprofessional in his handling of the motion. Specifically the complainant alleged that he did not have an opportunity to present his case and that the judge had made up his mind before the complainant spoke. He also alleged that interruptions of his comments by the opposing side were condoned by the judge, and that the judge spoke to him in a questionable tone. The complainant also suggested that the motion should be re-heard by a judge from outside of the region.

The investigating complaint subcommittee ordered a transcript and audiotape of the motion; however, one was not available as such proceedings are not routinely recorded. The subcommittee then requested a response to the complaint from the judge, and because there was no independent record of these proceedings, a response from the plaintiff in the matter. Following their investigation, the subcommittee reported to the review panel.

The review panel reported that the judge and the plaintiff did not agree with the allegations of the complainant and there was no independent record of the events. The review panel advised that in light of the complainant's version of events and the version of events from the others who were present, with no independent record, the panel was not able to make a determination with respect to the allegations. With respect to the complainant's request that the motion should be re-heard, that was not a matter of judicial conduct or within the jurisdiction of the Judicial Council.

For the reasons noted, this complaint was dismissed.

CASE NO. 14-013/08

The complainant was a self-represented Applicant in a family law matter before the subject judge. The complainant sought custody of his children, and the judge ordered custody to the mother with access to the father/complainant.

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

The review panel reviewed the subcommittee's report, the transcript and complainant's letter. They noted that the complainant was unhappy with the judge's decision and sought to re-litigate the issue. The subcommittee advised that this was a matter outside of the jurisdiction of the Ontario Judicial Council that involved no allegation of judicial misconduct.

The review panel informed that the complaint included one allegation about the conduct of the judge. The complainant alleged that the judge "rocked back in his chair, asked 'him have a lawyer' ….He jumped out of his chair and wrote his judgment on the case final custody and adjourned matter." The review panel found nothing in the transcript to support this allegation and there was no record of the exchange that had been noted in the complainant's letter. They also advised that there was no record of the judge writing or delivering his judgment in an abrupt or inappropriate manner. On the contrary, in the opinion of the review panel, the judge was patient and courteous with the complainant throughout the proceedings.

For the reasons noted, the review panel dismissed this complaint.

CASE NO. 14-015/08

The complaint arose from events that occurred shortly after the judge's appointment to the bench. Prior to her appointment, the judge had been the defence counsel for a man charged with murder. On her appointment, other counsel took over the defence of the case. When the Crown later determined that there was no reasonable prospect of conviction, the charge was withdrawn by the Crown before a judge of the Superior Court of Justice. The complaint to the Judicial Council was that the judge attended at the courtroom for the Superior Court proceeding, briefly spoke to the new defence counsel, and sat in the general vicinity of the family of the accused during the "stay" proceeding. The complainant stated that the judge's appearance at this proceeding, subsequent to her appointment as a judge, was inappropriate and that "at the very least, the family of the deceased was left with a question about impartiality of the judge."

The complaint subcommittee reviewed the complaint, and retained an investigator to interview

persons who were present during the court proceeding. As well, the subcommittee requested and reviewed a response from the judge. The subcommittee reported on the results of the investigation to the review panel.

Following careful consideration of the complaint, the information provided by the investigator and the response of the judge, the review panel referred the matter, pursuant to section 51.4(13)(b) of the *Courts of Justice Act*, to the Chief Justice for discussion.

Three members of the review panel were of the view that the matter should be referred to the Chief Justice. While the members noted that the judge had acknowledged in her letter that she had made an error in judgment, the members were concerned that the judge may not fully appreciate the sensitivities arising from her attendance in the courtroom of another judge after her appointment to the bench. The majority of the review panel noted the concerns of the complainant that a judge's attendance as an observer in a courtroom can gave rise to the risk of a perception on the part of the public that he or she may be defence-oriented rather than neutral and impartial; and, a risk of a perception on the part of the police that he or she may be seen as supportive of a person arrested for other serious gun-related offences. Further, the members observed that there arises the risk of a perception on the part of the accused that there may be some connection between the result in the case and the presence in the courtroom of a former lawyer who is now a judge. As well, the members advised that a presiding judge could perceive the presence of another judge in his or her courtroom as an act that could be seen as impacting upon the judicial independence of the sitting judge.

The review panel members also noted the consequential complications arising from the judge's presence at the proceeding. They advised that the interviews of witnesses in this case indicated that following the court appearance, there was a discussion between the new defence counsel and the investigating officer about comments made in the courtroom. The investigation indicated that the police officer, in response to remarks made by the new defence counsel about him, suggested that the judge, in her role as former counsel, should be asked for her view of past events. While the review panel members appreciated that the judge refrained from entering into that dialogue, there was concern that her presence did put her into a difficult situation that could have, if handled differently, raised further perceptions about her impartiality.

One member of the review panel was of the view that no further steps were required, noting that the judge's letter was remorseful and insightful, and that she had acknowledged an error in judgment.

The matter was referred to the Chief Justice for discussion of the concerns. Following her discussion with the judge, the Chief Justice reported back to the review panel. She confirmed that she had discussed with the judge the high standards of conduct expected of judges, and

the importance of a judge acting in a manner consistent with impartiality, and the concerns of the members of the review panel arising from the particular events.

The Chief Justice indicated that the judge had expressed deep regret for having attended the proceedings and reported that the judge appreciated the important reasons why a judge should not attend court proceedings as an observer. Following their review and consideration of the report from the Chief Justice, the review panel was satisfied that the judge appreciated the concerns of the complainant, and that it is vital not only that a judge be impartial but also that he or she refrain from actions that could be perceived to be partial or to hold any sort of personal favouritism or partial outlook.

For all of those reasons, the review council was satisfied that the judge now had a firm understanding of the requirements of the transition from being a lawyer to being a judge, and of the high standard of conduct required of a judge and the file was closed.

CASE NO. 14-024/08

The complainant was an accused in a criminal law proceeding before the subject judge, was found guilty and was sentenced.

In his letter of complaint to Council the complainant stated that he was not happy with the judge's decision and would like it appealed. He also alleged that the judge showed a clear bias against him because he was convicted notwithstanding the fact that two crucial police witnesses did not appear on the trial date and the trial was unreasonably delayed for 11 months.

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

The review panel observed that the judge appeared to be helpful, courteous and professional throughout the proceeding, and gave fulsome reasons for his finding of guilt. As well, the panel noted that the transcript showed that the judge's reasons were not, as alleged by the complainant, missing 'fairness and impartiality' and did not show any bias on the part of the judge.

The review panel advised that if the judge made any errors in assessing the evidence or determining any of the issues (and the review panel is not suggesting that he did), the proper way for the complainant to proceed would be through an appeal.

For the reasons noted, the review panel determined that the allegations made were unfounded and dismissed this complaint.

CASE NO. 14-025/08

The Ontario Society for Prevention of Cruelty to Animals seized some animals belonging to the complainant because the animals were alleged to be in distress and need to be removed from the complainant's custody. The seizure was made pursuant to a section of the *Ontario Society for Prevention of Cruelty to Animals Act*. The complainant brought an application before the subject judge for the return of his animals. He argued that the seizure was illegal and contrary to the *Canadian Charter of Rights and Freedoms*. The complainant was not represented by counsel.

The subject judge considered the respective positions taken by the complainant and counsel for the Society for Prevention of Cruelty to Animals. The subject judge then dismissed the complainant's application, ruling that the court lacked jurisdiction to hear the application.

In his letter to Council, the complainant made the following allegations:

1) The judge tried to instigate a charge against the complainant.
2) The judge was biased against the complainant.
3) The judge was acting "like a lawyer in judges robes".
4) The judge "had no clue what he was doing with [the complainant's] case. and had no right to quash [the complainant's] hearing".
5) The complainant's constitutional rights were violated.
6) In the case preceding that of the complainant, the judge forced the accused to "sign a deal" with the Crown. "A judge has no power to interfere between a lawyer and a client".

The complaint subcommittee reviewed the transcript of the proceeding involving the complainant's application regarding the legality of the seizure of his animals by the Society for Prevention of Cruelty to Animals, conducted their investigation and submitted a report to a review panel.

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

The review panel noted that the subject judge listened attentively to the complainant's argument, as well as the submissions of counsel for the Society for Prevention of Cruelty to Animals. In their opinion, it was clear to the judge that the threshold issue to be determined was whether the court had jurisdiction to hear the complainant's application. Ultimately, the judge determined that the court did not. The review panel further noted that this related to the judge's decision and is outside of the jurisdiction of the Judicial Council.

The review panel found no evidence that the judge was biased against the complainant or that the judge was trying to instigate a charge against the complainant. They noted that the transcript of the proceeding revealed that the judge made every effort to understand the complainant's application and offered suggestions as to alternative recourses that he could pursue. The review panel also found that the judge was patient, courteous and helpful to the complainant and carefully explained to the complainant why he lacked jurisdiction to hear the application and did so in a very understandable and empathetic manner. They noted that the judge even assisted the complainant by persuading the Society for Prevention of Cruelty to Animals to undertake no further action with respect to the animals for one week so as to permit the complainant to obtain legal advice. The review panel observed that while it may have appeared to the complainant that the judge was "acting like a lawyer", it must be remembered that a judge has a duty to assist an unrepresented accused in presenting his or her case when such assistance is required.

The complainant also alleged that the judge forced another accused in the case preceding his to "sign a deal" with the Crown. The review panel reviewed the transcript of that case. Counsel for the other accused told the judge that his client was unwilling to provide signed written instructions rejecting a plea resolution offered by the Crown and wished to proceed to trial. They noted that the judge responded by suggesting to that accused that he "just sign the document and we'll get on with the trial". In the review panel's opinion, the judge did not attempt to force that accused in that matter to "sign a deal" with the Crown, nor did the judge interfere in the solicitor-client relationship.

For all of the above reasons, the review panel dismissed this complaint as unfounded.

CASE NO. 14-028/08 AND 14-029/08

The subject judge presided over a trial on criminal charges, including a charge of assault and charges of uttering threats, which arose from events that occurred in relation to the female witness and her former boyfriend in their apartment. The Judicial Council received two letters of complaint about the judge, including one from the executive director of a women's abuse centre.

Concerns were raised by one of the complainants in relation to comments made to the female witness by the judge about how she gave her evidence. It was alleged that the judge interrupted her testimony and advised her to restrict her testimony to the specific questions asked by the Crown. It was also alleged that, as a result of the judge's treatment of her, the witness felt that the judge was frustrated by her presence, and she felt embarrassed, humiliated and re-victimized by the court. Further, it was alleged that the judge failed to understand facts in relation to

the charges of uttering threats and disregarded the risk to her life.

The complainants both raised concerns about comments that the judge made about domestic violence. At the conclusion of the trial, the judge dismissed the charges, finding that he was not satisfied beyond a reasonable doubt as to what had occurred. In making that finding, the judge made the following comments:

> This is a domestic violence case. 30 years ago, when I was a lawyer, we did not have any Crowns like Mr. F. prosecuting domestic violence cases. There were all sorts of women in houses where men had beaten them, husbands had beaten them regularly, and they could not get out. They did not have jobs to go to when they had kids, and they were trapped. They called it a conspiracy of silence. But 2008, in the province of Ontario, it is not a conspiracy of silence. We have two people here. No kids. We've got a woman who has good jobs, can find good jobs, got a man who is working. They are in a short-term relationship with no kids and I'm here listening to a domestic violence court, and the point I am making is years ago a woman in a relationship was in a very, very weakened situation, and she could not get help. There was no way to stand up and get out, and we were trying to help the weak and the disadvantaged, but modern women are not weak and disadvantaged, incapable of standing up.
>
> So when I'm listening to this case here, I always think why do we do criminal law? You know, criminal law we are here to find the guilty, guilty. We are trying to protect the weak. We're trying to protect the disadvantaged from doing antisocial things, and I do not find [the alleged victim who was a witness] to be weak or disadvantaged, but what has happened here is an antisocial thing. People in Canada do not want men and women to act towards each other like you two do. Thank heaven you do not have children. If you raised a child in a relationship where you are arguing with each other every day, you're going to raise a psychopath. But what I will tell you is you can grab a hundred Canadians on the street and ask them what goes on in their house and maybe one in a hundred argues with each other the way the two of you argue. This is a pathetic situation, and it is what Canadians do not want."

The judge also directed the following comment to the accused and the witness:

> …but do not ever come back into a court in this province with a problem if the two of you go back and live with each other again. Do not come back here. I'm telling you right now you have to take care of your own stuff. Do not bring it into a criminal Court. Do not be calling the police to mop it up. Get on with your lives and get on without each other.

The complainants alleged that the judge minimized the victim's experience of abuse in comparing it to a woman being beaten regularly, who had no children and no job. It was alleged that the judge discounted the experience of the witness because, in the view of the judge, women in Ontario no longer live in "a conspiracy of silence". As well, it was alleged that when the judge stated "You could have walked out", he demonstrated a lack of understanding of the dynamics of domestic violence, of the impact of abuse on women, and of why a woman might not leave her abuser. In addition, it was alleged that the judge inappropriately put the witness and abused women at greater risk by sending a message to the witness and to abused women that, unless you are beaten regularly and/or unable to get out because you have kids and do not have a job, you are not worthy of bringing your complaint forward, and have no right to access the police or the criminal justice system.

The investigating complaint subcommittee reviewed the complaints, the transcript of the proceeding, and listened to the audiotape of the trial and of the judge delivering his reasons for his decision. The subcommittee also requested and reviewed a response from the judge to the allegations. Following their investigation, the subcommittee made a report to the review panel.

In relation to the allegations that the judge did not understand some of the facts and disregarded the risk to the witness, the review panel advised that assessing the evidence and determining the case are not matters of judicial conduct and are matters outside of the jurisdiction of the Judicial Council that fall under the jurisdiction of an appeal court.

With respect to the allegations about the judge's comments to the witness about how she gave her evidence, the review panel advised that while the judge may have been somewhat curt in comments that he made, as the judge hearing the matter he was entitled to try to keep her on point, and to indicate to a witness that she was getting into matters which were either irrelevant or inadmissible. As a result, the review panel determined that no further steps were required in relation to that aspect of the complaints.

With respect to the allegations related to the judge's statements about domestic violence, the review panel expressed concern. The panel accepted that the judge's comments were in response to evidence in the particular case, and he may not have intended to suggest that any victim of a domestic assault be denied access to the police and the justice system. However, the panel concluded that a plain reading of his comments about domestic violence gave rise to a perception of a lack of appreciation of the nature of domestic violence and of the impact of the court process in situations of domestic conflict.

For those reasons, pursuant to section 51.4(13)(b) of the *Courts of Justice Act*, the review panel referred these aspect of the complaints to the Chief Justice for discussion.

The Chief Justice met with the judge and reported back to the review panel on the meeting. After reviewing the report from the Chief Justice, the review panel observed that the judge had reviewed the transcript of the proceedings and had reflected upon his conduct. The Chief Justice reported that the judge had acknowledged that his conduct on the day in question fell below the standard expected of judges and had taken action to address the concerns. He had initiated steps to strengthen his understanding of domestic violence, including obtaining input from a well-recognized Canadian expert in the area of domestic violence, who was a faculty member for educational programs for judges in which the curriculum is focused on enhancing judicial skills in domestic violence cases. He had also reviewed literature about domestic violence.

The judge had also written to the Chief Justice to express both his apology and his regret for his comments and conduct.

After considering the report from the Chief Justice, the review panel was satisfied that the judge appreciated that making such comments as he had done or extending advice is not part of the responsibility of a judge; rather, he ought to have dealt only with the issues before him. As well, the review panel was satisfied that the judge would be more careful when addressing witnesses who appear before him in the future.

The review panel noted that the judge had reflected upon the principle, as reflected in the concerns of the executive director of the abused women's centre, that a victim of domestic assault should never be told or left with the impression that he/she should not seek police assistance or that he/she would not find the courts welcoming. The review panel observed that through the complaints process, the judge was alert to the fact that victims of domestic violence are frequently reluctant, unwilling or unable to make a complaint to the police and to give testimony in court, and that he, as a judge, must be vigilant to create an atmosphere in court whereby such witnesses are welcomed and made to feel comfortable when they choose to participate.

For all of the above reasons, the review panel determined that no further steps were required and the files were closed.

CASE NO. 14-031/08

The complainant was a self-represented accused that appeared before the subject judge for trial on several criminal charges including one of threatening to blow up a government building. During the trial, there was reference to a medical report that contained an opinion that she suffered from a mental illness. She was convicted on the threatening charge. Prior to sentencing, the judge ordered her detained in custody for up to 30 days for a psychiatric assessment. The

complainant sent letters to the Judicial Council, alleging that the judge was biased, prejudiced, corrupt and unfair. She also alleged that the transcript was doctored and that she had not been given a chance to rebut the statements of the police or to call evidence.

The complaint subcommittee ordered and reviewed the transcript of the proceedings before the subject judge, they conducted their investigation and submitted a report to a review panel.

The review panel noted that the transcript did not support any of the allegations made by the complainant. On the contrary, the review panel advised that the transcript showed that the complainant was treated fairly, and with patience and compassion by the judge. The review panel found that throughout the proceedings the complainant was given the opportunity to cross-examine, to call evidence and to testify. They noted that there was no evidence that the transcript had been tampered with. Further, they advised that the decision of the judge was under appeal, and was a matter outside of the jurisdiction of the Judicial Council.

For the reasons noted, the review panel found no support for any allegation of misconduct and dismissed this complaint as unfounded.

CASE NO. 14-032/08

The complainant was an unrepresented accused who appeared before the judge in criminal court on charges of criminal harassment and uttering a death threat. In his letter of complaint, the complainant made the following allegations:

1) The judge offered him legal advice about signing a peace bond when he should only have been officiating, resulting in the complainant being "insulted by him like he were an 8 year old school kid." The judge's approach to this issue also showed bias in favour of the Crown Attorney and was racially biased;

2) The judge tried to bully him into doing what the judge wanted, and he called the complainant 'stubborn and hard-headed'; and,

3) The complainant took exception to the judge's ruling.

The complaint subcommittee ordered and reviewed the transcript of the proceeding, conducted their investigation and reported to a review panel.

The review panel reviewed the subcommittee's report and noted that at the outset of the trial before arraignment, the Crown Attorney offered to withdraw the criminal charges if the complainant entered into a peace bond. The complainant was unrepresented. The judge tried to assist the complainant by giving him information about peace bonds and by referring him to

duty counsel for independent legal advice. The complainant declined to enter into a peace bond and wished to represent himself. The panel also noted that during the trial, the judge provided some assistance to the complainant by explaining the legal process but also made it clear that the complainant had made a deliberate choice to represent himself. The judge declined to give the complainant advice on what he should do or how he should do it.

With respect to the allegations related to the judge offering the complainant advice about entering into a peace bond, the panel informed that the judge encouraged the complainant to accept the offer of a peace bond but was not inappropriate or insulting. Further the panel advised that a judge is required in common law to give extra assistance to an self-represented accused. They also informed that after giving the complainant that assistance, the judge further offered to hold the trial down on the docket to enable him to seek independent advice from the duty counsel. When the complainant returned to court and indicated that he still wanted to be tried on the criminal charges, rather than enter into a peace bond, the trial judge proceeded with the trial. The complaint subcommittee found no indication on the record of bias in this process. They further advised that if the complainant wished to pursue the allegation of bias, the proper way for the complainant to proceed was through an appeal.

In relation to the second allegation that the judge tried to bully the complainant into doing what the judge wanted, and called the complainant 'stubborn and hard-headed', the review panel noted that while it appeared that the complainant did not know how to introduce evidence, and while the judge was terse with the complainant several times when the complainant was unwilling to take direction on the rules of evidence, the transcript did not support the allegation that the judge tried to bully the complainant.

In relation to the third allegation indicating disagreement with the judge's ruling, the review panel advised that a judge's ruling is outside of the jurisdiction of the Council and is a matter for an appellate court.

The review panel found the complainant's letter disclosed a tirade of many personal insulting and repugnant comments about the judge. For the reasons noted above, and taking into account the abusive approach of the complainant, the review panel dismissed this complaint as vexatious and an abuse of process.

CASE NO. 14-033/08

The subject judge sentenced the complainant's son to a $600 fine on a conviction for fail to provide a breath sample and thirty days in jail on a conviction for fail to comply with a recognizance.

The complainant alleged that her son's sentence was unduly harsh and unreasonable. She also alleged that the judge "grabbed his papers and walked out of the court before the lawyer… even had a chance to finish what he was saying". The complainant accused the judge of being a "bully" and said that "his actions need to be reviewed".

The complaint subcommittee ordered and reviewed the transcript of the proceedings and the judge's reasons. They conducted their investigation and submitted a report to a review panel.

The review panel noted that that the judge provided reasons for the sentence that he imposed. The review panel further noted that before being sentenced, the accused told the judge that he was attending school, was scheduled to write his exams in the next two weeks and was enrolled to continue his studies in the next semester. The transcript indicated that the judge adjourned court immediately following the sentencing and then the accused stated: "What do I do about my school?" and uttered an obscenity.

The review panel advised that the complainant's main allegation related to the judge's decision. They commented that the fitness of the sentence is a matter that can be reviewed only by an appellate court and is outside of the jurisdiction of the Ontario Judicial Council.

The review panel noted that the transcript revealed that the judge gave the lawyer for the accused the opportunity to make submissions as to sentence and gave the accused the opportunity to address the court before being sentenced. As well, the transcript revealed that the judge did not leave the courtroom before the lawyer for the accused had a chance to finish what he was saying.

For the reasons noted above, the review panel dismissed this complaint.

CASE NO. 14-034/08

The complainant was a lawyer who acted for the father of a child in an application for a variation in the custody of the child. The application was allowed after a two day trial and the father was granted custody of the child.

In his letter, the complainant stated,

> 'When we bestow upon our Judges the power to defame citizens with impunity we expect they will use the privilege with restraint. And furthermore, if a Judge decides to use the Bench as perch from which to pontificate and defame counsel we expect them to have their facts straight.'

The complainant alleged that he was defamed by the subject judge and that the judge did not have his facts straight with respect to when material was filed with the court. He also

alleged that the judge showed "palpable contempt for the Order' of a Superior Court judge. The complainant also made a number of critical comments about the procedures in effect in the local court system.

The complaint subcommittee obtained information from the court concerning the filing of affidavit material in relation to this case and reviewed the transcript, conducted their investigation and submitted a report to a review panel.

Following their review of the subcommittee's report, affidavit material and transcript and the complainant's letter, the review panel noted that the complainant filed his affidavit material within the time limits directed by the judge. However, he did not file the book of affidavit evidence until several weeks later. The review panel noted from the judge's reasons that while it appeared that he had intended that all materials were to be filed at the same time, the written direction could be considered to be ambiguous. The review panel also noted that the letter of complaint suggested that the complainant believed that he was required to provide his affidavits to the court by a certain date but that he was not in fact required to provide his book of affidavit material at the same time.

The review panel further noted that while the order of the trial judge with respect to the filing of documents may have been ambiguous, it is not misconduct to have issued an ambiguous order. Further, the review panel noted that when the judge indicated at the commencement of the trial that he believed that counsel had not complied with his direction with respect to filing, the complainant did not explain that he had filed his affidavits and book of affidavits at different times.

The review panel also noted that during the proceedings, the complainant did not raise any issues with respect to the judge's comments on the poor quality of the material filed.

In relation to the complainant's allegation of 'contempt' shown for a decision of a higher court, the complaint subcommittee reported that the decision of the higher court on the issue of cross-examination on Affidavit material was not entirely clear. That court had described proceeding with cross-examination prior to having read the Affidavit as an 'irregularity' along with a number of others. In addition, they reported that at the beginning of the trial, when the judge had advised counsel that he had been unable to read a large part of the filed material due to its poor quality, the record confirmed that the complainant indicated that he was ready to proceed with the cross-examination of his witnesses but that later when a similar situation arose, he was not content to do so. The review panel also advised that the record showed that the judge determined that interrupting the trial would not be fair to the parties. The panel observed that if the judge made any errors in assessing the evidence or determining any of the issues (and the review panel is not suggesting that he did), the proper way for the complainant to proceed would be through appeal.

Following their investigation and review, the review panel did not find any evidence that counsel was defamed, nor that the judge acted in contempt of a higher court ruling and dismissed this complaint as unfounded.

CASE NO. 14-035/09

Following a trial, the subject judge found the complainant guilty of assault and granted him a conditional discharge with probation for six months. The victim of this assault was an elderly lady friend of the complainant's father. In finding the complainant guilty, the judge accepted the victim's evidence and rejected the complainant's denial that he had assaulted the victim.

In the complainant's letter to the Judicial Council, the complainant characterized the verdict as a "gross miscarriage of justice" because he never assaulted the victim. There were numerous allegations concerning the conduct of the judge which fell into the following four categories:

1) The judge erred by finding the complainant guilty;

2) The judge was biased against the complainant;

3) The judge "discriminated" against the complainant because he was self-represented; and,

4) The judge is incompetent and the Judicial Council should conduct an investigation into past decisions she has rendered.

The complaint subcommittee carefully reviewed the complainant's allegations, as well as transcripts of the complainant's trial and sentencing hearing. One member of the subcommittee also listened to the audiotapes of the entire proceeding.

Following their investigation, the complaint subcommittee submitted their report to the review panel.

The review panel carefully reviewed the subcommittee's report, the complainant's allegations, as well as transcripts of the complainant's trial and sentencing hearing.

Following their review, the review panel dismissed this complaint for the following reasons:

1) *The allegation that the judge erred by finding the complainant guilty.*

   The review panel reported that the complainant strongly disagreed with the judge's findings and conclusions. The panel advised that this type of allegation is outside of the jurisdiction of the Ontario Judicial Council. The proper forum for the complainant to contest the verdict and/or sentence is an appeal court, rather than the Council. The sub-

committee noted that the complainant's letter indicated that he appeared to understand this; however, he felt it was unfair that he should have to pay a lawyer for an appeal when, in his view, the judge "got everything wrong".

2) *The allegation that the judge was biased.*

The review panel reported that there was no support for the allegation that the judge was biased against the complainant or biased in favour of "the police, prosecutor and the elderly". On the contrary, the review panel reported that the transcript of the proceeding revealed that the judge conducted the trial in a balanced, even-handed manner and paid great attention to the fair trial rights of this unrepresented complainant. The review panel also reported that the complainant felt that the judge was biased in favour of the prosecution because he "discovered [the judge] had worked for the Police for number of years…as a prosecutor". The subcommittee reported that the transcripts and audiotape did not support the allegation, and instead revealed that the judge's previous career as a prosecutor played no role in the outcome of this case. Further, the panel noted that the Crown's case was not based on the testimony of police officers but on the evidence of the victim.

3) *The allegation that the judge discriminated against the complainant because he was unrepresented.*

The review panel noted that the complainant chose to represent himself both at his trial and at his sentencing. They informed that a trial judge has a number of obligations to fulfill to ensure an self-represented accused has a fair trial. Following their review of the record, the review panel reported that they were satisfied that the judge in this case complied with all of those obligations.

As well, the review panel advised that the transcripts demonstrated that the judge was patient and respectful of the complainant throughout the trial and sentencing.

4) *The allegation that judge was incompetent and the request that the Judicial Council should "look into the history of her decisions".*

The review panel informed that the complainant alleged that this judge had a history of making poor sentencing decisions. He based this allegation on numerous newspaper articles he had read about her cases. He alleged that the judge gave "too lenient sentences to criminals" and "excessively punitive" sentences to "average law abiding sentences" like the complainant. The complainant was also critical of a sentencing he had witnessed before his own case was heard, where the judge did not incarcerate an accused who had committed a domestic assault. The complainant asked the Judicial Council to conduct an investigation of the judge's past decisions because "she is a menace to the public".

The review panel noted, as indicated earlier, that a disagreement concerning the fitness of a sentence is a matter for an appeal court and is not within the jurisdiction of the Judicial Council. With respect to the suggestion that the Council should look at the history of the judge's decisions, the panel observed that the Judicial Council has no jurisdiction to conduct the kind of inquiry proposed by the complainant. The panel reviewed the transcript of the domestic assault sentencing heard prior to that of the complainant. The panel noted that based on the circumstances of that case, the judge decided that a jail sentence was not the appropriate sentence. As well, the panel observed that based on the facts of the case, the Crown had not suggested that a jail sentence was necessary. Further, the review panel observed that in the complainant's case although the Crown argued that a criminal conviction be imposed, the judge decided to sentence him more leniently by granting a conditional discharge.

For the reasons noted above, the review panel dismissed this complaint as unfounded.

CASE NO. 14-036/09

The complainant was the applicant in a contested family law matter related to custody and access of his child. After the complainant failed to attend court and failed to attend for DNA testing that had been ordered, the subject judge made an *ex parte* order of custody in favour of the mother and ordered that the complainant pay costs to the mother including the fees charged for him missing the DNA testing.

On a subsequent date the complainant sought leave to bring a motion to change his original application. The judge did not grant leave, noting that the order as to costs had not been satisfied.

The complainant wrote to the Judicial Council stating his disagreement with the decision of the judge to order custody and with her decision that he must pay the costs. The complainant also alleged that the judge was biased and showed that she was negligent in giving proper instruction. In addition, the panel found that the allegations of bias and negligence were not borne out by the evidence.

The complaint subcommittee conducted their investigation, ordered and reviewed the judge's endorsements and submitted a report to a review panel.

The review panel reviewed the complaint, the judge's endorsements and the report from the complaint subcommittee. The review panel found that the basis for this complaint did not relate to the judge's conduct but rather it reflected the complainant's disagreement with the judge's decisions. The panel advised that if the complainant felt that the judge made an error in her decision, or in her assessment of the evidence or in how she determined any of the issues

(and the review panel did not suggest that she did), the proper way for the complainant to proceed was to proceed through an appeal. Such matters are outside of the jurisdiction of the Ontario Judicial Council.

The review panel dismissed this complaint as being outside of the jurisdiction of the Judicial Council.

CASE NO. 14-037/09

The complainant was involved in a child protection proceeding before the subject judge. In her letter she alleged that:

1) The judge did not give her an opportunity to answer the Children's Aid Society allegations;
2) The judge, as a former Children's Aid Society lawyer, was not impartial but did whatever the Children's Aid Society asked;
3) The judge made inappropriate comments;
4) When she raised concerns about the Children's Aid Society putting a foreign substance in her baby's bottle, the judge called her paranoid; and,
5) The judge was cruel and biased and allowed an infant to be subjected to cruel and possible life threatening treatment (the foreign substance in the bottle) by the Children's Aid Society.

The complaint subcommittee investigated the complaint, ordered a transcript and submitted their report to a review panel.

The review panel reviewed the letter of complaint, the transcript and the subcommittee's report. The review panel noted the transcript did not support the complainant's allegations. They further noted that the transcript showed that the judge appeared to be patient. In addition, he made concerted efforts to help the complainant and her husband and to explain the proceedings to them in plain language. The review panel found that the judge gave the complainant and her husband ample opportunity to be heard. They also found no evidence of any bias on the part of the judge in favour of the Children's Aid Society. The panel noted that the complaint appeared to result from the complainant's disappointment with the judge's decision to leave the children in the temporary care of the Children's Aid Society. The panel advised that if the complainant disagreed with the decision of the judge, the proper way for her to proceed would be through an appeal.

The review panel found no evidence of judicial misconduct on the part of the judge and dismissed this complaint.

CASE NO. 14-038/09

The complainant is the spouse of a person who was charged with uttering death threats and causing bodily harm. The complainant's husband is in custody and has made numerous appearances before a number of judges.

In her letter of complaint, the complainant alleged that the judge yelled, 'Get (name of accused) up here now!' and alleged that the judge was duped by stalling tactics of the Crown Attorney.

The complaint subcommittee ordered and reviewed the transcript of the proceedings and conducted their investigation. Following their investigation they submitted a report to the review panel.

The review panel noted that a review of the transcript revealed that the defence counsel was hours late in his attendance at court and was the sole cause of the delay on the date in question. The review panel advised that the allegations of misconduct on the part of the judge were not supported and dismissed this complaint.

CASE NO. 14-039/09

The complainant was the respondent in a family court matter before the subject judge. The complainant advised in his letter that his case has been before the courts for over four years. He expressed frustration as to how the system could allow a matter to proceed that long without proof of income on the part of the applicant and raised points on the merits of the case. The complainant also sought a review of his case.

The complaint subcommittee reviewed the complainant's letter of complaint, conducted their investigation and submitted a report to a review panel.

The review panel noted that the complainant raised concerns about the family justice system in general and about the merits of his case. They advised that the legislative mandate of the Council is limited to matters of judicial conduct, and does not extend to reviewing the justice system in general.

The review panel dismissed this complaint as it related to matters outside of the jurisdiction of the Ontario Judicial Council.

CASE NO. 14-040/09

The complainant, is the step-father of an accused person who appeared before the subject judge in a criminal law proceeding. The complainant, in his letter, informed that his step-son stole

a large amount of property from the complainant's company, fraudulently used his mother's credit card on several occasions and was eventually held in custody after committing further offences while on bail. The complainant advised that he was very unhappy with the judge's decision because, in his view, it was far too lenient. In his letter he asked the Judicial Council, "Do you really think that [name of judge] and her courtroom gang deserve to keep their jobs?"

The complaint subcommittee investigated the complaint and reported on their investigation to the review panel. The review panel informed that the complaint concerned a decision made by a judge and that there was no basis for an allegation of judicial misconduct. The panel advised that the forum for the review of any sentence is an appeal court. They advised that the decision as to whether a particular sentence should be appealed is made only by the local Crown Attorney's office or the Crown Law Office of the Ministry of the Attorney General, depending on whether the Crown proceeded with the charges at trial by summary conviction or by indictment. They advised that if the complainant wished to pursue the matter, he could contact those offices to communicate his concerns.

The review panel determined that the subject matter of this complaint fell outside of the jurisdiction of the Judicial Council and the complaint was dismissed

CASE NO. 14-041/09

The complainant was the defendant in a civil proceeding. The complainant had been in default in a loan payment when the bank repossessed his vehicle and sued him to recover their monies. The complainant made a motion without notice to the plaintiff to strike the statement of claim. The Master dismissed the motion on the basis that it was premature, without prejudice to the complainant in making another motion once pleadings were closed. The complainant alleged that the Master committed perjury, verbally and in writing, and raised several arguments about the law and about how the Master applied the procedure.

The complaint subcommittee reviewed the complainant's letter and numerous documents enclosed by the complainant, conducted their investigation and submitted a report to a review panel.

The review panel reviewed the subcommittee's report as well as the complainant's letter and enclosures. The review panel noted that this complaint was not about the conduct or misconduct of the Master; rather, the complaint was about the Master's ruling on a matter of law and on the application of the *Rules of Civil Procedure*.

The review panel observed that the complainant disagreed with the Master's decision, which is a matter outside of the jurisdiction of the Judicial Council. The review panel advised that the

complainant's appropriate remedy if he disagreed with the decision in this case would be to appeal the decision before a judge.

For the reasons noted, the review panel dismissed this complaint.

CASE NO. 14-042/09

The complainant in this matter, an executive of a local union, filed the complaint on behalf of a courthouse staff person. The complaint related to an e-mail sent by the subject judge (Justice A) to another judge (Justice B) that referred to the staff person and her work performance. This e-mail was brought to the attention of the staff person by a fellow co-worker.

The complaint letter contained the following allegations:

1) That Justice A has "been creating a poison work environment" and that her comments in the email about the staff person are "degrading and demeaning to the staff person as an individual." The complainant also alleged that the staff person's "privacy rights were violated by discussing personal and confidential issues with another judge and that Justice A's comments are impartial (sic), humiliating and discriminating".

2) "[Justice A] has abused her power as a judge to interfere with management decisions during the hiring process of public servants."

The complaint subcommittee instructed the Registrar to retain an outside investigator to conduct interviews of persons at the courthouse who had knowledge of the events. Investigative counsel conducted interviews of persons working at the court house and provided a report to the committee.

The complaint subcommittee also requested and received a response from Justice A.

Following the completion of their investigation the complaint subcommittee submitted a report to a review panel.

The review panel reviewed the complaint, the complaint subcommittee's report, the investigator's report and the response of the judge.

The review panel made the following findings:

In relation to the allegations that Justice A was "creating a poison work environment", that her comments in the email about the staff person were "degrading and demeaning to the staff person as an individual, that the staff person's "privacy rights were violated by discussing personal and confidential issues with another Judge" and that Justice A's "comments are impartial (sic),

humiliating and discriminating", the review panel observed that the email at the centre of this allegation was sent by one judge to another judge. The email was not directed to the staff person, the staff person's supervisor or to Ministry management in the courthouse where the staff person was employed. The review panel also noted that the email that was forwarded to the Judicial Council by the complainant was not the complete version of that email. Justice A provided the complete email which shows the header, the time of delivery, the email account it was generated from and to whom Justice A directed it. This email was sent from Justice A's personal account directly to Justice B. No-one was copied on the email.

The review panel found that the evidence was clear that the email at the heart of the complaint was a private communication between two judges concerning the work performance of a staff person. The review panel was satisfied that Justice A did not intend for anyone but Justice B to read it. In fact, the email concluded with the sentence, "Any questions, please see me. PLEASE DELETE this message. You never know who's reading them."

The review panel also found that the issue before the Judicial Council was not to answer whether the staff person is or is not qualified to do her job, but whether there was any misconduct on the part of Justice A when she expressed her views regarding the staff person's job performance by way of a private communication to a judicial colleague. They noted that at the time of the email, Justices A and B were very involved in changes involving staff that affected the judges in the courtrooms, and the judges had exchanged a significant amount of material in regard to those changes. The review panel was of the view that judges must have the ability to freely express opinions to judicial colleagues regarding issues of mutual concern. The panel noted that such opinions will occasionally include, as here, concerns as to the abilities of courthouse personnel. The review panel found that there was nothing objectionable about one judge privately expressing such concerns to a judicial colleague, as Justice A did in this case. On the other hand, the review panel concluded that evidence gathered in the investigation raised concerns about the manner in which the email came into the possession of persons other than the two judges.

In relation to the allegation that "Justice A has abused her power as a judge to interfere with management decisions during the hiring process of public servants", the review panel noted that apart from the email itself, the complainant provided no evidence in support of the allegation that Justice A abused her authority by interfering in the hiring process of a civil servant.

Following the review and investigation of the complaint, the review panel found that there was no merit to the allegation that Justice A abused her power or in any way interfered in the hiring process. The review panel was satisfied that a ministry employee involved in the hiring process requested input from Justice A concerning applicants being considered for a staffing position that would have interactions with the judges. The review panel observed that this was

an entirely reasonable, expected and appropriate part of the hiring process. Judges and staff in any courthouse are required to work closely together in order to effectively deliver the administration of justice. It is to be expected that a judge, when requested by appropriate authorities involved in the hiring process, should respond in a complete and forthright manner to queries regarding both the strengths and weaknesses of a particular candidate's suitability. The review panel found nothing objectionable in Justice A providing her input in this regard.

For all of the above reasons, the review panel dismissed this complaint.

CASE NO. 14-043/09

The complainant was engaged in a high conflict matrimonial dispute over custody and access that lasted many years and involved so many motions by both parties that the court had ordered that no new motions could be brought without the permission of the Court. Even though this order was made, the parties continued further extensive litigation. On each of the two occasions complained of, both parties appeared in person without counsel.

In his letter to Council, the complainant made the following allegations relating to the subject judge:

1) With respect to one appearance, the complainant alleged that the judge chose to ignore a court order and told him on the record that he would not be permitted to bring any access, custody or contempt motions. He further alleged that when he hired a lawyer to bring the motion, the judge told a lie when he said in court that he did not know there was a court order when, in the view of the complainant, he must have known such an order existed. The complainant also alleged that the judge was guilty of misconduct by virtue of the manner in which he treated the complainant as an unrepresented litigant. In particular, he said that the judge treated him with less respect when he was unrepresented.

2) With respect to another appearance, he alleged that the judge again lied to him over the issue of whether a motion had been properly filed. He also alleged that the judge's accusations in the endorsement were not becoming of a judge, as he endorsed the record that the complainant did not file the papers correctly, and then on the second day, he made a subsequent endorsement saying that the papers were filed correctly. The complainant alleges that the judge's apology for his mistake made no sense, and that the complainant believed that he was dishonest and that he ill treated unrepresented litigants, going so far as to lie to litigants.

The complaint subcommittee reviewed the complainant's letter, and ordered and reviewed the transcripts of the proceedings and submitted their report to a review panel.

The review panel examined the subcommittee's report and supporting materials provided to

them. The review panel found that part of the issue the judge had to deal with in relation to the complainant's allegation that the judge lied on one occasion was an incomplete court file. The review panel could find no evidence the judge lied about anything, although he may have been mistaken. They noted that given the volume of cases going through family court and the size of the complainant's court file, an error about the contents of the file could have easily been made. The review panel noted that according to the complainant, this was pointed out to the judge on the next court appearance and the judge apologized for the misunderstanding. The review panel found that this does not constitute misconduct.

Further, they observed that while the judge may have been brusque with the complainant, he was not rude or inappropriate.

In relation to the complainant's allegations about the second occasion before the judge, the review panel noted that because of the history of the particular matter before the court, the complainant had been required previously by a court order to obtain the permission of the court before bringing any motion. The panel's investigation showed that the complainant had appeared in court to seek the court's permission to bring another motion on a custody and access issue. The judge at first refused to hear him because the notice of motion could not be found in the file. The motion was subsequently found and the judge heard from the complainant.

Following their review of the transcripts, the review panel found that there was no support for the allegations that the judge mistreated the complainant in any way or that the complainant was compromised by not having counsel. They also found no evidence that the judge lied to the complainant. For all of the reasons noted, the review panel dismissed this complaint.

CASE NO. 14-044/09

The complainant was a lawyer who appeared before the subject judge representing a client in a family law matter. Two years after the matter commenced, the complainant appeared before the judge who asked her to explain why she should not be held in contempt after she had failed to attend on several occasions when the case was in court. The complainant persuaded the court that she should not be found in contempt and was removed as solicitor of record. After the complainant had left the court, the issue of costs was raised and duty counsel appearing on behalf of the complainant's former client suggested that the court should consider making an order of costs against the complainant personally. The matter was then adjourned to allow the client to obtain further legal advice with respect to the request for costs, as well as for service on the complainant of notice of the request for costs against her personally. The matter returned before the subject judge. The complainant did not attend. Neither party raised any issues with

respect to whether or not she had been properly served with notice of the application. The subject judge made an order of costs against both the client and the complainant.

The complainant appealed the order of costs against her personally. The appeal was allowed on the basis that she had not received the requisite notice of the application for costs against her personally. The appeal court did not vary the amount of the costs or the order of costs against the client but only quashed the order against complainant personally, and ordered that it go back before another judge of the Ontario Court of Justice for determination as to whether such a costs order was appropriate.

The matter was heard before another judge of the Ontario Court who decided that in his view the actions of the complainant were not "outrageous, grossly negligent or inexcusable", as required by the case law. He declined to order costs against the complainant personally.

In her letter to Council, the complainant alleged that the subject judge was incompetent in failing to ensure that notice was personally served on her with respect to the claim of costs against her personally before making such an order. She also alleged that that the decision as to costs was made without any proper documentation such as receipts for legal fees. Also, she alleged that the judge discriminated against her based on her gender and/or racial background. She also requested that the Council educate female judges not to make harsh judgments against female counsel or their clients.

The complaint subcommittee conducted their investigation, ordered and reviewed numerous transcripts relating to this matter and submitted their report to a review panel.

The review panel reviewed the letter of complaint, the transcripts and the subcommittee's report.

The review panel noted that the complainant's allegation that the judge was incompetent in failing to ensure that notice was personally served on her was a matter of law that was successfully appealed. The review panel advised that an error in law by a judge does not constitute misconduct. Rather, it is the matter for an appeal, as was the case here.

The review panel noted that another judge of the same level of Court as the subject judge disagreed with her as to whether the complainant's conduct was sufficiently outrageous to justify an order of costs personally. The fact that another judge of concurrent jurisdiction takes a different view with respect to whether or not a set of facts justify a specific legal inference does not justify a finding of misconduct.

With respect to the complainant's allegation that the decision as to costs was made without any proper documentation such as receipts for legal fees, the review panel reported that the subject judge made no findings with respect to whether the complainant's accounts to her client were

justified. Rather, the subject judge made findings with respect to the costs incurred by the opposing party, and those findings were not disturbed by the appellate court.

The review panel also found no basis in the record to support the allegations that the subject judge showed bias as a result of the complainant's gender or racial origin.

For the reasons above, the review panel found no evidence of judicial misconduct and dismissed this complaint.

CASE NO. 14-045/09

The complainant/father alleged that the subject judge in a family proceeding for child support made an incorrect determination of his income and that, as a result, an order to pay excessive support was made. The complainant was self-represented at trial, as was the Respondent/mother.

The complaint subcommittee reviewed the complainant's letter and conducted their investigation. The complaint subcommittee requested a response from the judge asking whether the judge knew the Respondent. Following their investigation they submitted a report to a review panel.

The review panel informed that the complainant's issue relating to the incorrect determination by the judge of child support payable by complainant was a legal issue outside of the jurisdiction of the Council. If the judge erred in that determination (and the review panel made no such finding), it would be a matter for an appeal court to decide.

The review panel also advised that the complainant alleged that the judge had decided the case in a manner unfavourable to him because the judge was biased. The complainant alleged that the judge knew the Respondent/mother, who worked for a youth services organization that the complainant believed to have a relationship with the judges. They reported that the letter from the judge confirmed that the complainant was mistaken in his belief that the youth services organization that employed the Respondent had a relationship with the court. The letter also confirmed that the Respondent was not known to the judge before the trial. The fact that Respondent was an employee of the youth services organization had no bearing on the decision in the case or in the conduct of the trial. The panel noted that at the trial the complainant had never raised the concern that the judge was not impartial.

The review panel found no support for the allegation of judicial misconduct and dismissed this complaint.

CASE NO. 14-046/09

The complainant was the Respondent in a support proceeding in a family court proceeding before the subject judge. The complainant alleged that the judge increased the amount of monthly support payable by the complainant from the amount previously ordered by a different judge. The complainant wrote to the judge disagreeing with her order, asserting that the calculations were incorrect and setting his own analysis of his income.

In his letter to the Judicial Council, the complainant made the following allegations:

1) For reasons not understandable to him the judge was replaced;
2) The judge was aware of her mistake but ignored his objection to her method of income calculation;
3) The Applicant's lawyer wasn't able to explain in court the method that he used to calculate the complainant's income; and,
4) The judge didn't consider it necessary to explain the legal ground of her order.

The review panel conducted their investigation and submitted a report to the review panel.

The review panel noted that all of the allegations made by the complainant were matters of law and outside of the jurisdiction of the Judicial Council. The allegations concerned whether the judge made or communicated the correct decision in law. As the review panel found no basis for an allegation of judicial misconduct, they dismissed this complaint.

CASE NO. 14-047/09

The complainant in this matter was the father of a child who had been apprehended by the Children's Aid Society as a child in need of protection. The child was returned to her father's care temporarily a few months later. The complainant represented himself on appearances before the subject judge. At the last appearance, the judge placed the child in the temporary care of her father and adjourned the matter to a later date for completion of a settlement. On that date, the Children's Aid Society indicated that they were prepared to withdraw the application so long as both the complainant and his daughter indicated that it was their intention to continue with counselling. Both of them agreed to continue counselling and therefore the Children's Aid Society withdrew its application.

The complainant raised issues with respect to the behaviour of the Children's Aid Society, his daughter's lawyer and the family court system in general, matters which are not within

the jurisdiction of the Council. With respect to the subject judge, the complainant raised the following allegations:

1) The judge made comments which were unbecoming to a judge, specifically "children have no status in this court". Also, the judge obstructed justice by attempting to prevent evidence from the complainant's daughter being submitted to the court;

2) The judge failed to address an assault committed by the Children's Aid Society worker on his daughter;

3) The judge obstructed justice by refusing to allow a transcript of a settlement conference held on one day to be released but allowing the transcript of another settlement conference date to be released;

4) The judge acted improperly by presiding at both 'court hearings' and case conferences;

5) The judge refused without reasons to hear his motion with respect to production of Children's Aid Society files; and,

6) The judge is "nothing but a judicial bully and a tyrant who covers his own behind first and then puts the interests of a local Children's Aid Society ahead of the interests of children and families in the community".

The complaint subcommittee reviewed the letter of complaint and transcripts of the appearances before the subject judge. The subcommittee submitted a report to a review panel.

The review panel reviewed the complaint, the transcripts and the report from the subcommittee. The panel made the following findings in relation to the allegations as set out above:

1) The review panel noted that the judge pointed out that an order pursuant to section 38 of the *Child and Family Services Act* for the appointment of counsel for the child had been made. The judge also stated:

> Mr. [X,] you need to understand and [your daughter] needs to understand that children have no status in this court except through counsel. So therefore the Legislature provided a means whereby children could be heard through counsel. If this court rescinded the order, which, in my view, I probably do not have jurisdiction to do, but then [your daughter] would be here without a voice and she would have no status before this court and that would be unfortunate,…

The review panel observed that although the terminology used by the judge in indicating that children have 'no status' in the court was perhaps unfortunate, the judge was entirely correct in indicating that the law in child welfare matters is that the child is not a party

to the proceedings and does not have an independent right to file evidence as the judge indicated. Further, the review panel noted that the comments were made in circumstances where the complainant had objected that his daughter was not being permitted to submit an Affidavit to the Court, and the judge did eventually allow the Affidavit to be filed.

2) It was unclear to the review panel what the complainant expected the judge to do with respect to an unsubstantiated oral allegation of criminal behaviour by a Children's Aid Society employee. The panel noted that the transcript showed that the judge indicated that if the complainant wished to complain about the behaviour of the Children's Aid Society, there were other forums to raise those concerns. The panel observed that the judge also expressed concerns that the allegations against the Children's Aid Society were made without notice. The review panel advised that a judge is not required to respond to oral allegations made without notice to the other party and the judge appropriately advised the complainant that he could raise his concerns with the appropriate authorities.

3) With respect to allegation that the judge obstructed justice by not releasing a transcript of a settlement conference (record discloses it was a case conference), the review panel advised that, as the judge indicated in his ruling, case conferences are meant to be informal proceedings where all parties can feel comfortable to speak freely. The panel observed that if transcripts were produced on a regular basis, it is arguable that it would have a negative impact on the case management system. Further, the panel advised that this was a decision which was within the judge's discretion and the proper way for the complainant to proceed if he felt that the discretion was exercised improperly (and the review panel made no such finding) was through an appeal. As such, it was not a matter within the jurisdiction of the Ontario Judicial Council.

4) With respect to the allegation that the judge presided over procedural matters, a case conference and the withdrawal of the Children's Aid Society application, the panel advised that judges across Ontario do so on a daily basis in the case management process. The panel noted that the transcripts showed that the judge never made any findings on disputed facts. Further, they observed that no-one raised any issues about potential bias during the proceedings. The panel found that the judge did not act improperly.

5) The review panel advised that, contrary to the complainant's allegation that the judge refused without reasons to hear his motion, the transcript showed that the judge did give reasons for refusing to hear the complainant's disclosure motion. He indicated correctly that after the Children's Aid Society withdrew its application, the court had no jurisdiction to deal with the motion.

6) The panel observed that there was nothing on the court record to substantiate the allegations

of bullying, tyranny or putting the Children's Aid Society's interests first. On the contrary, the transcripts showed that the judge treated the complainant respectfully and fairly throughout the proceedings and attempted to expedite them as best he could in the circumstances.

Following their investigation, the review panel found no evidence to substantiate any of the allegations made by the complainant and dismissed this complaint as unfounded.

CASE NO. 15-001/09

A justice of the peace convicted the complainant of speeding. The complainant successfully appealed the conviction and was granted a new trial. At the second trial a justice of the peace again convicted the complainant. The complainant applied for leave to appeal this conviction. The subject judge denied leave to appeal.

In his letter to Council, the complainant alleged that the subject judge:

1) Refused to consider new evidence that the complainant wished to present showing that the police witnesses had perjured themselves at his trial.

2) Ignored the complainant's argument that the justice of the peace at trial was biased in favour of the police.

3) Created a "new category" and did not provide a "traditional" reason for denying the appeal.

The complaint subcommittee reviewed the complainant's correspondence, and the transcript of the reasons of the subject judge for denying leave to appeal. Following their investigation, they submitted a report to a review panel.

The review panel reviewed the complaint subcommittee's report, the complainant's correspondence and the transcript of the judge's reasons. The panel noted that the judge carefully reviewed the evidence given at trial, as well as the reasons for conviction. They also noted the judge found that the justice of the peace had not committed any errors of law and that his findings were reasonable. They further noted that the judge found no evidence of bias on the part of the justice of the peace. They observed that the judge determined that there were no grounds of appeal and, therefore, did not grant leave to appeal.

The review panel dismissed this complaint on the basis that the allegations related to questions of law and a disagreement on the part of the complainant with the judge's decision. These are matters which lie outside of the jurisdiction of the Judicial Council. If the judge made any errors in determining any of the issues (and the review panel did not suggest that he did), the proper way for the complainant to proceed would have been through an appeal.

CASE NO. 15-002/09 AND 15-003/09

The complainant was the Respondent in a lengthy family court matter dealing with support issues and filed complaints against three judges of the Ontario Court of Justice that presided over his proceedings. The Judicial Council dealt with two out of the three complaints as follows:

CASE NO. 15-002/09

The complaint subcommittee reviewed the complainant's letter to the Judicial Council, conducted their investigation and submitted a report to a review panel.

The review panel noted that the complainant disagreed with how the Child Support Guidelines were applied by Judge A in the calculation of support. The complainant also disputed that the judge did not take the complainant's true earnings into consideration to arrive at the support amount ordered.

The review panel found that there was no basis for an allegation of judicial misconduct as the complaint related to decisions made by the judge, which are matters outside of the jurisdiction of the Ontario Judicial Council and dismissed this complaint.

CASE NO. 15-003/09

The complaint subcommittee reviewed the complainant's letter to the Judicial Council, conducted their investigation and submitted a report to a review panel.

The review panel reviewed the subcommittee's report and the complainant's letter. They noted that the complainant alleged that Judge B made a comment at the trial management conference that the complainant's position was that he couldn't pay. The review panel further noted that the complainant further alleged that the judge's misleading suggestion led his case in the wrong direction and that all other judges who dealt with his case after Judge B had a bias about his case. The complainant alleged that impartiality was lost. The review panel also noted that it appeared that the complainant was not clear on the type of proof that was necessary to justify his income.

The review panel concluded that there was no basis for an allegation of judicial misconduct. The allegations made related to matters of fact-finding and decision-making of a judge and of procedure, matters that are outside of the jurisdiction of the Judicial Council. If the judge many any errors in assessing the evidence or determining any of the issues (and the review panel did not suggest that she did), the proper way for the complainant to proceed would be through an appeal.

With respect to the complainant's question about what evidence he should provide, the review panel advised that the Judicial Council cannot provide legal advice. A lawyer is in the best position to provide legal advice.

For the reasons noted, the review panel dismissed this complaint.

CASE NO. 15-004/09

This complaint concerned the alleged misconduct of a judge of the Ontario Court of Justice acting as a government-appointed Commissioner of a public inquiry.

The investigating complaint subcommittee reported that three years prior, the complainant had brought an application for standing and funding to challenge a decision of the Commissioner to recommend funding for an organization that had been granted standing at the public inquiry. The Commissioner dismissed the complainant's application on the basis that the complainant did not meet the test for standing to participate in the inquiry. The complainant then challenged this decision by way of a complaint to the Ontario Judicial Council, alleging judicial misconduct on the part of the Commissioner. The Judicial Council dismissed that complaint. The Council found that the decision made by the Commissioner was made in the course of his duties and if incorrect was subject to judicial review by a court. The Council further found that no allegation of judicial misconduct had been made and, therefore, the complaint was outside of the jurisdiction of the Judicial Council.

Subsequently, the complainant applied to the Commissioner to review his decision dismissing the complainant's earlier application regarding standing and funding. The complainant sought a recommendation from the Commissioner that the Attorney General should provide the complainant with funding for a judicial review application. The Commissioner dismissed this application, ruling that the application "was not of such an exceptional nature that it is appropriate…to suggest to the Attorney General that he receive funding for judicial review". The Commissioner observed that the complainant did not wish to participate in the inquiry in order to present evidence "to advance the Commission's mandate". He noted that, as well, even if the complainant's argument concerning the funding of the other party was successful, very little would change in the functioning of the inquiry since the organization that had received standing would continue to participate and the evidence given by that organization's witnesses would stand. The Commissioner also noted that the complainant had waited over six months to bring his initial application and over two years from the decision to dismiss his first application to bring the latest request for funding for a judicial review. The Commissioner observed that the complainant's delay in taking action rendered his latest application practically moot since an

Order-in-Council had mandated a completion date for the Inquiry's closing submissions. The Commissioner also noted that the complainant wished to judicially review both the decision of the Commission, as well as the decision of the Judicial Council. The Commissioner observed that he had no power to recommend funding to review the decision of a separate body such as the Judicial Council.

The complainant then wrote a letter of complaint to the Judicial Council, alleging that the Commissioner made false representations about the complainant's purpose for applying for funding and that the statements of the Commissioner showed "poor judgment". The alleged misrepresentations of fact were:

1) That the purpose of the complainant's application was to challenge the decision to recommend funding for the organization that received standing;

2) That the complainant made arguments that the organization's funding should be overturned; and,

3) That the complainant wanted to participate in order to argue that the religious organization's funding be withdrawn.

The subcommittee reviewed the complaint and the full ruling of the Commissioner. The complaint subcommittee then reported to a review panel.

The review panel noted that the essence of this complaint was that the Commissioner misapprehended the purpose of the application and the arguments raised by the complainant. They noted that the complainant also strongly disagreed with the reasoning and decision of the Commissioner dismissing his application. In his letter to the Council, the complainant alleged that the Commissioner exercised "poor judgment" and should be "censured by the Judicial Council".

The review panel advised that the findings and conclusions made by the Commissioner fell within his decision-making duties at the public inquiry. They observed that allegations of error relating to the Commissioner's findings and conclusions were properly the subject of judicial review and were not within the mandate of the Judicial Council. The review panel noted that the complaint did not concern misconduct on the part of the Commissioner and dealt with matters that were outside of the jurisdiction of the Council.

For the reasons noted, the review panel dismissed this complaint.

CASE NO. 15-006/09

The complainant was a litigant in a family law proceeding who had requested that his lawyer adjourn a matter that had already been adjourned twice. His lawyer told the complainant that he would need to either proceed that day or find other representation. The complainant indicated that he had then signed a 'Change of Representation' form and asked the subject judge to have the matter adjourned because he was unrepresented, and the judge told him that the matter would be completed on the date in question 'whether he liked it or not'. The judge ordered final custody to the mother and determined that the parties should work out access between themselves.

In addition to the complainant's allegation that the judge did not grant his adjournment and told him that she would finish the matter that day whether or not he liked it, in his letter the complainant set out points that he had made to the judge during the court proceeding. The complainant alleged to the Judicial Council that his pleadings were overlooked. The complaint subcommittee advised that these allegations related to the judge's decisions rather than to misconduct, and were outside of the jurisdiction of Judicial Council.

The subcommittee also reported that although the complainant made general allegations that referred to conduct, the allegations were conclusory and without any supporting particulars. For example, the judge was alleged to be 'gender biased' but the complainant provided no particulars of anything that the judge did or said to lead the complainant to that conclusion. The subcommittee noted that unsupported assertions, without any particulars, could not be further investigated. The subcommittee noted that overall the complaint was a criticism of the decision made by the judge which can only be reviewed by an appellate court.

For the reasons noted, the review panel dismissed the complaint.

CASE NO. 15-007/09

The complainant was a self-represented accused that appeared before the subject judge on a number of firearms related offences. The complainant made the following allegations relating to the subject judge:

1) The judge misinterpreted the law; and,

2) The judge was 'yelling at him like a wild animal'.

The complainant also raised a number of issues with respect to the behaviour of the police.

The complaint subcommittee conducted their investigation, ordered and reviewed in detail

the transcript of the last day of the trial and received a report from the Assistant Registrar who had listened to the audiotape of the proceeding before the subject judge. The subcommittee submitted their report to a review panel.

The review panel reviewed the letter of complaint, the complaint subcommittee's report and the transcript of the final day of the trial. The trial continued for a number of days with the trial judge allowing several adjournments for the complainant to obtain further evidence. Eventually he was acquitted of two charges but found guilty of possession of a prohibited firearm without having a permit for such possession and importing a prohibited firearm into Canada.

With respect to the complainant's allegation that the judge had misinterpreted the law, the review panel advised that if the judge made any errors in determining questions of law (and the review panel did not suggest that she did), the proper way for the complainant to proceed was through an appeal. Such matters are outside of the jurisdiction of the Judicial Council.

With respect to the allegation by the complainant that the subject judge was 'yelling at him like a wild animal', the review panel reviewed in detail the transcript of the final day of this trial that included sentencing in the matter. The panel determined that the transcript and the audiotape did not support the allegation that the judge yelled or that she at any time raised her voice. The panel observed that although the subject judge was on occasion firm with the complainant, it was necessary for her to do so in order to keep control of the proceedings.

The review panel advised that the allegations regarding the behaviour of the police were matters outside of the jurisdiction of the council.

The review panel found no evidence of any misconduct on the part of the subject judge and dismissed this complaint.

CASE NO. 15-008/09 AND 15-009/09

The complainant was the spouse of a person who was charged with uttering death threats and causing bodily harm. The complainant's husband was in custody and had made numerous appearances before a number of judges. The complainant attended in a number of criminal courts where her husband was to appear and complained about each of the presiding judges.

CASE NO. 15-008/09

The complainant's husband had appeared in plea court before the judge who is subject of this complaint. The complainant alleged that the judge made false allegations against her husband,

"was defending organized crime", had the audacity to diagnose her husband instantly, and "had a speech impediment and his hearing was impaired".

The complaint subcommittee conducted their investigation and submitted their report to a review panel.

The review panel observed that the complainant appeared to disagree with the charges against her husband and with the court process. The nature of the complaint reflected her perception of the justice system and did not contain any particulars that would support a finding of misconduct. As the review panel found no evidence of judicial misconduct on the part of the subject judge, the complaint was dismissed.

CASE NO. 15-009/09

The complainant appeared before the subject judge of this complaint on two separate occasions. The complainant alleged that the judge "is a disgrace, an undemocratic and unethical judicial figure."

The complaint subcommittee conducted their investigation, ordered and reviewed the transcripts of the proceedings and submitted their report to a review panel.

The review panel reviewed the complainant's letter, the transcripts and the subcommittee's report. They found that that the subject judge was patient with the accused and tried to assist the self-represented husband of the complainant to understand his rights and the legal process.

The review panel found no evidence of judicial misconduct on the part of the subject judge and dismissed this complaint.

CASE NO. 15-010/09

The complainant is the Executive Director of a sexual assault centre. In her letter of complaint to Council she indicated that she attended court as a support person for the cross-examination of a complainant/witness in a sexual assault trial before the subject judge. She indicated that the subject judge:

> "did not give the appearance of giving her full attention to the complainant's evidence. She appeared to be consulting documents, filling out a schedule, consulting an agenda and reviewing paperwork during the cross-examination for almost the entire duration of the session.

> Her Honour may have been focusing her attention upon the evidence, but that did not appear to be the case in this instance."

The complainant also emphasized that for a victim/witness in a sexual assault trial, feeling that her evidence is being taken seriously is an important part of the healing process. She noted that she was not saying that the judge was not diligent; however, her concern was that the judge did not give the appearance of attending to the testimony.

The complaint subcommittee conducted their investigation, ordered and reviewed transcripts of the proceedings and the judge's reasons. The subcommittee also requested and received a response from the judge. The subcommittee reported that the judge had explained that during the proceedings, there were several documents that she had needed to refer to including a transcript of the earlier date when the witness had testified, a translation of an interview with the defendant and several other exhibits. Further, she explained that she was taking extensive notes and cross-referencing prior testimony and statements, knowing that the next trial date would be too soon to have a transcript available. Following their investigation, the subcommittee submitted their report to a review panel.

The review panel reviewed the letter of complaint, the transcripts of the cross-examination of the victim/witness, the transcript of the judge's reasons, the judge's response, and the subcommittee's report. The review panel expressed its concern that the complainant received the impression that the subject judge was not focusing her attention on the evidence. However, the panel was able to confirm from their review of the transcripts and the response from the judge that she was quite diligent in focusing on all of the evidence before her. The panel noted that the particular trial involved numerous documents and it appeared to the review panel that the judge was taking care to ensure that she had a good record of the proceedings.

With respect to the complainant's concern that in a sexual assault trial, it is important for the victim/witness to feel that her evidence is being taken seriously and that the judge did not give the appearance of attending to the testimony, the review panel advised that their review of the transcripts showed that the judge was completely attentive to the evidence of the victim/witness. The transcript also showed that she had demonstrated an appreciation for the emotional state of the victim/witness during the cross-examination and provided for an opportunity for a break to accommodate the witness' need to collect herself. In addition, the judge's response showed that she was sensitive to the stress that such witnesses in these types of cases were under.

Although the review panel noted that this complaint served as a reminder that the judiciary has to both be diligent in the exercise of its duties and be aware of how their behaviour may appear to members of the public, the panel found no evidence of judicial misconduct on the part of the subject judge and dismissed this complaint.

CASE NO. 15-011/09

The complainant was an accused in a criminal matter who had appeared before the subject judge.

The complaint subcommittee reviewed the complainant's letter of complaint, conducted their investigation and reported to a review panel.

After reviewing the subcommittee's report and the complainant's letter, the review panel advised that the issue was that the complainant disagreed with the judge's decision. They reported that the complaint contained no allegations of judicial misconduct; rather, the complainant raised concerns about the decision of the judge to adjourn the trial and to grant the Crown Attorney's request for a warrant for a witness who had failed to appear. They also noted that the unsupported allegation by the complainant that the judge was biased in favour of the Crown Attorney did not indicate misconduct; rather, the complaint subcommittee informed that the judge was entitled in law to agree with the position put forward by the Crown Attorney and to make every order that was the subject matter of the complaint. They advised that if the judge made any errors in assessing the evidence or determining any of the issues (and the review panel is not suggesting that he did), the proper way for the complainant to proceed would have been through an appeal.

Accordingly, the review panel dismissed this complaint as falling outside of the jurisdiction of the Judicial Council.

CASE NO. 15-012/09

The complainant appeared before the subject judge on a trial on charges of fraud and uttering forged documents. During the trial, the complainant lost his temper and was threatening witnesses. In response, the judge ordered that he be held in the cells over the lunch break. After lunch, the complainant apologized for his behaviour toward the witnesses and the trial continued. The judge did not accept the evidence of the complainant. The complainant was convicted of the offence. The complainant raised numerous issues with respect to the correctness of the subject judge's decision, and made allegations about the behaviour of police and Crown Attorney.

The complainant also alleged that the judge was guilty of "professional misconduct, racial bias, conflict of interest and dereliction of duty." In addition, he alleged that the judge showed a bias against persons with disabilities when he stated during his reasons for sentence that he "understood how somebody on a disability pension who could not work might be tempted by the lure of easy money here".

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

The review panel reviewed the complainant's letter, the transcript and the complaint subcommittee's report. The review panel found that the transcript showed no support for any of the allegations of misconduct. Further, the panel observed that the statement made by the judge with respect to individuals on disability pensions was related solely to the fact that in the judge's view, any person on a limited income could be tempted by the lure of easy money. The statement did not indicate any bias against persons with disabilities.

The panel also noted that the concerns raised by the complainant relating to the judge's decision were matters outside of the jurisdiction of the Council. If the complainant disagreed with how the judge assessed the evidence or determined any of the issues, the proper way for the complainant to proceed was through an appeal. The panel advised that the allegations relating to the police and Crown Attorney were matters outside of the jurisdiction of Council. The complainant was provided with information about the appropriate offices where he could pursue his concerns about the police or the Crown Attorney, if he wished to do so.

Therefore, the review panel dismissed this complaint as unfounded.

CASE NO. 15-013/09

The complainant was the spouse of a person who was charged with uttering death threats and causing bodily harm. The complainant's husband is in custody and has made numerous appearances before a number of judges.

In her letter to Council, the complainant alleged that the judge's ruling was not measured nor sagacious, and that he displayed a complete lack of objectivity or reason. She also alleged that he was acting in support of another judge, who was cruel and irrational. She inferred that the judges were involved in organized crime and mafia activities on the side.

During the course of complaint subcommittee's investigation, a letter was received from the complainant asking that her complaint be withdrawn. The subcommittee then submitted their report to a review panel.

The review panel reviewed the complaint subcommittee's report and copies of the complainant's original letter and her letter requesting a withdrawal of the complaint. The review panel determined that the complainant had raised issues related to the decision of the judge and advised that if the complainant and her husband had any issues with the decision, the proper

way to proceed was through an appeal by her husband. The review panel also noted that the complainant had requested that the matter be withdrawn. The panel dismissed this complaint.

CASE NO. 15-014/09

The complainant, a landlord, commenced an action in Small Claims Court against one of his tenants for non-payment of utility bills. In defending the action, the tenant argued that the landlord had not properly maintained the tenants' living quarters. The trial proceeded before the subject judge. After hearing the evidence, the judge found that there were repair issues and the tenants were entitled to an abatement of rent equal to the amount claimed by the landlord. Since the amounts were equal, the landlord's claim was dismissed.

The complainant alleged that the subject judge completely ignored the findings of the City property inspector. The complainant disagreed with the judge's 'unbelievable and absolutely unacceptable judgment' and his assessment of the evidence. He also alleged that the when he tried to present his case or comment on statements by the defendant, the judge immediately interrupted him with his own questions. The complainant also alleged that the judge did not allow him to talk about a previous case involving another tenant nor allow him to ask any questions about 'the terrible crime the tenants committed while living on the property'.

The complaints subcommittee investigated this complaint, ordered and reviewed the transcript of the proceeding before the subject judge and submitted their report to a review panel.

The review panel reviewed the complainant's letter, the transcript of the proceedings and the complaint subcommittee's report. They found that the judge treated both parties equally and fairly, in trying to keep both of them proceeding according to what was allowed by law. The judge directed both parties to deal only with the issues before him and to not deal with inadmissible evidence.

The review panel observed that the complainant disagreed with how the judge assessed the evidence and with his decision. The panel advised that if the judge made any errors in assessing the evidence or determining any of the issues (and the review panel did not suggest that he did), or if the complainant disagreed with his decision, the proper way for the complainant to proceed would have been through an appeal. The Ontario Judicial Council does not have jurisdiction to review or change the decision of a judge.

The review panel found no evidence of judicial misconduct on the part of the subject judge and dismissed this complaint.

CASE NO. 15-016/09

The complainant was a former justice of the peace of the Ontario Court of Justice. The complainant made allegations of discrimination by a senior administrative judge related to requests by the complainant. The complainant alleged that there was an inordinate delay in and/or a failure to respond to his letters, and that the manner in which the judge dealt with the requests constituted discrimination. He also alleged that the judge rendered untenable/unreasonable decisions and exercised an illegal delegation of authority.

Further, the complainant alleged that the judge made misrepresentations to others and to the Human Rights Commission regarding the requests.

The complaint subcommittee conducted their investigation and submitted a report to a review panel. The review panel reviewed the complaint subcommittee's report and observed that the complainant had also brought an application to the Human Rights Commission in relation to the same matters involving the judge, and that he had argued that the actions amounted to discrimination with respect to employment on the basis of ancestry, colour, ethnic origin, place of origin and race.

The review panel noted that in the Human Rights Tribunal decision, the vice-Chair was satisfied that the complainant did not establish any good faith basis on which discretion should be exercised to permit the complainant's application to proceed and the application was dismissed as being out of time.

With respect to the allegations related to complainant's requests to the judge, the review panel found that they were matters of administration and outside of the jurisdiction of the Ontario Judicial Council.

With respect to the allegation that the judge made misrepresentations to others and to the Human Rights Commission regarding his requests, the review panel found that there was no evidence supporting that allegation. In addition, they noted that the Human Rights Tribunal expressed the view that there was no basis for the complainant's "oft-stated claim that respondents' counsel has deliberately and knowingly misled the Tribunal."

Based on the review panel's review of the materials before it, the panel did not find evidence of discrimination.

For all of those reasons, the review panel dismissed the complaint.

CASE NO. 15-017/09

The complainant, a former student at a university, was involved as an self-represented litigant in civil litigation with that institution. Following an *ex-parte* trial, he was found guilty of trespassing charges on the grounds of the university. The complainant appealed the convictions and brought an application in the Ontario Court of Justice which was heard by the subject judge.

In his letter to Council, the complainant made the following allegations regarding the judge:

1) The judge proceeded with the matter with only partial documents (about forty pages instead of five hundred). The judge said that he had read all of the materials and that he knew the issues although he did not have all of the materials, nor had he read all of the materials.

2) Immediately after seeing the complainant, the judge asked the court clerk to call two police officers to attend the hearing. The judge got all of the lawyers out of the courtroom and the complainant says he got the clear understanding that the judge intended to give him special treatment.

3) The judge said that the Crown Attorney did not need to be present, that he did not need him for the matter.

4) The judge gave him only ten minutes to persuade him to grant his requests. The judge also cut off the complainant's argument on the pretext that the time had expired.

5) The judge said that he had no jurisdiction to grant the relief requested by the complainant.

6) The judge said that "he probably is not so educated to understand my argument."

7) The judge said that he was very upset that the complainant spoke on the public meeting for Larry Flint and Hustler magazine.

8) There is a possibility that the judge is a white supremacist who is "craving for the lost of Second World War by Nazi Germany".

9) At the end of the proceeding, when the complainant asked if he could order a transcript, the judge was "getting increasingly upset from the fact that I was making a parody from my motion hearing told me again, "Your time is over, get out of my court".

10) There are issues in the judge's ruling which are "very disturbing unprofessional and present perversion of justice".

The complaint subcommittee conducted their investigation, ordered and reviewed the transcript of the proceeding before the subject judge. The subcommittee also requested and listened to an

audiotape of the proceeding. The subcommittee submitted their report to a review panel.

The review panel reviewed the complainant's letter and supporting documents, the transcript of the proceedings and the subcommittee's report.

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

1) During the hearing the subject judge made reference to the transcript of the trial before a justice of the peace. The review panel noted that it also appeared that the forty pages of material which the complainant had filed on his application were before the judge.

2) The transcript did not support the allegation that immediately after seeing the complainant, the judge asked the court clerk to call two police officers to attend the hearing. Nor, did the transcript support the allegation that the judge got all of the lawyers out of the courtroom or the complainant's understanding that the judge intended to give him special treatment.

3) The transcript indicated that the complainant was present when court commenced but Crown Counsel was not. The transcript also showed that the judge indicated: "All right the prosecution is not here it's 9:30. It's your application. If the prosecution is not here, I'm going to proceed without him. What are you asking for Mr. X?"

   The review panel found that the complainant did not suffer any prejudice by the court commencing to hear the matter in the absence of the prosecution.

4) & 5. The transcript showed that it was only after the judge explained that he had no jurisdiction to grant his application that the judge then stated that the complainant had ten minutes to make his submissions.

6) While the judge did make a comment that he may lack the intellectual ability to understand the complainant's complex argument, it was self-deprecating and not a reflection of his abilities.

7) The transcript did not support the allegation that the judge was upset that the complainant spoke on a public meeting for Larry Flint and Hustler magazine. Rather, what the judge said was: "So I am going to dismiss your application, all five grounds of relief. I do want you to know that your comments about Larry Flint, Hustler magazine as having some relevance in this matter cause me to have some concern. I don't seem to be link that – be able to link that to your application, so in addition to dismissing your application, I am making an endorsement that your must seek the leave of the court before filing any further motions in this matter."

8) 9) & 10) After the application was dismissed, there followed an exchange between the

judge and the complainant regarding the materials in the court file, following which the judge said: "And now Mr. X I'm asking you to remove yourself from the courtroom so I can move on to the rest of the list." And further: "It's time to go Mr. X, and still later I need you to leave. I need you to leave now."

The review panel also advised that the report from the investigating complaint subcommittee confirmed that the tone of voice used by the judge during the hearing was not harsh, overbearing, or in their opinion inappropriate.

The panel found that a review of the transcript did not support any of the allegations set out, and that some of the allegations made were conclusory without any supporting materials or particulars.

The review panel also noted that the remaining matters were outside the jurisdiction of the Council as they related to the judge's decision. The proper way for the complainant to proceed on such matters was through an appeal.

For the reasons noted, the review panel dismissed this complaint.

CASE NO. 15-018/09

The complainants, the mother and uncle of a young person, attended at the young person's set date hearing before the subject judge. The young person did not attend court because he was at a military training camp.

This complaint involved two allegations:

1) *That the judge engaged in inappropriate and abusive courtroom conduct toward the complainants, as follows:*

   - "Justice [subject judge] verbally attacked us. She was almost out of her seat the moment my brother opened his mouth to state what had happened and why were there to represent [the young person]."
   - When the uncle tried to explain, he was "repeatedly attacked and rudely interrupted by this biased judge. She was extremely rude and aggressive towards myself and my brother."
   - "The judge was visibly angry that [the young person] was not there despite our explanation…"
   - The subject judge rudely interrupted the mother, "did not listen to what [she] had to say", started talking over me in a very demeaning, rude, contemptuous manner and with an extremely threatening and aggressive attitude."

- "I was very upset by her actions and tone of voice. I literally thought she was going to jump over her podium. I was so upset and taken aback by this aggressive behaviour that it actually frightened me."
- "Her rude behaviour, bordering on hysterics; her unkindness to a pair of innocent lay-persons; and that look of such hatred on her face she showed us in court…is not acceptable behaviour of a judge."

2) *That the judge denigrated and disparaged the military as follows:*

- "…this woman's tone and inflection and her own words indicated that she 'did not care about the military";
- "her words coupled with her attitude and body language, in effect, disparaged our Armed Forces in open court";
- "This bias and hatred exhibited by this "so called" Justice towards the very institution which allows and preserves the very system she works for, in a free democracy, cannot and should not be tolerated in our justice system";
- "That she would disparage our Military as our boys are coming home in pine boxes is an affront to the dignity of all Armed Forces in open court"; and,
- "We can only speculate as to the reasons for this bordering-on-maniacal hatred of our Armed Forces, from this wild-eyed jurist."

As part of their investigation, the complaint subcommittee reviewed the transcript and listened to an audiotape of the proceeding. Following their investigation, the subcommittee provided a report to a review panel.

The complaint subcommittee reported to the review panel that the transcript showed that duty counsel for the young person wished to obtain an order appointing counsel for the young person pursuant to s. 25(4) of the *Youth Criminal Justice Act*. However, the subject judge, prosecutor and duty counsel agreed that such an order could not be made in the absence of the young person. The judge then learned that there was a co-accused in the same case who was in a position to set a trial date but was prevented from doing so because the young person had not yet retained counsel. This led the judge to express concern that the young person had not attended court. She stated, "He should have been here. I'm sorry I really don't understand this."

The complainants then addressed the court. They informed the judge that on a previous set date appearance, a justice of the peace in the same courthouse advised them that they could

appear by designation for the young person and that there would be "no problem" if the young person missed court in order to go to military training. The judge informed the complainants that the young person should have been in court. The judge also told them "…because …he wants to be in military training, he's got criminal charges outstanding so maybe he should be dealing with that in a more appropriate manner…"

The subcommittee reported that the remainder of the proceeding concerned finding an appropriate return date for the application to appoint counsel. The judge observed that she expected that a s. 25(4) order would be granted "because although the charges are not particularly serious, if he's in the military obviously there's going to be an issue with respect to that."

The judge concluded the proceeding with the following comment:

> "You know [the young person] is (sic) really had the benefit of this system and I'm really concerned about his attitude in not coming here and I don't care if he's in military training or not."

The judge then issued a bench warrant with discretion returnable to the next court date.

The subcommittee also reported that it appeared that on a previous occasion the complainants were given erroneous advice that the young person was not required to attend court on the scheduled date. Also, according to procedure followed at this particular courthouse, a young person must attend court in order to apply for a section 25(4) *Youth Criminal Justice Act* \order to appoint counsel. As well, the law did not permit the complainants to appear "by designation" for a young person. Only a lawyer can appear by designation.

The subcommittee also noted that although the complainants had no standing to address the court, the judge permitted them to do so.

The review panel reviewed the letter of complaint, the transcript of the proceeding and the subcommittee's report to them. In relation to the complainant's allegations above, the review panel made the following findings:

1) *Allegation of inappropriate or abusive conduct toward the complainants*

   The review panel found that the transcript and audiotape of the proceeding did not support the allegation that the judge treated the complainants in an inappropriate or abusive manner. They noted that while the judge could have been more patient she did not verbally or repeatedly attack or threaten the complainants. While the review panel was not in a position to assess an allegation of "visible" anger attributed to the judge, the panel observed that the audiotape did not support the allegation that the judge spoke in an angry, demeaning or hostile manner to the complainants.

The panel noted that the transcript showed that the judge did express concern about the young person's failure to attend court. However, in the opinion of the panel, her concern was justified. The young person's non-attendance was causing further delay in setting a trial date. An order to appoint counsel could not be made in his absence. A co-accused who was in a position to set a date could not do so because the young person had not yet retained counsel. The panel advised that the judge had a responsibility to effectively manage the case and the court record showed that she was attempting to do so. The judge issued a bench warrant with discretion returnable on the earliest possible date to deal with the appointment of counsel issue. In doing so, the judge also took into account the interests of the young person. The return date was chosen to permit him to finish his military training camp.

The review panel also found that in the course of her in-court discussion with the complainants, the judge did interrupt the uncle on one occasion and the mother on another occasion. The panel observed that it was evident from court record that she did so in the course of conveying to the complainants that, despite the reasons they were offering for the young person's absence, the young person was still required to attend court. These interruptions were unfortunate but did not constitute judicial misconduct. The panel found that the transcript and the audiotape confirmed that the judge did not address the complainants "in a rude, demeaning, contemptuous manner and with threatening and aggressive manner" as alleged.

2) *Allegation that the judge disparaged the military*

The review panel found no evidence that the judge "did not care about the military" or that she in any way disparaged the armed forces. The transcript showed that the judge did not exhibit a bias against or a "hatred" for the military. Rather, the judge simply indicated her concern about the attitude of the young person in not attending court. The transcript also indicated that the judge did say, "He should have made arrangements to be here and I don't care if he's in military training or not." In the review panel's opinion, the judge correctly pointed out that the young person's requirement to be in court had priority over his military training. Further, the panel observed that the judge's comment did not constitute an attack on the armed forces. In fact, the transcript showed that the judge chose to accommodate the young person's military training schedule in setting the next return date. As well, the judge suggested that it was in the young person's interests regarding his aspirations to be in the military to deal expeditiously with the outstanding charges before the court.

For all of the above reasons, the review panel dismissed this complaint.

CASE NO. 15-019/09

The complainant was charged with attempted murder and firearms offences. A judge (not the subject judge) found the complainant unfit to stand trial on account of mental disorder. At subsequent hearings before the Ontario Review Board, the complainant continued to be found unfit to stand trial and was ordered to be detained in a mental health facility.

Section 672.33(1) of the *Criminal Code* requires that the court hold a hearing for an unfit accused not later than two years after the verdict of unfit and every two years thereafter to determine whether sufficient evidence can be adduced to put the accused on trial.

In his letter of complaint the complainant alleged that the judge "misleads and prejudices [him] so as to amount to slavery". The complainant also alleged bias on the part of the judge. He also alleged that the judge acted "criminally" "unlawfully" and "treasonously" by permitting the Crown to rely on affidavit evidence while not allowing the complainant to cross-examine the affiants. Finally, he accused the judge of acting lawlessly by not recognizing the complainant's right to be identified as someone other than the person named on his birth certificate.

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

The review panel carefully reviewed the complaint, the transcript and the subcommittee's report. The review panel noted that a number of the allegations related to a ruling by the judge. The transcript showed that in the course of conducting a hearing pursuant to s. 672.33(1), the subject judge made a ruling permitting the Crown Attorney to rely on affidavit evidence and denying the complainant the opportunity to cross-examine the affiants with respect to any potential defences. Also, the judge did not permit the complainant to call evidence to support his claim that he was someone other than the person named on his birth certificate.

Following their review of the transcript, the review panel found that the judge delivered a thorough and reasoned ruling concerning the procedural issue before the court. The panel advised that if the complainant disagreed with the correctness of that ruling, the proper way for him to proceed was through an appeal. The matter was not within the jurisdiction of the Judicial Council.

The review panel also found that the transcript showed that there was no evidence of bias or misconduct on the part of the subject judge.

For the reasons noted, the review panel dismissed this complaint as unfounded.

A

CASE NO. 15-020/09

The complainant was a self-represented accused who appeared before the subject judge on charges of criminal harassment and fail to comply with recognizance. He alleged specific comments by the judge, as well as a course of conduct of stalking, harassment and intimidation by the judge as follows:

1) Before the proceedings began, the judge said to him, "I am the Jekyll."

2) At the end of the trial, the judge confirmed the complainant's submissions that the informant's testimony was blatantly inconsistent and contradictory, and in conflict with other Crown witnesses. He alleged that the judge then asked what charge should be dismissed, and told the complainant that he would dismiss one. He further alleged that the judge then said he should dismiss both but that he had orders to dismiss only one. He alleged that the breach charge was then arbitrarily dismissed and the trial on the harassment charge was remanded.

3) In a second letter to the Council, the complainant alleged that the judge said that "both charges are dropped". He further alleged that the judge said, "The trial will only be a formality, both charges are already dismissed."

4) The judge presided at the trial of the remanded charge and that the judge stated that he had already heard and dismissed the evidence, that he urged that the respondent need not be in attendance, promising that the trial was a mere formality. The complainant alleged that following those comments, the judge decided to accept the perjured evidence of the witnesses, despite overwhelming evidence to the contrary. The complainant alleged that this "perverse decision" was influenced by incoherent comments from persons sitting in the back of the courtroom.

5) The judge repeatedly told him his name and told him that he may need that for a complaint.

6) The judge repeatedly denied that credibility had any relevance.

7) The judge perversely ordered that the complainant be remanded for a psychiatric assessment to determine whether he could be held criminally responsible, resulting in false imprisonment of the complainant.

8) When he was in handcuffs and ankle chains, the judge told him to, "Blame D. and T. you can say that they are all witnesses."

9) The judge, with the prosecutor and others intimidated, harassed and threatened him and stated, "we are watching you no matter what". He stated that he had diarized the judge's

perpetration of harassment and intimidation including occasions of the judge and his accomplices yelling. He further stated that they expressly and intentionally alienated his acquaintances and interfered during his dialogues with each and every prospective acquaintance. He claimed that since his first court appearance before the subject judge, the judge had watched him during meals, interfered with him shaving, and interjected while the complainant was urinating, pursuing him around town. He alleged that he had, as a result, suffered ulcers and health issues. He also alleged that the judge has counselled others to threaten him with assault causing bodily harm, expressed the intent to obstruct justice by interfering with his request for retrial, and had demonstrated conflict of interest.

10) The judge interfered with and resisted the complainant's appeal and threatened to assault him.

In his letters, the complainant also requested an injunction forbidding the judge from contacting him further.

The complaint subcommittee asked Court Services to confirm which dates the complainant appeared before the judge. Court Services confirmed that the complainant appeared before the judge on two dates. The subcommittee ordered and reviewed the transcript of the first trial date before the judge, the date relevant to most of the complainant's allegations. The subcommittee also requested and reviewed a copy of the Information that was before the court in relation to the complainant. Following the completion of their investigation the complaint subcommittee submitted their report to a review panel.

The subcommittee reported to the review panel that the transcript showed that the charge of breach of recognizance was dismissed after the Crown Attorney called no evidence on that charge, and submitted that the charge should be dismissed. The subcommittee also noted that the transcript showed that the judge never stated that the trial on the second charge was a formality. Rather, evidence was heard on that charge and the matter was adjourned to be completed on a subsequent date. The subcommittee reported that they had carefully reviewed the transcript and it did not substantiate any of the allegations made by the complainant in relation to the judge's conduct in the courtroom or any of the comments that the complainant had alleged were made by the judge.

The review panel reviewed the letters of complaint from the complainant and the report from the subcommittee.

The review panel was satisfied that the transcript did not substantiate any of the allegations made by the complainant in relation to the judge's conduct in the courtroom or any of the comments that the complainant had alleged were made by the judge.

The review panel also noted that the complainant had raised objections to the judge's findings

on the evidence and his rulings. The review panel advised that if the complainant disagreed with how the judge assessed the evidence or with his decisions in the case, the proper remedy would have been to proceed with an appeal. Such matters are outside of the jurisdiction of the Ontario Judicial Council.

With respect to the allegations of intimidation and harassment outside of the courtroom, the review panel found that the nature of the allegations was such that the committee found that the allegations did not have the air of reality.

The review panel further noted that the complainant's request for an injunction against the judge is not a remedy within the legislative authority or jurisdiction of the Council. If the complainant sought an injunction, the proper way to proceed was through other legal remedies.

For the reasons noted, the review panel dismissed this complaint.

CASE NO. 15-021/09

The complainant was involved in a high conflict custody and access proceeding before the subject judge.

In her letters of complaint, the complainant alleged that during two appearances, she was never given a chance to speak and that the judge interrupted her and cut her off and sarcastically commented to her. She alleged that she was not allowed to speak or be heard. Further, she alleged that the judge never looked her way, but paid full attention to the Respondent as if he was obviously favouring him so that she was left feeling that she was hated by the Judge personally. The complainant also alleged that she was unable to complete her comments to the judge, as he stopped her for interrupting the proceedings and required her to leave the courtroom.

She alleged that with each and every order she was degraded in her requests and that the Respondent was "progressed and favoured."

The complaint subcommittee reviewed the full transcripts of both of the court dates referred to in the complainant's letter. One member of the committee also listened to the audiotape of one of the proceedings. After completing their investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed the complainant's letter, the transcripts and the subcommittee's report. In relation to the first court attendance, the review panel found that the transcript disclosed that the judge listened to the arguments of each of the parties. He described to both parties how their continued conflict might affect their children. He explained to the complainant

the principles of joint custody and suggested that she should consider re-framing her motion as a claim for increased access. In the review panel's opinion, although the judge was somewhat curt at times, he was equally so with both parties. In deciding that the access exchanges should take place at a supervised access centre, he considered that this process could equally protect both parties and potentially cause less conflict for the child.

The review panel advised that it was within his discretion to order costs taking into consideration the factors under the *Family Law Rules*, which recommend that costs be dealt with after each step in a proceeding. The complainant disagreed with the judge's decision. The review panel noted that if the judge made any error in assessing the evidence or determining any of the issues (and the review panel did not suggest that he did), the proper way for the complainant to proceed would be through an appeal.

The review panel found that the transcript showed that on the second court attendance, the complainant had not made her older child available for the Office of the Children's Lawyer investigation, as required by court order. They noted that many of the judge's comments concerned possible alternative measures that could be undertaken by the father in light of this breach. In their opinion, the judge was firm but not inappropriate when discussing these alternatives and attempted to impress upon the mother the seriousness of failing to comply with a court order. The review panel also observed that the audiotape of the proceeding was carefully reviewed and that it confirmed that the judge did not raise his voice or humiliate the complainant in any way.

The review panel noted that the transcript also showed that although the mother was represented by duty counsel, she continually spoke directly to the judge and interrupted both he and the father's counsel. The judge warned the complainant that if she interrupted again she would be asked to leave the courtroom. Despite this warning, the complainant continued to interrupt, even after a further warning from her own counsel. The judge then advised the mother that she would be required to leave the courtroom. The review panel found that the judge had a responsibility to control the court process before him and to ensure that it proceed fairly and expeditiously. This could include asking a party to leave the courtroom if he or she was not prepared to follow the rules of presentation after appropriate explanation and warning.

The panel also noted that the judge's decision to stay the access order was within his discretion once he had determined there had been a breach by the complainant of a court order, and review of a decision is a matter outside of the jurisdiction of the Ontario Judicial Council. The review panel advised that if the judge made any error in assessing the evidence or determining any of the issues (and the review panel is not suggesting that he did), the proper way for the complainant to proceed would be through an appeal.

For the reasons noted, the review panel dismissed this complaint.

CASE NO. 15-022/09

The complainant and her family members appeared before the subject judge and entered guilty pleas to criminal charges that included charges of resisting arrest and of threatening a police officer. The subject judge granted an absolute discharge on each charge.

In her complaint to the Judicial Council, the complainant made a number of allegations about the behaviour of the police officer, none of which had been raised before the subject judge. The main allegation against the subject judge was that he "ordered" that they apologize to the police officer, despite the fact that this had not been discussed as part of her plea bargain. She stated in her letter: "This was a total shock to us as it was not part of our plea bargain. In fact, we did not know what we were apologizing for. Judge X even added a very condescending, hubris comment when speaking to me directly: "If it is not beneath you". This added more to the humiliation we experienced."

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

The review panel reviewed the letter of complaint, the transcript and the subcommittee's report. They noted that Council has no jurisdiction to review the behaviour of a police officer. If the complainant wished to pursue a complaint with respect to the officer, there is another forum for that matter.

With respect to the subject judge, the review panel noted that he was presented with guilty pleas to charges of threatening a police officer and resisting that officer in the execution of his duty. There was a joint recommendation by the Crown Attorney and the defence for absolute discharges. The review panel reported that the transcript showed that the judge's reasons made it clear that in his view a discharge would not usually be a disposition that he would consider with respect to those offences. It was in the course of his considering whether or not to accept the joint submission that he inquired of all of the accused whether they were prepared to apologize to the officer. The transcript also confirmed that he did not order them to apologize, as alleged by the complainant, nor did he state to the complainant "if it is not beneath you".

The review panel informed that a sentencing judge is not bound by a 'plea bargain' and is entitled to take into account all of the circumstances in evidence before him or her that is relevant to the case, including any sign of remorse. A judge has the responsibility to evaluate the "plea bargain" for its appropriateness and has the discretion to amend such an agreement upon review. In the circumstances before the judge, where the complainant was pleading guilty to a criminal offence and the victim of the offence was a police officer, one sign of remorse was whether the accused was prepared to apologize to the police officer.

Although the transcript indicated that the judge asked the complainant "Now Ms [name], is there anything, can you apologize to him or is that beyond your capability here?", the review panel observed that it was clear to the judge that the complainant was still angry at the police officer and in the view of the panel, this question appeared to be a recognition of that fact.

The review panel found no evidence of judicial misconduct on the part of the subject judge and dismissed this complaint.

CASE NO. 15-025/09

The complainant was the applicant in a Small Claims Court matter before the subject judge. The complainant's car was towed after a traffic accident. He brought a court action against the towing company. The complainant alleged that the judge and two deputy judges probably control all Deputy Judges. He also stated that the judge successfully accepted the defendant's forged application for a towing list which gave the defendant permission to legally go around the municipal code, and which will give the opportunity to grant favours to the defendant.

The complainant further alleged that the judge, together with the defendant, knowingly put the full responsibility of the defendant's violation on the police traffic safety department to discredit the reputation of the police force.

As part of their investigation, the complaint subcommittee ordered and reviewed the transcript of the proceedings. Following their investigation, the subcommittee reported to a review panel.

The review panel reviewed the letter of complaint, the transcript of the proceedings and the subcommittee's report. They noted that the transcript did not substantiate the allegations made by the complainant. Further, they observed that if the judge made any errors in assessing the evidence or determining any of the issues (and the review panel did not suggest that the judge did), the proper way for the complainant to proceed would have been through an appeal.

For the reasons noted the review panel dismissed this complaint.

APPENDIX B

CONTINUING EDUCATION PLAN ONTARIO COURT OF JUSTICE

ONTARIO COURT OF JUSTICE

CONTINUING EDUCATION PLAN 2009-2010

The Continuing Education Plan for the Ontario Court of Justice has the following goals:

1) Maintaining and developing professional competence;

2) Maintaining and developing social awareness;

3) Encouraging personal growth.

The Plan provides each judge with an opportunity of having approximately ten days of continuing education per calendar year dealing with a wide variety of topics, including substantive law, evidence, *Charter of Rights*, skills training and social context. While many of the programs attended by the judges of the Ontario Court of Justice are developed and presented by the judges of the Court themselves, frequent use is made of outside resources in the planning and presentation of programs. Lawyers, government and law enforcement officials, academics, and other professionals have been used extensively in most education programs. In addition, judges are encouraged to identify and attend external programs of interest and benefit to themselves and the Court.

EDUCATION SECRETARIAT

The coordination of the planning and presentation of education programs is assured by the Education Secretariat. The composition of the Secretariat is as follows: the Chief Justice as Chair (*ex officio*), four judges nominated by the Chief Justice and four judges nominated by the Ontario Conference of Judges. Research counsel of the Ontario Court of Justice serve as consultants. The Secretariat meets approximately five times per year to discuss matters pertaining to education and reports to the Chief Justice. The mandate and goals of the Education Secretariat are as follows:

The Education Secretariat is committed to the importance of education in enhancing professional excellence.

APPENDIX B

Continuing Education Plan

It is the mandate of the Education Secretariat to promote educational experiences that encourage judges to be reflective about their professional practices, to increase their substantive knowledge, and to engage in ongoing, lifelong and self-directed learning.

To meet the needs of an independent judiciary, the Education Secretariat will:

- Promote education as a way to encourage excellence; and
- Support and encourage programs which maintain and enhance social, ethical and cultural sensitivity.

The goals of the Education Secretariat are:

1) To stimulate continuing professional and personal development;
2) To ensure that education is relevant to the needs and interests of the provincial judiciary;
3) To support and encourage programs that maintain high levels of competence and knowledge in matters of evidence, procedure and substantive law;
4) To increase knowledge and awareness of community, the diversity of the population and social services structures and resources that may assist and complement educational programs and the work of the courts;
5) To foster the active recruitment and involvement of the judiciary at all stages of program conceptualization, development, planning, delivery and evaluation;
6) To promote an understanding of judicial development;
7) To facilitate the desire for life-long learning and reflective practices;
8) To establish and maintain structures and systems to implement the mandate and goals of the Secretariat; and
9) To evaluate the educational process and programs.

The Education Secretariat provides administrative and logistical support for the education programs presented within the Ontario Court of Justice. In addition, all education program plans are presented to and approved by the Education Secretariat as the Secretariat is responsible for the funding allocation for education programs.

The current education plan for judges of the Ontario Court of Justice is divided into two parts:

- First Year Education
- Continuing Education

APPENDIX B
Continuing Education Plan

I. FIRST YEAR EDUCATION

Each judge of the Ontario Court of Justice is provided with certain texts in print or electronic format and materials upon appointment including:

- Conduct of a Trial
- Conduct of a Family Law Trial
- Judge's Manual
- Rules of the Ontario Court of Justice in Criminal Proceedings
- Writing Reasons
- Commentaries on Judicial Conduct (Canadian Judicial Council)
- Ethical Principles for Judges (Canadian Judicial Council)
- The Sentencing Finder

The Ontario Court of Justice organizes a one-day orientation program for newly-appointed judges shortly after their appointment which deals with practical matters relating to the transition to the bench, including judicial conduct and ethics, courtroom demeanour, and administrative procedures. This program is presented twice a year.

Upon appointment, each new judge is assigned by the Chief Justice to one of the seven regions of the Province. The Regional Senior Judge for that region is then responsible for assigning and scheduling the new judge within the region. Depending on the new judge's background and experience at the time of appointment, the Regional Senior Judge will assign the newly-appointed judge for a period of time (usually several weeks prior to swearing-in) to observe senior, more experienced judges and/or specific courtrooms. During this period, the new judge sits in the courtroom, attends in chambers with experienced judges and has an opportunity to become familiar with their new responsibilities.

In April of their first year, new judges are encouraged to attend the New Judges' Education Program presented by the Canadian Association of Provincial Court Judges (CAPCJ) at Carling Lake in the Province of Quebec. This intensive one-week program is largely substantive in nature and is oriented principally to the area of criminal law, with some reference to areas of family law.

The Ontario Court of Justice, the National Judicial Institute and the Canadian Association of Provincial Court Judges jointly present a five-day intensive program focusing on judicial skill training in November of each year at Niagara-on-the-Lake. The program includes sessions on the

delivery of judgments (both written and oral), issues related to self-represented accused, controlling the courtroom, communication skills and the effective conduct of a judicial pre-trial. The program has been very successful in the past and was presented in November 2009 when 15 newly-appointed judges from the Ontario Court of Justice joined 31 other judges from across Canada.

Judges in their first year of appointment are also encouraged to attend all education programs relating to their field(s) of specialization presented by the Ontario Court of Justice. These programs are outlined under the heading "Continuing Education".

Each judge at the time of appointment is also invited to participate in a mentoring program which has been developed within the Ontario Court of Justice by the Ontario Conference of Judges and funded through the Education Secretariat. New judges also have the opportunity (as do all judges) to discuss matters of concern or of interest with their peers at any time.

A Library Committee of the Court develops a list of texts and reporting services from which each judge is permitted annually to select materials of a value of up to $2,500 for their personal chamber's library.

II. CONTINUING EDUCATION

Continuing education programs presented to judges of the Ontario Court of Justice are of two types, either internal or external:

A) Programs developed and presented internally by the Ontario Conference of Judges with the oversight of the Education Secretariat; and

B) Programs presented by external organizations, such as the National Judicial Institute, the Canadian Association of Provincial Court Judges and the International Association of Women Judges.

A) Programs overseen by the Education Secretariat

The programs presented by the Education Secretariat and the Ontario Conference of Judges constitute the Core Program of the Ontario Court of Justice education curriculum. The Ontario Conference of Judges selects a director of criminal law education and a director of family law education. The two directors in turn may create a support committee to advise and assist them in putting together the core education programs. Part of the core programming is annual in occurrence and part of it is presented "as needed".

Continuing Education Plan

1) **Annual Core Programs**

Seven family and criminal programs are presented each year with a changing curriculum to reflect the educational needs of the Court. These courses are open to every criminal and family judge in accordance with their area of practice. They are more particularly described below:

There are two education programs dedicated to family law issues—the Judicial Development Institute in January and the Annual Family Law Program in the fall. Generally speaking, the principal topics are devoted to child welfare and family law (custody, access and support). Additional topics involving skills development, case management, legislative changes, social context and other areas are incorporated as the need arises. Each program is of two to three days' duration and is open to any judge who spends a significant amount of his or her time presiding over family law matters.

A family law education component is also included in the Annual General Meeting of the Ontario Court of Justice held in May.

There are five major criminal law education conferences presented each year:

a. At four regional locations, a three-day Regional Seminar is organized to be delivered in October and November of each year. These seminars cover a wide range of topics in the area of criminal law. Four separate agendas are developed each year to be responsive to the issues found in each region.

b. A two and a half day education seminar is presented annually in May in conjunction with the Annual General Meeting of the Ontario Court of Justice.

All judges are entitled and encouraged to attend these seminars.

2) **"As Needed" Recurring Programs**

These are programs presented annually or biannually with limited enrolment. They fulfil a variety of education needs such as the development of judicial skills and leadership and social context training. Particulars of the programs offered are set out below.

a. JUDGMENT WRITING/ORAL JUDGMENTS: Professor Emeritus Edward Berry and faculty from the Ontario Court of Justice and the National Judicial Institute present an intensive course to assist judges in developing the skills required to deliver oral judgments and to write effective judgments. This course was not offered in 2009.

b. PRE-RETIREMENT SEMINARS: Intended to assist judges and their domestic partners in their retirement planning, this one and one-half day program deals

with the social and financial issues that arise in the transition from the bench to retirement. This seminar was presented in March 2009.

c. JUDICIAL COMMUNICATION PROGRAM: The Court, in partnership with the National Judicial Institute, developed a Communication Skills in the Courtroom seminar presented annually for one week in Stratford. Judges learn and practice techniques to improve both their verbal and non-verbal communication skills. The faculty includes judges and Stratford performers who coach judges to improve their ability to communicate effectively. This course was presented in May 2009.

d. FAMILY LAW PRIMER: A number of judges who preside primarily in the criminal courts throughout the province expressed an interest in presiding in family court. As well, in a number of jurisdictions judges preside in both family and criminal courts. A Family Law Primer program was developed with the assistance of the National Judicial Institute, and, in September 2006, 28 judges participated in an intensive week-long family law seminar. Judges who preside primarily in family courts across the province provided a comprehensive overview in the following areas of family law:

- Child Protection and Adoption
- Introduction to Domestic Proceedings
- Custody and the *Children's Law Reform Act*
- Enforcement: *Family Responsibility and Support Arrears Enforcement Act*

This in-depth Family Law Primer was held again in April 2008 and, for the first time, was jointly developed and delivered by and for the judges of both the Ontario Court of Justice and the Superior Court of Justice. This course was not presented in 2009.

e. SOCIAL CONTEXT PROGRAMS: The Ontario Court of Justice has presented significant programs dealing with social context. The first such program, entitled *Gender Equity*, was presented in the fall of 1992. That program used professional and community resources in its planning and presentation phases. A number of Ontario Court of Justice judges were trained as facilitators for the purposes of the program during the planning process, which lasted over twelve months. Extensive use was made of videos and printed materials which form a permanent reference. The facilitator model has since been used in a number of Ontario Court of Justice education programs.

The Court undertook its second major social context program, presented to all of its judges, in May 1996. The program, entitled *The Court in an Inclusive Society*, was intended to provide information about the changing nature of our society, to

determine the impact of the changes and to equip the Court to respond better to those changes. A variety of pedagogical techniques, including large and small group sessions, were used in the course of the program. A group of judicial facilitators were specifically trained for this program which was presented following significant community consultation.

In September 2000, the Ontario Conference of Judges and the Canadian Association of Court Judges met in Ottawa for a combined conference which covered poverty issues and issues related to aboriginal justice.

At the Court's Annual General Meeting in 2003, the theme of the education program was "Access to Justice". A play followed by a panel discussion was used to describe issues of literacy, race, poverty, neglect, abuse and violence in the home affecting access to justice. Another session used lectures, videos, panel discussions and small group work to explore the issue of literacy and the courts.

As a result of our experience with these special programs, social context education is now integrated into most of the courses presented by the Education Secretariat.

Our approach to social context education has changed and matured since these courses were offered. We no longer deliver these programs as stand-alone courses that can serve to isolate the issues from the day-to-day experience of judges. Instead, social context education is now integrated into most of our core programming.

f. UNIVERSITY EDUCATION PROGRAM: This program takes place annually over a five-day period in the spring and makes extensive use of academics. It provides an opportunity for approximately 30 judges to deal in depth with criminal law education topics in a more academic context. The program, with some modification, remains largely unchanged over a three-year period to enable a larger number of judges to receive the benefits of the program. In June 2008, the latest cycle of this program entitled "Judges to Jails" was delivered. It is a week-long education initiative held in Gananoque to permit the judges to tour federal and provincial correctional institutions in the Kingston area and to participate in seminar work related to correctional issues. The Judges to Jails program was repeated in 2009.

g. JUDICIAL ADMINISTRATION CONFERENCE: This is a biannual conference last held over two days in February 2008. It brought together about 75 administrative judges of the Ontario Court of Justice and was also open to those judges who have shown an interest in judicial administration. The conference addressed issues of leadership and human resource management in a judicial

environment. It also addressed the changing landscape of judicial administration and provided an overview of the tools available to assist judges to make the courts more accessible and effective. This program was not offered in 2009-2010 but will return next year.

h. COMPUTER TRAINING: The Computer Effectiveness and Skills Training Seminar, developed in 2008, was delivered for the first time in February 2009. This course was designed by judges of the Ontario Court of Justice, the National Judicial Institute and the Judicial Information Technology Office. The course will be divided into two programs—one designed for judges at the beginner level and another designed for those at the intermediate level where a new note-taking template was introduced. This note-taking template was developed to assist and encourage judges who wish to use their computers in the courtroom.

   In 2009-2010, the computers of the Ontario Court of Justice were upgraded and a change was made from Outlook 2003 to Outlook 2007. The Judicial Information Technology Office, in partnership with the NJI, developed an extensive series of training modules pre-loaded onto each new computer to assist the judiciary in making the transition to Outlook 2007.

i. AD HOC PROGRAMS: From time to time, a need is identified for a focussed program of education for which judges are individually selected to ensure regional and gender balance. In October 2009, such a program was offered on the subject of problem-solving courts. This program looked at the challenges, rewards and best practices for the development of problem-solving courts to address the special needs of aboriginals, mentally-disordered offenders and drug-addicted offenders.

   In 2010, a special course was developed and delivered to educate judges and justices of the peace on the policy and procedures of the Courts' newly implemented Discrimination and Harrassment Policy. These judicial officers will serve as mediators/advisors to help in resolving conflicts between members of the Ontario Court of Justice that arise out of discriminatory actions or words.

B) External Education Programs

1) FRENCH-LANGUAGE COURSES: Judges of the Ontario Court of Justice who are proficient in French may attend courses presented by the Office of the Commissioner for Federal Judicial Affairs. The frequency and duration of the courses are determined by the judge's level of proficiency. The purpose of the courses is to assure

and to maintain the French language proficiency of those judges who are called upon to preside over French language matters in the Ontario Court of Justice. There are two levels of French-language courses: Terminology courses for francophone judges and Terminology courses for anglophone (bilingual) judges. This program will now be offered annually.

2) OTHER EDUCATIONAL PROGRAMS: Judges of the Ontario Court of Justice are encouraged to pursue educational interests by attending education programs presented by other organizations and associations including but not limited to:

- Canadian Association of Provincial Court Judges
- National Judicial Institute
- Federation of Law Societies: Criminal (Substantive Law/Procedure/Evidence) & Family Law
- International Association of Juvenile and Family Court Magistrates
- Canadian Bar Association
- Criminal Lawyers' Association
- The Advocates' Society
- Ontario Association for Family Mediation/Mediation Canada
- Canadian Institute for the Administration of Justice
- International Association of Women Judges (Canadian Chapter)
- Ontario Family Court Clinic Conference
- Canadian Institute for Advanced Legal Studies (Cambridge Lectures)

The Education Secretariat has established a Conference Attendance Committee to consider applications by individual judges for funding assistance to attend conferences/ seminars/ programs other than those presented by the Ontario Court of Justice. Funding will usually cover registration fees only. But judges are able to claim travel and accommodation expenses over and above this subsidy against a judicial allowance received by each judge in the amount of $2,500.

In accordance with a Memorandum of Understanding with the Ontario Conference of Judges, the Ontario Court of Justice annually sends 10 judges selected by the Conference

to the annual meeting and education program of either the Canadian Bar Association or the Canadian Association of Provincial Court Judges.

3) COMPUTER COURSES: In 2006, a position of Education Librarian Consultant to the Ontario Court of Justice and the Superior Court of Justice was established as a joint initiative of the two Courts. The consultant provided the judges of both Courts with a dedicated resource to provide enhanced training and support on electronic legal resources. The consultant's time was made available to train judges on a one-on-one basis and, if appropriate, in group sessions in court locations around the province. This position was continued until mid-2007 when the contract expired. Other less structured formats are now used to deliver computer training. Most Regional Seminars and the Annual General Meeting contain a module dedicated to providing and improving computer research skills.

4) In 2007, the Ontario Court of Justice IT Committee was established, and its mandate includes promoting opportunities for computer training. In addition, the companies that deliver electronic legal research products offer software training on an individual and group basis.

5) NATIONAL JUDICIAL INSTITUTE (NJI): The Ontario Court of Justice, through its Education Secretariat, makes a financial contribution to the operation of the National Judicial Institute. Based in Ottawa, the NJI is a world leader in the development and delivery of judicial education programs. Since 2002 the Ontario Court of Justice has made a significant financial contribution to the NJI in return for receiving dedicated education assistance from a senior NJI advisor. This relationship has given many judges of the Ontario Court of Justice the opportunity to work on the development of innovative programming and to serve as faculty for the delivery of that programming across the country. They are then able to bring their expertise back to the Court to the benefit of all aspects of the education portfolio.

6) Judges have access to remote learning computer-based courses prepared and hosted by the NJI covering substantive law issues such as unlawful detention, mental health, and evidence. These programs, offered usually twice per year, are available at no cost to the judges of the Ontario Court of Justice.

OTHER EDUCATIONAL RESOURCES

1) CENTRE FOR JUDICIAL RESEARCH AND EDUCATION: The Centre is a law library and computer research facility located in Toronto and staffed by five research lawyers

and three assistants. It is accessible in person, by telephone, e-mail or fax. The Centre responds to specific requests from the judiciary for research assistance and provides bi-weekly updates with respect to legislation and relevant case law through its electronic publication *Items of Interest*.

2) SELF-FUNDED LEAVE: In order to provide access to educational opportunities that fall outside the parameters of regular judicial education programs, the Ontario Court of Justice has developed a self-funded leave policy that allows judges to defer income over a period of years in order to take a period of self-funded leave of up to twelve months. Prior approval is required for such leave, and a peer review committee reviews the applications in selecting those judges who will be authorized to take such leave.

3) In addition to the educational programs outlined above, the fundamental education of judges continues to be self-directed and is effected in large part through continuing peer discussions and individual reading and research.

APPENDIX C

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 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

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.

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.