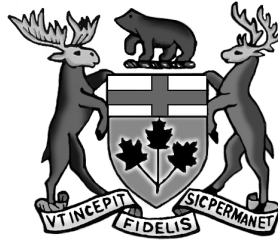


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SEVENTEENTH ANNUAL REPORT

2011 – 2012

ONTARIO
JUDICIAL COUNCIL

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

March 22, 2013

The Honourable John Gerretson
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 seventeenth 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, 2011 to March 31, 2012.

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

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INTRODUCTION

The period of time covered by this Annual Report is from April 1, 2011 to March 31, 2012.

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

The Ontario Judicial Council had jurisdiction over approximately 329 provincially-appointed judges, including full-time and *per diem* judges, and two masters during the period of time covered by this Annual Report. Most of the judicial officers whose conduct is under the jurisdiction of the Ontario Judicial Council preside over proceedings of the Ontario Court of Justice. The Ontario Court of Justice is the busiest trial court in Ontario, which is the province in Canada with the largest population. In 2012, the population was 12,851,821. In an average year, judges of the Court deal with over 600,000 adult and youth criminal charges and over 27,000 new family law proceedings. The Court holds sittings at approximately 200 locations across Ontario, ranging from large courthouses in cities to fly-in locations in northern Ontario.

The Ontario Judicial Council received 35 new complaints in its seventeenth year of operation, as well as carrying forward 28 complaint files from previous years. Of these 63 complaints, 34 files were completed and closed before March 31, 2012. Twenty-nine complaints remained open to be carried over into the eighteenth year of operation. Information about the 34 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.ca/ocj/ojc/. On the website, you will find the Council's current policies and procedures; updates about any public hearings; the *Principles of Judicial Office*; the Education Plan; and links to the governing legislation.



1. COMPOSITION AND TERMS OF APPOINTMENT

The Ontario Judicial Council includes:

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

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

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

2. MEMBERS – REGULAR

The membership of the Ontario Judicial Council in its seventeenth year of operation (April 1, 2011 to March 31, 2012) 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)
(September 1, 2007 to August 31, 2011)

The Honourable Kathryn Hawke (Hamilton)
(Effective February 29, 2012)

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

The Honourable Justice Timothy R. Lipson (Toronto)
(January 1, 2008 to December 31, 2011)

The Honourable Justice Fern Weinper (Toronto)
(Effective January 1, 2012)

The Honourable Justice Eileen S. Martin (Welland)



Lawyer Members:

TREASURER OF THE LAW SOCIETY OF UPPER CANADA

Ms. Laurie H. Pawlitza, Torkin Manes (Toronto)

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

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

LAWYER MEMBER APPOINTED BY THE LAW SOCIETY OF UPPER CANADA:

Ms. Kim Bernhardt, Grant and Bernhardt (Toronto)

Community Members:

Mr. William Blake (Ottawa)
Retired Police Officer, Ottawa Police Service
(June 13, 2007 to June 12, 2011)

Mr. Anish Chopra (Toronto)
Managing Director, TD Asset Management Inc.
(Effective May 4, 2011)

Ms. Delores Lawrence, O. Ont. (Markham)
NHI Nursing and Homemakers Inc.

Mr. Ray Sharma (Toronto)
Founder and President XMG Studio Inc.

Members – Temporary

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



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

Masters

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

Judges

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

Subsection 49(3) of the *Courts of Justice Act* permits the Chief Justice of the Ontario Court of Justice to appoint a provincial judge to be a temporary member of the Ontario Judicial Council to meet the quorum requirements of the legislation with respect to Judicial Council meetings, review panels and hearing panels. During the period covered by this report, the following 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)
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 financial, human resources and technology support staff, as needed, and computer systems without the need of acquiring a large staff.

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



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

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

Ms. Ana M. Brigido – *Assistant Registrar*

Mr. Thomas A. Glassford – *Assistant Registrar*

Ms. Janice C. Cheong – *Administrative Secretary*

4. FUNCTIONS OF THE JUDICIAL COUNCIL

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

- ♦ to establish complaint subcommittees from amongst its members to receive and investigate complaints 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;
- ♦ to consider applications under section 45 for the accommodation of needs; 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 in the courts, such as an appeal.

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



During the period covered by this Annual Report, the Council made a number of amendments to refine and improve its procedures. The Council amended the procedures to clarify that it has no jurisdiction under the *Courts of Justice Act* to grant the withdrawal of a complaint.

An amendment was made to reflect the Council's policy that if a complaint raises allegations of conduct about a judge who is presiding over a court proceeding, the Council will not generally commence an investigation until that court proceeding and any appeal or other related legal proceedings have been completed. This will ensure that any investigation by the Council is not interfering or perceived to be interfering with any on-going court matters.

The Council also amended its Procedures to clarify aspects of the stage in the complaints process when a judge may be invited to respond to the complaint. In some cases, a complaint subcommittee or review panel may determine that an appropriate step in an investigation is to invite the judge to provide a response to the complaint. An amendment clarified that the judge who is invited to respond to a complaint is not required to respond. As well, the Council amended the procedures to make it clear that if a judge does respond, his or her response may be tendered in evidence at a hearing if a hearing is ordered.

Recognizing the importance that the complaints process must be perceived to be fair and objective, the Council changed its practice to require that counsel who have been retained as investigating counsel on a file may not be retained as Presenting Counsel for any hearing ordered for that same complaint. To improve the process for hearings under section 51.6 of the *Courts of Justice Act*, the Council amended its Procedures to add a requirement that Agreed Statements of Fact must generally be submitted at least ten days in advance of the hearing.

An amendment was made to reflect the role that the complaints process has in maintaining and restoring public confidence, and to clarify that the legislative requirements for maintaining privacy no longer apply for formal hearings under section 51.6 of the *Act*. An amendment was made to make it clear that once Presenting Counsel files the Notice of Hearing as an exhibit in the initial set-date proceeding presided over by a hearing panel, the complaints process will become public, subject to any orders by the hearing panel. In addition, an amendment was made to direct that once a complaint has become public, the Registrar will have notice about the hearing posted in the prescribed form on the Council's website, subject to any orders of the hearing panel. Not less than two weeks prior to the commencement of the hearing, the Registrar will have notice about the hearing in the prescribed form published in the local newspaper. The public notice will include a brief summary of the allegations of conduct. The public notice must not identify complainants or witnesses, due to the possibility that a complainant or witness could bring a motion in the proceeding for an order of non-publication of his or her identity. The hearing panel may, on such grounds as it deems appropriate, abridge the time for publication of notice about the hearing.



A provision was added to clarify that in situations where a hearing has been ordered under section 51.4(18)(a) of the *Courts of Justice Act*, notice will be provided on the website to the media and members of the public of any motions for a publication ban or an *in camera* (private) hearing. The amendment provided that a motion for a publication ban or for part or all of a hearing to be held in private must be made at least ten calendar days before the set-date for the hearing.

The Council made an amendment to provide for an exception to the general framework of privacy permitting the release of documents from its files to the police and the Justice Sector Security Office if there is a concern about the safety of a judge or a staff person in the Council's office, and the documents or audio recordings may be relevant to determine whether there is a need for action to prevent harm to a person. The amendment also provided for the release of documents for use in any criminal trial that results from the actions or comments of the complainant related to the complaint or the disposition of the complaint. As well, an amendment was made to permit staff of the Council to release letters from the complainant and the disposition letter to a lawyer retained on behalf of the Council to defend the Council and/or its staff in a civil action brought by the complainant, and, as necessary in the course of litigation as the lawyer retained to represent the Council recommends is necessary in the course of litigation.

An amendment was also approved to improve the procedures to address requests for accommodation under section 45 of the *Act*. The amendment provided for the Council to be guided generally by Human Rights jurisprudence relating to the definition of “disability”, the content of the duty to accommodate and the procedures developed in the jurisprudence for the purposes of determining whether to make an order to accommodate.

5. EDUCATION PLAN

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



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.ca/ocj/conduct/do-you-have-a-complaint/. The brochure, “*Do you have a complaint?*” provides information on what a judge does, on how to tell whether the presiding judicial officer is a judge or a justice of the peace, and on how to make a complaint about conduct.

7. PRINCIPLES OF JUDICIAL OFFICE

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

8. JUDICIAL APPOINTMENTS ADVISORY COMMITTEE

A member of the Ontario Judicial Council serves on the provincial Judicial Appointments Advisory Committee as its representative. The Honourable Justice Eileen Martin has been appointed by the Judicial Council to act as its representative on the Judicial Appointments Advisory Committee until August 9, 2013.

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.ca/ocj/ojc/policies-and-procedures/procedures-document/.

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

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

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

B) Dispositions of Review Panels

Review panels are composed of two provincial judges (other than the Chief Justice of the Ontario Court of Justice), a lawyer and a community member. The Council (or a review panel thereof) will review the complaint, the report of the investigating complaint subcommittee and all materials that are recommended by the subcommittee. At this stage of the process, only the two complaint subcommittee members are aware of the identity of the complainant and the judge who is the subject of the complaint. Complaint subcommittee members who participated in the investigation of the complaint do not sit on the review panel or, if a hearing is ordered, on the hearing panel at the subsequent hearing. Similarly, review panel members who dealt with a complaint's review or referral will not participate in a hearing of the complaint, if a hearing is ordered. By the end of the investigation and review process, all decisions regarding complaints made to the Judicial Council will have been considered and reviewed by a total of at least six members of Council – two members of the complaint subcommittee and four members of the review panel – including two community members and one lawyer.



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

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

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

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

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

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

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

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

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

- ◆ a warning;
- ◆ a reprimand;
- ◆ an order to the judge to apologize to the complainant or to any other person;

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

The hearing panel may also recommend to the Attorney General that the judge should be removed from office. A recommendation by the Council to the Attorney General that the judge be removed from office cannot be combined with any other 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/navigation?file=home&lang=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 35 complaints in its seventeenth year of operation, as well as carrying forward 28 complaint files from previous years. Of these 63 complaints, 34 files were closed before March 31, 2012. Two of the files closed were from the fifteenth year (2009-2010), 18 from the sixteenth year (2010-2011) and 14 from the seventeenth year (2011-2012).

Of the 34 files that were closed during the period covered by this Report, 17 arose from proceedings under the *Criminal Code*, nine arose from family court proceedings, one related to the conduct of a judge outside of court, four arose from matters in Small Claims Court, and three related to *Provincial Offences Act* appeals.

Thirteen of the 34 complaint files closed by the Ontario Judicial Council during the period of time covered by this report were dismissed on the basis that they were found to be outside of



the jurisdiction of the Council. This occurred if a complainant expressed dissatisfaction with the result of a trial or with a judge's decision, but the complaint contained no allegation of misconduct. While the decisions made by the trial judge in these cases could be appealed, the absence of any alleged misconduct meant that the complaints were outside of the jurisdiction of the Judicial Council.

Twenty of the 34 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.

In one case a judge retired and the Council lost jurisdiction over the judge. The file was administratively closed.

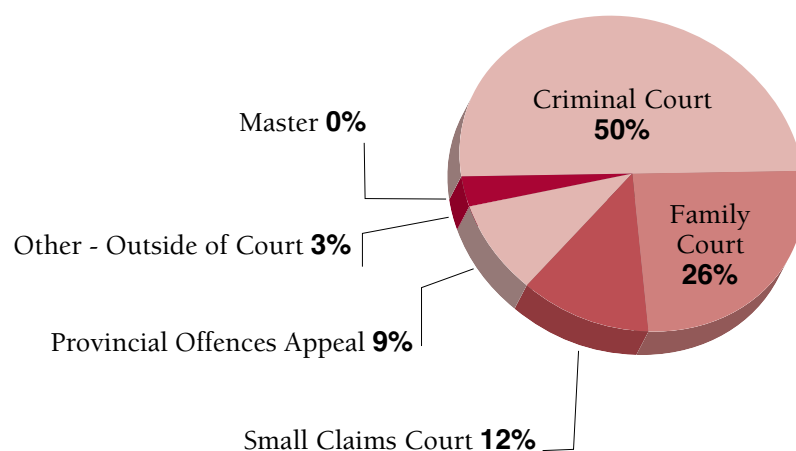
Twenty-nine complaints remained open to be carried over into the eighteenth year of operation. Of those 29 files, two files were from Year 15 (2009-2010) and six were from Year 16 (2010-2011) and 21 were from Year 17 (2011-2012).

DISPOSITIONS IN 2011/2012

DISPOSITION	NUMBER OF CASES
Dismissed – Out of Jurisdiction	13
Dismissed – unfounded, not judicial misconduct, etc.	20
Loss of Jurisdiction	1
TOTAL	34

TYPES OF CASES CLOSED IN 2011/12

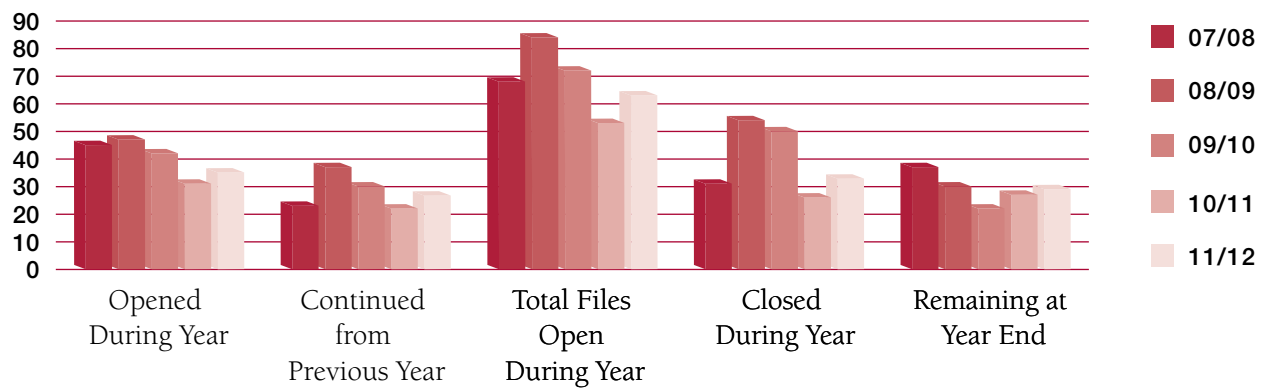
TYPES OF CASES CLOSED	
Criminal Court	17
Family Court	9
Other – Outside of Court	1
Small Claims Court	4
Provincial Offences Appeal	3
Master	0
TOTAL	34



CASELOAD IN FISCAL YEARS

FISCAL YEAR	07/08	08/09	09/10	10/11	11/12
Opened During Year	45	47	42	31	35
Continued from Previous Year	23	37	30	22	28
Total Files Open During Year	68	84	72	53	63
Closed During Year	31	54	50	26	34
Remaining at Year End	37	30	22	28	29

CASELOAD IN FISCAL YEARS



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Files are given a two-digit prefix indicating the year of the Council's operation in which they were opened, followed by a sequential file number and by two digits indicating the calendar year in which the file was opened (i.e., file no. 17-001/11 was the first file opened in the seventeenth year of operation and was opened in calendar year 2011).

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

CASE NO. 15-032/10

In his complaint to the Judicial Council, the complainant made numerous allegations about the subject judge including the following:

- 1) The judge made “disturbing, inappropriate and prejudicial comments.” The complainant cited as examples a comment by the judge during a proceeding about the death of a local lawyer, an order made by the judge, and his comment that the complainant should undergo a psychological assessment.
- 2) The complainant also took issue with the judge's conclusions that his behaviour was obsessive and that he might have a mental illness.
- 3) He alleged that the judge told the Respondent mother that this was the man she chose to have a child with and she was stuck with him.
- 4) The judge urged the Respondent's mother's lawyer to instruct the child's doctor to call the police if the complainant called to enquire about the child's health.
- 5) The complainant alleged that the transcript of one appearance had been improperly altered. He recalled that the judge had said, after being reminded that the complainant was a registered nurse, “they are mad people.” He also remembered the judge saying, “we in the medical profession are crazy.”
- 6) He alleged the judge described his request for a court appointed doctor as “silly.”
- 7) The judge lied on various occasions, and allowed the Respondent's lawyer to use questionable tactics and materials. He referred to a particular court date when the judge referred to “thirty-five endorsement sheets” and another date when the judge made false comments contradictory to those he had made at an earlier hearing about the access centre visits. The judge denied he had earlier stated the father would resume unsupervised access.

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- 8) He alleged that the judge made an “attack on my character and prejudgement comments.” The complainant alleged that he found the judge’s behaviour to be threatening at times, particularly when he pointed his finger at him or stared at him.
- 9) The judge exercised “careless” judgment which had damaged the complainant’s relationship with his son.
- 10) The judge ignored an agreement that had been reached by the parties regarding child support, resulting in an overpayment of an estimated \$6000.00.
- 11) The judge discriminated against him on the basis of his job status, gender and race.
- 12) The judge ignored medical evidence, resulting in a delay in his son’s diagnosis with possible permanent affects on the child.
- 13) The judge was improperly made aware that he had forwarded a letter to him.
- 14) The judge used a “questionable” report of the Office of the Children’s Lawyer despite the fact that the original lawyer assigned was “removed under suspicious circumstances.”
- 15) The judge improperly provided assistance to the other side when he advised the Respondent mother to get a letter from her family doctor.
- 16) The judge created an apprehension of bias when he immersed himself in discussion during most of the appearances and was “shutting out the lawyers.”
- 17) The judge showed callous disregard for the health and well-being of a special needs minor (the complainant’s older child, who was autistic) and the importance of bonding between the siblings. At one of the hearings, he commented: “This is about this child, not [name of complainant’s other son]. [The other son] will have to deal with it.”

The complaint subcommittee ordered and reviewed eleven transcripts relating to the complainant’s proceedings and, considered various letters that the complainant sent to the Judicial Council, court staff and the Chief Justice regarding the conduct of the judge throughout the family court proceeding. After completing the investigation, the committee submitted a report to a review panel.

The review panel reviewed the complainant’s letters to Council regarding the subject judge and the complaint subcommittee’s report.

The review panel noted that the materials showed that the complainant and the Respondent mother of his child were involved in a longstanding, acrimonious custody/access dispute regarding their son. The complainant/father contended that the child had not been properly

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A diagnosed as suffering from developmental delays and autism. His belief led to disputes between the parties regarding his behaviour towards the child during access visits, and the appropriateness of his communications with professionals such as daycare workers and doctors involved with the child. A report completed by an expert for the Office of the Children's Lawyer recommended that the father's access to the child be restricted and supervised.

The panel observed that the court record showed that over the course of four years, the complainant appeared before the subject judge on various motions and case conferences. The judge initially restricted the father's access to supervised access for two hours a week pending the review of a doctor's report about the child and notes describing the father's conduct during visits. Later, an order was made requiring the complainant/father to obtain a letter from a psychiatrist regarding his mental health. Subsequently, the access was increased to six hours each week, unsupervised, with pick-ups and drop-offs to occur at the access centre. However, the child displayed reluctance to go for some visits, which was verified by workers at the access centre. An order was made for referral to counselling for the child and for re-involvement of the Office of the Children's Lawyer. The child was later diagnosed to be suffering from separation anxiety. The father was unable to exercise access. In the fourth year of the court proceedings, the judge granted a motion by the complainant requesting that he remove himself from the case, and ordered that the matter continue before another judge.

The review panel found that the transcripts showed that the judge had attempted to persuade the complainant and the Respondent mother throughout a lengthy, stressful, emotionally-charged proceeding to focus on the needs of their son and to learn to respect one another as parents. The judge had stressed that they had many years ahead of them to parent their son, and he had explained that his focus, as the judge, must be on the best interests of the child, and not on their personal interests. He was critical of the behaviour of both parents, not only that of the complainant, if he concluded that their behaviour was adversely affecting the child. He also praised them both when they displayed better behaviour during supervised visits so that access could be increased and made less restrictive over time. The review panel found that although the judge may have been blunt at times in his assessment of the parties, there was no evidence of improper judicial behaviour.

The panel found that there was no evidence in the transcripts that the judge in any way showed biased behaviour towards the complainant based on his job status, gender or race.

The panel also found that the record showed that the judge, after hearing submissions and reviewing affidavits and reports, concluded that the father/complainant was obsessively fixed on "proving" that his son was autistic. The judge was concerned that the complainant's conduct during access visits was not always appropriate and child-focused but was instead often an

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attempt to “test” or “diagnose” his son’s behaviour. For these reasons, the judge had restricted the father’s access. He encouraged the complainant/father to display better behaviour during supervised visits so that the access could be increased and made less restrictive over time. The panel noted that complainant obviously did not agree with the judge’s assessment, and was unhappy about his limited access to his son, but the panel found that this did not constitute improper behaviour on the part of the judge.

With regard to specific comments of the judge complained about, the panel found that the comments needed to be considered in the context within which they were made. The transcript showed that the comment regarding the death of a lawyer was made in the context of the judge speaking to two counsel to illustrate that their accusations about each other’s conduct were inconsequential compared to news of the death of a noted counsel. The transcripts showed that the comments that the Respondent mother had chosen the father of her child and would have to live with it was part of the general message that the judge attempted to convey to the parties that they would have many years ahead of them when they would need to communicate for the sake of their child. The transcript showed that the judge’s comment that the complainant’s request for an independent examination of the child was “silly” was made after the judge had already spent some time explaining to the complainant that the child was already being seen by an independent professional. The review panel observed that the comment may have been terse, but it was made after several repeated requests by the complainant for such relief. The review panel also found no evidence that the transcript of the proceeding had been improperly altered in any way.

The panel found that the transcript did not support the allegation that the judge said that “we in the medical profession are crazy” or that he made derogatory comments about the complainant’s profession. The transcript did show that the judge reiterated his conclusion, based on his review of the supervised access notes, that the Applicant/father remained obsessed about his diagnosis that his son was autistic, and considered himself an expert in child development. The review panel determined that the complainant did not agree with the conclusions of the judge; however, the comments expressed the judge’s opinion based on the evidence before him and were not inappropriate.

The review panel found no evidence that the judge lied or misled the parties in the proceedings. On the contrary, the transcripts showed that he was forthright and transparent about his findings, and provided lengthy explanations to the parties outlining the rationale for his conclusions. The judge’s comment about “thirty-five endorsement sheets” appeared to be an intentional exaggeration to illustrate how many times the parties had been back to court and

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also to emphasize the change in time in the complainant's position from a party who had questioned the paternity of the child to an overly anxious parent asserting that he was a child development expert.

The review panel found no evidence that the judge promised the complainant would immediately return to overnight, unsupervised access after three months of supervised access. Rather, the review panel noted that the court record showed that the judge did comment that increased access would be contemplated if the supervised visits went well.

In conclusion, the review panel determined that the allegations made by the complainant were not supported by a review of the transcripts which showed the context of the events in this case. The transcripts showed that the judge attempted, at each appearance, to remind the parents of their responsibility to their child. The judge encouraged the complainant to enjoy his time with his son and to let go of his fixation of diagnosing him, even in the face of medical opinion that his son was normal. The review panel also noted that the judge stressed that the welfare of this child was before him and the needs of the complainant's older child were not being assessed by him.

The record confirmed that the judge did not improperly take the side of the Respondent mother. On occasion, he criticized her unwillingness to communicate with the Applicant, or her cancellation of access visits without proper notice. The review panel found no evidence he improperly interfered with a child support arrangement agreed to by the parties. The judge expressed concern about the father's obvious anxiety and sadness when he was unable to see his son.

The review panel concluded that the complainant was unhappy about many of the decisions made by the judge, and with how he assessed and relied upon the evidence, and he did not wish the judge to continue to hear the matter. Decisions of a judge and the manner in which he assesses or relies upon evidence are matters that are properly pursued through an appeal and are not within the jurisdiction of the Ontario Judicial Council.

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

CASE NO. 15-035/10

The complainant's son was convicted and sentenced by the subject judge. She alleged that:

- 1) The judge was biased in that:
 - a) he allowed the complainant to read her victim impact statement in court when her son's counsel was ill and unable to attend; and,

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- b) he held the subsequent sentencing hearing down to allow the Crown Attorney to inquire into why the complainant had not attended court as expected.
- 2) Her allegations of bias were supported by the fact that the judge was a Crown Attorney prior to his appointment to the bench.
- 3) The judge must have written his reasons for sentence prior to having heard the argument.
- 4) He directed terms of sentence that were impossible to fulfill. He imposed a condition which prevented her son from attending counselling as required by the Order.
- 5) The complainant was unable to obtain a transcript of the sentencing proceedings for a number of months after the event which prevented her son from filing an appeal.

The complaint subcommittee reviewed the complaint letter and ordered and reviewed the transcripts of the proceedings. Upon completion of its investigation, the subcommittee submitted a report to a review panel comprised of two judge members, a lawyer member and a community member.

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

- 1) With respect to the allegation that the judge demonstrated bias by giving the victim preferential treatment:
 - a) The review panel noted that Section 722 of the *Criminal Code* requires a judge to allow a victim to read his or her Victim Impact Statement in court if he or she wishes to do so. The panel observed that the transcript showed that the Crown Attorney advised that the victim had been required to take time off from work three times in order to attend court and that members of her family, who had come to support her, had traveled a long distance to be present. The Crown Attorney urged the court to allow the victim to read her Victim Impact Statement and to then adjourn the remainder of the sentencing proceedings until defence counsel was available. The panel noted that when advised that defence counsel was unable to attend, the judge considered the inconvenience to the victim and her family if they were required to return in order for the victim to exercise her rights.
 - b) As well, the judge considered any prejudice to the defence. The transcript confirmed that the judge decided that in balancing those interests, it was reasonable to allow the victim to read her statement. However, he ordered that a transcript of the proceedings be prepared and forwarded directly to defence counsel so that he could raise any concerns that he might have on the next court date. The judge also indicated that

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A if defence counsel wished to question the victim with respect to her statement, he would consider that request. The review panel concluded that the transcript showed that the judge fully considered the interests of all those involved in the proceeding and showed no bias. The panel also noted that defence counsel did not raise any concerns about the procedure on the subsequent court date.

Although the review panel agreed that the victim of a criminal offence is not a party to the proceedings, the panel noted that the victim does have an interest in the matter. The panel found that the judge did nothing inappropriate in taking the victim's interest into account by allowing the Crown Attorney to make inquiries into whether the victim would be attending. Although the judge did hold the matter down, he also proceeded with the sentencing as requested by defence counsel, over the objections of the Crown Attorney. The panel found that the fact that the matter was held down briefly does not in any way suggest bias on the part of the judge.

- 2) With respect to the allegation that the fact the judge had been a Crown Attorney prior to his appointment suggested bias, the review panel noted that there is a legislated requirement that all judges of the Ontario Court of Justice must have been lawyers for at least ten years prior to their appointment to the bench. The vast majority have been either a Crown Attorney or defence counsel, if not both, at various times in their careers. The panel was of the view that the mere fact that someone performed a particular role within the justice system prior to his or her appointment did not mean that he or she was unable to deal with cases before them in an unbiased way. In any event, the transcript confirmed that there was no support for the allegation of bias.
- 3) With respect to the allegation that the judge must have written his reasons prior to the completion of submissions, the panel observed that the judge's reasons for sentence comprised some eighteen pages of transcript. The first four pages consisted of a summary of the facts found by the judge at the time he entered the finding of guilt. The next five pages summarized the written material before the court concerning the accused's background. In the remaining eleven pages, the judge applied the law to the fact situation and imposed sentence. The panel found that there was nothing in the record which suggested that the judge did not give full consideration to the submissions made by both counsel. After hearing submissions from both counsel, the judge recessed the court and at the conclusion of the recess, he gave his reasons for sentence. The review panel found that the transcript showed that the judge had reviewed all material filed with the court and made reference not only to material filed prior to when he heard the submissions, but also to the written statement that the accused filed just prior to recessing. The review panel found no support in the record for this allegation.

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- 4) With respect to the allegation that the judge directed terms of sentence which were impossible to fulfill because the requirement of house arrest prevented the complainant's son from attending an anger management program, the review panel noted that the terms of sentence are within the discretion of the trial judge. A review of the transcript showed that there was a term that allowed the complainant's son to attend the anger management program.
- 5) The judiciary has no control over the production of transcripts. The review panel noted that any complaints about delays in transcript production would need to be made to the Court Services Division of the Ministry of the Attorney General. The review panel also noted that the fact that a transcript is not available does not prevent the filing of an appeal. All that is required for the filing of an appeal is evidence that the transcript has been ordered.

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

CASE NO. 16-001/10

The complainant and her former partner were parties in a *Children's Law Reform Act* proceeding. In an earlier *Child and Family Services Act* proceeding, their child had been apprehended shortly after birth due to mental health concerns regarding both parents.

The matter proceeded to trial before a judge who presided over both the Trial Management Conference and later the trial. Both parties represented themselves. Testimony was heard on a number of dates. The judge ruled it was in the child's best interests that she remain in the custody of the father. The complainant was granted specified access to be supervised by a third party, and encouraged to seek out therapeutic counselling.

In her letter to the Judicial Council, the complainant made numerous allegations about the judge:

- 1) Prejudicial behaviour leaked out even when other plausible explanations were offered and/or validated.
- 2) Blatant disregard for gender issues.
- 3) Lacks foresight.
- 4) Absence of insight into the complainant's pathological nature.
- 5) Twists conversation to her gain at others' expense.
- 6) Tendency to over-simplify complex situations.

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- 7) Continuously delayed the court dates.
- 8) Crafted the complainant's further alienation by continuously delaying the court dates and elevated an abuser.
- 9) Made convenient use of other professionals' biases to further her decision and/or causes.
- 10) Cost-based justification for setting morality aside.
- 11) Carefully worded her ruling in such a way to discredit the complainant.
- 12) Seemed to be more interested in discrediting my interpretation of previous events in order to give more weight to those social groups whom have written and misinterpreted the horrendous ordeals I have endured over the years.
- 13) Blatantly put words in my mouth.
- 14) Confused causes with systems.
- 15) Confused anxiety, nausea and fatigue with disorganized and chaotic thinking.
- 16) Superficial reasoning in relation to victimization and gender issues as it relates to workplace violence and spousal abuse.
- 17) Purposely omitted relevant testimony of Respondent because it seems to contradict and/or contrast with explanations and interpretations as it relates to the case.

The complaint subcommittee ordered and reviewed the transcripts of the numerous court dates for both the Trial Management Conference and the trial, as well as the judge's reasons. Following the investigation, the subcommittee submitted its report to a review panel.

The review panel reviewed the complainant's letter of complaint, the judge's reasons and the complaint subcommittee's report. The review panel found that the judge treated the complainant and the child's father equally with respect. The transcript showed that the judge advised both parties on numerous occasions about the proper conduct of a trial and carefully explained the process. She urged each party to seek out legal advice. She provided to both a summary of the kind of evidence she would need to hear in order to determine the child's best interests.

The review panel found no evidence that the judge intentionally delayed the matter. On the contrary, the court record confirmed that she moved the matter along as expeditiously as possible, although some delays were caused by the inability of each of the parties to properly subpoena, or have available, certain witnesses deemed necessary by the judge. Other delays were simply due to court scheduling.

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The review panel also found that the judge at no time displayed prejudicial behaviour or gender bias at the complainant's expense.

The Judicial Council concluded that there was no support for the allegations in the court record. Her allegations and the transcript indicated that the complainant disagreed with the judge's decision. The proper way for the complainant to proceed was by way of other legal remedies through the courts, such as an appeal. The decision was a matter outside of the jurisdiction of the Ontario Judicial Council.

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

CASE NO. 16-007/10

The complainant appeared before the subject judge for an appeal of a *Highway Traffic Act* conviction. He missed the first trial date and the second rescheduled trial date. He was convicted in his absence. He was granted a re-opening and received notice of a third trial date. However, when he arrived at court, because he had already paid the fine, the trial was cancelled and he was legally required to pursue an appeal to obtain a new trial. When the appeal came before the subject judge, the complainant tried to explain the various reasons for missing his trial dates.

The complainant alleged that the judge did not review his matter in a professional manner, interrupted him and did not fully hear his story before the appeal was dismissed. He further alleged that the judge misstated or misunderstood the evidence when he stated in his reasons that the complainant had three trial dates and did not show up for any of them. Further, he alleged that the judge treated him less fairly than others who appeared before the judge that day.

The complaint subcommittee ordered and reviewed the transcript of the complainant's proceeding and the transcripts of the two proceedings preceding the complainant's matter. Upon completion of their investigation, the subcommittee submitted a report to the review panel.

The review panel reviewed the complainant's letter and the transcripts that were reviewed by the complaint subcommittee, as well as the subcommittee's report. The panel found that a review of the transcripts showed that the judge was not discourteous. In relation to the complainant's proceeding, the panel noted that the transcript indicated that the complainant's explanations were unclear to the judge who at one point said, "I do not know to what you refer". The panel found that although the subject judge may have misapprehended the evidence as to what had occurred on third trial date, the assessment of evidence and submissions, as well as the decision as to whether to re-open the matter were matters within the discretion of the judge. Those are not matters within the jurisdiction of the Judicial Council.

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The panel found that there was no evidence that the judge treated the other cases in a manner that was unequal to or different from how he treated the complainant's case.

The review panel also found that in his reasons, the judge not only cited the missed trial dates but also pointed out to the complainant that the appeal was not filed until after the statutory appeal period. The panel concluded that if the complainant disagreed with the decision of the judge, his remedy would have been to appeal the decision.

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

CASE NO. 16-008/10

This complaint arose out of a family proceeding where the complainant was ordered to provide support for a child. In his first letter of complaint, he alleged that the child in fact was not his child, that he made numerous requests for DNA testing which were ignored by the judge, and that the subject judge was biased, "always taking the woman's side, nothing for the father". He also alleged that he had difficulty enforcing an Access Order because he was only provided with a photocopy, that the child's mother did not abide by the terms of the Access Order and that a Final Order was made when he was not present in court due to illness.

At the subcommittee's request, the Assistant Registrar contacted the complainant to request specifics of when he made requests for DNA testing. Only after a second letter requesting this information did he advise that he first made that request on his first appearance before the judge.

The subcommittee obtained a complete case history report with respect to the matter and was able to determine that although the matter commenced on a certain date, the first time when the case was before the subject judge was on a later date at which time the complainant was not present. The complainant did appear on the subsequent date. The complaint subcommittee ordered and reviewed the transcript of that proceeding, as well as the next appearance before the same judge later that year.

The complaint subcommittee concluded its investigation and submitted a report to the review panel for its consideration and decision.

The review panel reviewed and considered the complainant's letter, the subcommittee's report and the transcripts of the proceedings. The panel noted that the matter before the judge was commenced by an application brought by the mother of the child to change the terms of an agreement she had reached with the complainant with respect to the support for her child.

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The panel observed that the transcript showed that the complainant's first appearance before the judge began with duty counsel appearing on behalf of the complainant indicating that there were Minutes of Settlement agreeing to an increase in support for the child. The complainant was requesting a slight change in the wording. Duty counsel took the view that, given the agreement as to amount, it was unnecessary to get into whether or not his client received funds from his family. The subject judge indicated that she needed to have information on record with respect to all of the complainant's sources of income in order to justify the proposed support amounts, since the proposed amount of support varied from what would be calculated under the child support guidelines based on his stated income.

The complainant refused to agree to the proposed change. The transcript showed that the subject judge then adjourned the matter and ordered that the complainant file and serve updated financial information prior to the next court appearance.

On the next court date, the applicant insisted that the complainant was receiving substantial funds from other sources and the complainant denied receiving such funds. Since there was a clear dispute with respect to the complainant's income and it was likely that a hearing would be required to determine that issue, the matter was then scheduled for a case conference.

The review panel found no reference in either of the transcripts to a request by the complainant for DNA testing.

The panel found that the transcript showed that the judge displayed patience with the complainant and in no way displayed any form of bias towards him. For example, at the first appearance, the judge refused to issue an order requiring him to pay child support in an amount above that provided for by the child support guidelines based on the income that he admitted.

With respect to his other allegations, the panel noted that the Final Order issued in the absence of the complainant was not issued by the subject judge. In addition, the panel observed that matters with respect to the issuance of Orders are under the control of Court Services, not the judiciary.

The review panel concluded that none of the allegations against the judge were substantiated by the record and therefore dismissed this complaint.

CASE NO. 16-010/10

The complainant was before the subject judge on charges of criminal harassment. His complaint against the judge initially centered on an allegation that the judge improperly participated in coercing him to plead guilty to the charge. He alleged that the judge should be removed

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A from the Bench for misconduct unbecoming to a judge, including collusion with an apparent conspiracy to subvert just cause. He requested a new trial based on judicial error. He also alleged that the judge allowed false statements to go un-negated and that he “negated that coercion is unbecoming to a judge”. Further, he alleged that at his last appearance before the judge, the judge sounded so senile as to evoke the strongest feelings of indignation. He stated that the judge had no regard for the truth and the burden of proof and was biased.

The complaint subcommittee reviewed lengthy and numerous pieces of correspondence from the complainant. The subcommittee requested that staff at Court Services provide information on the history of the matter from the court record. The complainant sent a copy of a psychiatric report arising from the court proceedings to the Council and it was reviewed by the subcommittee as part of its investigation. Following the investigation, the complaint subcommittee submitted a report to a review panel.

The review panel reviewed correspondence from the complainant and the complaint subcommittee’s report. The panel noted that in one letter, the complainant stated that he was not seeking a sanction against the judge and that the judge was kinder to him than any other would have been. In a later letter, the complainant appeared to have change of heart and asserted that the judge erred in receiving a guilty plea from the complainant. The panel found that the information from Court Services confirmed that the complainant entered a plea of guilt. Subsequently, a psychiatric assessment was done. The guilty plea was struck by the judge based on his concern about the mental state of the complainant. Ultimately, the judge found the complainant not criminally responsible. The panel noted that in one letter, the complainant indicated that he disagreed with the verdict that he was not criminally responsible and alleged that the judge showed “a lack of willingness to be held to Christian virtue”.

The review panel did not find any misconduct on the part of the judge and dismissed this complaint as unfounded. The panel noted that if the complainant disagreed with the decision of the judge to strike the guilty plea and to find him not criminally responsible, or with how the judge considered the medical evidence, the proper way to proceed would be through his legal remedies in court. The Judicial Council has no jurisdiction over such matters.

CASE NO. 16-011/10

The subject judge was a member of a racquet club. He reserved court time to play at the club for a particular evening. Due to a club computer system error, the judge was able to reserve a court despite the fact there was a standing booking that evening for the mixed house league on all of the courts at the club. Racquet club staff forgot to notify the judge to advise him of the scheduling conflict.

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When the judge and his wife attended the club to play, the director of racquet sports advised the judge of the scheduling problem and that the court which he had reserved was no longer available. The judge became very upset and loudly expressed his dissatisfaction in strong language that included a profanity.

A member of the tennis club heard about the events from the director of racquet sports, who was a friend of hers. The complainant learned that the subject of the complaint was a judge from another member and from the internet. The complainant then sent a letter of complaint to the Council.

The complaint subcommittee retained independent counsel to assist in the investigation by conducting interviews of the complainant and the director of racquet sports to obtain further information. After receiving and reviewing the results of the investigation, the committee requested and received a response from the judge and submitted a report to the review panel.

The review panel reviewed the complaint, the judge's response to the complaint and the complaint subcommittee's report. The review panel noted that in the community, judges are expected to maintain their personal conduct at a level which will ensure the public's trust and confidence. The conduct of judges both inside and outside of the court can have an impact upon public confidence in persons holding judicial office and in the administration of justice generally.

The panel found that in his response, the judge properly acknowledged that his conduct during this incident fell below this standard. As well, the review panel observed that the investigation confirmed that as soon as the judge was made aware of how his conduct was perceived by the director of the racquet sports and the complainant, he delivered to the racquet club a written apology to the director. In his response, he extended an apology for his conduct to the Council. The panel was satisfied that the response from the judge showed that he sincerely regretted his intemperate behaviour. As well, the investigation revealed that this was an isolated incident and one that was out of character for this judge. The panel found that the judge both acknowledged responsibility for his conduct and was remorseful.

The review panel noted that the complaints process through the Judicial Council is remedial in nature and through the review of and reflection upon one's conduct, improvements are made as to how situations and individuals are treated and handled in the future. In these circumstances, the review panel was satisfied that the judge has genuinely reflected upon his conduct, that he truly regretted his behaviour, and that he would in future be mindful of the high standard of behaviour expected of judges, even outside of the courtroom. The panel concluded that no further action was required on the part of the Judicial Council and closed this file.

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CASE NO. 16-012/10

The complainant (Respondent) brought a motion to change an Order requiring him to pay child support for his daughter. Substantial arrears had accumulated under the order.

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

- 1) The judge “inserted everything” that the Applicant’s solicitor asked for on a date when the complainant was not present. She “deliberately set out to punish me” and showed “tremendous bias” in finding against him.
- 2) Vacating the portion of the Order that had required the complainant to surrender his passports was an admission of “judicial (mis)conduct” by the judge.
- 3) The judge displayed her bias and prejudice against him in her ruling and should be reprimanded or removed from the bench.
- 4) Although she later recused herself from the case, “the damage was already done” and the subsequent judge ruled against him because, “One judge does not go against the ruling or action of another judge unless the matter goes to a higher court.”

The complaint subcommittee ordered and reviewed the transcripts of four court appearances and also the endorsement of the complainant’s Form 14B Motion. At the conclusion of its investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed the complaint, the four transcripts and the complaint subcommittee’s report to them.

The panel found that the transcripts showed that nothing was said by the judge at any of the court attendances that supported the allegation of bias or prejudice against the complainant, or that she deliberately set out to punish him.

The panel found that the transcript showed that the decision by the judge to vacate the term of the Order that had required the complainant to turn his passports into the court was made because the judge queried the statutory authority to make such an order. That decision did not constitute judicial misconduct.

With respect to the recusal, the panel observed that the transcript showed that the judge appeared conscious of appropriately moving the matter to its completion and properly set timelines for examination and the filing of materials by both parties.

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When faced with the request by the complainant to recuse herself of the matter, the judge granted the motion without ruling on its merits to ensure there could be no complaint about the impartiality of the hearing process. She ensured that the matter was promptly heard by another judge.

The review panel observed that most of the allegations related to the complainant's dissatisfaction with decisions made by the judge. The review panel noted that if the complainant disagreed with the terms of her judgment, the proper way to proceed was through his legal remedies through the courts. The review of a judge's decision is not a matter within the jurisdiction of the Judicial Council. The panel observed that the complainant had already appropriately pursued his legal remedies.

With respect to the allegation that the appeal judge ruled against the complainant because, "One judge does not go against the ruling or action of another judge unless the matter goes to a higher court," the review panel found that the allegation was based on unsupported beliefs of the complainant. Decisions of judges can be successfully appealed if there is a legal basis.

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

CASE NO. 16-016/10

The complainant in this matter was tried on a charge of impaired driving before the subject judge and was found guilty and convicted.

The complainant alleged that while he was waiting for his trial to proceed, the court dealt a case involving a sexual offence and that during that proceeding, the subject judge made jocular comments about "kiddie porn". The complainant also alleged that during his trial, the judge was not fair or impartial, conducted himself in an unprofessional and deceptive manner, ignored misconduct by the police department, and prodded police officers to embellish their testimony.

The complainant appealed his conviction to the Superior Court of Justice where it was argued that the subject judge made a number of legal errors. The appeal court found no merit to those grounds. It was also argued on appeal that the trial judge demonstrated bias, or an apprehension of bias, and inappropriate judicial demeanour by his jocular comments and other interjections made by him throughout the trial, thereby denying the complainant a fair trial.

The subcommittee ordered and reviewed the transcript of the complainant's trial, the transcript of the trial preceding the complainant's case, and the transcript of the complainant's appeal to the Superior Court of Justice.

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Following its review of the transcripts, the complaint subcommittee found no support for the allegation that the judge had commented on “kiddie porn”. The transcript showed that there were no inappropriate comments made by the judge.

He summarized the evidence, explained his findings of fact and provided his reasons for conviction.

The subcommittee found no support in the court record for the allegation that the subject judge encouraged the police to embellish the evidence.

The subcommittee did observe that during the complainant’s trial, the judge made such comments as: “we’re going to be a bunch of Luddites, trying to figure out how to use a TV”; in relation to reasons why a person’s eyes might be glassy and bloodshot, other than alcohol consumption, “Country and Western music”; “all the symptoms are consistent with other things other than impairment, blah, blah, blah. And I don’t mean to be silly with blah, blah, blah but I know, you know I can anticipate...”

The subcommittee noted that the appeal court found that while the trial judge’s comments, off topic discussions with witnesses and jocular remarks would have been better left unsaid, the court did not find that he was unable to hear and determine the case with an open and dispassionate mind. The appeal court found that the remarks, while unfortunate, did not meet the legal test for bias. As well, the appeal court found that the subject judge considered all of the evidence in an even-handed manner and made his decision without bias. The appeal was dismissed.

The subcommittee requested a response from the subject judge to the complaint. After reviewing the response and considering all of the information, the subcommittee provided a report to the review panel.

The review panel reviewed the complainant’s letter, the transcript of the reasons for decision of the appeal, which included the comments by the judge during the trial, the letter to the judge requesting a response to the complaint and the judge’s response to the complaint.

The review panel noted that in the judge’s response to the Council, he explained that the comments he made were largely attempts on his part to put context to the evidence and the overall purpose at the trial. He explained that no harm was intended by the comments, that he had taken the matter very seriously and applied himself in a diligent manner and that certain comments were intended to humanize the nature of the criminal trial. He provided references to the transcript which illustrated that he had taken the case very seriously. He assured the Council that it was not his intention to detract in any way from the seriousness of the matter. The judge also acknowledged that he had read the appeal decision and agreed that the comments were better off not having been made. He agreed that in the future, it was incumbent upon him to refrain from making such comments.

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The panel noted that the complaints process is a remedial one that provides a judge with an opportunity for reflection and learning. While the review panel agreed with the appellate court that various comments by the judge during the complainant's trial should not have been made, the panel noted that the judge had genuinely reflected upon his conduct, and had undertaken to avoid such behaviour in the future.

For those reasons, the panel was satisfied that no further action was required in this matter and the complaint was dismissed.

CASE NO. 16-017/10

The complainant had leased a vehicle and allegedly returned it with damage. When he received an invoice for damage, he filed a claim in Small Claims Court that alleged defamation. He appeared before the subject judge for a settlement conference.

In his letter to Council, the complainant alleged that the judge was revengeful and took advantage of the settlement conference because the complainant had made a previous complaint to the Judicial Council against him. He alleged that the judge turned the appearance into a "de-settlement conference", suggesting cynically that the defendant reduce the amount another party was asking for and suggesting that another party bring an action to reduce the complainant's claim. He alleged that the judge was not acting in good faith and that all parties were not treated equally, that the judge struck his defamation claim and that he was not provided the opportunity to provide more information to the court. He also alleged that the judge lacked common sense.

Settlement conferences are not generally recorded in Small Claims Court, so the investigating complaint subcommittee was not able to order a transcript of the proceeding. The subcommittee asked for additional information from the two lawyers who represented two defendants in the legal action. A response was received from one lawyer. Upon completion of the investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed the letter of complaint, the response received from the defendant's counsel and the subcommittee's report.

The review panel noted that the response from the lawyer confirmed that the lawyer for the other defendant was not present at the settlement conference because the court was unable to accommodate two parties participating by teleconference. He also confirmed that the information which he provided was based on notes that he took during the proceeding and his recollection. The lawyer stated that the judge was not at any time revengeful. The lawyer stated

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that the judge conducted himself appropriately and professionally and attempted to resolve the issues between the parties. Nor did the lawyer recall the complainant making any reference to a previous complaint that he had made about the judge.

Rather, the lawyer indicated that the judge reviewed all of the documentation, and asked questions of both parties, including questions that were in the complainant's interest even though he had not raised them in his statement of claim. The lawyer indicated that it appeared to him that the judge was conscious that he was dealing with a self-represented litigant and was attempting to ensure that any shortcomings in the pleadings did not prejudice the complainant.

The lawyer informed of his observations that the complainant was disrespectful toward the judge, inflammatory and disruptive. He also indicated despite the complainant's conduct, the judge made efforts to explain the deficiencies in the complainant's claim to him, and to have the complainant explain how there was any basis for his claim of defamation. However, the complainant was not able to provide evidence to support his claim and never indicated that he had any further documentation to bring forward. Following this, the judge stated that the defendants could seek an order striking the claim for failure to disclose any cause of action.

Following its review, the review panel was satisfied that there was no evidence to support the complainant's allegation of judicial misconduct and dismissed this complaint.

CASE NO. 16-018/10

The complainant appeared on behalf of a person for whom she had the power of attorney, on a landlord and tenant matter in Small Claims Court before the subject judge. The judge issued an order that the claim was stayed until the claimant paid in amount of money into the court in accordance with a previous judgment.

The complainant alleged in her letter that the order contravened the principles of justice and that the requirement to pay the money into court caused a financial hardship. The complainant also alleged that the judge was not impartial and might assume that all landlords are wealthy and evil and all tenants are powerless and victimized. The complainant also alleged that the judge was biased against the defendant due to her foreign accent and last name.

The complaint subcommittee asked the complainant for further details of her allegations of impartiality and bias and received her response. The complainant stated that her claim against the judge stemmed from the order that the claim would not be heard until the amount of money was paid into court. She also referred to the "foreign" names of the parties. Following the investigation, the complaint subcommittee submitted a report to a review panel.

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The review panel reviewed the letter of complaint, the complainant's response to the request for further details, and the complaint subcommittee's report. The panel found that there was insufficient information provided by the complainant to support the allegations of bias, impartiality or discrimination. The existence of a foreign accent or name does not support a conclusion of bias. The complainant did not provide any details to support the allegation that the judge discriminated against landlords. The panel found that the complainant was merely dissatisfied with the exercise of judicial discretion which is a matter that is properly pursued through legal remedies in court. Such matters are outside of the jurisdiction of the Council.

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

CASE NO. 16-019/10

The complainant appeared before the subject judge at a settlement conference in relation to an application by the Children's Aid Society (CAS) for wardship of the complainant's children. In her letter of complaint she alleged that:

- 1) The judge did not allow herself, her son's father or either of their counsel to speak and the only party allowed to speak was the CAS lawyer and CAS worker.
- 2) The judge had prior knowledge of the complainant's involvement with an organization that was critical of the Canadian justice system, which therefore resulted in an apprehension of bias, and she had made up her mind prior to the parties entering the courtroom.
- 3) She declined to look at affidavit material from her lawyer or look at the results of monitored drug tests which the complainant had been undergoing for a period of time.
- 4) Her language to all parties other than the CAS Society counsel was offensive and contemptuous.
- 5) The judge failed to carry out her responsibilities by failing to learn that the child's grandparents had harboured a sex offender in their home and put their own teenage daughter out on the streets.

The subcommittee reviewed the letter from the complainant, the transcript of the proceedings before the judge and listened to the audio recording of the proceedings. Following the investigation, the subcommittee submitted a report to a review panel.

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

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The review panel found that the transcript showed that:

- 1) The judge in fact allowed all parties and their counsel to speak to the matter, although she did exercise appropriate control of the proceedings when the parties were speaking over each other.
- 2) There was no evidence of any kind that the judge knew anything about the complainant's 'community involvement' or that she had prejudged the matter, although it was clear that she had clearly reviewed the briefs filed by the parties and was aware of the background of the case.
- 3) There was no attempt by her counsel to file affidavit material and the judge did not refuse to consider the evidence of the complainant's urine tests but rather indicated that she had concerns with respect to their reliability and concerns since there was no testing for alcohol consumption.
- 4) Her Honour's language throughout the proceeding was polite and professional.
- 5) The only reference to sexual misconduct at the grandmother's residence was a statement from counsel that there was some historical allegations. There was no suggestion of anything inappropriate with respect to the current care and supervision of the complainant's daughter.

The review panel found that there was no support in the transcript for the allegations made and no evidence of misconduct by the judge. Therefore, the review panel dismissed this complaint as unfounded.

CASE NO. 16-020/10

The complainant sued his former lawyers in Small Claims Court. The trial started before a Deputy Judge. However, before the matter was completed, the Deputy Judge passed away, and the trial continued before the judge who was the subject of this complaint.

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

- 1) The judge told the complainant that it was unnecessary for him to have obtained an expert's report, contrary to what the first Deputy Judge had said. When the complainant said to the judge, "So basically I spent \$3000 for nothing?" the judge "showed his trademark sadistic smile and quiet laugh."

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- 2) The judge insisted that the trial could be completed in one day. The complainant alleged “this was an obvious sign that the judge had already made up his mind who he was going to rule in favour of. What I didn’t know was that he had already made his mind up to rule against me.”
- 3) The judge refused to order costs against the other parties when they made a motion for an adjournment, even though the motion was unsuccessful. “This was another obvious example of bias against me.”
- 4) The judge failed to make the proceeding fair and just.
- 5) When a witness gave her evidence and was caught lying, the judge began to chuckle out loud on at least two occasions.
- 6) When the judge gave his written reasons, he found the other witness more credible than the complainant, even though he cited no specific examples. “This was clear evidence of bias.”
- 7) Prior to final submissions, when the complainant tried to present the judge with evidence that the witness had committed perjury, His Honour said, “I don’t care.” He then said it was because the trial was over. His Honour used a condescending tone when speaking to the complainant. “This was another example of his egregious bias.”
- 8) It was an example of bias that His Honour ignored the other witness’ dishonesty, and found her to be a credible witness.
- 9) When the complainant gave his final submissions, the judge wasn’t listening to anything he was saying, nor was he writing anything down. He kept looking at the clock on the wall.
- 10) Another Deputy Judge, who had previously heard another proceeding related to the complainant’s matter, entered the courtroom and sat behind him. The complainant indicated that he had previously made a complaint about that deputy judge. He alleged that when the Deputy Judge came in and sat behind the complainant, the complainant knew that the judge was going to rule against him, and he did.
- 11) Court staff at the Small Claims Court deliberately doctored the transcripts and when the complainant asked for an Order to obtain a copy of the audio recording, the judge replied by lying, saying he was unaware of the procedure to get a copy of the tape. After the complainant began to explain that he was told he needed a judge’s Order, the judge interrupted him and began to give an explanation of the process for obtaining an order. Because the complainant confronted him with his lie, His Honour required him to file a separate motion and imposed the maximum order of costs against him.

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- 12) The trial was “nothing more than a sham and a kangaroo court trial.” The judge was completely biased at every opportunity, and ignored all of the complainant’s evidence, the law and case law that he was provided with, and the evidence of the complainant’s independent expert.
- 13) The judge incorrectly stated that the complainant was required to provide “hard proof” when the test should have been whether there was a preponderance of evidence/on the balance of probabilities.
- 14) The judge made up his mind to rule against the complainant before the trial had started, and his decision was either partly or entirely influenced by the fact that the complainant had complained about his colleague, a Deputy Judge.

The complaint subcommittee ordered and reviewed the transcripts of the trial and of the judge’s reasons. The subcommittee also requested and listened to the portions of the audio recordings of the hearing that related to the allegations. The subcommittee provided a report to a review panel.

After a thorough review of the information before them, the review panel made the following findings which are outlined below and refer to the numbered paragraphs above:

- 1) The transcript did not support this allegation. The review panel noted that plaintiffs always need corroborative opinion evidence in professional negligence cases. The panel also observed that the subcommittee had listened to the audiotape and found no evidence on the audiotape that the judge ‘laughed’ as alleged by the complainant.
- 2) The review panel found that the transcript showed that the judge said he doesn’t take an hour for lunch, he might take a half hour. As well, he did express concern that the trial was indicated to be two days and he wanted to make sure that the evidence got in on the one day. The panel noted that it is always the goal of the Court to make proper use of court time and to use it as efficiently as possible; it is not an indication of pre-disposition or of a desire to cut off any party off from giving relevant evidence. The court record confirmed that there was no insistence by the judge.
- 3) The review panel noted that concerns relating to the issue of costs are a matter outside of the jurisdiction of the Judicial Council. If the complainant disagreed with the Order, the proper way to proceed would be through an appeal.
- 4 & 12) The review panel found there was no evidence in the court record that the judge failed to make the proceeding fair or just. Nor was there any evidence of bias or that he ignored all of the complainant’s evidence, the law or the complainant’s expert. On the contrary,

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the record confirmed that the judge was fair, there was no evidence of bias and there was no support for the allegation that this was a “sham or kangaroo court trial”.

- 5, 6, 7, 8 & 12) The review panel noted that it is a judge’s responsibility to weigh the evidence, to assess credibility of witnesses and to evaluate the truth. The panel found that the court record showed that the judge listened to and weighed the evidence and that he preferred the evidence of the defendants. If the complainant disagreed with how the judge assessed the evidence or determined the issues, the proper way to proceed would be through the appeal process. Such matters are outside of the jurisdiction of the Judicial Council.
- 7) The review panel found that the court record showed that the judge did not say “I don’t care” or sigh or snicker at any point in the trial. The panel concluded that these allegations were unfounded. The panel found no evidence on the audio recording that His Honour used a condescending tone.
- 9) The review panel noted that the complainant’s evidence, opinion and argument were canvassed in the judge’s written reasons. In addition, the panel observed that the audio recording and the transcript showed that the judge appropriately reacted and commented during the complainant’s testimony. The panel concluded that this allegation was unfounded.
- 11) The review panel found that the allegation that court staff had “doctored” the transcripts was a matter outside of the jurisdiction of the Ontario Judicial Council. Allegations about the conduct of court staff was a matter that the complainant could pursue with the Court Services Division of the Ministry of the Attorney General.
- 12) With respect to the allegation about the complainant’s request for a copy of the audio recording, the panel found that the transcript showed that the judge first explained that the complainant should check with the Ministry as to its policy on such requests, that he indicated that the complainant would need to bring a motion to make his request, and that he candidly indicated that he did not think that he had experienced such a request previously. The panel observed that the court record showed that His Honour was merely stating the law. The panel noted that although it appeared from the court record that the complainant’s request had no bearing on the order for costs, if the complainant disagreed with the order of costs, the proper way to proceed was through other legal remedies. That was a matter outside of the jurisdiction of the Council.
- 13) The review panel noted that the term “Hard proof” is a common expression used to mean documentary evidence rather than oral testimony as to facts or opinion or feelings. This would be one consideration when assessing the balance of probabilities. The panel found that use of the expression “hard proof” was not judicial misconduct.

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10 & 14) The review panel found no evidence to support these allegations in the court record and concluded that these allegations were based on speculation by the complainant, without anything to substantiate such speculation.

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

CASE NO. 16-021/10

The complainant appeared before the subject judge as the Respondent/mother on an application by the father of the children to vary the terms of an Order that granted joint custody to both parents with the primary residence to be with the Respondent. On the day of the motion, the judge denied a request by counsel for the complainant for an adjournment and the motion proceeded. The judge made an Interim Order that continued joint custody but gave primary day-to-day care of the children to the father.

The complainant alleged that the judge made numerous legal errors, didn't care about the children, refused to listen to (or look at) her lawyer, refused to hear her evidence and ordered her children into an unsafe situation. She also alleged that the judge placed the children with the father because the judge was mad that the complainant had moved out of the jurisdiction. She also alleged that the judge discussed the case with counsel for the father outside of the presence of the complainant or her counsel.

The complaint subcommittee ordered and reviewed the transcript of the proceedings. The subcommittee requested information about the alleged events from the lawyer who had represented the complainant and from the lawyer who had represented the father. The subcommittee also requested and received a response to the complaint from the judge. Following its investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed the transcript of the proceedings, the responses from the judge, the responses from the two lawyers, and the subcommittee's report.

With respect to the allegation that the judge did not want to hear from the complainant's lawyer or hear the complainant's evidence, the review panel found that transcript showed that the complainant's counsel was allowed to make full and complete submissions and that, in fact, her counsel did not file any responding material on the application for the judge to consider. As well, the transcript showed that the judge considered the safety of the children and the best interests of the children.

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The review panel found that the majority of the allegations by the complainant were allegations of legal errors. She also disagreed with the decision of the judge to change the day-to-day residence of the children. The panel noted that if the complainant disagreed with how the judge applied the law or with her decision, the proper way to proceed was through legal remedies through the courts. The Judicial Council has no jurisdiction over such matters of law.

With respect to the allegation that the judge and the lawyer for the father were discussing the case when the complainant's lawyer wasn't present, the review panel noted that the transcript showed that her lawyer made no mention of any such concern during the motion. The panel observed from the transcript that after the motion was completed, counsel for the complainant immediately left the court. The father's lawyer pointed out to the judge that they had omitted to set a return date for the matter. A date was set and it was confirmed that the matter was to be spoken to. The review panel found that the evidence obtained through the investigation did not support the allegation that the judge had inappropriately had a conversation with the applicant's counsel in the absence of the complainant's lawyer.

The panel dismissed this complaint as unsubstantiated and the file was closed.

CASE NO. 16-022/10

This complaint arose out of two family court proceedings before the same judge. On the first court date in question, the judge heard an application to change and reduce arrears of child care support that were allegedly owed to the complainant. There was a cross-motion by the spouse of the complainant to increase the amount of support retroactively, and thereby increase the amount of arrears owing. On the second court date, the complainant appeared before the same judge on a related cause of action. He was seeking an order that the Family Responsibility Office reimburse him for an overpayment.

The complainant alleged that during the first proceeding that the judge:

- 1) Complained about having to resolve the issues;
- 2) Constantly berated and belittled the complainant and his ex-wife for not settling the issues outside of court, and intimated that they were bad and irresponsible;
- 3) Was rude and on several occasions implied that the complainant was stupid;

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- 4) Did not allow the complainant to properly present his case because of constant interruptions and did not allow his second wife to assist him, and threatened to have her removed from the court; and,
- 5) Demonstrated a bias in favour of the complainant's children who were potential witnesses against him.

With respect to the second proceeding, the complainant alleged that the judge misstated the law, was hostile toward him, did not want to be bothered with him, and “simply ‘blew me off’ by telling me that he lacked jurisdiction.”

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

The review panel reviewed the letter of complaint, the report from the subcommittee and the transcripts of the proceedings. The review panel found that a careful review of the transcript of the first proceeding revealed that the judge was patient and repeatedly explained what he was doing and why to the two self-represented parties. The panel observed that the transcript showed that the complainant and his ex-wife were in court disputing support issues that dated back several years, resulting in the need for their adult children to be involved by testifying about their education that occurred years prior. One adult child had travelled from Europe to be present to give evidence. The panel found that the judge's comments about the children and their parents' failure to resolve the issues were made in the context of the judge repeatedly urging the parents to try to resolve the issues between them. The panel found that the judge's comments and his efforts to resolve the matter were not misconduct.

The review panel found that the transcript showed evidence of some comments that could be seen to be rude but concluded that the comments had to be viewed in the circumstances of this case and observed that the judge showed considerable patience in trying to focus the parties on the issues that needed to be resolved, and in helping to resolve their conflict. The panel did find that after the complainant commented that his son might not be the most brilliant student, the judge said, “Maybe the apple doesn't fall far from the tree.” The panel concluded that the judge was attempting to be humorous and to mitigate the impact of the father's comment on his son who was present in circumstances where the judge was assisting adverse emotional parties to achieve a resolution in the presence of their adult children.

The review panel found that the transcript showed that the judge was getting frustrated with the complainant's difficulty in accepting his advice or rulings. The panel found that this was not misconduct on the part of the judge.

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From its review of the transcript, the panel found that the treatment of the judge toward the adult children of the marriage who had to testify in a proceeding brought by their parents was supportive and sympathetic. In his letter, the complainant alleged that the attitude of the judge towards these witnesses made it appear that he was biased in their favour. The review panel noted that two of the children did testify and their evidence was uncontroversial. The panel also noted that the complainant did not contest their evidence and did not raise as an issue in the submissions either the credibility of those witnesses or the alleged inappropriate remarks by the judge. The panel observed that the remarks made by the judge about the children of the complainant did not appear to have any impact on the proceedings and did not amount to judicial misconduct. As well, the judge's observations with respect to the adult children were based on his observations at the time. If the complainant disagreed with the judge's assessment of the witnesses and the evidence, the proper way to proceed was through his legal remedies in the courts.

From its review of the transcript of the second proceeding, the review panel noted that the proceeding was an application by the complainant for an order that the Director of the Family Responsibility Office reimburse him for an alleged overpayment. The judge advised the complainant that he had no jurisdiction to make such an order.

The complainant alleged that:

- 1) The judge "falsely" advised him that the judge had no jurisdiction to vary a final support order;
- 2) The judge did not consider his motion on the merits; and,
- 3) The judge attempted to intimidate him by directing court security to have him removed from the courtroom.

The review panel found that the first and second allegations related to issues of law rather than conduct and as such were outside of the jurisdiction of the Council. The proper way for the complainant to proceed on such matters was through his legal remedies in the courts.

The panel observed that the transcript showed that the complainant appeared to refuse to accept the judge's ruling and became increasingly argumentative. As the judge had completed the case, he wanted to call the next case. The panel also found that the complainant would not leave the court and the judge called court security. The panel noted that a judge is entitled and required to maintain order in a court and to manage the court process. The panel concluded that in such circumstances, ordering the complainant removed from the courtroom at the conclusion of the hearing was not judicial misconduct. Similarly, with respect to the complainant's new wife, the panel observed that the transcript showed that it was after she spoke out from the body of the

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courtroom that the judge cautioned her about interrupting and disrupting the proceedings and explained that she had no role before the court. It was in that context that he explained to her that she must refrain from disrupting or she would have to leave.

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

CASE NO. 16-025/10

The complainant in this matter was the respondent on an application by the Family Responsibility Office to enforce an order for child support issued by a Superior Court judge in 2005. In 2010, the complainant appeared in court with respect to the application and at that time he expressed concerns about the appropriateness of the Order and indicated that he was unable to make the required payments. He stated in his letter that the presiding judge at that time advised him that if he was unable to pay, he should apply to the Superior Court of Justice to have the Order changed. His Honour also ordered that the matter return to court for a hearing peremptory on the complainant and informed him that it would be best if he made some payments prior to that date.

The matter next came before the subject judge for a hearing. At the hearing, counsel for the Family Responsibility Office requested a final Default Order. The complainant advised the court that he had applied for legal aid to bring an application to vary the Order but his application had been denied. His appeal was also denied but he wanted to appeal again. He then requested that the subject judge recuse herself from his hearing because of her membership in the Association of Family and Conciliation Courts, a family law organization which he described as a “U. S. Based criminal organization.” He further indicated that he had sent a letter to the Chief Justice of the Ontario Court of Justice the previous day complaining about the judge’s involvement in a committee of the court and about her membership in the family law association. The judge refused the request that she recuse herself, indicating that she did not see how a letter to the Chief Justice which she had never seen could possibly be cause for her recusal and that there was no reason why her membership in the association should be of concern.

The case proceeded and at the conclusion, the judge found that she was not satisfied that the complainant had met the onus on him to establish an inability to pay, in particular since he had not satisfied her that he was unable to find gainful employment.

In his letter to Council, the complainant complained about the entire family court process, the legal aid system, the Family Responsibility Office, as well as the subject judge. The Judicial Council’s legislative authority is to consider and investigate allegations about the conduct of provincially appointed judges. Since the Council has no legislative jurisdiction to deal with

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general complaints about the justice system or complaints about persons who were not judges, the complaint subcommittee and review panel investigated and considered only the specific allegations of misconduct by the subject judge.

The specific complaints against the subject judge were as follows:

- 1) “Behaviour unbecoming a judge (corruption and criminal collusion) and bringing the administration of justice into disrepute.”
- 2) The judge acted in collusion with two former directors of Legal Aid offices and as part of that conspiracy, she had herself assigned to the complainant’s case despite the fact that the judge who had presided at the previous appearance had indicated that he would be dealing with the case personally.
- 3) She denied his request for postponement of the hearing.
- 4) The judge refused to recuse herself from hearing the case.
- 5) The judge breached her responsibilities by becoming a member of a “criminal organization”, the Association of Family and Conciliation Courts.
- 6) The judge showed bias in requiring him to give evidence under oath while she did not require counsel for the Family Responsibility Office to give evidence under oath.
- 7) The judge suffered from a Narcissistic Personality disorder and was therefore medically unqualified to act as a judge.

The complaint subcommittee ordered and reviewed the transcript of the proceedings from the matter before the previous judge who had made it peremptory that the hearing proceed, and the transcript of the proceeding before the subject judge. After reviewing the transcripts and the correspondence from the complainant, the subcommittee submitted a report to a review panel.

The review panel reviewed the complainant’s letter, the transcript of the proceedings, the reasons for decision, the complaint subcommittee’s report and the supporting documents provided to them. The review panel made the following findings in relation to the complainant’s allegations:

- 1) There was no evidence in the court record that supported the allegations of “Behaviour unbecoming a judge (corruption and criminal collusion) and bringing the administration of justice into disrepute.” The court record confirmed that the judge acted appropriately and that she considered and applied the law.

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- 2) There was no evidence of any kind to support the complainant's allegation of conspiracy that led to this judge presiding over the hearing. The court record showed that the judge who dealt with his matter at the prior appearance did not indicate that he would be dealing with the trial. On the contrary, there was a clear reference in the transcript of the proceedings to the fact that a female judge would be hearing the trial of the matter. This was a location where the subject judge regularly presided.
- 3) If the complainant disagreed with the judge's decision that she would not grant his request for a postponement of the hearing, the proper way to proceed was through other legal remedies. This was a question of law that the Council did not have jurisdiction to consider.
- 4) The panel noted that the judge's decision that she would not recuse herself from the matter was based on her conclusion that the application was without merit. If the complainant disagreed with this decision or with how the judge arrived at this decision, the proper way for the complaint to proceed would be through an appeal. This was a matter of judicial discretion and outside of the jurisdiction of the Ontario Judicial Council.
- 5) The Association of Family and Conciliation Courts describes itself as "an interdisciplinary, international Association of professionals dedicated to improving the lives of children and families through the resolution of family conflict." The panel found that there was nothing in the description of the organization that raised any issues with respect to bias towards court proceedings. On the contrary, the Association was dedicated to acting in the best interests of children and families, which is an approach that is consistent with the family law legislation of Canada. Other than the complainant's unsupported assertions of the "criminal" nature of the organization, the complainant raised nothing which would suggest that membership in the organization would be inappropriate for a judge.
- 6) The law is clear that at a default hearing, the onus is on the defaulter to convince the court of his inability to pay. The law also establishes that absent evidence to the contrary, the statement of arrears provided by the Family Responsibility Office is deemed to be correct. Therefore, it was up to the complainant to provide evidence of his inability to pay support. There was no legal requirement for the Family Responsibility Office to provide evidence other than the statement of arrears. As well, counsel do not give evidence, they make submissions.
- 7) The complainant based his allegation of a mental disorder on his private study of psychiatry and his perception of the judge. His perception was based on a number of inaccurate beliefs about the judge, such as allegations about compulsive lying, distorting of information in order to arrive at preconceived conclusions, bullying and intimidation.

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The review panel found that the record did not support any of the allegations made about the judge and dismissed this complaint as unfounded.

CASE NO. 16-026/10

The complainant, a single mother on a fixed income, was convicted of a criminal offence by the subject judge. The sentence was a fine.

The complainant indicated that she could not afford to appeal the decision. She stated in her letter that the judge's decision caused her and her family great financial hardship. She also alleged that he didn't believe her testimony and didn't look at her medical evidence, saying it was just an excuse to get out of trouble. She indicated that the judge caused her to keep driving back to court because the case was held over when there wasn't enough time and it was adjourned for the lawyers to give their final statements, and then it was adjourned again because the judge wanted time to look over everything.

The complaint subcommittee reviewed the complainant's letter and submitted its report to a review panel.

The review panel reviewed the complaint letter and the report of the complaint subcommittee. The review panel found that the allegations were ways in which the complainant disagreed with how the judge assessed the evidence and with his decision on sentence. The panel noted that the proper way for the complainant to proceed would be through her legal remedies in court. The Judicial Council has no jurisdiction over such matters. The panel also found that the judge's decisions to adjourn the case were also matters of judicial decision-making that are outside of the jurisdiction of the Council.

The review panel dismissed this complaint on the basis that it was outside of the jurisdiction of the Judicial Council and closed the file.

CASE NO. 16-027/10

This was a complaint brought against a judge who presided over a criminal proceeding.

The accused was charged with attempted murder and with carrying a concealed weapon. She alleged in her complaint that the judge asked a lawyer to act as *amicus curiae* (a friend of the court) against her wishes.

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The complaint subcommittee reviewed the letters from the complainant, considered the allegations and submitted a report to the review panel.

The review panel reviewed all of the complainant's letters and the report of the subcommittee. The panel noted that an *amicus curiae* is a lawyer who is appointed by a judge to assist the judge when there is a self-represented accused. An *amicus curiae* may, for example, educate the court on points of law that are in doubt, gather or organize information, or raise awareness about some aspect of the case that the court might otherwise miss. The review panel noted that a decision to make such an appointment is acceptable in law and is a matter that is reviewable by an appellate court. As such, the review panel found that the proper way for the complainant to proceed if she disagreed with the decision was through her legal remedies in court. The decision was a matter outside of the jurisdiction of the Ontario Judicial Council.

The review panel also noted that the complainant alleged that she had been kept in custody pending trial for long periods in time and that the court had no real proof or sufficient evidence. The review panel found that a decision to remand an accused and determinations on the evidence are matters which would need to be pursued through legal remedies in the courts, and are outside of the jurisdiction of the Ontario Judicial Council.

The review panel dismissed this complaint on the basis that the allegations were outside of the jurisdiction of the Ontario Judicial Council and closed this file.

CASE NO. 16-029/11

The complainant was involved in a physical altercation with his neighbours and was charged with four counts of assault with a weapon. The subject judge convicted him of three counts of assault with a weapon and sentenced him to a conditional sentence plus probation. The complainant appealed to the Superior Court of Justice, the Ontario Court of Appeal and the Supreme Court of Canada. A judgment for damages was issued against him in a civil action brought by the victims.

The complainant made the following allegations regarding the judge in his letter to the Council:

- 1) The judge's "tone of voice, facial expression, and body language, and the way she showed the hospital records to the defence counsel indicated utter contempt for and personal dislike of the complainant."
- 2) In her judgment, the judge "abused the provisions of the *Criminal Code* where she has the sole right to determine credibility. Her analysis was flawed and biased due to lack of impartiality she displayed at trial."

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- 3) With respect to sentence, the judge displayed bias and “interpersonal hostility”.
- 4) With respect to the probation variation hearing, the judge displayed bias.

The complaint subcommittee ordered and reviewed the audiotape and transcript of the trial, as well as the sentencing and the probation variation hearing. The subcommittee also reviewed all of the materials submitted by the complainant which included transcripts of the reasons for judgment in the criminal and civil trials, as well as a portion of the sentencing hearing, the summary conviction appeal ruling and the probation variation hearing. Following its investigation the complaint subcommittee forwarded a report to a review panel.

The review panel reviewed the complainant’s letter, the transcript of the trial, the reasons for judgment, the transcript of the probation variation hearing and the complaint subcommittee’s report.

- 1) In relation to the complainant’s first allegation above, the review panel found that this allegation was not supported by the transcript of the trial. The panel noted that the complaint subcommittee had listened to the audio recording of the trial and had reported that there was no evidence that the judge displayed a hostile tone, contempt or personal dislike toward the complainant during his trial. The review panel also noted that the complainant’s medical records were filed as an exhibit on consent of the Crown Attorney and defence counsel. Those records were filed without comment by the judge.
- 2) The panel found that the second allegation reflected the complainant’s dissatisfaction with the judge’s findings of credibility of the witnesses. The review panel noted that allegations concerning a judge’s factual findings and assessment of the credibility of witnesses were matters outside of the jurisdiction of the Judicial Council. If the complainant disagreed with the judge’s findings or with how she assessed the evidence, the proper way to proceed was through such other legal remedies as the complainant had already pursued. The review panel found no evidence that the judge displayed bias toward the complainant. The panel observed that the judge’s reasons for conviction were fully supported by the evidence.
- 3) In relation to the third allegation, the review panel noted that in the sentencing, the judge imposed a term of probation that the complainant not attend within one kilometre of the victims’ residence. In order to comply with this term, the complainant would have had to sell his home and relocate his family residence. The panel observed that the summary conviction appeal judge recognized that the trial judge imposed this term for the protection of the victims but held the term to be unreasonable given its punitive effect on the complainant and his family. The review panel found no evidence that the judge imposed the sentence due to “interpersonal hostility” toward the complainant.

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- 4) The review panel did not find any support for the allegation that the judge displayed bias at the probation variation hearing. On the contrary, the transcript showed that the judge agreed to the complainant's request that she recuse herself so that he could bring his application before the same Superior Court judge who had heard his sentence appeal. The panel noted that the judge had expressed her view that the probation order should not be terminated. While the panel observed that in the circumstances, this comment was unnecessary given that she had decided not to hear the application, the panel was satisfied that the comment concerned the merits of the application and was not an expression of any personal bias or hostility toward the complainant.

In summary, the review panel found no evidence of judicial misconduct and dismissed this complaint.

CASE NO. 16-031/11

The complainant was a court staff person. The subject judge was the Local Administrative Justice at the courthouse where she was employed.

The judge learned that, while on a day off, the complainant attended a court appearance with her "ex-partner/ friend" who was facing a criminal charge. The next day, when the complainant returned to work, she was sent home by her manager and eventually reassigned to another court position in another courthouse.

In her letter, the complainant made the following allegations:

- 1) That she was initially told that the judge did not want her back in their courthouse until her ex-partner/friend's court matter was completed. She alleged that she was later told that her manager had asked the judge when she could return and that his response was "never".
- 2) That she was exiled to another court for all of the other court staff to know, and that she has been labelled as the "black sheep" of court staff. She alleged that her reputation was harshly tainted and that her career opportunities were hurt.
- 3) That when she asked when she could return, she was told that she could not because of her poor judgment in waving to other court staff when she attended court with her ex-partner/friend. She was told that her manager had investigated the situation.
- 4) That her manager refused to give her confirmation in writing of the reason for her reassignment and it appeared that he had blacklisted her.

The complainant stated that she was tried and convicted without due process and without her participation.

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The complaint subcommittee reviewed the letter of complaint and requested that the Registrar of the Judicial Council retain outside counsel to conduct interviews of managerial staff of Court Services to obtain further information about the events that gave rise to the complaint. After receiving and reviewing the material, the complaint subcommittee submitted a report to a review panel.

The review panel reviewed the complainant's letter and the subcommittee's report.

The review panel found that the investigation showed that following the incident, the complainant was spoken to by senior management of Court Services about her attendance with her ex-partner/friend in the courtroom. The interviews confirmed that senior management also spoke with the Local Administrative Judge who had been informed about the complainant's attendance in court by another judge. The Local Administrative Judge expressed his concern that the case for which the complainant had attended was very serious and that afterwards, other judges did not feel comfortable with her in the courtroom due to her lack of judgment and her actions of that date appearing with an accused person.

The panel also found that the investigation confirmed that it was senior management of Court Services who decided that the complainant would be reassigned to another court location. As well, senior management informed her that she exercised poor judgment in attending court with her friend and that she should have told her manager about the conflict of interest.

The review panel noted that the complainant herself agreed in her complaint letter that she had exercised poor judgment. The panel had no conclusive evidence whether or not she waved in the courtroom and made no finding on that point.

The panel noted that the *Courts of Justice Act* gives the Regional Senior Justice the discretion to delegate the authority to exercise specific administrative functions to a Local Administrative Justice. One of the functions of a Local Administrative Justice is to consult with officials of Court Services Division in the Ministry of the Attorney General in his or her particular courthouse about concerns regarding the conduct and performance of court staff. The Local Administrative Justice is not only permitted but obliged to raise such concerns on behalf of the judiciary and in the interests of the proper administration of justice. The review panel found that was what had occurred in this case. The panel found that the judge expressed his concerns and requested, as he was entitled to do, that the complainant be reassigned to other duties. The actual decision to reassign the complainant was made by senior management of Court Services who had the authority to do so.

The review panel was satisfied that there was no evidence of judicial misconduct. Accordingly, the panel dismissed this complaint and closed the file.

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CASE NO. 17-001/11

The complainant appeared before the judge to seek an adjournment of his motion for leave to change a child support order. The *Family Law Rules* generally require that such a motion may be brought after six months have elapsed since the order of child support. The complainant's application was brought before six months had passed. The judge decided to deny the request for an adjournment and dismissed the motion for leave. The complainant alleged that the judge was not fair or objective and discriminated against him regarding his age and abilities. The judge was not impartial but appeared to be "full of hatred and spite."

He also alleged that the judge did not apply the proper law, and the judge's attitude and bias brought the administration of justice into disrepute. He felt that his motion was denied without just cause.

The complaint subcommittee ordered and reviewed the full transcript of the complainant's motion before the judge. When the subcommittee concluded the investigation, it submitted a report to the review panel.

The review panel reviewed the transcript and the subcommittee's report. The review panel noted that it was within the discretion of the judge to decide to deny the request for an adjournment and to proceed to hear the motion.

The transcript showed that the judge appeared to be familiar with the history of the complainant's actions in the proceedings and asked the complainant pertinent information about his present circumstances and compliance with the support order. The panel found that the transcript showed that the judge did not appear to discriminate against the complainant on the basis of his age or abilities. Rather, his comments about the age of the complainant were made in the context of his general comments about the complainant's legal responsibility, as a father, to pay support for his children. The judge also referred to the complainant's failure to make financial disclosure or file pleadings in the previous proceedings. He provided full reasons for refusing to grant the adjournment and dismissing the complainant's motion.

The review panel concluded that the complainant did not agree with the judge's decisions. The proper way for the complainant to proceed if he disagreed with how the judge assessed the evidence or determined the issues was through an appeal. The Council has no jurisdiction over such matters.

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

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CASE NO. 17-002/11

The complainant appeared before the subject judge for a pre-trial on criminal charges. Subsequently, he wrote directly to the subject judge, the Ontario Judicial Council and others of setting out his view that the judge was extremely biased against himself and in favour of the Crown Attorney. He asserted in his letter that the transcript of the judicial pre-trial clearly revealed this bias. As an example of misconduct, the complainant alleged that the judge was “loving the tanned skin” of the female Crown Attorney.

He further alleged that the judge harassed and badgered him and refused to listen to him. He also alleged that the judge’s conduct was shocking, that he refused to properly and fairly listen, that he constantly “cut off” the complainant.

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

The review panel reviewed the complainant’s letters, the transcript and the complaint subcommittee’s report. The review panel noted that the proceeding was a pre-trial to assess the amount of time needed to try the charges contained in two separate informations. The panel further noted that the transcript showed that from the outset of the proceeding, the complainant sought to bring matters to the attention of the judge that were not the subjects of the pre-trial. In particular, during the proceeding, he wanted to make allegations of wrong-doing against the Crown Attorney. The judge tried to explain that this pre-trial was not a hearing on the merits of the case but the complainant appeared to be determined to get all of his concerns about the case “on the record”. The panel found that the transcript confirmed that the judge maintained his poise throughout the lengthy hearing even though the complainant appeared to be frequently upset and excited and strayed from the business at hand.

The panel also found that a careful review of the transcript confirmed that there was no reference made by the judge to “loving the tanned skin” of the Crown Attorney, as alleged by the complainant. The review panel found that the judge’s conduct was proper and professional with respect to the Crown Attorney and to the complainant. The panel noted that the judge frequently tried to assist the complainant by advising him about the necessity of obtaining subpoenas for his witnesses and offered to assist in expediting the production of transcripts that the complainant required for a *Charter* application.

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A The review panel found that while the transcript showed that the judge frequently interrupted the complainant, it was clear that he did so to try to keep him on track. The panel also found that the complainant frequently interrupted the judge and did not want to be guided by him. However, the panel found no evidence of bias or misconduct by the judge. As well, the panel observed that the transcript also disclosed that at the end of the pre-trial, the complainant told the judge twice that he respected him.

The review panel dismissed this complaint as unfounded and the file was closed.

CASE NO. 17-004/11, 17-005/11 and 17-006/11

The complainant, who was charged with a number of serious criminal offences, appeared before several judicial officers. The complainant wrote to the Council about concerns he had in relation to three judges of the Ontario Court of Justice.

The complainant was denied bail and was held in custody pending his trial and following his conviction. In his letter, the complainant stated that he was unhappy with the manner in which his lawyer represented him and in particular that a trial date had been set without his approval.

The first two complaints were made against judges (Justice A and Justice B) who refused to vacate the trial date at the request of the complainant. He indicated that Justice A granted a request to have his lawyer removed from the record but would still not vacate the trial date. He alleged that she was unjust and that she racially discriminated against him, and would not let him respond on a motion. With respect the second judge, Justice B, the complainant alleged that even though the judge adjourned the matter for further disclosure, she still would not vacate the trial date that had been set. He also alleged that Justice B told him that if he refused to listen to her, he would be removed from the court, and after he indicated that he would not set a trial date, she had security remove him from the court room.

The third complaint was against the judge (Justice C) who presided over his trial, convicted him and sentenced him. The complainant alleged that the third subject judge (Justice C) made improper rulings during his trial, refused to let him cross-examine a witness and imposed a sentence that was illegal. He further alleged that the judge (Justice C) was prejudiced and racially discriminatory. He said that the judge had been a Crown Attorney before he was appointed to the Bench and that he did not understand the law.

The complaint subcommittee reviewed the complainant's letters to the Council and after concluding the investigation, submitted a report to a review panel.

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The review panel reviewed the complainant's letters and the complaint subcommittee's report. With respect to the complainant's objections that all three judges had refused to vacate the trial date, the review panel found that the proper way to proceed if he disagreed with these decisions was through legal remedies in court. The Council has no jurisdiction to review judicial decisions.

With respect to the allegations that Justice A racially discriminated against him, and was unfair and unjust, the panel found that these were general allegations related to his disagreement with the decision that the trial date would not be vacated. With respect to his allegations that Justice B told him that he would be removed from the courtroom if he would not listen to her, and that he was eventually removed, the panel found that a judge has the authority to maintain control of his or her courtroom. If he disagreed with her exercise of that authority, the proper way to proceed was through his legal remedies.

The panel found that the complainant's allegations with respect to Justice C related to his disagreement with the judge's decision that the trial would proceed, and his disagreement with the sentence. The complainant made general assertions that (Justice C) was prejudiced and racially discriminatory but provided no evidence or particulars other than his unhappiness with the rulings and sentence of the trial judge (Justice C).

The review panel found what the complainant was seeking was a review of his conviction and sentence by the Ontario Judicial Council – a remedy that could not be ordered as it is outside of the jurisdiction of the Council. Only a court can review the correctness of a conviction or sentence. The review panel found that there was no support for a finding of judicial misconduct and dismissed the complaints against all three judges and closed the files.

CASE NO. 17-007/11

The complaint arose out of an appearance in youth court for the sentencing of the complainant's son, a young offender, before the subject judge.

The judge reviewed a disposition report about the youth and his background before the sentencing. After the sentencing was completed but before turning to another matter, the judge directed some remarks to the father of the youth. It was these remarks that led to the complaint brought by the father.

The complainant alleged that the judge said, "I need to back off and be less concerned about my son's hair style and what my son does hereafter." The complainant indicated that he was very upset that the judge rebuked him in front of his son and estranged spouse. He also indicated

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that he tried to address the judge about his displeasure with the remarks after the ex-spouse, his son and the lawyer left the courtroom. He stated that he was sent away while being told that the sentencing had already passed and there was nothing further to discuss.

He viewed the remarks as hostile toward him and asked in his letter of complaint that the judge apologize to him. He felt the remarks were made gratuitously by the judge when he did not have all of the facts of his relationship with his son. He felt that the judge had a responsibility to give him an opportunity to explain his misconceptions about himself or the relationship he had with his son or ex-spouse. He also feared that the remarks of the judge would be used against him in his divorce proceedings, and wanted a letter of apology that he could use to reaffirm his position in family court.

The complaint subcommittee ordered and reviewed the transcript of the proceeding. A member of the subcommittee also listened to the audio recording. Following the investigation, the subcommittee submitted a report to the review panel.

The review panel reviewed the letter of complaint, the transcript of the proceedings and the subcommittee's report. The panel found that the record confirmed that after sentencing the youth, the judge said to the father, "Dad, lay off. Let him go by himself. It is the best help you can give him right now. Back off and give him some space." His Honour also said, "Lay off. Let him grow, forget about his hair. Do not get hung up about silly issues."

The review panel noted that the record showed that the pre-sentence report discussed a difference of opinion between the parents on the kind of discipline to impose on their son. The subject of discipline was raised in submissions by counsel.

The panel found that the record showed that at the time when the complainant told the judge that the information received from duty counsel was not exactly correct and that the remark was a very unfair statement, the sentencing had already been imposed and the lawyer had been told to take the youth to the probation office. The judge said he was sorry that he made the statement and that the case was over.

After reviewing the record, the review panel found in the context of the case, the remarks by the judge were made without malice and with good intentions. It was clear from the record that the judge intended the comments as advice to the complainant in relation to his son, and not to be hurtful. His Honour verbally apologized on the record for his remark.

The review panel concluded that while the comments were unfortunate and would have been better left unsaid, they did not meet the standard of judicial misconduct. The review panel dismissed this complaint and closed the file.

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CASE NO. 17-008/10

The complainant was the husband of a defendant who appeared before the subject judge for trial on a charge of uttering a death threat. He stated that he stood up when the judge was talking about remanding the case, and said that he did not want a remand and wanted the matter to proceed. He alleged that the judge told him that it was none of his business and ordered him out of the courtroom. The complainant also indicated that he had power of attorney for his wife because she was mentally challenged. He alleged that after he left the courtroom, the judge told her anything could happen and scared her into signing a resolution. He alleged that his wife signed the papers without counsel, without her husband and without knowing what was happening. He felt that she was “ganged up on by all the professionals” in the courtroom. Also, he indicated that he had a horror story of another case in which the judge had been involved.

The investigating complaint subcommittee reviewed the letter of complaint and ordered and reviewed the transcript and audiotape of the proceeding and submitted a report to a review panel. The review panel reviewed the letter of complaint, the transcript of the proceeding and the subcommittee’s report. The panel noted that the transcript confirmed that it was the complainant’s wife who was facing the criminal charge, not the complainant. The transcript also showed that the complainant’s wife requested an adjournment in order to bring a missing defence witness to court. The transcript confirmed that the complainant was opposed to such an adjournment and voiced his objection to the court. The panel observed that the judge rightly pointed out that the complainant’s wife’s need for an adjournment outweighed any inconvenience that an adjournment might cause the complainant. The review panel also found that the court record showed that the judge did not tell the complainant that “it was none of [his] business”, as alleged.

With respect to the allegation that the judge ordered the complainant from the courtroom, the transcript showed that after the judge decided that an adjournment was necessary, the Crown Attorney suggested that a judicial pre-trial be conducted with respect to this case. The judge explained the pre-trial process to the accused’s wife and after she indicated her agreement to having a pre-trial, he asked that the courtroom be cleared for the purposes of conducting a pre-trial. A judicial pre-trial is an informal discussion intended to promote resolution or narrow the issues and number of witnesses for trial. A judicial pre-trial is not usually held in public or in the presence of potential witnesses. The complainant was a potential defence witness. Accordingly, the review panel found that it was appropriate that the complainant and others were excluded from attending the judicial pre-trial hearing.

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A With respect to the allegation that the judge coerced the complainant's self-represented wife into entering into a section 810 peace bond, the review panel found that this allegation was unfounded. The transcript and the audio recording showed that at the outset of the judicial pre-trial, the judge inquired whether duty counsel could assist the complainant's wife. The Crown Attorney informed him that duty counsel would not be assisting her. The complainant's wife did not request counsel.

There was no evidence in the court record that the judge or anyone else "ganged up" on the complainant's wife to resolve her charge, as alleged by the complainant. Rather, the panel found that the court record showed that after providing the judge with a summary of the allegations against the accused, the prosecutor suggested that one possible resolution was a section 810 peace bond with a term that the complainant's wife must have no contact with the alleged victim and her children. The judge explained to the complainant's wife that if she had, in fact, made the alleged threat, she could agree to enter into a peace bond. He explained to her that it would be a court order that would require her to keep the peace and not have any contact with the victim and her children for a period of one year. The review panel found that judge never told the complainant that she might go to jail. The complainant's wife then told the judge, "I'll take the peace bond." The complainant's wife then explained the circumstances surrounding the incident, including the fact that she was intoxicated at the time of the threat. There was no indication that the complainant's wife had any difficulty understanding the nature of the proceeding or what the judge and prosecutor were saying.

The panel found that the transcript revealed that the judge listened patiently to the complainant's wife and carefully explained to her the consequences of violating the peace bond. The panel found that the judge treated the complainant's wife fairly throughout the proceeding and maintained a respectful and friendly tone during the judicial pre-trial.

The complainant also indicated that the complainant's wife was mentally challenged and that he held power of attorney for her. The panel noted that if that was the case, it was never brought to the judge's attention. The panel found that, more importantly, there was no suggestion in the court record that the complainant's wife was unfit to stand trial or incapable of representing herself. She understood the allegations and provided the judge with background information regarding the alleged offence. She was able to comprehend her various legal options and she was content to sign a peace bond.

With respect to the allegation that the complainant had a horror story of another case in which the judge had been involved, the panel found that there was no information or evidence provided to support that allegation.

The review panel found no evidence of judicial misconduct and dismissed this complaint.

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CASE NO. 17-009/11

A complaint was received and assigned to a complaint subcommittee for investigation. Before the investigation was completed, the Council was informed that the subject judge had retired. As a result, the Council lost jurisdiction and this file was closed administratively.

CASE NO. 17-012/11

The complainant entered a plea of guilty to a charge of assault. He had been in custody for a psychiatric assessment for 60 days prior to the plea and the sentencing judge had available to him a twelve page psychiatric report. The following allegations against the sentencing judge were made:

- 1) The judge ordered that the complainant must take medication as prescribed and follow the directions of a named psychiatrist. The complainant said this caused him anxiety since the judge did not know the doctor.
- 2) The date on the probation order was a date when the complainant was not in court.

The complaint subcommittee reviewed the letter of complaint and prepared and submitted a report to a review panel. The review panel reviewed the letter of complaint and the subcommittee's report.

The review panel determined that both of the allegations fell outside the jurisdiction of the Ontario Judicial Council. If the complainant was of the view that the judge made errors in assessing the evidence or determining any of the issues, the proper way for the complainant to proceed would have been through an appeal.

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

CASE NO. 17-018/11

The complainant wrote to the Council after reading a newspaper article relating to the trial and sentencing of a G20 activist before the subject judge.

The complainant took exception to the findings of fact made by the judge and asked in his letter to the Council if "this wilful lack of understanding by [this judge] warrant(s) censure?" He is strongly supportive of the actions taken by the police and states that is essential that "rioters and those protecting them be held accountable for their actions." The complainant expressed the view that the judge was derelict to the point of misconduct in his rulings and findings that did not adequately support the police in doing their difficult job.

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

The panel noted that the judge was expected to exercise his independent judgment on the particular charges and evidence before him in accordance with the Rule of Law. The review panel found that the concerns expressed by the complainant were all matters that were within the jurisdiction for an appellate court to consider but were not within the authority and jurisdiction of the Ontario Judicial Council.

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

CASE NO. 17-019/11

The complainant pled guilty before the subject judge to the offence of failing to remain at the scene of an accident, contrary to section 252 of the *Criminal Code*. As part of the sentence, the judge imposed a six month driving prohibition. The complainant informed the Council that when she went to retrieve her driver's licence from the Ministry of Transportation, she was advised that regardless of the subject judge's decision, there was also a mandatory one year driving suspension pursuant to the *Highway Traffic Act* for failing to remain at the scene of an accident.

The complainant wrote to the Council stating that she "would like an investigation into whether the judge knowingly gave me a sentence that he knew could not be enforced". In a second letter to the Council, she stated: "My complaint relates to the conduct of Justice [name] in that the sentence he passed was neither transparent nor legally binding when referring to the *Ontario Highway Traffic Act*."

The complaint subcommittee reviewed the letters from the complainant. The subcommittee prepared a report which was submitted to a review panel.

The review panel noted that section 42(1)(b) of the *Highway Traffic Act* provides that the licence of a person convicted under section 252 of the *Criminal Code* will be suspended upon the first conviction for one year. This mandatory *Highway Traffic Act* suspension operates independently of any other driving prohibition imposed by a sentencing judge. While the review panel noted it would have been preferable for the judge, in his plea comprehension inquiry, to indicate that there was a mandatory administrative driving suspension, the failure to do so was not judicial misconduct.

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The review panel found that this complaint related to the propriety of the sentence imposed by the judge and, as such, was a matter outside of the jurisdiction of the Judicial Council. If the complainant disagreed with the sentence imposed by the judge, the proper way to proceed would be through her legal remedies through the appeal process.

The review panel found no evidence of judicial misconduct and dismissed this complaint on the basis that it was a matter outside of the jurisdiction of the Council.

CASE NO. 17-020/11

The complainant was charged with two *Criminal Code* offences including Refusing to Provide a Breath Sample and Assaulting a Peace Officer. He appeared before the subject judge on a date to set a date for trial. The two charges subsequently proceeded to trial before a different judge. One charge was dismissed, while the complainant was found guilty and sentenced on the second charge.

In his letter to the Council, the complainant alleged that the judge was “reckless and incompetent” for setting a date for trial. He also believed that the judge should not have pursued “frivolous and obviously fabricated charges in face of obvious evidence to the contrary”.

A complaint subcommittee of the Ontario Judicial Council considered the complainant’s letters and submitted its report to a review panel.

The review panel reviewed the correspondence from the complainant and the report from the subcommittee. The panel determined that the complaint centred on the manner in which the judge exercised his discretion during the pre-trial process rather than on judicial misconduct. The panel noted that the judge would have committed a serious error in law if he had not set the charges for trial and had simply stayed the charges without sworn evidence being called and without giving all parties an opportunity to be heard. By setting a trial, the judge upheld the principles of the criminal legal system.

The review panel found that there was no judicial misconduct. Rather, this complaint was outside of the jurisdiction of the Ontario Judicial Council. The panel dismissed this complaint and closed the file.

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Case Summaries

CASE NO. 17-021/11

The complainant wrote to the Council from a psychiatric ward of a hospital. He alleged that the judge made “fraudulently applied custodial arrangements” approximately four years prior to the time when the complaint was filed. The complainant also alleged that the judge must have been aware of the status of an appeal that the complainant had filed earlier of a previous decision of the judge. He also alleged that the judge was lacking in judicial impartiality. With his letter of complaint, the complainant included a copy of the transcript of the criminal court proceedings before the judge.

The complaint subcommittee reviewed the complaint letter and the transcript. The subcommittee submitted a report to the review panel.

The review panel reviewed the complainant’s letter, the transcript of the court proceedings and the subcommittee’s report. The panel noted that the transcript showed that the judge made a finding that the complainant was not guilty of an offence on the grounds that he was not criminally responsible. It was this finding that the complainant alleged was illegal. If the complainant disagreed with the decision that he was not guilty on the grounds that he was not criminally responsible, the proper way to proceed was through his legal remedies in the courts.

The review panel further noted that that transcript showed that the complainant was represented by duty counsel at the hearing. When the charges were read out, the complainant entered a plea of not criminally responsible. The transcript confirmed that the judge had a medical report before him that supported that plea. The panel observed that neither the Crown Attorney nor the duty counsel objected to the plea or the finding. The review panel found that there was nothing in the transcript that supported the complainant’s allegation that the order made by the judge was illegal or that there was any partiality or bias on the part of the judge.

For the reasons noted, the review panel dismissed this complaint on the basis that it was outside of the jurisdiction of the Council and unsupported by the evidence and closed the file.

CASE NO. 17-024/11

The complainant acted as agent for his wife at a *Provincial Offences Act* appeal before the subject judge. In his letter to the Council, the complainant made the following allegations:

- 1) The judge did not properly interpret or apply the law;
- 2) The judge admitted at the outset that he had not read all of the materials filed; and

APPENDIX A

Case Summaries

3) The judge admitted that he had no understanding of the grounds of appeal.

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

The review panel reviewed the letter of complaint, the complaint subcommittee's report and the transcript of the appeal. The review panel found that the first allegation was outside of the jurisdiction of the Council as it was not a matter of judicial conduct and related instead to the judge's decision. The panel noted that if the complainant disagreed with how the judge interpreted or applied the law, the proper way to proceed would have been through his legal remedies in the courts, such as an appeal of the judge's decision.

With respect to the second allegation, the review panel noted that when asked if he had read the materials, the judge said that he had read the transcript of the trial and the reasons for judgment. The review panel noted that the record showed that the judge had not read all of the supporting material for the appeal prior to the hearing. However, the record also showed that the judge repeatedly gave the complainant an opportunity to explain the issues that he relied upon in his appeal and to point out in the transcript where the issues arose. The review panel found the trial judge was patient in listening to the complainant and in trying to assist him to articulate the grounds of appeal. The panel concluded that the actions of the judge did not amount to judicial misconduct.

With respect to the third allegation, the review panel noted that the judge did say that he failed to understand the grounds of the appeal. However, he also repeatedly and patiently invited the complainant to show him how the justice of the peace made any error. The complainant was unable to identify any error in law. The review panel also noted that the trial judge in his reasons concluded that there were no grounds for appeal contained in the Notice of Appeal. The judge said, "But because he is not a lawyer or – nor does he have legal training, I have reviewed the transcript and the decision of the Justice of the Peace [name redacted] to determine whether or not there is anything in Justice of the Peace [name redacted]'s reasons which would indicate to me that he made a palpable and overriding error, or that his decision was unreasonable." The review panel found that this allegation was a matter related to the judge's decision and did not support a finding of judicial misconduct. The panel also found the judge to be patient and fair.

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

APPENDIX B

**CONTINUING
EDUCATION PLAN
FOR JUDGES
OF THE
ONTARIO COURT
OF JUSTICE**

APPENDIX B

Continuing Education Plan for Judges of the Ontario Court of Justice

ONTARIO COURT OF JUSTICE

CONTINUING EDUCATION PLAN 2011-2012

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.

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Continuing Education Plan for Judges of the Ontario Court of Justice

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.

In 2011-2012, a reference guide setting out judicial abilities and skills that should be addressed and enhanced through education was approved by the Education Secretariat and adopted by the Chief Justice. The guide will also enable the Secretariat to compare the learning objectives of prospective programs to the competencies needed by the judges. The Secretariat is grateful for the leadership of Susan Lightstone in this project.

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Continuing Education Plan for Judges of the Ontario Court of Justice

Judicial Abilities and Qualities¹

A. Knowledge and Technical Skills

Sound knowledge of the law, procedure and their application.
Rapid mastery of unfamiliar areas of law. Maintains bilingual skills.

B. Communication and Authority

Listens and communicates effectively.
Establishes and maintains authority of the court.
Manages hearing to enable fair and timely disposal.

C. Decision making

Sound judgment.
Appropriate exercise of discretion.

D. Professionalism and Civility

Maintains independence and authority of the court.
Maintains personal independence and integrity.
Promotes highest standards of behaviour in court.

E. Effectiveness

Manages hearings to facilitate fair and timely disposal.
Actively manages cases to promote effective and just conclusion of business.
Applies technologies to effectively manage cases.

F. Leadership Skills for Puisne Members of the Judiciary

Sets tone for the court and courthouse.
Shows interest in upholding a positive image of the organization.
Demonstrates ethics, collegiality and support of colleagues.

G. Leadership & Management Skills for Administrative Judiciary

Strategically plans and organizes.
Manages change.
Supports and develops talent.
Manages judicial resources.
Encourages and facilitates teamwork.

1. Adapted from: U.K. Judicial Studies Board, Framework of Judicial Abilities and Qualities, October 2008.

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Continuing Education Plan for Judges of the Ontario Court of Justice

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

- ♦ First Year Education
- ♦ Continuing Education

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.

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Continuing Education Plan for Judges of the Ontario Court of Justice

In April of their first year, new judges are encouraged to attend a six-day New Judges' Education Program presented by the Canadian Association of Provincial Court Judges (CAPCJ). This intensive one-week program is largely substantive in nature and is oriented to criminal law. In 2011, the program was presented at Château Bromont in the province of Quebec. In 2010, the curriculum was reviewed and the course shortened by 2 days.

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. It is constantly refreshed. In 2010, new teaching problems were developed to enhance the skills of family court judges and a new module was presented on problem-solving approaches to criminal and family dispositions.

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 available 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 involvement 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.

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Continuing Education Plan for Judges of the Ontario Court of Justice

(A) PROGRAMS ADMINISTERED 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”.

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.

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2) “As Needed” Recurring Programs

These are programs presented annually or biannually with limited enrolment. They fulfill 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) PRE-RETIREMENT SEMINARS: This program assists judges and their domestic partners in their retirement planning. The 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 2012.
- b) 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.
- c) 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. In 2010, the Education Secretariat chose to explore new ways to prepare new family court judges. The development of this program will continue in 2012.

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Continuing Education Plan for Judges of the Ontario Court of Justice

- d) **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 Provincial 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.

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.

- e) **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

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Continuing Education Plan for Judges of the Ontario Court of Justice

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. In 2010, this program was taken over by the National Judicial Institute. The timing of this week-long event in June and the changing demographic of this Court has resulted in a steady drop in attendance. No replacement program was developed in 2010. In 2011, the Education Secretariat decided to indefinitely suspend this program. A substantial part of the program budget was assigned to the Conference Attendance Committee to support and encourage judges to address their individual educational needs.

- f) JUDICIAL ADMINISTRATION CONFERENCE: This is an occasional 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. The program returned in January 2011 and was attended by five Chief Judges and seven Associate Chief Judges from other provinces as well as 70 judges of the Ontario Court. It was not held in 2012.
- g) 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 was 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 2010, this course was extensively redesigned in response to course evaluations recommending it focus on judges with entry-level computer skills. A further refresh of the curriculum is now under way for the fall of 2012. In response to changing needs, the course will be at the intermediate level with an emphasis on electronic legal research.

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.

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Continuing Education Plan for Judges of the Ontario Court of Justice

- h) 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 Harassment 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. A follow up two-day course was presented in the fall of 2010 to develop mediation skills. In 2011, a special course was developed to consider the needs of aboriginal offenders in an urban setting. A particular focus of the program was to support the expansion of courts sensitive to native issues and the application of Supreme Court of Canada decision, *R. vs. Gladue*.

(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 is 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

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- ♦ 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)
- ♦ French Language Education at Caraquet, New Brunswick and Quebec City

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. 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. Over the last two years, the budget has quadrupled as some resources assigned to the University Program were shifted to enable judges to define and meet their individual education needs.

- 3) 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.
- 4) 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.

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Continuing Education Plan for Judges of the Ontario Court of Justice

- 5) 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

Principles of Judicial Office

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

PRINCIPLES OF JUDICIAL OFFICE

PREAMBLE

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

Judges must be free to perform their judicial duties without fear of reprisal or influence from any person, group, institution or level of government.

In turn, society has a right to expect those appointed as judges to be honourable and worthy of its trust and confidence.

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

The following principles of judicial office are established by the judges of the Ontario Court of Justice and set out standards of excellence to which all judges subscribe.

These principles are not exhaustive. They are designed to be advisory in nature and are not directly related to any specific disciplinary process. Intended to assist judges in addressing ethical and professional dilemmas, they may also serve in assisting the public to understand the reasonable expectations which the public may have of judges in the performance of judicial duties and in the conduct of judges' personal lives.

APPENDIX C

Principles of Judicial Office

PRINCIPLES OF JUDICIAL OFFICE

1. THE JUDGE IN COURT

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

Commentaries:

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

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

- 1.2 Judges have a duty to follow the law.

Commentaries:

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

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

Commentaries:

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

2. THE JUDGE AND THE COURT

- 2.1 Judges should approach their judicial duties in a spirit of collegiality, cooperation and mutual assistance.
- 2.2 Judges should conduct court business with due diligence and dispose of all matters before them promptly and efficiently having regard, at all times, to the interests of justice and the rights of the parties before the court.
- 2.3 Reasons for judgment should be delivered in a timely manner.
- 2.4 Judges have a duty to maintain their professional competence in the law.

Principles of Judicial Office

Commentaries:

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

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

Commentaries:

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

3. THE JUDGE IN THE COMMUNITY

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

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

Commentaries:

Judges must not participate in any partisan political activity.

Judges must not contribute financially to any political party.

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

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

Commentaries:

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