OJC

TWENTIETH ANNUAL REPORT

2014 – 2015

ONTARIO
JUDICIAL COUNCIL

The Honourable George R. Strathy

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

The Honourable Lise Maisonneuve

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

ONTARIO JUDICIAL COUNCIL

February 5, 2016

The Honourable Madeleine Meilleur
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 twentieth 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, 2014 to March 31, 2015.

Respectfully submitted,

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

Lise Maisonneuve
Chief Justice
Ontario Court of Justice

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INTRODUCTION

The period of time covered by this Annual Report is from April 1, 2014 to March 31, 2015.

The Ontario Judicial Council investigates complaints made by the public about the conduct of provincially-appointed judges. In addition, it approves the continuing education plan for provincial judges. 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 350 provincially-appointed judges, including full-time and *per diem* judges during the period of time covered by this Annual Report. Most of the judicial officers whose conduct is under the jurisdiction of the Ontario Judicial Council preside over proceedings 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 2014, the population was approximately 13,792,100. In an average year, judges of the Court deal with over 215,000 adult and youth criminal cases and over 21,000 new family law proceedings. The Court holds sittings at approximately 200 locations across Ontario, ranging from large courthouses in cities to fly-in locations in northern Ontario.

The Ontario Judicial Council received 30 new complaints in its twentieth year of operation, as well as carrying forward 25 complaint files from previous years. Of these 55 complaints, 31 files were completed and closed before March 31, 2015. Twenty-four complaints remained open to be carried over into the twenty-first year of operation. Information about the 31 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 for orders of accommodation of a judge's needs resulting from a disability or requests for continuation in office after age 65 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 except for complaint subcommittee and 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 twentieth year of operation (April 1, 2014 to March 31, 2015) was as follows:

Judicial Members:

CHIEF JUSTICE OF ONTARIO

The Honourable George R. Strathy ..... (Toronto)
Co-Chair (Effective June 13, 2014)

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 Lise Maisonneuve ..... (Toronto)

REGIONAL SENIOR JUSTICE

The Honourable Martin Lambert ..... (Sudbury)

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

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

The Honourable Justice Peter De Freitas ..... (Oshawa)

Lawyer Members:

TREASURER OF THE LAW SOCIETY OF UPPER CANADA

Mr. Thomas G. Conway, Cavanagh LLP ..... (Ottawa)
(Until June 25, 2014)

Ms. Janet Minor..... (Toronto)
(Effective June 26, 2014)

LAWYER MEMBER APPOINTED BY THE LAW SOCIETY OF UPPER CANADA:

Mr. Paul R. Sweeny, Evans Sweeny Bordin LLP ..... (Hamilton)
(Until March 30, 2014)

Community Members:

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

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

Mr. Farsad Kiani ..... (Markham)
President and Chief Executive Officer at ENSIL Canada Inc.

Mr. Ranjit Singh Dulai ..... (Brampton)
President and Chief Executive Officer at Petroleum Plus
(Effective July 23, 2014)

Members – Temporary

Sections 87 and 87.1 of the *Courts of Justice Act* give the Ontario Judicial Council jurisdiction over complaints made about 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 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 – 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:

The Honourable Mr. Justice M. Don Godfrey ..... (Superior Court of Justice)

The Honourable Madam Justice Pamela Thomson ..... (Superior Court of Justice)

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

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

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

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 Sally Marin ..... (Toronto)

The Honourable Justice Manjusha Pawagi..... (Brampton)

The Honourable Justice Barry Tobin ..... (Windsor)

3. ADMINISTRATIVE INFORMATION

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

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

In the twentieth 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*

Ms. Michelle M. Boudreau – *Assistant Registrar*
(Effective June 23, 2014)

Ms. Janice C. Cheong – *Administrative Secretary*
(Until February 20, 2015)

Ms. Ingrid Richards – *Administrative Secretary*
(Effective February 23, 2015)

4. FUNCTIONS OF THE JUDICIAL COUNCIL

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

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

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

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

The Council amended its Procedures to make it clearer that the Council's jurisdiction is limited to complaints about conduct and to reflect its practice of referring persons to more appropriate offices or bodies, where applicable. The following amendment was incorporated into the Procedures:

> No Allegations about Conduct
>
> If a complaint does not contain allegations about the conduct of a provincially-appointed judge, the Registrar will write to the complainant to inform him or her that there do not appear to be any allegations about conduct and that the jurisdiction of the Judicial Council is limited to the investigation and review of complaints about conduct. The Registrar will inform the complainant that if he or she disagrees with how the judge interprets or applies the law, the proper way to proceed is by remedies through the courts, such as an appeal.
>
> Where the complaint relates to other participants in the justice system, staff of the Office of the Council will refer the person to the appropriate agency or office where the concerns may be pursued.
>
> *Commentary:*
>
> The Judicial Council does not have the legal authority to change a decision of a judicial officer.

Commentary:

The Judicial Council has determined that allegations about the interpretation or application by a judge of section 136 of the *Courts of Justice Act or the Protocol Regarding the Use of Electronic Communication Devices in Court Proceedings* are not, in and of themselves, complaints about conduct.

The Council noted that its Procedures did not reflect its delegation to the Registrar the authority to issue and sign summonses. Amendments were made that reflect the Council's decision that if Presenting Council or the Respondent requires a summons for persons to attend to give evidence at a hearing, or documents or things to be produced at a hearing, the Registrar has authority to issue and sign the summons.

The Council considered the sections of the Procedures that relate to circumstances where a judge is invited by a complaint subcommittee to respond to the complaint. An amendment was made to reflect each complaint subcommittee's discretion to decide whether to invite a response to a complaint from the subject judge without specifying particular concerns, or whether to specify particular concerns. The wording was also amended to make it clearer that it is the subcommittee who is identifying the concerns to which a response is invited, not the Registrar.

Section 45 of the *Courts of Justice Act* provides that a provincial judge who believes that he or she is unable, because of a disability, to perform the essential duties of office unless his or her needs are accommodated may apply to the Judicial Council for an order that the needs be accommodated to the extent necessary to enable him or her to perform those duties. An order by the Council binds the Crown. The Council was informed that the Ministry of the Attorney General developed a process for judicial officers to request accommodation of needs arising from disabilities. The Council recognized that the Ministry's process provided a means for applications to be addressed consistently and comprehensively. The Council recognized that the Ministry has the resources and means to assess and meet needs. They are aware of equipment that may already be available in courthouses to meet needs.

The Council amended its Procedures to avoid the risk of duplication in considering an application for accommodation and to improve the evidence available to the Council, if an application for accommodation were received. The amendment indicates that for the Judicial Council to properly consider an application, the applicant judge must first pursue the accommodation of needs process that is available for judicial officers through the Ministry of the Attorney General. When that process has been completed, the judge must provide a copy of all documents, medical evidence and decisions resulting from the application process.

Previously, there was a section in the Procedures that dealt with internal administrative matters. The Council decided that section should be a separate document provided to staff and Council members.

The issue arose as to whether the legislative framework permits a complainant to disclose a disposition letter. The Council considered the following policy considerations:

> The *Courts of Justice Act* provides a unique framework for the complaints process that balances judicial independence and judicial accountability.
>
> The legislative framework contemplates that names of judges will not be released unless there is a hearing. The investigation of complaints must be conducted in private: section 51.2(6). The Council must make decisions on the appropriate disposition of a complaint in private: section 51.4(18). The names of complainants and judges may not be included in the Annual Report. In each Annual Report, there is a summary of every case that has been reviewed and closed by the Council during the period of time covered by the report. As required, by section 56(6) of the *Act,* names of the complainants and subjects of complaints cannot be published, unless a public hearing is ordered.

After considering the policy reasons, the Council made an order that: Pursuant to subsection 49(24) of the *Courts of Justice Act,* subject to an order by a review panel or a hearing panel, any information or documents relating to a meeting, investigation or hearing that was not held in pubic are confidential and shall not be disclosed or made public.

In keeping with the Council's responsibility to make public the rules that govern its Procedures, the Council amended the Procedures to reflect the order made by the Council so the judiciary and members of the public are aware of it. The amendment reflected that circumstances can arise where an order needs to be made by the full Council:

> The Judicial Council has ordered that, subject to an order by the Council, a review panel or a hearing panel, any information or documents relating to a mediation or a Council meeting or hearing that was not held in public are confidential and shall not be disclosed or made public. The order applies whether the information or documents are in the possession of the Judicial Council, the Attorney General or any other person. The order of non-disclosure does not apply to information and/or documents that the *Courts of Justice Act* requires the Judicial Council to disclose or that have not been treated as confidential and were not prepared exclusively for the purposes of the mediation or Council meeting or hearing.

The Toronto Star and the Criminal Lawyers' Association made an application for disclosure of materials from a complaint file and challenged the validity of the order of confidentiality. The Council's decision on the application was not issued during the period covered by this Annual Report. The decision will be posted on the Council's website at **www.ontariocourts.ca/ocj/ojc/confidentiality/** under the menu item Confidentiality.

The Council added a commentary into the hearings section of the Procedures after the potential dispositions are listed to better inform the public of the considerations in determining the disposition when a hearing is ordered. The amendment explained that in determining the appropriate disposition, it is necessary to focus on what is required to restore public confidence in the judge and in the judiciary. The amendment reflected the law that once it is determined that a disposition under s. 51.6(11) is required, the Hearing Panel should first consider the least serious – a warning – and move sequentially to the most serious – a recommendation for removal – and order only what is necessary to restore the public confidence in the judge and in the administration of justice generally. The amendment included a list of non-exclusive factors set out in case law on judicial discipline relevant to an assessment of the appropriate sanction for judicial misconduct.

The Council observed that if a hearing is ordered, a judge and Presenting Counsel may decide to use an Agreed Statement of Facts as evidence in a hearing. The Council added a template into the Procedures that can be used if there is an Agreed Statement of Facts. The Council observed that including basic background and wording in such documents can serve the purpose of educating and information members of the public or the media who read the exhibit about the judicial disciplinary process.

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

5. EDUCATION PLAN

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

6. COMMUNICATIONS

The website of the Ontario Judicial Council continues to include information regarding the Council, as well as information about any upcoming hearings. Updates on ongoing hearings are posted on the website under the link "Public Hearings". Copies of "Public Hearings Decisions" 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 Peter DeFreitas was appointed by the Judicial Council to act as its representative on the Judicial Appointments Advisory Committee during the period covered by this report.

9. THE COMPLAINTS PROCEDURE

Any person may make a complaint to the Judicial Council about the **conduct** of a judge. Complaints must be made in writing. The governing legislation and the principles of natural justice do not provide for the Judicial Council to act on anonymous complaints or to initiate inquiries into the conduct of a judicial officer. Rather, an investigation conducted by the

Judicial Council must be in response to specific allegations submitted by a complainant. All correspondence is reviewed to determine whether or not the complaint is within the jurisdiction of the Judicial Council. If an individual is complaining about his/her lawyer, a Crown Attorney or another office, the complainant is referred to the appropriate office of authorities to make the complaints.

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

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 two-person complaint subcommittee for review and investigation. A complaint subcommittee of Judicial Council members, comprised of a provincially-appointed judicial officer (a judge, other than the Chief Justice of the Ontario Court of Justice) 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. There, of the six persons who consider each complaint, at least half of the members are not judges under subsection 51.4(18) the Council (or a review panel thereof) may decide upon the following dispositions:

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

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

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

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

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

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

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

C) Hearings under Section 51.6

Hearing panels are made up of four 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 judge of the Ontario Court of Justice and a lawyer also sit on the hearing panel.

A hearing into a complaint is public unless the Council determines, in accordance with criteria established under subsection 51.1(1) of the *Courts of Justice Act,* that exceptional circumstances exist and the desirability of holding an open hearing is outweighed by the desirability of maintaining confidentiality, 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 disposition.

D) Removal from Office

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

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

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

10. NOTIFICATION OF DISPOSITION

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

11. LEGISLATION

The official version of the *Courts of Justice Act,* which governs the work of the Ontario Judicial Council is posted on the government's e-laws website at:
www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c43_e.html

12. COMPENSATION FOR LEGAL COSTS INCURRED

When the Judicial Council has dealt with a complaint, section 51.7 of the *Courts of Justice Act* makes provision for a judge to request compensation for 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 may make a recommendation to the Attorney General that a judge be compensated, indicating the amount of compensation. Pursuant to section 51.7(7) of the *Act,* the Council's order for compensation may relate to all or part of the judge's costs for legal services and must be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services. The Attorney General is required to pay compensation to the judge if such a recommendation is made. One recommendation for compensation was made to the Attorney General during the period covered by this report.

13. SUMMARY OF COMPLAINTS

The Ontario Judicial Council received 30 complaints in its twentieth year of operation, as well as carrying forward 25 complaint files from previous years. Of these 55 complaints, 31 files were closed before March 31, 2015.

One of the files closed was from the sixteenth year (2010-2011). This file had been opened and then the complainant initiated a related court proceeding. 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 file was held in abeyance until the conclusion of the court proceedings.

One file was from the seventeenth year (2011-2012), two from the eighteenth year (2012-2013), 19 from the nineteenth year (2013-2014) and eight from the twentieth year.

Of the 31 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, three related to allegations about a judge's conduct outside of court, one arose from complainant's disagreement with policies of the Ontario Court of Justice. and one arose from a matter in Small Claims Court.

Seven of the 31 complaint files closed by the Ontario Judicial Council during the period of time covered by this report were dismissed on the basis that they were found to be outside of the jurisdiction of the Council. This occurred if a complainant expressed dissatisfaction with the result of a trial or with a judge's decision, but the complaint contained no

allegation of misconduct. While the decisions made by the trial judge in these cases could be appealed, the absence of any alleged misconduct meant that the complaints were outside of the jurisdiction of the Judicial Council.

Twenty-one of the 31 files closed were dismissed by the Council on the basis that they contained allegations of misconduct that were unfounded or that did not amount to judicial misconduct. The complaints included allegations such as improper behaviour (e.g., rudeness, belligerence, etc.), lack of impartiality, conflict of interest or some other form of bias. The allegations contained in each of these files were reviewed and investigated in each case by a complaint subcommittee and considered by a review panel before a decision was made.

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

A review panel will order a hearing where a majority of the members of the review panel are of the opinion that there has been an allegation of judicial misconduct which the majority of the members believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct. A complaint had been ordered to a public hearing in relation to a complaint about the conduct of the Honourable Justice Dianne M. Nicholas. Before the hearing process concluded, Her Honour retired from office. The Council lost jurisdiction and the file was administratively closed. A decision from the Hearing Panel is included in Appendix C of this Report and is available on the Council's website under the link Public Hearings Decisions.

A complainant wrote a letter about a complaint previously dismissed by the Council. He was unhappy with how the complaint was addressed. The members considered the statutory framework imposed by the *Courts of Justice Act* and the law governing the review of decisions made by an administrative tribunal to determine whether it had the authority to investigate how a previous review panel addressed the complaint. The Judicial Council concluded that it does not have the jurisdiction or legal authority to investigate the process followed by a review panel or to reconsider the decision that was made under section 51.4(18) of the *Act* on the appropriate disposition.

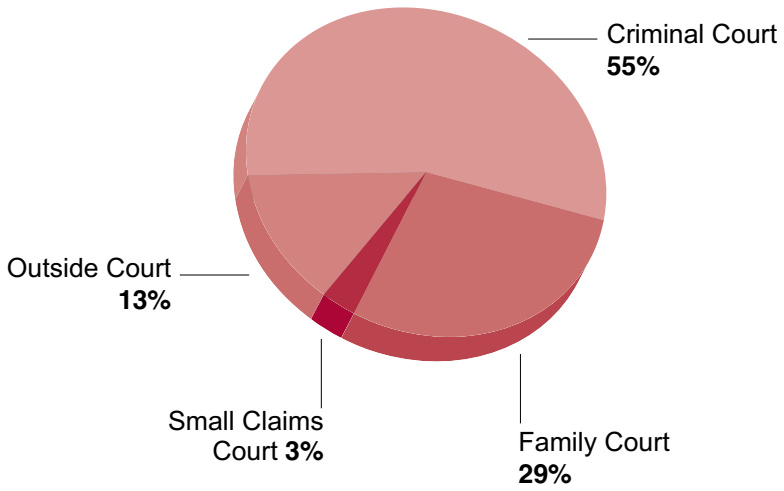
Twenty-five complaints remained open to be carried over into the twenty-first year of operation. Of those 25 files, three were from Year 19 (2013-2014) and twenty-two were from year 20 (2014-2015)

DISPOSITIONS IN 2014/2015

DISPOSITION	NUMBER OF CASES
Dismissed – Out of Jurisdiction	**7**
Dismissed – unfounded, not judicial misconduct, etc.	**21**
Referred to Chief Justice	**2**
Ordered to a Hearing	**1**
TOTAL	**31**

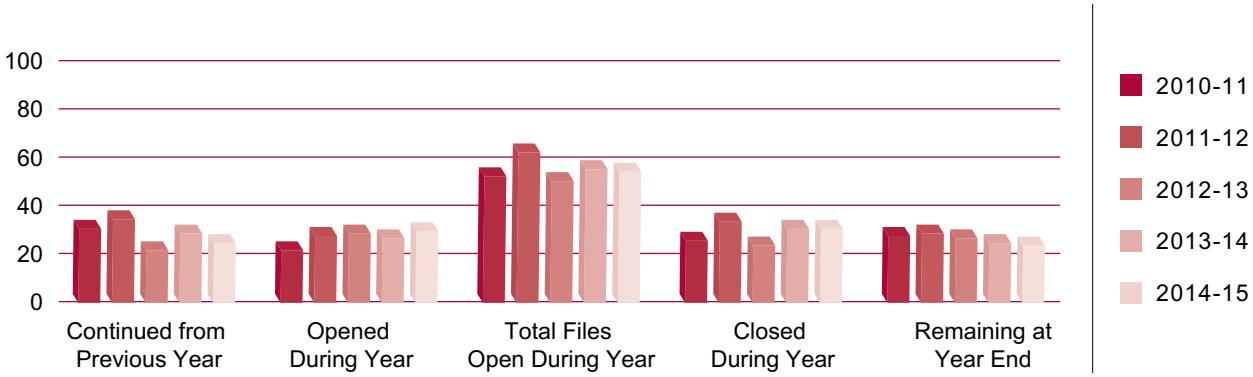
TYPES OF CASES CLOSED IN 2014/2015

TYPES OF CASES CLOSED IN 2014/2015	
Criminal Court	**17**
Family Court	**9**
Other – Outside of Court	**4**
Small Claims Court	**1**
Provincial Offences Appeal	**0**
TOTAL	**31**



CASELOAD IN FISCAL YEARS

FISCAL YEAR	10/11	11/12	12/13	13/14	14/15
Opened During Year	32	35	22	29	30
Continued from Previous Year	22	28	29	27	25
Total Files Open During Year	54	63	51	56	55
Closed During Year	26	34	24	31	31
Remaining at Year End	28	29	27	25	24



APPENDIX A

CASE SUMMARIES

Files are given a two-digit prefix indicating the year of the Council's operation in which they were opened, followed by a sequential file number and by two digits indicating the calendar year in which the file was opened (i.e., file no. 20-001/14 was the first file opened in the twentieth year of operation and was opened in calendar year 2014).

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

CASE NO. 16-023/10

A complainant wrote a letter about a complaint previously dismissed by the Council. He was unhappy with how the complaint was addressed. He alleged that the Council had responded improperly and alleged that there were possibly illegal actions by the Council in their investigation and findings.

None of the members on the review panel that considered the previous complaint remained on the Council. Therefore, none of the members who considered his request had any involvement in the process that determined the disposition of the complaint.

The members considered the statutory framework imposed by the *Courts of Justice Act* and the law governing the review of decisions made by an administrative tribunal to determine whether it had the authority to investigate whether a previous review panel followed the legal provisions set out in the *Act* and the Procedures to address the complaint again and to determine the appropriate disposition.

The Judicial Council concluded that it does not have the jurisdiction or legal authority to investigate the process followed by a review panel or to reconsider the decision that was made under section 51.4(18) of the *Act* on the appropriate disposition.

CASE NO. 16-032/11

The complainant appeared before the judge on three criminal charges. After a guilty plea to one of the charges, he was sentenced to a period of incarceration. In his original letter of complaint and his subsequent correspondence, he alleged that:

- The judge should not be able to preside over his case and he was unable to render an unbiased, just, fair and impartial decision. He wanted someone to intervene in the process.
- The judge was biased, quick to dismiss, discredit, discount, minimize, contradict and ignore relevant evidence.
- His Honour contradicted previous court occurrences and said that the court record showed that the complainant made certain assertions. The complainant disagreed with the statements and said they showed a manipulation of the truth, and constituted an abuse of judicial power.
- There was collusion, collaboration, cover-ups, conspiracy and corruption amongst members of the judicial system who were involved in his case.
- Members of the judicial system had a pre-meditated plan to try to ensure that his matter would be dealt with as expediently as possible, while continuing to do everything in their power to prevent his case from proceeding to a trial, and that the judge would be well aware of this fact.
- His Honour continued to be dishonest in order to cover up everybody's wrongdoings.

The complainant made a general allegation that the judge "committed an abundance of serious and significant degrees of misconduct against him". He also made a general allegation that the judge covered up evidence against him that was contained in certified transcripts. No specifics in that regard were provided in his correspondence.

Further allegations included that:

- The judge assumed that he would waive his section 11(b) right (right to be tried within a reasonable time) under the *Charter* without his presence or consultation.
- The judge made references to his case being resolved well before making a decision which the complainant perceives to be part of the collusion against him.
- The judge intentionally expected him to elect for trial and the judge already knew this before entering the courtroom.
- The judge ordered the lawyer to provide him with advice even though the judge knew that the complainant did not want the lawyer to represent him.

- The judge, in collaboration with all other legal officials associated with his case, did everything in their respective and joint powers to ensure that his personal disclosure would not be entered into evidence.
- The judge did not comply when asked by the complainant to remove himself from the case.

The complainant wanted the Council to intervene in the case and to have the judge removed from the case. The complainant was informed that in accordance with the Judicial 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 ensures that any investigation by the Council is not interfering or perceived to be interfering with any on-going court matters. When the complainant advised that the criminal case had concluded, a file was opened. Subsequently, the complainant commenced legal action related to the court case. The complaint file was held in abeyance pending the completion of the litigation. When the litigation concluded, the complaint file was re-activated and the investigation proceeded.

The complaint subcommittee reviewed the materials received from the complainant, the correspondence between the complainant and the Judicial Council, the decision of the subject judge, the order of the Superior Court of Justice in relation to the litigation brought by the complainant about the matters, and the order of the Court of Appeal for Ontario in relation to the litigation. After completing its investigation, the subcommittee provided a report to the review panel.

The review panel reviewed correspondence from the complainant, the subcommittee's report, a ruling made by the judge, the orders of the Superior Court of Justice and the Court of Appeal for Ontario. The panel found that the investigation by the subcommittee showed that after a pre-trial, and after the judge conducted a plea comprehension inquiry, the complainant entered a plea of guilty to one of the criminal charges. The matter was adjourned and on a subsequent date, it came to light that the person who represented himself as the complainant's counsel was a paralegal not licensed by the Law Society of Upper Canada and was, in any event, ineligible to represent the complainant on the charges. The judge appointed a lawyer as *amicus curiae* to assist in the matter. The matter was adjourned again and ultimately another lawyer was appointed as counsel.

The guilty plea was struck and then a new plea of guilty on that count was re-entered. Later, the retainer with the lawyer was terminated and the complainant sought to strike the guilty plea. The judge refused to grant the application to strike the guilty plea. After numerous appearances, he was sentenced to a period of incarceration.

After reviewing the results of the investigation, the review panel concluded that the complaint related to disagreement with how the judge determined the case and decisions that he made in the case. The panel noted that allegations about findings of fact and decisions made by a judge relate to the exercise of judicial discretion made in the course of a judge's duties, not allegations of judicial misconduct. Judges have decision-making independence in accordance with the *Constitution Act, 1867*. The Council's legislated jurisdiction is limited to the conduct of judges. The Council has no discretion to change a judge's decision or to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint if it falls outside of the Judicial Council's jurisdiction. If a person is of the view that a judge erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

The panel concluded that there was no evidence found through the investigation to support the complainant's allegations that he was the victim of collusion, corruption or a cover-up by the judge or those working in the justice system who were involved in his criminal court case. Nor was there evidence to support a conclusion that there was a pre-meditated plan against him or that the judge was acting to cover up the wrong-doings of others.

Under section 51.4(3) of the *Courts of Justice Act*, a complaint may be dismissed without further investigation if, in the subcommittee's opinion, it is frivolous or an abuse of process. The subcommittee recommended that the complaint should be dismissed on the basis that it was frivolous and an abuse of process. The panel concluded that the complainant filed his complaint while the criminal case was ongoing before the court in an effort to have the Council intervene in the case. The panel observed that filing frivolous allegations about a judge in an effort to delay or avoid the court process was an abuse of the complaints process. The panel accepted the subcommittee's recommendation and dismissed the complaint as being frivolous and an abuse of process.

CASE NO. 17-023/11

The complainant was a lawyer who was counsel for a respondent in a family court matter before the judge. The judge reserved his decision on one aspect of the case. After waiting a period of time, the lawyer wrote to the Trial Co-ordinator and spoke to the Regional Senior Justice about the delay. The complaint arose following comments made by the judge in the decision when it was issued.

The complainant made the following allegations:

a) The judge excessively delayed rendering an uncomplicated decision;

b) He suggested that counsel's behaviour was improper in requesting a decision that had been reserved for more than one year;

c) He gratuitously referred to "importuning" by counsel which had no place in the decision and demonstrated some other motive;

d) He attacked both counsel's competence without providing either counsel an opportunity to address that issue at the hearing of the oral argument;

e) He conferred with the Settlement Conference judge;

f) He disparaged counsel in less than judicial language;

g) He assumed each party was completely controlled by counsel;

h) He relied upon gossip as the foundation for a legal decision; and,

i) He stated that both counsel acted unethically by having a trial at the expense of his and her client when there was no foundation for such a statement.

The investigating complaint subcommittee reviewed the correspondence from the complainant, the transcript of the proceedings, His Honour's Reasons for Decision in the case, and the decision that gave rise to the complaint. The subcommittee provided an opportunity for the judge to give his response to the allegations. He submitted a response which was reviewed by the subcommittee. The subcommittee then provided a report on its investigation to the four-person review panel.

The review panel reviewed the correspondence from the complainant, the transcript of the proceedings, the judge's Reasons for Decision, the decision that gave rise to the complaint, the judge's response and the report from the investigating complaint subcommittee. The judge also sent in an additional response to the complaint. The panel reviewed and considered the response.

Having reviewed the materials, the panel could understand how the judge's language would leave the parties and their counsel with the impression that His Honour was angry and frustrated because he was compelled by requests from them to render his decision, and with the impression that his emotions affected the outcome.

The panel noted that when a judge delays rendering judgment on a case, there are negative consequences on the administration of justice. In addition to depriving litigants of timely and certain justice on a case, delays by a judge reinforce the negative images of the judicial system reflected in such sayings as "justice delayed is justice denied." Failure of a judge to dispose promptly of the business of the court reflects on the entire judicial system. It is particularly concerning where a delay reflects willful disregard for the responsibility of a judge to conduct the business of the court in a timely manner. The *Principles of Judicial Office of Judges of the Ontario Court of Justice,* which have been approved by the Ontario Judicial Council, state in part:

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

The panel noted that in some jurisdictions, Settlement Conference judges make notes in the Endorsement Record in the file. However, the panel observed that Rule 17 (23) of the *Family Law Rules* states as follows:

> Confidentiality of Settlement Conference
>
> 17. (23) No brief or evidence prepared for a settlement conference and no statement made at a settlement conference shall be disclosed to any other judge, except in,

(a) an agreement reached at a settlement conference; or

(b) an order.

The panel noted that His Honour's comments in the decision about a previous animosity between the two lawyers gave rise to a perception that he obtained information outside of the presence of the parties and their counsel. The panel observed that His Honour raised this suggestion for the first time in his decision without evidence and without providing the parties or their counsel to make submissions on that matter.

The review panel also observed that several of the judge's comments about each of the counsel were rude, unnecessary and imprudent.

In his response, the judge assured the review panel that he had not read the notes from the Settlement Conference contained in the file. He expressed his regret that his reasons created the impression that he had informal discussion with the Settlement Conference judge outside of the court and confirmed that there were no such discussions. He informed the panel that the complainant was a skilled and well-respected lawyer. His Honour expressed regret for his intemperate comments, and extended his apology to all concerned for referring to previous animosity between counsel.

After reviewing his response, the panel could see that His Honour had reflected upon his conduct. However, the panel noted that it was important that he fully realize how his conduct during this case was perceived by others, the impact of his conduct on others, and how it can undermine confidence in the judiciary and in the administration of justice generally.

The panel noted that all persons in the court process are observers of the comments and behaviour of a judge. Each and every comment made by a judge, and his or her tone and manner in the courtroom are all important elements of how a judge is perceived by members of the public. A judge has a unique role as exemplar and guardian of dignity in the court.

The panel noted that the preamble of the *Principles of Judicial Office of Judges of the Ontario Court of Justice* states:

> The judges of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their

> judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

The panel observed that one of the Commentaries contained in the *Principles of Judicial Office* states:

> 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.

In a leading case on judicial conduct, *Therrien v. Minister of Justice et al*, the Supreme Court of Canada provided a general description of the requisite qualities and conduct of anyone performing a judicial function:

> "The judge is the pillar of our entire justice system, and of the rights and freedoms which that system is designed to promote and protect. Thus, to the public, judges not only swear by taking their oath to serve the ideals of justice and truth on which the rule of law and Canada and the foundations of our democracy are built, but they are asked to embody them…
>
> Accordingly, the personal qualities, conduct and image that a judge projects affect those of the judicial system as a whole and, therefore, the confidence that the public places in it. Maintaining confidence on the part of the public in its justice system ensures its effectiveness and proper functioning….
>
> The public will therefore demand virtually irreproachable conduct from anyone performing a judicial function. It will at least demand that they give the appearance of that kind of conduct. They must be and must give the appearance of being an example of impartiality, independence and integrity. What is demanded of them is something far above what is demanded of their fellow citizens."

The review panel noted that a judge must always strive to be patient, dignified and courteous in performing the duties of judicial office. A judge must have a heightened sense of awareness of the appearance to others as to how his or her conduct or comments are perceived. A judge has a duty to maintain a high standard of conduct and professionalism so as to preserve the integrity of the judicial office and the faith and trust of society in the persons who hold that judicial office.

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. The review panel decided to refer the complaint, pursuant to section 51.4(17)(c) of the *Courts of Justice Act*, to the Chief Justice for discussion with His Honour with the objective of precluding another incident of this nature from occurring and restoring public confidence in the administration of justice and the judiciary.

After meeting with the judge, the Chief Justice reported to the review panel that she had provided educational materials on civility to the judge for him to study in advance of their meeting. When they met, she discussed with him the materials, the importance of civility and the high standards of conduct expected of a judge. The panel could see that the judge had taken the complaint and the concerns seriously, and he had learned from the complaint process. He explained that after the complaint, he changed his approach to reserved judgments, including setting dates for parties to return so that he will not fail to address any of his outstanding matters. The judge expressed his regret for the delay in rendering his decision and for the manner in which he had treated counsel. He extended his apologies to all concerned. He acknowledged that he was more reflective about his conduct and aware of his duty to uphold the high standards of the Ontario Court of Justice.

As noted above, the complaints process is remedial. After reviewing the report from the Chief Justice, the review panel closed the file.

CASE NO. 18-015/12

The complainant was a lawyer who sent letters to the Judicial Council about a judge's conduct during three court proceedings including an application for an adjournment (Proceeding A), a preliminary inquiry (Proceeding B), and a trial (Proceeding C), as well as the judge's attempt to contact her by telephone.

In Proceeding A, the complainant lawyer sent a colleague on her behalf to request an adjournment of a trial matter. She alleged that when her colleague appeared, the judge yelled, was uncivil and "went ballistic". The adjournment was denied. The lawyer also raised concerns that subsequent to the dismissal of the adjournment application, and

while she was on vacation, the Crown Attorney sought and received an adjournment of the same matter as in Proceeding A without the accused or the lawyer being present.

Further, the lawyer alleged that during Proceeding B, a preliminary inquiry, the judge criticized her line of questioning and commented that he had not seen such a waste of time in all of his years on the bench. She alleged that he yelled, said she was ineffective and ridiculed her personally and professionally. A different matter (Proceeding C), on which the lawyer was also counsel, was scheduled to follow Proceeding B. The lawyer's client and his wife on Proceeding C were present in court and heard the criticism leveled at the lawyer in Proceeding B. Proceeding C commenced immediately following the completion of Proceeding B.

The following day, when Proceeding C continued, the lawyer requested a mistrial. She said in her letter to the Council that after she made her submissions, the judge said he did not think he had yelled at her but if he had, he apologized. The judge adjourned the matter for his decision on her request for a mistrial.

The complainant lawyer wrote a second letter to the Council alleging that after the appearance on Proceeding C, and pending the judge's decision on the lawyer's request for a mistrial, the judge telephoned her office three times to speak with her.

The complaint was assigned to a complaint subcommittee to investigate. The subcommittee ordered and reviewed the transcripts and audio of each of the court appearances indicated in the letters from the complainant. The subcommittee also retained independent external counsel to interview the staff member in the lawyer's office who received the telephone calls from His Honour. The subcommittee also requested and reviewed a response from His Honour. When it completed its investigation, the subcommittee made a report to a four-person review panel.

The review panel reviewed the letters from the complainant, the transcripts of the proceedings before His Honour that were referenced in her letters, a transcript of the interview with the staff person, the response from the judge and the report from the subcommittee.

The panel found that the transcript did not support the allegations about the judge's conduct during Proceeding A. There was no evidence to support the allegation that the judge was uncivil or that he went ballistic. He remained calm and professional. With respect to the

complainant lawyer's concerns about the decision by the judge to grant a request by the Crown Attorney for an adjournment, in the absence of the lawyer and her client, the review panel found that it was a decision made by His Honour in the exercise of his duties, and not a matter of judicial conduct. Judges have decision-making independence in accordance with the *Constitution Act, 1867.* The Council`s legislated jurisdiction is limited to the conduct of judges. The Council has no discretion to change a judge`s decision or to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint if it falls outside of the Judicial Council`s jurisdiction. If a person is of the view that a judge erred in a ruling or decision, a higher level court is the body with jurisdiction to determine whether there was an error and, if so, to change the decision.

With respect to the allegations about His Honour`s conduct during Proceeding B, the review panel found that the court record showed that the judge permitted over two hours of cross-examination by the complainant and then made disparaging comments about how she was conducting the case. The subcommittee reported that the audio recording showed that he did not yell or scream, as alleged. His Honour raised his voice and his tone was rude, harsh and condescending.

The panel found that when the complainant appeared before the judge the next day on Proceeding C, she requested a mistrial and that he recuse himself in light of his criticism and conduct towards her during Proceeding B when her client and his wife were present in the courtroom. The transcript showed that the judge said her request for a mistrial had taken him by surprise and he was going to listen to the audio recording and review what happened during Proceeding B and he would give his answer on the lawyer`s request for a mistrial on the next court date. The panel found that the interview conducted by independent counsel with the staff member in the lawyer`s office confirmed that after court on Proceeding C, the judge telephoned her office three times to try to speak with her.

Further, the review panel found that that the transcripts showed that on the day of the complainant's next appearance before the judge, before he gave his ruling on the request for a mistrial on Proceeding C, and in the absence of the complainant, the judge spoke to the Crown Attorney who was in court and asked whether the Crown Attorney assigned to Proceeding C would be coming into court to make submissions. He said all he needed to know was whether the Crown wanted an opportunity to respond to the mistrial application and he hoped the Crown did not want to respond. The panel observed that His Honour did not disclose this discussion to the complainant and she only found out about the

comments from the Crown Attorney. The review panel noted that comments of this nature should not be put on the record in the absence of one of the parties and, if they are, they should be repeated on the record once the other party attends.

The panel observed that the transcript of the judge's ruling on the mistrial showed that he inappropriately reprimanded the lawyer for her conduct and he showed a lack of civility. The panel noted that a judge has a responsibility to remain polite, dignified and courteous in the courtroom.

The panel noted that in His Honour's response to the complaint, he acknowledged that his words and his tone in addressing the complainant lawyer were harsh, uncivil and critical. He expressed regret about his comments. He offered some explanation for his behaviour at the preliminary inquiry: that he had a particularly heavy list that day; he felt that the cross-examination during the preliminary inquiry had strayed from the issue defined at the focus hearing held in the matter; and, he was concerned that the trial scheduled to follow it would not be reached or would have to be adjourned. The panel noted that the purpose of a focus hearing is to ensure that the court process is streamlined and witnesses with non-contentious evidence are not inconvenienced or that non-contentious evidence is not unnecessarily called. If the parties cannot agree on the witnesses to be called or the manner of receiving their testimony, then a hearing on the record can be scheduled before the preliminary inquiry judge and may result in the judge making binding orders for the conduct of the inquiry.

Further, in his response, His Honour explained that on that very morning he had seen a medical specialist, who had prescribed medication.

He explained that he telephoned the lawyer because he was aware of some of the lawyer's personal history and he wanted her to know as quickly as possible that his remarks were not intended to be personal towards her. He did not want her to spend her weekend feeling harshly attacked by him. His Honour explained that a health condition was affecting him and apologized again. He recognized that he should have reflected on this issue before calling her office and that, if he felt that communication was appropriate, it should have been in writing to her with a copy to the Crown Attorney. The panel observed that through his response, he expressed an apology to the complainant, her client and her client's wife, and to the public for his uncivil remarks, and he expressed his regret for his remarks and tone in which they were delivered.

With respect to the judge's query to the Crown Attorney in the absence of the lawyer, that is, whether the Crown Attorney assigned to Proceeding C would be making submissions on the motion for a mistrial, the panel observed that His Honour explained that he did not think the Crown Attorney would have anything to add and he thought that his query was in the nature of canvassing the list and planning the day.

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

> 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 panel observed that one of the Commentaries contained in the *Principles of Judicial Office* states:

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

The review panel noted that a judge must have a heightened sense of awareness of the appearance to others as to how judicial conduct or comments are perceived. A judge has a duty to maintain a high standard of conduct and professionalism so as to preserve the integrity of the judicial office and the faith and trust of society in the persons who hold that judicial office.

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. Having considered all of the allegations, the evidence gathered through the investigation, including the judge's response, and the criteria set out in the Council's procedures, the review panel determined that the appropriate disposition in this matter was to refer the complaint, pursuant to section 51.4(17)(c) of the *Courts of Justice Act* to the Chief Justice for discussion about the judge's inappropriate conduct in court and *ex parte* communication. Further, the review panel recommended that the referral to the Chief Justice be on the condition that

the judge would attend remedial education programs on ethics and civility as suggested by the Chief Justice.

The Chief Justice provided a report after she met with the judge. Education seminars to address the particular needs raised by the panel were not available. In order to address the concerns and avoid any such conduct in the future, the Chief Justice arranged for His Honour to undertake independent study on ethics and civility. After the course of study, the Chief Justice met with him to discuss it and to examine his conduct and behavior to assist him in the future. The report confirmed that the Chief Justice had discussed all of the concerns about the conduct with His Honour. He recognized the shortcomings in his conduct and was disappointed in himself. The panel could see that he had taken the complaints process and the concerns of the complainant and the findings of the review panel seriously. He had learned from the process and had assured the Chief Justice that similar conduct would not occur again. As indicated above, the complaints process is remedial. After the report was received from the Chief Justice, the file was closed.

CASE NO. 18-017/12

Pursuant to section 51.4(18)(a) of the *Courts of Justice Act*, a hearing into a complaint about the Honourable Justice Dianne M. Nicholas was ordered. Hearing dates for evidence to be heard were scheduled. Before the evidence was presented, the judge retired from office. The Ontario Judicial Council lost jurisdiction over the matter. A decision made by the Hearing Panel providing a summary of the allegations and the history in the case is included in Appendix C of this Annual Report.

CASE NO. 19-006/13

The complainant had been involved in a lengthy, high conflict proceeding against a former spouse wherein he was seeking joint custody and access. He represented himself throughout. His former spouse counter-claimed for child support. After he had brought multiple motions before the case management judge (not the judge subject to this complaint), she made an order that the complainant had to post security for costs if he proceeded with his claim of joint custody at trial. If he abandoned his claim for joint

custody and only pursued his claim for expanded access, security for costs would be reduced. He was also ordered to provide financial information and to pay costs of the motion. The complainant indicated that he withdrew his application because he could not afford to pay the amount ordered.

The complainant appeared before the judge who is the subject of this complaint for the trial management conference. By then, he had filed a Notice of Withdrawal of his claim and the Respondent had made claims of her own in her Answer.

The complainant alleged that he repeatedly requested to speak with Duty Counsel, but the subject judge would not allow him to do so. He further alleged that it was only after he answered the judge's questions that he was permitted to speak with Duty Counsel. He also alleged that when he came back into the courtroom, the judge appeared to be angry and was speaking to him in a high tone of voice. He stated that when he was making his submissions, she stopped him and said he had no standing in the proceedings because he had withdrawn his application. He indicated that the hearing continued in his absence in violation of his right to be there, even as an observer. He also stated that the court staff refused to provide him with a copy of the endorsement and the judge also made sure that he was not recording the proceedings on his own.

The matter was again before the subject judge for an uncontested trial. The complainant alleged that he was excluded from the hearing as he was not notified of it. He alleged that on that date:

a) An *ex parte* claim was accepted over the counter even though the court clerk had refused to accept it.

b) The judge increased his support payments without any change in circumstances.

c) The judge overruled the case management judge's order for costs and granted a higher amount in costs which the case management judge had previously dismissed as excessive. He alleged that, "The judge has so much hate towards me because of my race, colour and gender that she ordered that FRO enforce those costs as a child support order. It is clear that she doesn't have a clear mind to follow facts and is highly incompetent."

d) The judge overruled the case management judge's previous order that the complainant must have supervised access to the child and ordered that he could now have unsupervised access. The complainant alleged that according to the *Family Law Rules*, he would be entitled to the full costs for bringing his motion.

e) Opposing counsel lied to the court about the complainant not paying child support. The judge made a comment to the effect "I don't think you misrepresented anything, I think it's just Mr. _____'s modus operandi."

f) After the complainant appealed the judge's final order, she altered the final order to cover up her mistakes, clearly obstructing justice and committing a criminal act.

He also alleged that the judge was corrupt, biased, racist, and unprofessional.

The investigating complaint subcommittee reviewed the correspondence from the complainant, and requested and reviewed the transcripts from all of the proceedings in the case that took place before the subject judge. In order to fully understand the situation, the subcommittee also reviewed transcripts of the appearances when the complainant appeared before a different judge on the same matter. Following the investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed the complainant's letters to the Council, the transcripts of the proceedings before the subject judge that gave rise to the complaint and the subcommittee's report.

The review panel found no evidence in the court record to support the allegations that the judge was corrupt, biased, racist or unprofessional. The panel found that the record showed that this was not a situation where the complainant was prevented from speaking with Duty Counsel. The transcript showed that before allowing the complainant to speak with Duty Counsel, the judge asked the complainant to confirm whether he had filed a Notice of Withdrawal and also whether he had not posted the security for costs. The judge also ensured that the complainant was not recording the proceedings, which is a legal matter within the authority of a judge to decide. The panel noted that her decision on that point was a matter outside of the jurisdiction of the Council.

The panel found no evidence on the record to support the allegation that the judge was angry after the complainant spoke with Duty Counsel.

The transcript disclosed that a discussion then ensued between the judge and counsel for the Respondent about this claim proceeding on the basis of an uncontested trial since the complainant had withdrawn his application, had not responded to the Respondent's claim made in her Answer and had not posted security for costs. The matter was adjourned for the uncontested trial.

Following its review of the information gathered during the investigation, the review panel found that the judge was firm with the complainant but there was no evidence of judicial misconduct by the judge. The complainant's allegations were not supported by the evidence.

With respect to the next court proceeding in the case, the panel observed that the transcript confirmed that the complainant was not present and had not been notified of the date by the court staff as he had withdrawn his Application. The matter was scheduled to proceed by way of affidavit evidence on an uncontested basis and the subject judge was to deal with this in her chambers.

The panel found that the transcript showed that the judge had some questions on the relief sought by the Respondent. She had counsel for the Respondent to attend to make submissions on the record. Submissions were made on the issue of costs and access, as well as other ancillary issues. The judge dealt with the issues as was within her jurisdiction to do so. The review panel found no evidence of judicial misconduct by the judge.

The panel reviewed the transcript in relation to the allegation that the judge made a comment to the effect, "I don't think you misrepresented anything, I think it's just Mr. [redacted name]'s modus operandi." The panel found that the judge's comments about the truthfulness of the lawyer and the complainant's pattern of conduct were matters related to her assessment of the case before her. This related to the jurisdiction of a judge to assess the case, and was outside of the jurisdiction of the Council.

The panel noted that if the complainant disagreed with the judge's decisions or how she weighed the evidence, the proper way to proceed was through his legal remedies in the courts. The Council has no jurisdiction over judicial decision-making in the absence of judicial misconduct.

The panel found no evidence to support his allegation that the judge altered the final order to cover up her mistakes, that she obstructed justice and committed a criminal act.

After considering all of the allegations, the review panel concluded there was no evidence of judicial misconduct, dismissed this complaint and closed the file.

CASE NO. 19-007/13

The complainant brought a motion in family court for joint custody of one of his children. This complaint was brought against the case management judge who dealt with all motions brought by the parties until the matter went before the trial judge. The matter was dealt with on numerous occasions by the subject judge as both parties brought a number of motions dealing with temporary child support, financial disclosure, contempt, terms of access, costs and Christmas access. The complainant filed complaints against both judges.

The complainant wrote to the Council while the matter was on-going. He was informed 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.

When the court case was concluded, the complaint was assigned to an investigating complaint subcommittee. The complainant made the following allegations:

1. The judge showed outright moral corruption and racial prejudice. She discriminated against him because he is a man of colour and because the evidence was favourable to him.
2. The judge ordered supervised access until the Children's Aid Society (CAS) provided more information, even after their file had been closed.
3. On one date, the judge failed to control her courtroom and allowed Duty Counsel to verbally abuse the complainant and she ordered tampering of the recording.
4. The judge refused to allow a registered nurse or the complainant's babysitter to supervise the access. She only allowed unsupervised access at a play centre, provided he paid taxi fare for the mother, which put a lot of strain on his budget.

5. On one date, the judge refused to hear his motions but heard the mother's motion to change his access, just to suit the mother's lifestyle. On the same date, the judge did nothing when the mother slammed the desk in anger.
6. The judge illegally accepted falsified material without it being filed in court then used it as evidence.
7. The judge requested a police report and then refused to use it because it favoured him.
8. The judge made a new court rule that allowed the mother to serve him by email, contrary to the rules.
9. The judge ordered CAS disclosure and twisted the findings in an illogical way that made no sense.
10. Instead of finding the mother in contempt for denying him access, the judge changed the date and time for his access visits.
11. The judge continued to make false accusations against the complainant contrary to the police and CAS reports.
12. The judge refused to recuse herself from hearing this case as she had planned to retaliate against him and his family.
13. The judge falsely accused him of defrauding Ontario Works and she falsely accused him of not providing financial disclosure and made up her own "false story".
14. The judge acted in bad faith when she advised future judges that costs should be awarded against him, clearly retaliating. She also falsely accused him of abusing the court process.
15. The judge criticized a judge of the Superior Court of Justice who had granted him custody of his children from a previous hearing, and spoke disparagingly about the Office of the Children's Lawyer, discrediting it.

He requested that the subject judge be removed from office.

The subcommittee read all of the numerous letters received from the complainant, nine transcripts of the proceedings before the judge, and Her Honour's written endorsements.

Following its investigation, the subcommittee made a report to the review panel.

The review panel read all of the letters from the complainant and the subcommittee's report. From its review, the panel accepted that the subcommittee's report which noted that the judge displayed extreme patience and respect during the process. The panel accepted that the subcommittee found that the evidence in the court record showed the following:

1. Throughout the transcripts, there was no evidence that the judge displayed racial prejudice.
2. The judge's order for supervised access was as a matter of judicial decision-making outside of the jurisdiction of the Council.
3. There was no evidence to support the allegation that on a particular date the judge failed to control her courtroom, that she allowed Duty Counsel to verbally abuse the complainant or that she ordered tampering of the recording.
4. The judge's order for unsupervised access in favour of the complainant was a matter of judicial decision-making outside of the jurisdiction of the Council.
5. The judge dealt with all motions before her. The transcript did not support the allegation that on the same date, the judge did nothing when the mother slammed the desk in anger. Even if that had occurred, that would not amount to judicial misconduct.
6. There was absolutely no evidence that the judge accepted falsified material and then used it as evidence.
7. The judge was careful in the use of the police report, as it was not in affidavit form. The panel observed that this was an aspect of how the judge assessed the evidence. A judge's assessment of evidence is a matter of judicial decision-making outside of the jurisdiction of the Council.
8. The judge permitted service by email after the complainant agreed. The evidence showed that this occurred as there had been continuous problems with the issue of service.

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9. The judge's decision to use the CAS letters and the manner in which she considered them were matters of judicial decision-making outside of the jurisdiction of the Council.
10. The judge dismissed the contempt motion and changed the access terms in the best interests of the child. Her decisions were matters of judicial decision-making outside of the jurisdiction of the Council.
11. There was absolutely no evidence that the judge made false accusations about the complainant.
12. The judge's decision that she would not recuse herself from the case was a matter of judicial decision-making outside of the jurisdiction of the Council.
13. The judge did not accuse the complainant of defrauding Ontario Works but she did criticize him for not making full financial disclosure.
14. There was no evidence that the judge advised future judges to award costs against him.
15. The judge did not criticize the judge of the Superior Court of Justice, nor the Office of the Children's Lawyer.

The review panel concluded that there was no evidence of judicial misconduct. For the reasons set out above, the complaint was dismissed and the file was closed.

CASE NO. 19-008/13 AND 19-017/13

Two complainants were witnesses in a criminal trial. The accused was acquitted. One complainant alleged that the judge lacked impartiality, he was biased and he showed an evident lack of objectivity in the discharge of his duties during the trial and in his decision. He said that a judge must rule on the law, facts and evidence, not based on his opinion.

The complainant also alleged that in his ruling, His Honour implied that witnesses were untruthful, collusive and there was a cover-up of the events and facts. The complainant found this to be distasteful, insulting, offensive and slanderous.

Further, the complainant alleged that on the first day of the trial, the Assistant Crown Attorney in charge of the prosecution told the witnesses that the judge was pro defence

because of his background before his appointment to the bench. The complainant asked the prosecutor if she would be bringing a motion to have the judge recuse himself from the case, but she indicated that she had no intention to do so, and during the trial she did not do so. The complainant expressed the view that the judge should have disqualified himself from the case.

Furthermore, the complainant pointed out that at one point during the trial the accused became disruptive. The complainant indicated that additional security in the courtroom was requested by the judge. He alleged that at one point the judge would not re-enter the courtroom until proper security was in place. The complainant said that when the defence counsel apologized for her client's behaviour the judge responded "It's understandable". Based on this exchange the complainant queried whether the judge had already determined the innocence of the accused prior to hearing all of the evidence.

In his letter he asked the Council to consider the following:

1. Was there bias by the judge and was his judgment therefore tainted?
2. Was the Court impartial?
3. Did the judge render his decision on facts, evidence and law or on his opinion?
4. Since the truth is apparent that the witnesses were not liars, what now happens to the defendant?

The complainant further stated that the judge's opinion adversely affected the witnesses involved who were humiliated by the media publicly reporting on them as untruthful and being liars.

The second complainant alleged that the judge's decision was disgusting and disgraceful behaviour by a judge. She referred to a media story that reported the judge had questioned whether the witnesses fabricated evidence or collaborated to protect each other. She questioned why the judge would make such untruthful and painful remarks. She indicated that the judge's comments about the testimony of the witnesses had given rise to fear of giving testimony in court by her colleagues, as there was a concern that a witness could be slandered publicly by a judge's biased opinion.

The subcommittee reviewed all of the correspondence and materials submitted by the complainants. The subcommittee ordered and reviewed the transcripts of the entire

trial and of the judge's decision. When the subcommittee completed its investigation, it submitted a report to the review panel.

The review panel reviewed the correspondence from the complainants, the transcript of the judge's reasons for his decision, and the report from the subcommittee.

With respect to the allegation from one complainant that the Crown Attorney had expressed an opinion that the judge was pro-defence and sympathetic to issues he had dealt with before his appointment, the panel noted that an opinion of a Crown Attorney is not sufficient evidence to establish bias or a lack of impartiality. The panel noted that many judges who are appointed to the bench have a background as defence lawyers and many have experience on boards concerning issues that arise during trials over which they preside. A judge is trained to set aside personal views and is presumed to remain impartial. If a party is actually of the view that a judge has an interest which will render him or her partial, that party may bring a motion for recusal. In this case, the panel found that the investigation confirmed that the Crown Attorney did not bring a motion for the judge to recuse himself and no evidence was put forward to support a conclusion of bias.

With respect to the allegation that the judge's findings were based on his own opinion rather than on the facts before the Court, the panel noted that the transcript showed that in his decision, the judge thoroughly reviewed the evidence. His Honour reviewed and analyzed the evidence in detail, including a consideration of the evidence given by the witnesses in examination-in-chief and in cross-examination of the witnesses. He then proceeded to make findings of fact and findings of credibility. He explained why he reached the conclusions that he did.

The panel concluded that the concerns about His Honour's comments in relation to the credibility of the witnesses and his findings of fact in this case related to matters of judicial discretion made in the course of a judge's duties, not allegations of judicial misconduct. Judges have decision-making independence in accordance with the *Constitution Act, 1867*. The Council's legislated jurisdiction is limited to the conduct of judges. The Council has no discretion to change a judge's decision or to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint if it falls outside of the Judicial Council's jurisdiction. If a person is of the view that a judge erred in his or her rulings or decision, a higher court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

With respect to the judge commenting "It's understandable" after the defence counsel apologized for her client's behaviour after he was disruptive in the courtroom, after considering the subcommittee's findings, the panel concluded that this exchange did not demonstrate bias on behalf of the judge. It was a comment made in the context of the particular case before him and the events that occurred in the courtroom.

After considering all of the allegations, the review panel concluded that the results of the investigation did not support a conclusion of bias, a lack of impartiality or a finding that the judge had made his mind up based on his personal opinion. Rather, the panel concluded that the results of the investigation showed that the judge had assessed and considered the evidence and reached a decision. As indicated, the allegations related to judicial decision-making were outside of the Council's jurisdiction.

For all of these reasons, the panel dismissed the complaints and closed the file.

CASE NO. 19-010/13

The complainant wrote to the Judicial Council alleging that the subject judge and his father, who was a teacher at a school in the province where the complainant had attended decades ago, "initiated business associations intended to exploit and pimp her over time." She alleged that this was a hate crime. As well, the "stalking and violence were ongoing." She alleged that third parties who were peers from her high school were employed to continually harass her. Included with her complaint was a complaint form to the Law Society of Upper Canada that alleged that the while he was a lawyer, the judge was involved in maiming her during high school. The complainant also alleged criminal harassment, aggravated assault, intent to kill, threats, intimidation, terrorizing, hate crime, attempted murder, cruel and unusual punishment, malicious prosecution, and use of illegal weapons. She said she had last seen the judge in the 1980's.

The complainant was informed that since her allegations appeared to relate to the period of time before the judge was appointed to the Bench, the allegations were outside of the jurisdiction of the Judicial Council. The Judicial Council has jurisdiction over persons while they hold the office of a judge.

The complainant wrote to the Council, alleging that there was ongoing exploitation and harassment that had continued after the judge's appointment to his position.

A letter was sent to the complainant asking her for details to support her allegations. She responded that the complaints about business associations were ongoing and diabolically violent. She referred to a bombing in her province and threats and torture of celebrities and groups of children and others.

A letter was sent to the complainant to ask her to provide any evidence that supported her allegations. She wrote a letter in which she reiterated the allegations.

After reviewing all of the correspondence received from the complainant, the complaint subcommittee submitted a report to a review panel. The review panel reviewed the correspondence received from the complainant and the subcommittee's report. The review panel noted that although the complainant alleged that the harassment and maiming by the judge was ongoing, the complainant had indicated that she had not seen the judge for several decades and they lived in different provinces. There was no evidence or information that linked him to the injuries or events she believed were his fault. The panel found that there was no reliable information or evidence to substantiate the allegations and they did not have the air of reality. The panel concluded that the complaint should be dismissed and closed the file.

CASE NO. 19-011/13

The complainant was involved in a family law case with a former spouse. There had been several appearances before another judge at which time the parties had agreed that access would resume through the Supervised Access Centre, as the father had not seen the children for a period of time. A final order was made dealing with issues of custody, access and child support.

The matter came back to court as a result of a motion to change brought by the complainant. She sought to increase child support based on the grounds that the father's income had increased and the father had not been exercising access to the children. The matter was before the subject judge for a settlement conference. It concluded with a final order being made on the consent of the parties.

The complainant was of the view that the judge conducting the settlement conference was disrespectful, unprofessional in her conduct, and unpleasant. She said that the judge

handled the matter wrongfully, was impatient towards her and her counsel, and favoured the father as he was self-represented. Specifically, she alleged the following:

1. The judge had no regard for orders made by the previous judge and made orders that made no sense for her family;
2. The judge ordered unsupervised access contrary to what the parties had already agreed;
3. The judge was emotional in court and was condescending towards her and her lawyer;
4. The judge yelled at the complainant and her lawyer to follow her orders. She was irritable and seemed angry;
5. The judge's tone of voice was very nasty and rude and she, the complainant, was not given a voice in the proceedings and her concerns were not taken into consideration; and,
6. The judge forced her into a settlement, would not listen to her concerns and generally favoured the father. The complainant indicated that she felt pressured to fire her lawyer as the judge had asked her lawyer to assist the father in filling out the Intake forms for the Office of the Children's Lawyer.

The investigating complaint subcommittee reviewed letters received from the complainant, and requested and reviewed all four transcripts of the proceedings, and the audiotapes of the proceedings. Following the investigation, the subcommittee reported to a review panel.

The review panel reviewed the letters from the complainant, the transcripts of the proceedings and the report from the subcommittee.

The review panel found that the transcript showed that Her Honour asked questions about why supervised access was needed in circumstances where it had previously been unsupervised. The panel observed that Her Honour was firm and direct with the complainant in asking questions about she was not permitting the father to have access. The court record also showed that she said:

> "But I see each of you as equally responsible. You have a responsibility. Your kids are old enough to anticipate and want contact and she needs to know when you're coming…"

The panel found that the court record showed that the settlement conference continued on a second date. An interim order had been made on consent granting the father unsupervised access. Neither party had filed updated materials for which the judge expressed frustration. The transcript showed that counsel for the complainant indicated that she had difficulty in getting hold of her client at times, explaining the lack of materials for the continuation of the settlement conference.

The panel noted that the record showed that the judge firmly recommended that there should be reasonable access, and explained that failing a resolution, the custody issue could also be revisited at trial. The panel could see from the record that the complainant disagreed with the judge and she kept interrupting the judge. The judge finally used a slightly elevated tone of voice to say, following an interruption, "I'm talking." There was a discussion about access and child support with no resolution arrived at. The judge decided to order the involvement of the Office of the Children's Lawyer (OCL) and asked that counsel for the mother ensure that she file the Intake Forms for the OCL on behalf of both parties. The judge did not ask counsel for the mother to fill out the forms for the father, only to file them.

The matter was next before Her Honour for a brief appearance but it was adjourned, as the report of the Office of the Children's Lawyer had not yet been received.

When the matter was before the judge for the last time, the matter was resolved with a consent order. The record showed that at this time, the complainant had fired her lawyer and thus, she relied on the assistance of Duty Counsel. The panel found that at the outset of the final appearance, the judge indicated that she had read the report of the Office of the Children's Lawyer and the complainant indicated she had not received it though it had been provided to her counsel. As the judge was speaking, the complainant interrupted. The judge interjected and said, "I'm talking now." She ordered the matter stood down so that the complainant could review the report and consult with Duty Counsel.

The panel observed that the record showed that the matter was addressed early in the day, and that it was held down more than once so that the complainant had an opportunity to read the report and to consider her position. The complainant did not agree with the

recommendations contained in the report. The judge made strong recommendations that the matter should be resolved, as suggested in the OCL report. The panel noted that Her Honour was direct as to how the matter should be resolved. She was again interrupted by the complainant and the judge once again said, “Okay, I’m just talking. I want you to listen.” The panel noted that the audio tape of the proceeding revealed that the complainant was also whispering to Duty Counsel while the judge was speaking to her. The matter was held down for the complainant to consider her position and to allow further resolution discussions and to allow Duty Counsel to be present.

The panel observed that although resolution discussions continued on the issue of child support, Her Honour also made it clear to the complainant that she was not the trial judge and that she was only telling her what she thought was likely to happen if the matter went to trial. The complainant indicated that she did not want to have to come back and deal with it again if she was at work. She wanted it done on that date. The parties left the courtroom to discuss the matters and returned with a consent order on all issues.

The panel noted that the complainant disagreed with the judge’s decisions to grant interim unsupervised access, and to have the Ontario Children’s Lawyer provide a report. She also disagreed with the final order. The panel noted that these were matters of judicial decision-making that were outside of the jurisdiction of the Judicial Council. The Council has no discretion to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint without further investigation if it falls outside of the Judicial Council’s jurisdiction.

After reviewing all of the materials, the review panel found no evidence to support the allegations of judicial misconduct. The panel noted that the judge was firm and at times irritated when she was interrupted, when materials were not properly filed and when the complainant was whispering to Duty Counsel while the judge spoke to her. The panel concluded that the judge’s comments must be viewed in the context of a settlement conference and her efforts to see whether the matter could be resolved through agreement of the parties, rather than through a trial. The panel found that there was no undue pressure on the complainant to agree to a settlement.

The complaint was dismissed and the file was closed.

CASE NO. 19-016/13

The complainant's son was convicted of breaking and entering. The judge imposed a conditional sentence of house arrest. The complainant alleged that the judge instructed his son's lawyer to call his client (the accused) to testify at his trial. He indicated that the lawyer replied to the judge's comments with "seems fair". The complainant alleged that this is contrary to the *Canadian Charter of Rights and Freedoms* because his son was compelled to testify in his own defence. The complainant asked the Ontario Judicial Council to reprimand both the judge and the lawyer. He asked the Council to reverse the trial judge's decision.

The complaint subcommittee read the letter from the complainant and ordered and reviewed the transcript of the proceedings. After they concluded their investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed the complainant's letter, the subcommittee's report and the excerpt of the transcript for the portion of the trial where the Crown Attorney concluded his case and the lawyer for the accused started calling evidence. The review panel noted that the subcommittee reported that the transcript confirmed that at the beginning of the trial, the Assistant Crown Attorney requested an order excluding witnesses from the courtroom. Such an order is commonly made in trials to avoid the risk that a witness' evidence is affected or influenced by testimony from another witness. If the witness remains in the courtroom and hears other testimony, it can give negatively affect the credibility of the witness.

The panel observed that after the closing of the Crown Attorney's case, counsel for the accused indicated to the judge that he wished to call a witness. After hearing the name of the witness, the judge said:

> "I am not, of course, in any way going to attempt to dictate to you the order in which witnesses should be called but bearing in mind there was an order excluding witnesses, if you are going to call your own client with respect to the issue of alibi, you do understand that I am entitled to draw an inference against him for having testified after hearing the other witnesses?"

The lawyer for the accused then said the following: "Yes. I think that is very fair. I appreciate your comments, sir." At that point, the lawyer told the witness in question to

wait outside and that he would be called to testify at a later time. The accused was called as the first witness in his defence.

The review panel concluded that the judge did not act inappropriately. The exchange cited above showed that the judge did not at any time indicate that the accused had a duty to testify. He used the words "if you are going to call your own client". The judge did not tell counsel to call his client. Rather, the judge reminded counsel of the law and that a negative inference could be drawn against his client if the witness testified before the accused. The panel noted that the judge's comments constituted an explanation of the applicable law. It appeared to the review panel that the comments were made to ensure that accused's rights in this regard were protected.

The panel noted that the judge's interpretation and application of the law applicable to the evidence of witnesses was a matter of judicial decision-making made in the course of the judge's duties, not allegations of conduct. The Council has no discretion to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint without further investigation if it falls outside of the Judicial Council's jurisdiction. If the complainant disagreed with how the judge applied the law or decided the case, the appropriate way to proceed was through an appeal in the courts.

For these reasons, the complaint was dismissed on the basis that it was outside of the jurisdiction of the Council and the file was closed.

CASE NO. 19-019/13

The complainant was found guilty of criminal harassment and placed on probation with various conditions. A month later, the complainant was charged with counts of breach of probation. The alleged breaches involved the same complainant as the complainant in the criminal harassment matter. The complainant appeared before the subject judge and pleaded guilty to the two counts of breach of probation and was sentenced. She made the following allegations against the judge who took her guilty plea on the breaches of probation:

1. The judge appointed a lawyer as her counsel without her input or consent. Her right to self-representation was violated. The judge allowed the lawyer to work through

the Crown Attorney and the judge to adjourn the matter without her consent. She advised that her children were seized by the Children's Aid Society and her wish was to be released immediately so that she could attend a family court apprehension hearing to get her children back home. She alleged that the judge should not have allowed the lawyer to maliciously work without her consent or permission to obtain the adjournment which put her health and her family in jeopardy.

2. On a subsequent date, the judge again asked the lawyer to represent the complainant. The judge asked the lawyer if the facts read into the record on the guilty plea were admitted and he by-passed the complainant altogether. He also only asked the lawyer about her mental health and he made a submission about her sentence that was against her best interests.

3. The judge failed to demonstrate the ability to make independent and impartial decisions and to uphold the high standards of conduct expected of a judge. She was not treated with courtesy or dignity, and she was interrupted, and not given opportunities to speak for herself or answer questions herself. The transcript showed that the judge was not able to determine, using his own judgment, what would be the right sentence. He consulted the Crown Attorney and then challenged the Crown Attorney saying, "Well if you've got a better solution than me let me hear it". The judge demonstrated incompetency with a lack of knowledge of the law and legal procedures and failed to uphold basic principles of sentencing. By seeking advice from the Crown Attorney and not from the complainant, he acted in a way that undermined the appearance of impartiality and did not provide the accused with fair access and equal opportunity as a self-represented defendant. He did not perform his duties in a just manner.

4. The judge made inappropriate and improper remarks. He said, for example, "In [name of city], that's where you belong. Everyone has a place where they belong". She alleged that this comment raises issues of stereotyping and discrimination, and was clearly insensitive and demeaning.

5. He failed to control proceedings with a firm, decisive and authoritative manner. In a discussion about her release, he said, "I don't know how I am going to do this", "I don't know how that's going to work", "it is really not my problem", "I really am not going to take the time now" and "I am simply going to do this. Her sentence is one

> day in jail plus three years probation". "I think I better stay out of it" and "I cannot think of any way right now unless we adjourn for a day". All of this shows the judge's failure to make good decisions and perform duties expected of a judge in a diligent and competent manner.

The complainant alleged that the judge's failure to conduct himself in a way expected of a quality judge and his incompetency resulted in a wrongful conviction and disproportionate sentence, and led to tremendous suffering for her and her family. She also said that he contributed negatively to public respect and confidence in the justice system.

The investigating complaint subcommittee read the correspondence from the complainant and ordered and reviewed the transcript of the proceedings before the judge. To understand the events that led up to the appearance before the judge, the subcommittee also requested and reviewed the Information and the transcript of the appearances in bail court. The subcommittee invited the judge to respond to the complaint, and received and reviewed his response. After completing its investigation, the subcommittee provided a report to a review panel.

The review panel reviewed the correspondence from the complainant, the transcripts of the appearances before the judge, the letter inviting his response, his response and the report from the investigating complaint subcommittee.

The review panel noted that during the bail proceedings, the complainant declined to have Duty Counsel assist her; however, this Duty Counsel acted as a friend of the court effectively assisting the complainant. During the bail hearing the justice of the peace was advised by both counsel that the complainant had mental health issues. The complainant also referred to her mental health issues. The complainant was denied bail.

On a later date, when the complainant appeared before the judge who was the subject of the complaint, he appointed the lawyer who had assisted her at the bail hearing to be her counsel. On the second appearance before him, the complainant entered a guilty plea and was sentenced.

The review panel could see from the results of the investigation that a judicial pre-trial was held by the judge in his chambers with the Crown Attorney and the defence lawyer who had acted as a friend of the court at the bail hearing. Both the Crown Attorney and

the lawyer advised the judge during this meeting that there was a mental health issue and there was discussion of a possible guilty plea resolution.

The review panel noted that the judge explained in his response that it was a practice in the jurisdiction to have defendants who were remanded in custody after a bail hearing appear immediately before a judge for either a plea or a fast-track trial date. The panel noted that the in-chambers judicial pre-trial was conducted in the absence of the complainant in circumstances where she had not chosen to have the lawyer act for her and a lawyer had not been appointed on the record.

The panel recognized that the judge was informed by the lawyers that there was a mental health issue and that the lawyer had acted as a friend of the court at the bail hearing and to assist in developing a plan to have her released from custody.

The panel observed that with a self-represented defendant, the better practice is to conduct all the proceedings in the presence of the defendant and on the record in court. In circumstances such as these, that would have provided the complainant with an opportunity to be advised in advance, and in open court, of the options the judge was considering, such as the appointment of counsel and a proposed plan to be implemented upon resolution of the charges. She could have then been given an opportunity to respond. However, the panel found, when considering all of the circumstances, the decision to conduct a pre-trial in chambers in the absence of the complainant and prior to the appointment of counsel to represent her was not judicial misconduct.

The panel found that the decision by the judge to appoint counsel to represent the complainant was a matter of judicial decision-making outside of the jurisdiction of the Council.

With respect to the allegations about the complainant's desire to attend a Children's Aid Society matter and that her family had suffered because the case was adjourned and she remained in custody, the panel noted that the complainant had been detained in custody after a bail hearing. The decision to hold her in custody was not a matter within the jurisdiction of the Judicial Council.

With respect to the allegations that the judge permitted the lawyer to speak for the complainant, the review panel noted that this was reasonable in circumstances where the lawyer had been appointed to represent her. Similarly, it was entirely appropriate for

the judge to speak to the lawyer about the mental health issues facing the complainant since these issues would have to be addressed as part of the sentencing.

The panel found that there was no support for the allegation that the judge's incompetency resulted in a wrongful conviction. The panel noted that the complainant pleaded guilty. The panel observed that if she wished to seek to have her guilty plea struck or if she disagreed with the sentence, those were matters related to judicial-decision making outside of the jurisdiction of the Judicial Council. If the complainant wished to pursue those, she would need to do so through legal remedies in the courts.

The review panel observed that the transcript revealed that the judge acted with sensitivity and empathy. He addressed the complainant courteously and politely. He showed that he wanted to assure her that there was a "good" plan being worked out for her.

The panel found that the comments quoted by the complainant such as "well if you've got a better solution than me let me hear it", and "I don't know how I am going to do this" and other comments referred to by the complainant needed to be read in context. The panel observed that normally, when an offender is released from custody and required to report to probation, the offender first reports in the jurisdiction where he or she was incarcerated. Then the probation order is transferred to the jurisdiction where the offender resides. In this case, the judge wanted the complainant to return to her home city as soon as possible to report to a probation office from her home city. Further, by telling the complainant that she belonged in [name of city], he was encouraging her to go back to her home and ultimately to her children and to leave the victim whom she had harassed alone. The panel found that the judge's comments were motivated by a desire to help the complainant and to ensure that the victim of the offences committed by the complainant was protected.

The panel found that there was no evidence in the court record to support the allegations that comments by the judge raised concerns of stereotyping or discrimination or that they were insensitive or demeaning. Nor was there evidence to support the allegations of incompetence or a lack of knowledge of the law or the principles of sentencing.

For the reasons stated, the review panel found no evidence of judicial misconduct, dismissed the complaint and closed the file.

CASE NO. 19-020/13, 19-021/14, 19-022/14 AND 19-023/14

Four complaints were received by the Council arising from comments made by a judge during a criminal court proceeding after he sentenced an in-custody offender. In post-sentencing remarks, the judge criticized a member of the offender's First Nation community by name and First Nations leadership generally. The complainants requested that their complaints be considered jointly by the Judicial Council.

Case No. 19-020/13

The first complainant was an organization representing First Nation communities. The complaint alleged that comments made by the judge during the proceeding, as well as the overall tone, were not consistent with the conduct expected of a member of the judiciary. The complainant alleged that the conduct showed a lack of impartiality and objectivity. It was alleged that the comments constituted a direct, unprovoked and personal attack on the particular individual and leaders of Ontario First Nations. The complainant questioned how any First Nation person could reasonably expect an objective, unbiased and non-prejudicial hearing from the judge.

Case No. 19-021/14

The second complaint was received from the individual who was personally named in the judge's remarks. In her complaint, she said that the comments appeared to be unsolicited and gratuitous and completely unnecessary to the criminal case before the court. She informed the Council that no official, including herself, was present in court to dispute his comments and defend her honour or that of other First Nations.

She said the comments were very hurtful and she questioned how any First Nation person could believe that they would get a fair hearing before this judge, given the intemperate remarks. She alleged that there would always be a fear of underlying bias. She also expressed concern that the remarks may have undone progress that had occurred over the last few years to heal the rift between the First Nations and the Canadian justice system.

Case No. 19-022/14

This was a joint complaint brought by members of three First Nation groups. The complainants alleged that the comments constituted a direct, unprovoked and personal attack on the named First Nation individual and leaders of the First Nations. The complainants said that the language would be offensive in any context but was shocking from a presiding judge.

The complainants alleged that the bias shown by the judge was insulting, damaging and unethical and denigrated the justice system. They questioned how the judge could be seen to be an impartial adjudicator.

Case No. 19-023/14

A letter was received from a First Nation organization. The complainants alleged that the tone of the statements made by the judge reflected a general condemnation of First Nations and their ability to govern within the environment created, not by their own choices, but by the larger society that judge represented. They said that the criticism leveled by the judge targeted a particular First Nation specifically and First Nations generally. They alleged that his statements represented political condemnation that contributed little to building respect for and cooperation with the judicial system.

The complainants said they acknowledged the hardships of their community and said that they “decry the judge’s use of his position on the bench to offer negative political commentary”.

Loss of Jurisdiction

Before the complaints process was completed, the Ontario Judicial Council received information, through the Office of the Chief Justice of the Ontario Court of Justice that the judge had fully retired. The retirement resulted in a loss of jurisdiction by the Ontario Judicial Council. The complaint files were administratively closed due to the loss of jurisdiction by the Council.

CASE NO. 19-024/14 AND 19-025/14

Two complaints arose following a long outstanding and acrimonious family law dispute. The complainant was self-represented during the court proceedings and alleged that he was treated unfairly by the two judges who presided over the proceedings. The complainant retained counsel to assist him with his complaints. Counsel submitted a Joint Documents and Authorities Brief.

The complainant and his ex-spouse were the parents of two children. They separated and entered into a Separation Agreement in which custody of the children was given to the ex-spouse. Subsequently, court proceedings were started. They were resolved by way of Minutes of Settlement some years later. After the Minutes of Settlement were signed, the complainant, his current wife and their family moved to out of the province for work-related reasons. Subsequently, while the younger child of the former spouse was with the complainant for a summer visit, a dispute arose between the complainant and the ex-spouse about the return of the younger child to her. Court proceedings were started by the spouse in two provinces as a consequence of this dispute. The allegations related to the judges who presided over the court proceedings that took place in Ontario.

Case No. 19-024/14

The complainant alleged that the case management judge was biased against him and was incompetent. His complaint was comprised of four allegations:

1. The judge was abusive in the courtroom. The case was before the judge for a Motion on Notice. The complainant moved for extended Christmas access. The complainant's current wife was in the body of the court observing the proceeding. The complainant alleged after the spouse's lawyer made a statement that was a lie, the judge attacked the complainant's current wife for laughing in the courtroom, and stated that because of her behaviour in the courtroom, he could only imagine what was being said in their home about his ex-wife to the children. The complainant alleged this was "a blatant, unwarranted attack, inaccurate and blown out of proportion."
2. When the judge became aware of a false affidavit used to obtain the non-removal order, the judge participated in misleading the court, ignored this evidence and prejudiced the complainant.

3. The judge acted contrary to the *Family Law Rules* in making Orders on Motions Without Notice. The judge "plainly failed to follow the dictates of established legislation, which indicates bias and a refusal to follow clear legislation, if not acting in rebellion to the constitution in which judges must follow and obey the clear dictates of constitutionally valid legislation." The complainant also stated that the judge would not hear his Without Notice Motion for access and required it to be served.

4. The judge failed to act according to Statute. The complainant alleged that the judge did not follow the *Children's Law Reform Act* in the Ruling because the child's views and preferences were not considered. The basis of this allegation was the judge's statement within the reasons that "the wishes of a nine year old child should not be confused with the best interests of the child.

The investigating complaint subcommittee reviewed the correspondence from the complainant and the materials from his lawyer. All of the transcripts of the proceeding were reviewed along with the digital recording. Following their investigation, the subcommittee submitted a report to the review panel. The review panel reviewed the complainant's correspondence, the correspondence from the lawyer, the subcommittee's report and the transcript of the appearance that was the basis for the complainant's allegation that the judge was abusive in the courtroom.

After considering the allegations and the results of the investigation, the review panel concluded as follows:

1. *Abusiveness of the judge in the Courtroom.*

   The review panel accepted the subcommittee's findings that the transcript and the audio recording of the appearance demonstrated that the judge afforded the complainant and the spouse's counsel with a full opportunity to put forward their respective positions on the motion. The subcommittee found that the judge recognized the degree of conflict that existed between the parties and fashioned a decision designed to minimize the potential for conflict between the parties during the Christmas holiday by taking into account their respective positions and Christmas traditions.

The subcommittee's report showed that the judge was firm and acted in a manner well within a judge's jurisdiction to control unacceptable behaviour observed within the courtroom. The judge did admonish what was seen as disrespectful behaviour on the part of the complainant's current wife. The judge observed the current wife to be shaking her head, smiling and laughing. The judge interpreted these behaviours as disrespectful to the court, the parties and counsel in the courtroom. The judge stated a concern about the degree of respect and civility that the new wife displayed outside of the courtroom. The complaint subcommittee reported that the digital recording showed the tone of the judge's voice was calm and measured.

2. *The review panel determined that the investigation did not support the allegation that the judge was abusive or that he attacked the complainant's wife in a manner that was blatant, unwarranted, inaccurate and blown out of proportion.*

   When the judge became aware of the false affidavit used to obtain the non-removal order, the judge participated in misleading the court, ignored this evidence and prejudiced the complainant.

   The review panel found no merit to this allegation. The investigation showed that the judge never made a finding there was a false affidavit. The panel noted that the investigation showed that the judge delivered a comprehensive and reasoned decision for continuing the non-removal order. The position of both parties was set out and the controlling legislation was considered.

   The panel concluded that the complainant's concerns related to the judge's assessment of the facts and an order related to the exercise of judicial discretion made in the course of a judge's duties, not allegations of judicial misconduct. Judges are given decision-making independence under the Constitution. The Council's legislated jurisdiction is limited to the conduct of judges. The Council has no discretion to change a judge's decision or to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint if it falls outside of the Judicial Council's jurisdiction.

   The panel observed that if the complainant was dissatisfied with the order made by the judge, the proper way to proceed was through remedies in the courts, such as an appeal.

3. and 4. *The judge acted contrary to the Family Law Rules in making Orders on Motions Without Notice and he failed to follow the Children's Law Reform Act.*

   The panel concluded that these allegations related to how the judge interpreted and applied the law, not allegations of judicial misconduct. As indicated above, judges have decision-making independence in accordance with the *Constitution Act, 1867*. The Council's legislated jurisdiction is limited to the conduct of judges. The Council has no discretion to change a judge's decision or to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint if it falls outside of the Judicial Council's jurisdiction.

Further, the review panel concluded that the results of the investigation showed that there was no support for the allegations that Her Honour was biased against the complainant, that Her Honour was incompetent in the conduct of the case, that human rights were violated, that there was an unjust process or that she was making up the rules. After considering all of the allegations made by the complainant, and the allegations and submissions made by his lawyer and the results of the investigation, the review panel concluded that there was no judicial misconduct.

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

Case No. 19-025/14

This complaint related to the judge who presided at the trial management conferences, a motion to have the judge recuse himself from the case and the trial.

The complainant, assisted by his lawyer, alleged that the judge was biased against him, and that he was subjected to an unjust process. In particular, he alleged:

1. *Conflict of Interest and Bias:*

   He alleged that before being appointed to the bench, the judge was his former spouse's lawyer on this long outstanding family law case. He said that having acted for the former spouse, the judge was in a conflict of interest and therefore was in actual or reasonable apprehension of bias. He said that in these circumstances, the judge should not have taken part in this case.

2. *The judge granted an order on an oral Without Notice Motion, thereby prejudicing the complainant:*

   The complainant said that he did not attend or participate in that hearing, as it was just to set a date for a trial management conference. He did not expect any substantive issues to be dealt with. He alleged that by granting an extension of a non-removal order on an oral Without Notice Motion, the judge was "...wilfully blind or too lazy and grossly negligent to ascertain whether or not [the former spouse] had in fact filed a motion before making such an important decision. ... [The judge] also acted contrary to and disobeyed the clear dictates of delegated legislation. ... [The judge] acted dishonestly in abuse of office and/or failed in the due execution of the ...office. In the alternative [the judge] acted with incompetence and gross negligence in doing so."

3. *Scheduling the trial date knowing or calculating that the complainant would not be in a position to make representations:*

   The complainant alleged that in scheduling the trial, the judge acted "to violate the complainant's natural justice rights or otherwise exclude him from the proceedings." The complainant also said he was not contacted to participate at the trial by way of teleconference.

The complaint subcommittee reviewed the correspondence from the complainant and from his lawyer. The subcommittee reviewed the submissions and materials received from the lawyer. The subcommittee ordered and reviewed the transcripts and audio recordings in relation to the complainant's proceedings before this judge. Following the investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed all of the correspondence from the complainant and his lawyer and the complaint subcommittee's report to them. The review panel determined as follows:

1. *Conflict of Interest and Bias:*

   The review panel noted that a letter was sent to the lawyer by the Registrar, on behalf of the complaint subcommittee, to ask for particulars about when the judge represented the ex-spouse, details of the court case, and to ask for copies of any documentation that would show that the judge represented the ex-spouse. Counsel

wrote back informing the Registrar that the complainant wished to withdraw this allegation. Even though the complainant wished to withdraw this allegation, the Procedures Document of the Ontario Judicial Council states that the Judicial Council has no jurisdiction to allow the withdrawal of a complaint. The review panel therefore considered the allegation.

The panel observed that the subcommittee found that no concern about alleged conflict of interest was raised by the complainant while the case was ongoing before the judge. The subcommittee obtained and reviewed the Endorsement Record in the family law case and the transcripts of the trial management conferences conducted by the judge. They found no reference in these documents to the judge having acted for the former spouse. The subcommittee found that the complainant had brought a motion requesting that the judge be removed from the position as trial judge due to the impossibility of impartiality. The subcommittee obtained and reviewed a copy of the motion materials and the judge's endorsement on the motion. In support of the motion, the complainant swore an affidavit. The subcommittee's review of the motion materials, the endorsement and the transcript showed that there was no evidence of, or request for recusal because the judge had once acted for the complainant's former spouse.

The review panel noted that lawyers once appointed to the Bench should refrain from sitting on cases involving former clients. Whether doing so amounts to judicial misconduct requires an examination of the particulars of the retainer and the extent of involvement of the judge while a lawyer. Particulars and context are required.

As the complainant did not provide any particulars or evidence to support this allegation and requested it be withdrawn, and the investigation showed that there was no evidence in the court record or the complainant's motion materials submitted during the trial to support it, the review panel dismissed this allegation as unfounded and unsupported.

2. *The judge granted an order on an oral Without Notice Motion, thereby prejudicing the complainant:*

The panel observed that the subcommittee found that the court record showed that prior to the appearance when the order was made, the complainant had participated in an appearance by teleconference. As part of the case conference judge's

endorsement, the matter was adjourned to the judge's list to set a trial management conference date. A copy of this endorsement was mailed to the complainant.

When the matter was before the judge, the complainant was not present in person or by teleconference. The judge scheduled a trial management conference for a date two months later in the spring. During that attendance, the former spouse's lawyer asked the judge to extend the non-removal order "to cover the summer." This request appeared to the subcommittee to have been made without a notice of motion or affidavit in support being served or filed. After hearing the request, the judge continued the non-removal order "until further order of the court."

The review panel noted that the subcommittee found no evidence to support the allegation that the judge was lazy, or acted dishonestly in abuse of office and/or failed in the due execution of the office. Nor was there evidence that he acted with incompetence and gross negligence in doing so. The essence of the allegation was that the judge did not follow the criteria established in the *Family Law Rules* when granting without notice orders. The panel determined that this allegation related to an order made by a judge to the exercise of judicial discretion made in the course of a judge's duties, not allegations of judicial misconduct. Judges have decision-making independence in accordance with the *Constitution Act, 1867*. The Council's legislated jurisdiction is limited to the conduct of judges. The Council has no discretion to change a judge's decision or to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint if it falls outside of the Judicial Council's jurisdiction. Further, the panel agreed with the finding of the subcommittee that extending the non-removal order in the circumstances described was not so egregious as to make it a matter of judicial misconduct.

3. *Scheduling the trial date knowing or calculating that the complainant would not be in a position to make representations:*

   The review panel noted that the subcommittee found that the court record showed that the case had been before the case management judge for a settlement conference. The complainant had not filed a settlement conference brief. Instead, he forwarded correspondence to the court advising he was out of the country and the date scheduled for the settlement conference was not satisfactory. In this

circumstance, the case management judge scheduled the case to the judge's court for another date to schedule a trial management conference and trial dates.

On the date set by the judge, the complainant was not in attendance. Counsel for the former spouse advised the court that the complainant was residing in India and counsel requested that the matter proceed. The judge noted that the case had been set for trial "...at least twice, maybe three times." The review panel found that it was within the judge's jurisdiction and discretion to decide to set a trial date and proceed with the trial in the absence of the complainant.

The subcommittee found that the transcript of the trial disclosed that the judge learned from a court clerk that the complainant had called the court office from outside of the country that morning inquiring about what was to happen in court with respect to the case. It appeared that the complainant wanted the trial postponed until after the summer when he would be back in Canada. The clerk's conversation ended with the complainant saying that he was "...going to have to let this show continue."

The transcript showed that the judge treated the second-hand information received from the court clerk as a request by the complainant to adjourn the trial to another date to be fixed at some point in the future. The judge gave comprehensive reasons explaining why the trial was not to be adjourned. After giving a detailed chronology of the steps that had been taken in the case, the judge found that to adjourn the trial would be detrimental to the child. The judge also observed that "[The complainant's] willingness to participate in a trial had waned over the last year and his commitment to participating in all of the trial preparation process had completely disappeared for at least the last seven or eight months."

The review panel determined that the allegation that the judge deliberately acted to prevent the complainant from participating in the case was not supported by the results of the investigation. The subcommittee's report showed that the judge gave cogent reasons for exercising the discretion to set and then proceed with the trial. The panel found no basis to find judicial misconduct as alleged by the complainant.

Further, the review panel concluded that the results of the investigation showed that there was no support for the allegations that His Honour was biased against the complainant, that His Honour was incompetent in the conduct of the case, that human rights were

violated, that there was an unjust process or that he was making up the rules. After considering all of the allegations made by the complainant, and the allegations and submissions made by his lawyer and the results of the investigation, the review panel concluded that there was no judicial misconduct.

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

CASE NO. 19-026/14

The complainant made a complaint about a judge who presided over a family law case while the court case was ongoing. He identified himself as the agent and process server for one of the parties in the case, the mother. The mother had asked the judge to allow the complainant to act as her agent in court, and the request was refused.

The complainant made allegations about the judge and alleged that there was a pattern of misconduct and abuse of justice in collusion with the police and Family and Child Services to obstruct justice in hundreds of cases. He also complained about the lawyer who represented the father in the case.

The Registrar sent a letter to the complainant to inform him that the Council will not generally commence an investigation until the court proceeding and any appeal or related legal proceedings have been completed. This ensures that any investigation by the Council is not interfering or perceived to be interfering with any on-going court matters. He was also provided with information about the Law Society Referral Service where the mother could obtain legal advice.

The complainant again wrote to the Council. He asserted that there was a criminal offence committed against him because the judge permitted a Statement of Claim written by him to be opened in the courtroom and the judge had read the document. He alleged that the events constituted a criminal offence of mail tampering. With his correspondence, he included correspondence from the mother in which she argued that the judge should recuse herself from the case.

After the court case had concluded, the complainant wrote several letters to the Council. In his letters, he described his allegations against the judge as serious criminal and judicial misconduct. His allegations included the following:

1. That the judge violated Rule 2 of the *Family Law Rules*;
2. That the judge had a conflict of interest in favour of the father and his family in the family court proceedings;
3. That the judge violated the mother's rights guaranteed to her by the *Charter of Rights and Freedoms,* as well as her basic human rights;
4. That the judge committed "declamatory slander" and criminally intimidated the mother during the proceedings;
5. That the judge failed to enforce an order and provided legal advice to the father off the record and in court proceedings;
6. That the judge executed illegal court procedures and issued knowingly false orders which caused hardship to the mother and showed bias and prejudice toward the mother;
7. That the judge knowingly participated in mail tampering in the courtroom;
8. That the judge "executed defamatory slander and libel" against the complainant during court appearances;
9. That the judge wilfully participated in conspiracy to commit murder with certain police officers, a police services board and some lawyers; and,
10. That the judge participated in an illegal attempt to remove the digital blueprint existence of a press release which the complainant had issued.

Subsequently, the Council received similar correspondence from three more complainants: one from the mother in the court case (Complainant B), one from her mother (Complainant C) and one from her father (Complainant D).

The complaint subcommittee reviewed all of the correspondence and materials received from all four complainants. The subcommittee noted that the allegations made by all three individuals were virtually identical to those made by the first complainant. The subcommittee ordered and reviewed all of the written endorsements from the family court file which spanned approximately a year and a half. The subcommittee ordered and reviewed 15 transcripts of appearances before the judge. When they completed their investigation, the subcommittee reported to the review panel.

The review panel reviewed a series of correspondence between Complainant A and the Registrar and correspondence from the other three complainants, as well as materials and transcripts of court appearances that had been submitted by Complainant A. As well, they reviewed the report from the subcommittee. The review panel noted that the subcommittee had conducted a thorough and careful investigation.

The panel found that the investigation showed that the complaint by the four complainants was against the judge who conducted the case management of the family court case throughout the matter. The panel observed that the investigation confirmed that there were over twenty appearances before the judge. A final order was made by the judge after the mother had been noted in default for failing to file materials. The review panel noted that that some of the allegations referred to comments made by the judge during a particular court appearance when both parties were unrepresented. The report from the subcommittee showed that a first final order about the access of the child had been made by the judge on consent of the parties but the matter was brought back to court by the father as he was alleging that the mother, Complainant B, had used drugs during a period of access. The judge made an order for hair follicle testing for the parties which confirmed that the mother had used cocaine. The purpose of the hearing on that date was to re-visit the issue of access that the mother would thereafter have to the child in light of the confirmed drug use.

The subcommittee reported that the transcript disclosed that as the judge was having a discussion with the parties about the appropriate access order to be made, a person identified in the transcript as “female voice from the body of the court” started addressing the court. The panel reviewed the transcript of that appearance which revealed that the female voice was that of Complainant C, the mother of Complainant B and the grandmother of the child who was the subject of the court order. The panel observed that the transcript showed that Complainant C was arguing with the judge. The panel found that the transcript showed that at one point, the judge made the following comment, “You were part of the abduction of that child in [an earlier year].” This comment reflected a conclusion by the judge that the maternal grandparents had assisted the mother in over-holding the child after an access visit contrary to a court order. This over-holding of the child had led the father to bring a motion without notice at which time he was granted temporary sole custody of the child.

The panel concluded that the investigation by the subcommittee supported the following additional conclusions with respect to the allegations:

1) The review by the subcommittee of the transcripts and the endorsements supported a conclusion that the court dealt with the case justly.

2) There was absolutely no evidence that the judge had a conflict of interest in favour of the father and his family.

3) The allegation that the judge breached the *Charter* rights of the mother was a question of law and judicial decision-making outside of the jurisdiction of the Council. Judges have decision-making independence in accordance with the *Constitution Act, 1867*. The Council's legislated jurisdiction is limited to the conduct of judges. The Council has no discretion to change a judge's decision or to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint if it falls outside of the Judicial Council's jurisdiction. If a person is of the view that a judge erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

4) The comments made by the judge about an abduction were made in the context of her findings based on evidence and submissions heard in the course of a judge's duties. This was a matter of judicial decision-making, not a matter of judicial conduct. As indicated in paragraph 4, the Council's legislated jurisdiction is limited to the conduct of judges. The *Courts of Justice Act* states that the Council must dismiss a complaint if it falls outside of the Judicial Council's jurisdiction.

5) There was no evidence that the judge provided out of court advice to the father.

6) There was no evidence of the judge making "false orders". Further, as indicated in paragraph 4 above, the orders were judicial decisions outside of the jurisdiction of the Council. The *Courts of Justice Act* states that the Council must dismiss a complaint if it falls outside of the Judicial Council's jurisdiction.

7) The transcripts showed that the "mail tampering" allegation was that the judge asked to see a document which a process server was attempting to serve on the father in the courtroom during a court proceeding. This was within the judge's discretion in controlling the courtroom and did not amount to judicial misconduct.

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8) There was no evidence to support the allegation that the judge "executed defamatory slander and libel" against any of the complainants.

9) The allegation of conspiracy to commit murder was completely baseless. Nor was there any evidence of collusion or conspiracy on the part of the judge with the police or any other participants in the justice system.

10) There was no evidence that the judge did anything with respect to the false press release issued by Complainant A. Further, even if she had taken steps to assert her legal rights, that would not have been inappropriate given the defamatory and false nature of its contents.

The panel noted that the investigation by the subcommittee and its review of all of the transcripts showed that the judge displayed extreme patience and respect during the proceedings notwithstanding the difficult circumstances of a contentious family law case.

The review panel considered all of the allegations made by the complainants and concluded that the thorough investigation by the complaint subcommittee confirmed that there was no evidence of judicial misconduct by the judge. The complaint was dismissed on the basis that it was groundless and the file was closed.

CASE NO. 19-027/14

This complainant was charged criminally with several criminal offences as a result of his conduct related to a family court matter. He filed complaints about four judges in total. This complaint related to the judge who conducted a pre-trial in his criminal case.

The complainant alleged that the judge colluded with the complainant's lawyer and breached his *Charter* rights and that they conspired to illegally delay the court process and cause him harm. He alleged that his counsel made unethical and disturbing comments to him about the judge, saying that the judge had no idea how to handle the case. He expressed concern about the close relationship between his counsel and the judge and the fact that his matter was discussed by the judge and his counsel when he was not present. He requested a review of the case management of the file by the judge.

The subcommittee reviewed a large amount of correspondence received from the complainant, including a complaint that he had made to the Law Society of Upper Canada

about his lawyer, and the three transcripts of the appearances before the judge. After completing its investigation, the subcommittee reported to the review panel.

The review panel reviewed the correspondence from the complainant, the transcript of the appearance when the judge made the comments referred to by the complainant in his letter, and the report from the subcommittee.

The panel noted that the subcommittee found that the transcripts showed that the criminal charges were set for judicial pre-trial before the subject judge. The panel observed that, as is usual in most of the province, the judicial pre-trial in the particular jurisdiction was conducted with counsel in chambers. The subcommittee reported that the transcript showed that both the subject judge and the complainant were very polite throughout the hearing.

The panel found that the transcript of the first proceeding showed that the judge informed the complainant that he had just held a half hour judicial pre-trial with counsel and that they had to look at case law since the charges were unusual. The matter was adjourned for continuation of the pre-trial. The transcript showed that the judge told the complainant that he could not get a better lawyer than the one he had. The panel found that the comment reflected an observation by the judge based on his observations of the lawyer's work in the circumstances of the case, and it did not constitute judicial misconduct.

The subcommittee advised that the transcripts showed that the matter was again before the judge for further pre-trial discussions and the matter was adjourned for continuation. The complainant agreed, on the record, to this adjournment. The matter was before the judge a third time and at that time, the complainant requested that his counsel be removed from the record, said that he was in the process of retaining new counsel and that he wanted to be adjourned to video remand court the next day. The judge granted the requests and removed his counsel as counsel of record and adjourned the matter to the next day.

The panel noted that the subcommittee had found no evidence of judicial misconduct and that the judge was polite throughout and was obviously focused on moving the matter along expeditiously as the complainant was being detained in custody. The transcripts confirmed that the matters were adjourned on consent. The panel also noted that the decisions by the judge to adjourn the case were matters of judicial discretion outside of the jurisdiction of the Council, not matters of judicial conduct. Judges have decision-

making independence in accordance with the *Constitution Act, 1867*. The Council's legislated jurisdiction is limited to the conduct of judges. The Council has no discretion to change a judge's decision or to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint if it falls outside of the Judicial Council's jurisdiction.

The panel observed that the allegations about the complainant's former counsel were outside of the jurisdiction of the judicial council and were matters for the Law Society of Upper Canada to consider. Further, the panel noted that even if the lawyer expressed an opinion about the judge, in the circumstances of this case, it would not support a finding of judicial misconduct.

The panel accepted the findings of the complaint subcommittee that there was no evidence that the judge colluded with his former counsel to breach his *Charter* rights and concluded that there was no support for the allegations. The complaint was dismissed.

CASE NO. 19-028/14

The complainant was the mother of a youth who was found guilty by the judge of two criminal offences. The complainant made the following allegations:

1. The judge has serious memory problems that he has been coping with for some time. He looked confused and could not remember. He has learned to compensate for his memory deficiency by writing very thorough and extensive notes and then reading them very carefully back. The judge "reiterated" often to keep himself on track and the Crown Attorney would nod his head to indicate to the judge that he was on track. The complainant alleged that on one occasion she heard the Crown Attorney say this aloud.

2. The judge leaned on the Crown Attorney for quick references to points of law, sentencing and time periods overly often. The Crown Attorney repeatedly reminded the judge about points of law, that sentencing is to run concurrently and time periods. His Honour asked the Crown Attorney to look up points of law in a manual on more than one occasion. The complainant believed that an investigation should be initiated to look into all the medical information available to determine whether the judge can perform as a fair and independent thinker. She expressed the view

that if after an investigation it is determined that the judge has impaired mental health faculties, it would be appropriate for the judge to take retirement.

3. The judge concluded that her son was guilty even before the closing arguments were completed which did not seem to her to be very fair or just. It almost seemed as though the judge sided with the Crown Attorney because of their "strong relying connective working repertoire [sic]".
4. The judge did not accurately apply the laws in relation to her son's criminal matter.
5. There was no evidence that her son committed any crime.
6. The judge sided 100% with the victim and told her son that he did not believe him. It was clear to the complainant that the victim lied and fabricated evidence.

The investigating complaint subcommittee reviewed the letter of complaint and requested and read the transcript of the trial, the submissions, the judgment given by the judge, a brief appearance, the sentencing submissions, and the reasons for sentence. After completing its investigation, the subcommittee made a report to a four-person review panel.

The review panel reviewed the letter of complaint, the transcript of submissions made on the trial, the judgment, the transcript of submissions made by the Crown Attorney and defence counsel on the sentencing, and the transcript of the reasons for sentence. The review panel received and reviewed the subcommittee's report.

The review panel observed that the complainant's son was a young person within the meaning of the *Youth Criminal Justice Act* (the "*YCJA"*). The transcript showed that during the course of the sentencing hearing, the judge and the Crown Attorney had a brief discussion about the maximum period of probation and the length of a weapons prohibition that the judge could impose in law. The maximum sentencing provisions of the *YCJA,* are found in technical provisions of the *YCJA.* The panel noted that there was nothing inappropriate with the judge having a dialogue with counsel on the interpretation of the often complicated sentencing provisions of the *YCJA* and their application in this particular case.

The panel noted that the subcommittee found nothing in the transcripts of the trial, the judgment, the submissions or the sentencing to indicate that the judge was confused

or had memory or mental health problems. No evidence was found in the transcript to suggest that the Crown Attorney told the judge that he was on track. The panel observed that it was not inappropriate for a judge to take copious notes and incorporate those notes into a judgment. The panel found no evidence in the results of the investigation that supported the allegations that the judge sided with the Crown Attorney or pre-judged the matter. The subcommittee reported that the transcripts showed that the judge was fair to both sides during the trial; he only intervened during the trial when improper questions were asked. He showed no signs of bias.

The review panel observed that it appeared that the complainant did not agree with the outcome of the case. The panel noted that allegations that a judge misapplied the law to the evidence are a matter beyond the jurisdiction of the Judicial Council. Judges have decision-making independence in accordance with the *Constitution Act, 1867*. The Council's legislated jurisdiction is limited to the conduct of judges. The *Courts of Justice Act* states that the Council must dismiss a complaint if it falls outside of the Judicial Council's jurisdiction. If a person is of the view that a judge erred in his or her rulings or decision, a higher court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

The review panel dismissed the complaint for the reasons set out above, and the file was closed.

CASE NO. 19-029/14

The complainant was required to pay child support pursuant to a court order. He later brought a motion to change that order as a result of a change in income. The Family Responsibility Office (FRO) commenced enforcement proceedings against the complainant for arrears of support. Several consent orders were made in both proceedings, compelling the complainant to disclose certain financial information. Both the motion to change and the FRO proceedings were before the subject judge and this appearance concluded with a consent order in both matters.

The complainant wrote to the Council while the matter was still on-going. A file was not opened at that time. If the complaint raises allegations of conduct about a judge who is presiding over a court proceeding, the Council will not generally commence an

investigation until that court proceeding and any appeal or other related legal proceedings have been completed. This will ensure that any investigation by the Council is not interfering or perceived to be interfering with any on-going court matters.

When the case concluded, a file was opened for investigation. In his letter to the Council, the complainant alleged that the judge forced him to sign an agreement when the judge knew his income was from the Ontario Disability Support Program. He further alleged that the judge was biased and discriminated against him because of his religion, she suspended his driver's licence on purpose and she garnisheed money owed to him by the Workplace Safety and Insurance Board (WSIB) and Employment Insurance benefits. He wanted an apology from the judge, the return of his driver's licence and a return of the money that had been garnisheed. The complainant also wanted help with a motion and alleged that the judge committed a crime against humanity.

The investigating complaint subcommittee ordered and reviewed all of the endorsements in both court proceedings, as well as a transcript of the appearance before Her Honour. After completing its investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed the complainant's letter, the subcommittee's report and the transcript of the proceedings. The review panel noted that the transcript showed that the judge said to the complainant that he was a fool if he did not accept the offer being made to him by the mother. The panel observed that the comment was a statement made in the context of the judge offering a very frank opinion as part of the settlement discussions. The panel found that in the circumstances, there was no judicial misconduct. Her Honour then encouraged the parties to leave the courtroom with their counsel to discuss the matter. This was done and consents were then filed on both the motion to change and the FRO proceedings

Following its review of the transcript and the materials, the review panel concluded that the allegations made by the complainant were not supported by the evidence. The consequences to the complainant were as a result of his non-compliance with child support orders, not the result of conduct on the part of the judge. The review panel dismissed this complaint and closed the file.

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CASE NO. 19-030/14

The complainant was found guilty of one count of assault after a trial. He was acquitted of mischief. The complainant alleged that the judge presiding over his trial ignored his written medical evidence, believed contradictory evidence from witnesses, and was prejudiced against him when imposing sentence because he was asking questions. He stated he was treated this way because he was a visible minority. He further alleged that the sentence was heavy-handed and the conditions imposed on sentence were too onerous.

The complaint subcommittee reviewed the correspondence from the complainant and requested and reviewed the transcript of the trial and the sentencing proceedings. The subcommittee provided a report to the review panel.

The review panel reviewed the correspondence from the complainant, the transcript of the sentencing proceedings and the report from the subcommittee. The panel found that there was no indication in the transcript that the judge showed any prejudice or bias towards the accused due to his race.

With respect to the complainant's allegations that judge ignored part of the evidence, that she made errors in relation to findings of credibility, and that the sentence was too harsh, the review panel found that these were matters of how the judge assessed the evidence, made findings of fact and decided the case. The panel noted that these were matters of judicial decision-making made in the course of the judge's duties, not allegations of conduct. The Council has no discretion to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint without further investigation if it falls outside of the Judicial Council's jurisdiction. If the complainant disagreed with how the judge determined the issues or decided the case, the appropriate way to proceed was through an appeal in the courts.

The Council dismissed the complaint as the allegations were unsupported and closed the file.

CASE NO. 20-002/14

This complainant was charged criminally with several criminal offences as a result of his conduct in relation to a family court matter. He filed complaints about four judges in total. This complaint relates to the judge who sentenced him after he pleaded guilty to two charges. The other charges were withdrawn. He alleged that the judge failed to offer him an opportunity to speak before and after sentencing. He also alleged that the judge bullied him and demonstrated behaviour unbecoming of a judge.

The complaint subcommittee read the correspondence from the complainant and ordered and reviewed the transcripts of both appearances before the judge. After completing its investigation, the subcommittee provided a report to a review panel.

The review panel read correspondence from the complainant and the report from the subcommittee. The panel noted that the report from the subcommittee showed that during the appearances, the judge was polite throughout the proceedings and there was no evidence of bullying behaviour.

During the first appearance before the judge, the complainant entered a guilty plea on two charges and the facts were read in and agreed to. The complainant was represented by counsel and submissions were made by Crown counsel and the lawyer for the complainant on the issue of sentence. The judge reserved his decision and adjourned the matter to another date for a decision.

The panel noted that the subcommittee reported that before he imposed the sentence, the judge did not give the complainant an opportunity to speak. Section 726 of the *Criminal Code of Canada* provides as follows:

> s. 726 Before determining the sentence to be imposed, the court shall ask whether the offender, if present, has anything to say.

The panel observed that the subcommittee advised that the transcript also showed that this was not a situation where the offender sought to address the judge and he was not permitted to do so. In any event, the panel found that the application of section 726 was a matter of law, not a matter of judicial conduct, and it was outside of the jurisdiction of the Judicial Council. The Council's legislated jurisdiction is limited to the conduct of judges. The Council has no discretion to change a judge's decision or to act on complaints that

do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint if it falls outside of the Judicial Council's jurisdiction.

For the reasons set out above, the review panel concluded that there was no evidence of judicial misconduct and the complaint was dismissed.

CASE NO. 20-003/14

The complainant posted a press release on the Internet which contained false allegations about a judge who was presiding over a family court case. The complainant was supporting one of the parties in that case. His press release said that the family court judge was the focus of a judicial misconduct investigation involving all family law cases alleging child abuse over a number of years. The press release included a quote from the complainant saying that there was a historic joint task force investigation underway of social service agencies, law enforcement and the family court judge and that sworn evidence had uncovered extensive obstruction of justice violations by all, including the judge.

A local newspaper published a story reporting that the allegations in the press release were false and that the complainant had been charged with criminal libel as a result of his actions.

The complainant wrote to the Judicial Council alleging that a judge in an administrative position wrote a letter to the editor of that newspaper expressing thanks for the "speedy clarification of dubious allegations" made by the complainant against the family court judge and other justice officials. The complainant alleged that by writing that letter to the editor, the administrative judge violated the *Principles of Judicial Office* and defamed him. He alleged that the letter made unfounded and unmerited public criticism of him. He further alleged that this "defamatory and malicious letter" wilfully interfered in a criminal case against him and perverted the course of justice. Finally, he alleged that the letter gave rise to a reasonable apprehension of bias, prejudice and constituted judicial nepotism.

The complaint subcommittee reviewed all correspondence from the complainant, the press release, the newspaper article and the letter to the editor. To gather all relevant information, the subcommittee reviewed the transcripts in the family court proceedings, the endorsements in the family court file, all transcripts of the complainant's appearances

in criminal court on the related charges, and related newspaper articles. The subcommittee provided a report to the review panel.

The review panel reviewed correspondence from the complainant, the press release, the letter sent by the judge to the newspaper editor, and the report from the subcommittee. The review panel observed that the subcommittee conducted a thorough investigation. The subcommittee reported that the investigation showed that the contents of the press release were patently false and that the complainant was the author of that press release. The panel concluded that the administrative judge acted appropriately and in accordance with her professional responsibilities when she wrote the letter to the editor.

The review panel dismissed the complaint on the basis that it was frivolous and an abuse of process. The file was closed.

CASE NO. 20-005/14

The complainant had been in court to lay a criminal charge against a person. He said that the justice of the peace asked him whether he was making a recording and he said that he was. He indicated that he was told that he should have had her permission to record the proceedings and two police officers seized his recorder. He said that he was then arrested.

In his letter to the Council, he referred to the *Protocol Regarding the Use of Electronic Communication Devices in Court Proceedings* that has been established by the Ontario Court of Justice and that is posted on the Court's website. The policy applies to use of electronic devices in court proceedings, including recording devices. In his letter, the complainant expressed his disagreement with the policy contained in the protocol. He also referred to section 136(2) of the *Courts of Justice Act* which governs audio recording in the courtroom.

He alleged that the policy violates the rights under the *Charter* and the International Covenant on Human and Political Rights. He alleged that the Attorney General requested that the subject judge issue illegal orders about making audio recordings. He stated that the subject judge passed verbal instructions at the whim and fancies of the Attorney General's office to conduct criminal activities inside the courtroom, and she did not want anything to be documented. He said that the goal of the judge was to slowly change the policy on recording so that she could help in committing criminal activities in the

courtrooms by punishing those who do not hire lawyers close to the government and by wrongly convicting them. He alleged that there was obstruction of justice, as well as a conspiracy to conduct illegal activities in the courtroom and hide them by not releasing the audio recordings.

He expressed disagreement with the requirement in the policy and in the legislation that permits the presiding judge to decide whether to give a person permission to record proceedings in the courtroom. He said that he suspected that the judge was involved in the events that led to his arrest. He requested that criminal charges be laid against the judge.

The complaint subcommittee reviewed the correspondence from the complainant, the *Protocol Regarding the Use of Electronic Communication Devices in Court Proceedings* and section 136 of the *Courts of Justice Act*. Following the complaint subcommittee's investigation, it submitted a report to a review panel.

The review panel reviewed the *Protocol Regarding the Use of Electronic Communication Devices in Court Proceedings* from the complainant and the subcommittee's report. The panel noted that it is within the jurisdiction of the Court to establish policies governing recording in the courtroom. The panel observed that the Court's *Protocol Regarding the Use of Electronic Communication Devices in Court Proceedings* is founded on the "open courts" principles and is not a policy that supports hiding criminal activity. Further, in each courtroom, a qualified reporter makes an official audio recording and, upon request from a person and for the appropriate regulated fee, a transcript is available of the proceedings that occur in the courtroom. The transcript is reviewed by the reporter before it is certified to be accurate.

The panel concluded that the complaint constituted disagreement with section 136 and the policies contained in the *Protocol Regarding the Use of Electronic Communication Devices in Court Proceedings.* The review panel found that those were matters of policy and law outside of the jurisdiction of the Judicial Council to review or assess. The panel noted that he also disagreed with how the provisions were interpreted or applied by a judicial officer. The review panel found that was a matter of judicial decision-making outside of the jurisdiction of the Council. The review panel found that no evidence to support the allegations of conspiracy, criminal intent or criminal activity.

For the reasons noted above, the review panel concluded that the complaint be dismissed as it was out of the jurisdiction of the Council.

CASE NO. 20-007/14

The complainant filed a complaint against the judge who presided over his criminal trial. He was convicted and sentenced to jail and a term of probation. In his letter, he disagreed with the finding of guilt and how the judge assessed the evidence. He alleged that the judge based her decision on lies and misinformation and he did not receive a fair trial. He alleged that the police tampered with the witnesses and he was inadequately represented at the trial. He alleged that the judge was "in cahoots with the crown and the defence" to convict him. He stated that he was denied representation by Legal Aid for an appeal and he was hopeful that the Judicial Council would intervene with Legal Aid so that he could obtain representation for an appeal.

The complainant also alleged that during the proceedings, the judge made the following comment: "are we done playin ping pong with him yet" (*sic)*. He further stated that the judge went on to say, "don't worry about it, there's nothing no one can do to me about it im Retire soon" (*sic)*. The complainant further stated that both his lawyer and the Crown Attorney congratulated the judge on her up-coming retirement and gave her their best wishes. He said that when the courtroom quieted down the judge said, "ya see they can't do anything to me–I'm going to retire soon."

With respect to concerns that the complainant expressed about the police and his lawyer, the Registrar referred him to the appropriate bodies. The Ontario Judicial Council has no jurisdiction over the conduct of the police or lawyers.

The investigating complaint subcommittee read the letters sent to the Council by the complainant. The investigating complaint subcommittee obtained all of the transcripts in this matter and read the trial evidence, the Reasons for Judgment and the Reasons for Sentence.

The members of the subcommittee carefully read all of the transcripts, looking for any reference to "ping pong", or to see whether the judge said, "are we done playing ping pong with him yet". The subcommittee also looked for comments that the judge might have made regarding her retirement and any evidence that the judge was working in collusion with the lawyers who appeared before her in the case to come up with a finding of guilt. After completing its investigation, the subcommittee prepared a report for the review panel.

The review panel reviewed the complainant's letters, the report from the subcommittee, and excerpts from the transcripts that related to the "ping pong" comments and the reference during the proceeding to the judge's retirement. The panel found that during the second day of trial, evidence came out that caused the Crown Attorney to seek permission from the judge to call a witness in reply. The defence wished to hold off closing its case until it saw the results of a police interview with this potential witness. The judge permitted the Crown Attorney to call the reply witness and ruled against the defence's request to hold off closing its case. Then shortly afterwards, the defence counsel asked for a few minutes to think about how he wished to proceed.

In this context, the judge said that she would not permit the defence to keep his case open and potentially have the matter ping pong back and forth. Her comment was made in the course of her ruling. The panel concluded that it was her way of saying that she wished to proceed as trial matters normally proceed: the Crown Attorney calls its case; the defence calls its case; and, then the Crown Attorney may, in certain circumstances, call reply evidence. The panel noted that there was nothing offensive or untoward in this comment. Further, the subcommittee reported that the judge did not say, at this point, or indeed at any point, that there was nothing anyone could do to her because she was retiring.

The panel found that the transcript showed that the judge made a comment about her upcoming retirement in the course of a discussion about the return date for her to render her decision on the trial. The reference to her retirement was made in the course of finding a suitable return date and in explaining why the return date was far off in the future. The comment was made in passing; the defence counsel congratulated the judge and he said that he did not know that she was retiring. The Crown Attorney also congratulated the judge. The panel found that the investigation by the subcommittee showed that there were no comments to the effect that "ya see, they can't do anything to me--i'm going to retire soon".

The panel also noted that the subcommittee found nothing in the transcripts to suggest that the Crown Attorney, the defence counsel and the judge were in "kahoots" (sic) with each other to come up with a finding of guilt against the complainant. The subcommittee found that the transcripts showed that the trial was conducted in a fair and unbiased manner.

With respect to the judge's assessment of the evidence, her decisions and the sentence which she imposed, the review panel noted that those related to the exercise of judicial

discretion made in the course of a judge's duties, not allegations of judicial conduct. Judges have decision-making independence in accordance with the *Constitution Act, 1867*. The Council's legislated jurisdiction is limited to the conduct of judges. The Council has no discretion to act on allegations that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint without further investigation if it falls outside of the Council's jurisdiction. If a person is of the view that a judge erred in his or her rulings or decision, a higher level court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision.

The panel observed that the Judicial Council has no authority to intervene with the process for obtaining Legal Aid or to advocate for any person charged with a criminal offence. A lawyer is in the best position to provide legal advice or assistance in relation to that process.

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

CASE NO. 20-010/14

The complainant was charged with four offences under the *Criminal Code* resulting from an incident on the complainant's property. The complainant was self-represented at his trial and brought an application under the *Charter of Rights and Freedoms* that was heard at the same time as the trial. Ultimately, the judge made no findings of guilt on the criminal charges.

The complainant expressed a great deal of respect for the way the judge conducted the trial. He explained that the complaint was not intended to bring any type of discipline or hearing against the judge; rather, the intention was to bring the judge's conduct to the attention of the Council and the judge.

In his letter to the Council, the complainant alleged that the judge, in his Reasons for Judgment, negatively commented on the complainant's conduct during his arrest and yet ruled that he was unlawfully arrested and his rights and liberty were violated. The judge then proceeded to compliment the officer for being articulate even though the complainant believed that the police officer lied in his evidence.

The complainant said that he believed that if the judge was made aware of the past actions of the police at the specific detachment involved, then perhaps the judge's comments would not have been so biased. The complainant requested an opportunity to communicate with the judge and present him with facts describing what he and his family have endured at the hands of the police from this police detachment.

The members of the subcommittee reviewed the letter of complaint, the judge's Reasons for Judgment and the transcripts from the trial. When they completed their investigation, they submitted a report to the review panel.

The review panel reviewed the letter of complaint, the judge's Reasons for Judgment, and the complaint subcommittee's report. The review panel noted that the judge found the complainant not guilty of impaired operation of a motor vehicle. The judge also found that the complainant's arrest was unlawful and in violation of the complainant's rights under the *Canadian Charter of Rights and Freedoms*. As a result, the judge dismissed the remaining charges because they flowed from the evidence that was gathered following the complainant's unlawful arrest.

With respect to the complainant's request that the Council communicate his concerns to the judge, the review panel further noted that the Ontario Judicial Council's role is to conduct investigations of allegations of misconduct against a judge. The legislated jurisdiction of the Council is limited to the investigation and review of complaints about conduct. The Council is not a means for a complainant to communicate with a judge.

With respect to the complainant's concerns about the comments made by the judge, the review panel found that the transcript showed that the judge's comments that the complainant behaved in a "coarse, common and crude" way towards the police and that the police "showed admirable restraint in the face of his uncivilized behaviour", were comments made in the context of the judge making findings of fact on the evidence and in deciding the case. The review panel concluded that the allegations related to matters of judicial discretion made in the course of the judge's duties, not allegations of judicial misconduct. Matters of judicial decision-making are outside of the jurisdiction of the Council. The Council has no discretion to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint without further investigation if it falls outside of the Judicial Council's jurisdiction.

After its review of the results of the investigation, the panel found no evidence that the judge demonstrated any bias against the complainant.

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

CASE NO. 20-011/14

The complaint filed a complaint about the judge who presided over his son's criminal trial. The complainant's son was found guilty by the judge. The complainant assisted his son at the trial because his son was unrepresented.

The complainant stated in his letter that his intention was to bring the judge's competence, misconduct and bias to the attention of the Council. The complainant also stated that, in considering the evidence and exhibits of the prosecutor and its witnesses versus the defence exhibits and witnesses, and in the findings of fact, it was obvious that the judge was biased. He asserted that the judge's finding of guilt on the charge of causing a disturbance and the fact that she found no *Charter* violations were strong evidence of bias and incompetence. He also alleged that the judge had a comment removed from the transcript of her reasons for judgment.

The finding of guilt was appealed by the accused to the Superior Court of Justice and the appeal was dismissed. The matter was further appealed to the Court of Appeal for Ontario. The Court of Appeal for Ontario found that the accused yelled and swore at the police and that there was no *Charter* breach; however, the court allowed the appeal on the basis that the conduct of the accused did not constitute the offence in law.

The subcommittee reviewed the letter of complaint, the trial transcript; the transcript of Her Honour's Reasons for Judgment and Reasons for Sentence; the judgment of the Superior Court of Justice; and, the judgment of the Court of Appeal for Ontario.

With respect to the allegation that the judge altered the transcript, the subcommittee noted that the practice is that when a transcript of a judge's reasons for judgment is prepared, it is provided to the judge to review for minor grammatical corrections. The subcommittee requested and obtained the unedited transcript of the Reasons for Judgment (as originally typed by the court reporter prior to review by the judge). The reporter provided a copy of the original transcript that showed the handwritten

changes made by the judge. The subcommittee noted that the judge did not remove any comments from the transcript. Following their investigation, the complaint subcommittee submitted a report to a review panel.

The review panel reviewed the complainant's letter, the subcommittee's report to them and the unedited transcript of the Reasons for Judgment containing the judge's edits.

The review panel concluded that the investigation showed that throughout the court proceeding, the judge was polite, patient and helpful, and there was no evidence of bias, or misconduct. There was no support for the allegation that she was incompetent. There was also no evidence that the judge was more concerned about fairness towards the police witnesses than the defence witnesses.

The review panel found that the unedited transcript, showing the hand-written changes requested by the judge, revealed that the judge only corrected very minor grammatical errors. There were no comments deleted by the judge as alleged by the complainant.

The panel noted that the complainant disagreed with how Her Honour assessed the evidence and the credibility of the witnesses and he believed there was a breach of his son's rights under the *Charter*. The panel observed that the investigation showed that the Court of Appeal for Ontario had confirmed that there was no breach of the accused's *Charter* rights but allowed the appeal on the basis of an error in law. The review panel found that the allegations about how the judge assessed the evidence, determined the issues and made her decisions in the case related to matters of judicial decision-making made in the course of the judge's duties, not conduct. The Council has no discretion to act on complaints that do not fall within its jurisdiction. The *Courts of Justice Act* states that the Council must dismiss a complaint without further investigation if it falls outside of the Judicial Council's jurisdiction. If a person disagrees with how the judge determined the issues, applied the law or decided the case, the appropriate way to proceed was through an appeal in the courts. The panel noted that this had been done in this case.

The review panel dismissed the complaint on the ground that the allegations were both unsupported by the evidence and outside of the jurisdiction of the Council. The file was closed.

CASE NO. 20-015/14

The complainant pleaded guilty to criminal charges before the subject judge. On the recommendation of counsel, the judge ordered a mental health assessment and a pre-sentence report. The judge sentenced the accused to custody followed by probation for three years.

The complainant wrote to the Judicial Council explaining that he has been the caregiver for the accused for a number of years as a result of the accused's instabilities and trouble with the law. The complainant disagreed with various aspects of the judge's sentencing and set out a number of reasons for his disagreement, including: the sentence was too long; it was consecutive to sentences on similar offences and not concurrent; the judge considered material that ought not to have been considered; the judge failed to adequately consider the accused's background and mental health issues as mitigating factors; the judge placed too much weight on the victim impact statements; he drew inappropriate inferences from the materials before him; he was confused about timelines; and, he could have requested clarification of the circumstances that led up to the charges. The complainant expressed disappointment that the judge did not address the issue of the accused being harassed and assaulted while in custody, as the complainant believed that played a big role in delaying his decision to plead guilty.

The complainant alleged that the sentencing was "so outrageous that it did not serve the public's best interest" and the judge was unsympathetic to mental health issues. Further, the complainant alleged the sentence demonstrated that the judge acted in a vindictive manner. The complainant requested that the judge be asked "to give a thorough reasoning for his actions and how he came to his decision as the reasons given in court were dismal and vague."

The Registrar wrote to the complainant explaining the jurisdiction of the Ontario Judicial Council and informing him that to try to change the sentence, the accused would need to appeal the sentence. He was referred to the Law Society Referral Service where he could obtain legal advice.

The complainant wrote a subsequent letter to the Council stating that he knew that the chances of a successful appeal were slim; an appeal would be costly; and, that the sentence would be completed before the appeal. The complainant reiterated in the

second letter that the judge should be held accountable for his decision and reiterated many of the allegations contained in the first letter of complaint. He again requested that at the very least the judge should be questioned as to how he came to his decision and why he did not provide reasons.

The complaint subcommittee reviewed the letters from the complainant and the transcripts of the guilty plea and the judge's reasons for sentence. When the subcommittee completed their investigation, they submitted a report to a review panel.

The review panel reviewed the letters of complaint, the transcripts and the subcommittee's report to them. They observed that the judge gave thorough reasons for his sentence. The review panel found that the transcript of the reasons for sentence showed that there was nothing vague, dismal or outrageous about the judge's reasons for sentence. The reasons did not demonstrate that the judge was unsympathetic to mental health issues or that he acted in a vindictive manner.

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

CASE NO. 20-018/15

The complainant alleged that the judge provided letters of character reference for a lawyer and a paralegal who were before the Law Society Tribunal. He alleged that this was abusing her position as a judge to assist her friends.

He also alleged that the judge presided over a marriage which later turned out to be illegal. He alleged that she should have been suspicious when she was asked to perform a marriage.

He alleged that the judge had acknowledged that she suffered from depression. He said that her depression may explain why she made errors in law during court proceedings in which he appeared before her as a plaintiff and it may explain her conduct during the proceedings. He had previously made a complaint about her to the Council. He wanted to know whether the Council "delved into the depth and effects" of the depression and indicated that it should have been apparent. He suggested the complaint made by him previously should be reopened based on the allegation of depression.

The Council had no jurisdiction to re-open the previous complaint when a disposition had already been imposed. The correspondence from the complainant contained new allegations. A file was opened to address the new allegations raised by the complainant. The complaint was assigned to a complaint subcommittee comprised of a judge member and a community member of the Council to review and investigate the new allegations.

The subcommittee reviewed the letters from the complainant and the enclosures he provided. The subcommittee located and reviewed decisions made by the Law Society Tribunal that had been referred to by the complainant. The subcommittee also consulted resource materials available to guide judges on judicial ethics in relation to the question of whether it is inappropriate for judges to act as character references. After the subcommittee completed the investigation, they submitted a report to a review panel.

The review panel reviewed the complainant's correspondence and enclosures and the subcommittee's report. The panel considered the material on judicial ethics on the question of whether it is inappropriate for judges to act as character references. The panel also reviewed excerpts of the proceedings before the Law Society Tribunal in which the judge provided a letter of character reference. The panel also reviewed an excerpt of the proceeding before the Law Society Tribunal.

With respect to the complainant's allegations about the judge providing letters of character reference for parties subject to disciplinary proceedings before the Law Society Tribunal, the review panel found that the investigation confirmed that the judge had provided letters of reference. The panel noted that the *Commentaries on Judicial Conduct* from the Canadian Judicial Council indicate that the practice of judges varies on providing character references. While some judges have expressed reservations and a reluctance to give character references if it can be avoided, there are instances where letters of character reference are provided. The panel noted that judges should not do so where

it is the office of the judge that is sought rather than the opinion of the individual. The panel observed that a distinction has sometimes been drawn between a reference that is a factual statement that someone has worked at a given place for a certain period and a general appraisal of the person's performance, and secondly an assessment of the individual's personal qualities. The panel observed that there is support for the view that the latter category should only be given if the judge has known the person well for a considerable number of years.

The panel also observed that a Model Code on judicial conduct in the United States supports the position that letters of recommendation are not generally seen as a misuse of abuse of judicial office and a recommendation based on the judge's personal knowledge is recognized to be permissible.

The review panel observed that while there is a need for prudence on the part of a judge when considering whether to provide a character reference, in the instances that gave rise to the complaint, the judge was basing her recommendation upon her personal knowledge and experience with the parties. The panel concluded that the provision of letters of character reference in these two instances was not an abuse or misuse of judicial office, and did not constitute judicial misconduct.

With respect to the complainant's allegation that the judge should not have performed the marriage that was later determined to be illegal, the review panel noted that the investigation showed that the judge had no knowledge prior to the marriage to believe it should not proceed. The panel observed that there was no obligation on a judge performing a marriage to verify the authenticity of a previous divorce decree. The panel found that the judge did nothing inappropriate in performing the marriage.

The review panel observed that the complainant was suggesting that an acknowledgement by Her Honour that she suffered from depression should lead to a conclusion that she was incapable of carrying out the functions of a judge at the time of his proceedings before her. The panel concluded that it had no jurisdiction to reopen the earlier complaint. The panel noted that even if it had jurisdiction, the Ontario Human Rights Commission recognizes that people with mental health disabilities face a high degree of stigmatization and stereotypes whereby others blame their conduct on the disability and deem them to be incapable of doing their work. The panel observed that it could be seen as discriminatory to suggest that because a person acknowledges suffering from depression, one should

conclude that he or she is incompetent at carrying out his or her work. The Ontario Judicial Council is committed to respectful and fair treatment of all persons in accordance with the law on human rights.

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

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APPENDIX B

PRINCIPLES OF JUDICIAL OFFICE

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

PRINCIPLES OF JUDICIAL OFFICE

PREAMBLE

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

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

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

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

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

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

PRINCIPLES OF JUDICIAL OFFICE

1. THE JUDGE IN COURT

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

Commentaries:

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

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

1.2 Judges have a duty to follow the law.

Commentaries:

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

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

Commentaries:

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

2. THE JUDGE AND THE COURT

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

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

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

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

Commentaries:

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

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

Commentaries:

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

3. THE JUDGE IN THE COMMUNITY

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

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

Commentaries:

Judges must not participate in any partisan political activity.

Judges must not contribute financially to any political party.

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

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

Commentaries:

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

APPENDIX C

HEARING ABOUT THE CONDUCT OF THE HONOURABLE JUSTICE DIANNE M. NICHOLAS

Hearing about the conduct of the Honourable Justice Dianne M. Nicholas

IN THE MATTER OF A HEARING
UNDER SECTION 51.6 OF THE COURTS OF JUSTICE ACT,
R.S.O. 1990, c. 43, AS AMENDED,

Concerning a Complaint about the Conduct of the Honourable Justice Dianne M. Nicholas

Decision of the Panel Following Notice of the Pending Retirement of Justice Nicholas

Before: The Honourable Justice Eileen Gillese, Chair
Court of Appeal for Ontario

Regional Senior Justice Martin Lambert
Ontario Court of Justice

Mr. Paul R. Sweeny
Evans Sweeny Bordin LLP
Lawyer Member

Mr. Farsad Kiani
Community Member

Hearing Panel of the Ontario Judicial Council

Counsel:

Ms. Marie Henein and Mr. Matthew Gourlay Henein Hutchison LLP	Mr. Richard H. Shekter Shekter Dychtenberg LLP
Presenting Counsel	Counsel for Justice Dianne M. Nicholas

APPENDIX C

Hearing about the conduct of the Honourable Justice Dianne M. Nicholas

OVERVIEW

1. The Ontario Judicial Council ordered a hearing under section 51.6 of the *Courts of Justice Act* into a complaint about the conduct of Justice Dianne M. Nicholas. This Hearing Panel was appointed to look into the allegations of judicial misconduct of Justice Nicholas and to determine the appropriate disposition of the complaint.

2. On December 3, 2014, through counsel, Justice Nicholas formally advised the Hearing Panel that she had elected to take retirement, effective December 31, 2014. In light of that information, the Hearing Panel adjourned the proceedings until January 14, 2015, a date which had been scheduled for the hearing to resume for the purposes of hearing evidence.

3. On December 3, 2014, the Hearing Panel also invited counsel to provide written submissions on whether it should issue an order staying the proceedings. Counsel for Justice Nicholas indicated that he would not be making written submissions on the matter and that he would not be taking any position on that issue.

4. After receiving and considering the written submissions of Presenting Counsel, the Hearing Panel re-affirms its decision to adjourn this hearing to January 14, 2015. It does so because through the adjournment the Hearing Panel will retain jurisdiction in this matter until Justice Nicholas' retirement takes effect. If for any reason, Justice Nicholas' retirement does not take effect on December 31, 2014, this proceeding will continue, as previously scheduled, beginning on January 14, 2015.

5. If Justice Nicholas' retirement takes effect on December 31, 2104, then this proceeding will come to an end by operation of law because the Ontario Judicial Council and the Hearing Panel will cease to have jurisdiction over Justice Nicholas who will no longer be a judge. Accordingly, no further order is needed to ensure that the public interest is protected and that the matter has been fully concluded.

BACKGROUND IN BRIEF

6. The Ontario Judicial Council received a complaint about the conduct of Justice Nicholas. After an investigation by a complaint subcommittee, pursuant to sections 51.4(18) and 51.6 of the *Courts of Justice Act*, a review panel of the Judicial Council

directed that the complaint regarding the conduct or actions of Justice Nicholas be referred for a hearing. It was alleged that Justice Nicholas had conducted herself in a manner that was incompatible with the due execution of the duties of her office.

7. A Notice of Hearing was issued on October 1, 2013. The particulars of the complaint, which were attached to the Notice of Hearing, can be briefly summarized as follows:

> In October, 2012, Justice Nicholas posted comments on the Facebook wall of an Assistant Crown Attorney in which she criticized judgments rendered by two other judges in criminal driving cases and disclosed personal information about one of the judges. The posting was seen by persons working in the justice system. These actions and comments were alleged to be a failure to meet the high standard of conduct expected of judges and may have resulted in the perception that Justice Nicholas would not be impartial in the adjudication and sentencing of criminal driving cases.

8. Prior to convening on December 3, 2014, the Hearing Panel had last convened on August 20, 2014. At that time, Mr. Shekter, counsel for Justice Nicholas, moved for an adjournment of the hearing dates that had been scheduled for September 25 and 26, 2014. The grounds for the requested adjournment were that Justice Nicholas' former counsel had taken steps to have himself removed as her counsel, Mr. Shekter was newly retained and needed time to properly prepare, and the scheduled dates conflicted with a religious holiday which he observed.

9. The Hearing Panel granted the motion and took steps to ensure that the hearing would resume in a timely fashion. The hearing was scheduled to resume in Ottawa, Ontario, on January 14, 15, 16, 19, 20 and 21, 2015. Counsel for Justice Nicholas and Presenting Counsel were advised to be ready to present all of their evidence and witnesses, with the possible exception of medical witnesses, during that period. The Hearing Panel indicated that it was prepared to sit early and late on the scheduled hearing dates, and over the weekend dates of January 17 and 18, 2015, if necessary, to accommodate witnesses and complete the hearing of evidence.

10. The Hearing Panel scheduled additional hearing dates of March 10, 11, and 12, and April 14, 15 and 16, 2015, to be used as necessary to complete the hearing of evidence, including medical evidence.

11. The Hearing Panel also established timelines by which both counsel were to advise: (1) whether the matter would proceed by way of an agreed statement of facts, in full or in part; and (2) the number of witnesses they intended to call and the amount of time they needed to present their respective cases. In addition, a deadline was established for counsel to Justice Nicholas to advise Presenting Counsel as to any medical reports that he intended to rely upon.

12. Subsequently, counsel for Justice Nicholas indicated, through the Registrar, that Justice Nicholas intended to retire by December 31, 2014. He later advised that Justice Nicholas wished to bring a motion asking that the Hearing Panel make a recommendation to the Attorney General that she should be compensated for the costs of legal services that she had incurred in connection with the complaints process.

13. The matter was scheduled to be spoken to on December 3, 2014.

14. On November 19, 2014, counsel for Justice Nicholas advised that she would not be proceeding with a motion for compensation of her costs of legal services incurred in connection with the complaints process.

15. On December 3, 2014, counsel for Justice Nicholas formally confirmed to the Hearing Panel that Justice Nicholas was not seeking compensation for the legal costs that she incurred in connection with the complaints process. He also formally confirmed that Justice Nicholas had submitted an unconditional letter of full retirement to Chief Justice Bonkalo, effective December 31, 2014.

THE STATUTORY SCHEME

16. The Council derives its jurisdiction over provincially-appointed judges through the *Courts of Justice Act*. Section 51.3 requires that the complaint be about the conduct of a provincial judge:

> 51.3(1) Any person may make a complaint to the Judicial Council alleging misconduct by a **provincial judge**. [Emphasis added.]

51.3(4) Once a complaint has been made to the Judicial Council, the Council has carriage of the matter.

17. Section 51.6 of the Act is similarly predicated on the subject of the complaint being a judge at the time of disposition:

51.6(11) After completing the hearing, the Judicial 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, may,

(a) warn the judge;

(b) reprimand the judge;

(c) order the judge to apologize to the complainant or to any other person;

(d) order that the judge take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a judge;

(e) suspend the judge with pay, for any period;

(f) suspend the judge without pay, but with benefits, for a period up to thirty days; or

(g) recommend to the Attorney General that the judge be removed from office in accordance with section 51.8.

18. Once a judge retires, he or she is no longer a “judge” or “provincial judge” and the Council no longer has jurisdiction to hold a hearing or impose a disposition. Though not made explicit by the legislation, this limit on the Council’s jurisdiction is implicit in the statutory language.

DISPOSITION

19. Accordingly, the Hearing Panel affirms that this matter is adjourned to January 14, 2015. If, for whatever reason, Justice Nicholas' retirement is not effective as at December 31, 2014, the matter shall resume in Ottawa, on the scheduled dates and in accordance with the Hearing Panel's prior directions.

20. The Hearing Panel directs the Registrar to cancel the scheduled hearing dates upon confirmation that Justice Nicholas' retirement is effective.

21. The Hearing Panel concludes by noting that should Justice Nicholas attempt to return to office as a judge, the Ontario Judicial Council would regain jurisdiction over her and this hearing would resume.

Date: December 18, 2014

Members of the Hearing Panel:

The Honourable Justice Eileen Gillese, Chair
Court of Appeal for Ontario

Regional Senior Justice Martin Lambert
Ontario Court of Justice

Mr. Paul Sweeny
Lawyer Member

Mr. Farsad Kiani
Community Member