OJC

TWENTY-FOURTH ANNUAL REPORT

2018-2019

ONTARIO
JUDICIAL COUNCIL

ISSN 1206-467X

The Honourable George R. Strathy

CHIEF JUSTICE OF ONTARIO

Co-Chair, Ontario Judicial Council

The Honourable Lise Maisonneuve

CHIEF JUSTICE

ONTARIO COURT OF JUSTICE

Co-Chair, Ontario Judicial Council

ONTARIO JUDICIAL COUNCIL

September 23, 2019

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

Dear Minister:

It is our pleasure to submit the Annual Report of the Ontario Judicial Council concerning its twenty-fourth 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, 2018 to March 31, 2019.

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

TABLE OF CONTENTS

Introduction 1

1) Composition and Terms of Appointment 2
2) Members 3
3) Administrative Information 6
4) Functions of the Judicial Council 7
5) Education Plan 8
6) Communications 9
7) Principles of Judicial Office 9
8) Judicial Appointments Advisory Committee 10
9) The Complaints Procedure 10
10) Notification of Disposition 16
11) Legislation 16
12) Compensation for Legal Costs Incurred 17
13) Summary of Complaints 17

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

Appendix B – *Principles of Judicial Office* ..... B - 69

INTRODUCTION

The period of time covered by this Annual Report is April 1, 2018 to March 31, 2019.

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

The Ontario Judicial Council had jurisdiction over 381 provincially-appointed judges, including full-time and *per diem* judges during the period of time covered by this Annual Report. Most of the judicial officers whose conduct is under the jurisdiction of the Ontario Judicial Council preside over proceedings at the Ontario Court of Justice. The Ontario Court of Justice is the busiest trial court in Ontario, which is the province in Canada with the largest population. In 2018, the population was approximately 14.32 million. In an average year, judges of the Court deal with over 230,000 adult and youth criminal cases and approximately 17,000 new family law proceedings. The Court holds sittings at approximately 130 locations across Ontario, ranging from large courthouses in cities to fly-in locations in northern Ontario.

The Ontario Judicial Council received 25 new complaints in its twenty-fourth year of operation, and carried forward 20 complaint files from previous years. Of these 45 complaints, 24 files were completed and closed before March 31, 2019. Information about the files that were completed and closed is included in this Report. Twenty-one complaint files were carried over into the next year of operation.

The Judicial Council may make an order for accommodation of the needs of a judge who, because of a disability, is unable to perform the essential duties of judicial office. Such an order may be made to the extent necessary to enable him or her to perform those duties. Such an accommodation order may be made as a result of a complaint (if the disability was a factor in a complaint) or on the application of the judge in question. Although the Judicial Council itself is not directly involved in the appointment of provincial judges to the bench, a member of the Judicial Council serves on the provincial Judicial Appointments Advisory Committee.

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

1. COMPOSITION AND TERMS OF APPOINTMENT

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

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

The Chief Justice of Ontario or another judge of the Court of Appeal designated by the Chief Justice chairs all public hearings regarding the conduct of a particular judge and chairs all proceedings dealing with applications for orders of accommodation of a judge's needs resulting from a disability or requests for continuation in office by a Chief Justice or an Associate Chief Justice. The Chief Justice of the Ontario Court of Justice, or another

judge of that Court designated by the Chief Justice, chairs all other meetings including review panel meetings.

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

2. MEMBERS – REGULAR

The membership of the Ontario Judicial Council in its twenty-fourth year of operation (April 1, 2018 to March 31, 2019) was as follows:

Judicial Members:

CHIEF JUSTICE OF ONTARIO

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

CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

The Honourable Lise Maisonneuve .....(Toronto)
Co-Chair

ASSOCIATE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

The Honourable Peter J. DeFreitas .....(Toronto)

REGIONAL SENIOR JUSTICE

The Honourable Sharon Nicklas..... (Hamilton)
(Until December 17, 2018)

The Honourable Justice Patrick J. Boucher ..... (Sudbury)
(Effective December 17, 2018)

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

The Honourable Justice Howard Borenstein.....(Toronto)

The Honourable Justice Lise S. Parent..... (Brampton)

Lawyer Members:

DESIGNATED BY THE TREASURER

Mr. Christopher D. Bredt.....(Toronto)
Borden Ladner Gervais LLP

LAWYER MEMBER APPOINTED BY THE LAW SOCIETY OF ONTARIO:

Mr. David M. Porter .....(Toronto)
McCarthy Tetrault

Community Members:

Mr. James Dubroy ..... (Ottawa)
JAMES R. DUBROY LTD

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

Mr. Ranjit Singh Dulai..... (Brampton)
President and Chief Executive Officer at Petroleum Plus
(Until July 22, 2018)

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

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

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

The Honourable Justice Robert Sharpe.....(Toronto)

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

During the period covered by this report, the following judges of the Ontario Court of Justice were appointed by the Chief Justice to serve as temporary members of the Ontario Judicial Council when required:

The Honourable Justice Joseph A. De Filippis ..... (St. Catharines)

The Honourable Justice Hugh L. Fraser ..... (Ottawa)

The Honourable Justice Martin P. Lambert ..... (Timmins)

The Honourable Justice Paul M. Taylor .....(Toronto)

3. ADMINISTRATIVE INFORMATION

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

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

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

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

Ms. Shoshana Bentley-Jacobs, J.D – Counsel & Deputy Registrar
(Effective June 11, 2018)

Ms. Michelle M. Boudreau – Assistant Registrar

Ms. Ana M. Brigido – Assistant Registrar

Ms. Rachel Doiron – Administrative Assistant
(Until October 1, 2018)

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

4. FUNCTIONS OF THE JUDICIAL COUNCIL

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

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

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

The legislation that governs the Judicial Council establishes a complaint process that is generally private and confidential in the stages of investigation and determination of the appropriate disposition. If a hearing is ordered, the process becomes public, unless the hearing panel orders that there are exceptional circumstances to warrant a private hearing. The confidential and private nature of the complaint process required by the *Courts of Justice Act* is intended to achieve a balance between the accountability of judges for their conduct and the constitutionally protected value of judicial independence.

Under section 51.1 of the *Courts of Justice Act,* the Council may establish rules of procedure for complaint subcommittees, review panels and hearing panels. As a means of informing the public about the complaints process, the Council must make the rules available to the public. The Council has established procedural rules for the complaints process which are posted on its website.

In 2018, the Council developed and adopted a new format for its Procedures. Changes included adding paragraph numbers throughout the document for easier reference and separating legislative provisions from procedural rules. An "Overview" section was added to assist the public better understand the complaints process."Interpretation" and "Definitions" sections were also added.

Further, the Council made an amendment to inform the public that Presenting Counsel is not instructed by the Hearing Panel, the Registrar (or Council staff), and operates independently during the hearing process. Once the hearing process is complete, counsel takes instructions from the Registrar in any court proceedings arising from the hearing.

The current version of the Procedures is posted on the Council's website on the webpage "Policies and Procedures" at **www.ontariocourts.ca/ocj/ojc/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. The continuing education plan is developed by the Chief Justice in conjunction with the Education Secretariat. Purusant to subsection 51.10(1), the education plan must be approved by the Judicial Council.

The most recent version of the continuing education plan can be found on the Council's website at: **www.ontariocourts.ca/ocj/ojc/education-plan/.**

6. COMMUNICATIONS

The website of the Ontario Judicial Council continues to include information regarding the Council, as well as information about any upcoming hearings. Updates on ongoing hearings are posted on the website under the link, “Public Hearings”. Copies of public hearings decisions are posted on the website when released. Further, the Annual Reports are included on the website in their entirety.

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

7. PRINCIPLES OF JUDICIAL OFFICE

The Chief Justice of the Ontario Court of Justice is empowered to establish “standards of conduct for provincial judges” by section 51.9 of the *Courts of Justice Act.* A document entitled, the *Principles of Judicial Office* was prepared by the Judicial Conduct Subcommittee of the Chief Judge’s Executive Committee in consultation with the Judges’ Association and the judges of the Ontario Court of Justice. The document was then submitted to the Ontario Judicial Council for its review and approval in the second year of the Council’s operation, as required by subection 51.9(1) of the *Courts of Justice Act.*

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

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

8. JUDICIAL APPOINTMENTS ADVISORY COMMITTEE

A member of the Ontario Judicial Council serves on the provincial Judicial Appointments Advisory Committee as its representative. The Honourable Justice Sharon Nicklas, Regional Senior Justice of the Central West Region, was appointed to act as the Judicial Council's representative on the Judicial Appointments Advisory Committee during the period between August 11, 2016 and December 17, 2018. The Honourable Justice Patrick Boucher was appointed to act as the Judicial Council's representative effective December 17, 2018.

9. THE COMPLAINTS PROCEDURE

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

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

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

If the complainant expresses dissatisfaction with a decision that has been made by a judge, the letter of acknowledgment will advise the complainant that the Judicial Council has no power to change a decision made by a judge. In such cases, the complainant is advised that he or she may wish to consult with legal counsel to determine what, if any, legal remedies may be available.

A brief outline of the complaints process is set out below. A more detailed outline of the Judicial Council's procedures can be found on the Judicial Council's website at: **www.ontariocourts.ca/ocj/ojc/policies-and-procedures/.**

A) Investigation and Review of Complaints

Complaints are assigned to a two-person complaint subcommittee of the Judicial Council for review and investigation. The complaint subcommittee, comprised of a provincially-appointed judge (other than the Chief Justice of the Ontario Court of Justice) and a community member, is assigned to examine each complaint made to the Council. Complaints are generally not assigned to members from the same region where the judge who is the subject of the complaint presides. This avoids any risk or perception of bias or conflict of interest between a member of the Council and the judge.

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

Subsection 51.4(3) empowers the complaint subcommittee to dismiss complaints which are either outside of the jurisdiction of the Council (e.g., complaints about a judge's decision or decision-making, such as findings of credibility) or which, in the opinion of the complaint subcommittee, are frivolous or an abuse of process. All other complaints are investigated further by the complaint subcommittee.

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

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

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

B) Dispositions of Review Panels

Review panels are composed of two provincial judges (other than the Chief Justice of the Ontario Court of Justice), a lawyer and a community member. A review panel will review the complaint, the report of the investigating complaint subcommittee and all of the relevant materials considered by the subcommittee. If the subcommittee recommends any disposition other than a dismissal, the materials will include the response from the judge who is the subject of the complaint.

At this stage of the process, only the two complaint subcommittee members are aware of the identity of the complainant and the judge who is the subject of the complaint. With the objective of facilitating an objective, neutral consideration of the complaint, the review panel members are not informed of the identities of the complainant or the subject judge.

Complaint subcommittee members who participated in the investigation of the complaint do not sit on the review panel or, if a hearing is ordered, on the hearing panel at the subsequent hearing. Similarly, review panel members do not participate in a hearing of the complaint, if a hearing is ordered.

By the end of the investigation and review process, all decisions regarding complaints made to the Judicial Council will have been considered and reviewed by a total of at least six members of Council – two members of the complaint subcommittee and four members of the review panel – including two community members and one lawyer. Of the six persons who consider each complaint, at least half of the members are not judges (subsection 51.4(18).

The review panel may decide upon the following dispositions:

- dismiss the complaint;
- refer it to the Chief Justice of the Ontario Court of Justice, and if the subject judge agrees, impose conditions (for example, counselling, remedial education) on a decision to refer the complaint;
- refer it to a mediator; or
- order that a hearing into the complaint be held.

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

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

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

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

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

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

C) Hearings under Section 51.6

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

A hearing into a complaint is public unless the Council determines, in accordance with criteria established under subsection 51.1(1) of the *Courts of Justice Act,* that exceptional circumstances exist and the desirability of holding an open hearing is outweighed by the desirability of maintaining confidentiality. Where such criteria are met, the Council may hold all or part of a hearing in private. In certain circumstances, for example, where a

complaint involves allegations of sexual misconduct or sexual harassment, the Council has the power to prohibit publication of information that would disclose the identity of a complainant or a witness.

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

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

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

Under subsection 51.6(11), , the hearing panel of the Council may dismiss the complaint (with or without a finding that it is unfounded) or, if it finds that there has been misconduct by the judge, it may impose one or more of the sanctions set out below.

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

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

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

D) Removal from Office

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

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

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

10. NOTIFICATION OF DISPOSITION

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

11. LEGISLATION

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

12. COMPENSATION FOR LEGAL COSTS INCURRED

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

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

13. SUMMARY OF COMPLAINTS

The Ontario Judicial Council received 25 complaints in its twenty-fourth year of operation, and carried forward 20 complaint files from previous years for a total of 45 open files. Twenty-four files were addressed and closed during the period covered by this Report. Twenty-one complaint files remained open at the end of the reporting period and were carried over to the next reporting year (2019-2020).

Of the 24 files closed during the 2018-2019 period, one file was closed after a public hearing about the conduct of Justice Donald McLeod.

Of the 23 other files closed during 2018-2019, 7 were opened in that year. Eleven of the files were opened in 2017-2018. Five were opened in 2016-2017 and one file was opened in 2015-2016. In the latter case, after the file was opened, the Council learned that court proceedings that gave rise to the complaint were not fully concluded. In accordance with the Council's procedures, the file was held in abeyance pending the conclusion of the court proceedings and then investigated and considered.

Of the 24 files that were closed during the period covered by this Report, 15 arose from proceedings under the *Criminal Code,* 8 arose from family court proceedings, and one raised allegations about a judge's conduct outside of court.

Four of the 24 complaint files closed during the period of time covered by this Report were dismissed on the basis that they were found to be outside the jurisdiction of the Council. This occurred because the complainants expressed dissatisfaction with the result of a trial or with a judge's decision, but did not allege that the judge committed misconduct. While the decisions made by a trial judge in such cases could be appealed, the absence of any alleged misconduct meant that the complaints were outside of the jurisdiction of the Judicial Council.

Thirteen of the 24 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, yelling), lack of impartiality, conflict of interest or some other form of bias. The allegations contained in each of these files were reviewed and investigated in each case by a complaint subcommittee and considered by a review panel before a decision was made.

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

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

One hearing was ordered. A review panel will order a hearing where a majority of the members of the review panel are of the opinion that there has been an allegation of judicial misconduct that has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct. A hearing was ordered in relation to a complaint about Justice Donald McLeod. The hearing panel concluded that Justice McLeod's conduct was incompatible with judicial office, but that it was not so seriously contrary to the impartiality, integrity and independence of the judiciary that it rose to the level of undermining the

public's confidence in his ability to perform the duties of office or the public's confidence in the judiciary generally. Accordingly, the hearing panel dismissed the complaint. The decisions in relation to that hearing are posted the Council's website under the link "Public Hearings Decisions".

Twenty-one complaint files remain open to be carried over into the 2019-2020 reporting period.

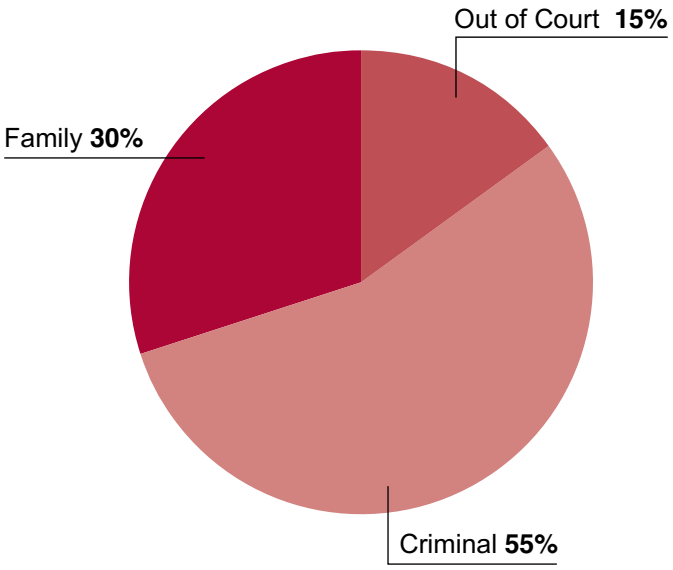
DISPOSITIONS ON FILES CLOSED IN 2018-2019

DISPOSITION	NUMBER OF CASES
Dismissed – Out of Jurisdiction	**4**
Dismissed – unfounded, not judicial misconduct, etc.	**13**
Referred to Chief Justice	**5***
Loss of jurisdiction	**1**
Hearing	**1**
TOTAL	**24**

* The five complaints arose from the same court proceeding.

TYPES OF CASES CLOSED IN 2018-2019

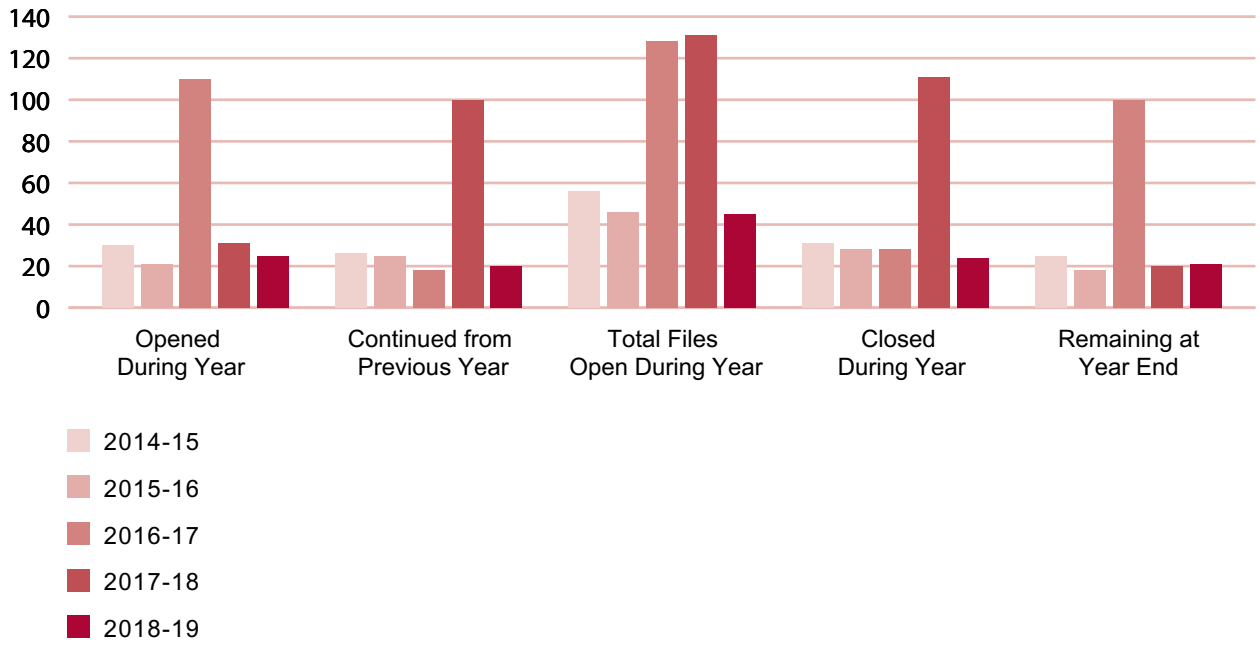
TYPES OF CASES CLOSED IN 2018-2019	
Criminal Court	**15**
Family Court	**8**
Other – Outside of Court	**1**
Small Claims Court	**0**
Provincial Offences Appeal	**0**
TOTAL	**24**



CASELOAD IN FISCAL YEARS

FISCAL YEAR	14/15	15/16	16/17	17/18	18/19
Opened During Year	**30**	**21**	**110**	**31**	**25**
Continued from Previous Year	**26**	**25**	**18**	**100***	**20**
Total Files Open During Year	**56**	**46**	**128**	**131**	**45**
Closed During Year	**31**	**28**	**28**	**111***	**24**
Remaining at Year End	**25**	**18**	**100**	**20**	**21**

* 81 complaints addressed by the hearing about the conduct of Justice Zabel took place in August 2017. One complaint about the conduct of Justice Keast was addressed by a hearing panel in December 2017. The decisions in the hearings can be found on the Council's website at www.ontariocourts.ca/ocj/ojc/public-hearings-decisions.



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

DISPOSITIONS IN FORMAL HEARINGS IN 2018-2019

Decisions made in relation to each of the hearings are posted on the Council's website on the Public Hearings Decisions 2018-2019 page at: **http://www.ontariocourts.ca/ocj/jprc/public-hearings-decisions**

JUDGE	# OF COMPLAINTS	DISPOSITIONS
Justice Donald McLeod	**1**	**Dismissal**

APPENDIX A

CASE SUMMARIES

A

Files are given a two-digit prefix indicating the year of the Council's operation in which they were opened, followed by a sequential file number and two digits indicating the calendar year in which the file was opened (e.g., file no. 24-001/18 was the first file opened in the twenty-fourth year of operation and was opened in calendar year 2018).

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

CASE NO. 21-007/15

The complainant wrote to the Council about the trial judge who presided over his family law proceeding in relation to issues of custody, access and support. The complainant was self-represented at trial.

The complainant alleged that:

- The judge was "rude and accusatory" in his Reasons for Judgment; the judge *"spoke in belittling tones and with belittling mannerisms".*
- During the trial, the judge spoke to the complainant *"in a harsh nature"* and was "rude and demeaning", at one point yelling at him.
- The judge referred to the complainant's conduct as "*borderline criminal and began to treat him as such".*
- The judge had presided multiple times over one of the witnesses in other proceedings and made mention of this at trial. The judge should have recused himself from the case as he had been involved with the family in question many times.
- The judge acted in a manner inconsistent with the law insofar as he allowed his personal feelings with the trial to carry over into the judgment. His ruling was completely out of line with the law.
- In his judgment, the judge referred to information that was not addressed at the trial. The complainant concluded that the judge was in contact with the other party's lawyer or some other individual who had close ties to the case.

- The judge ordered the complainant not to attend the child's school or speak to the teacher. This was inconsistent with the law.

The Council opened a file. The complaint subcommittee subsequently learned that a post-trial motion was filed with the court. The Council's Procedures state that if a complaint raises allegations of conduct arising from a court proceeding over which the subject judge is presiding, the Council does not generally investigate such complaints until the court proceeding and any appeal thereof, or other related legal proceedings, have been completed. This approach prevents the Judicial Council's investigation from interfering with, or from being perceived as interfering with, any ongoing proceedings. As a result, in accordance with the Council's procedures, the complaint was held in abeyance pending the completion of the court case. When the court case fully concluded, the investigation continued.

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

The review panel reviewed the subcommittee's report, the correspondence from the complainant, excerpts from the transcripts of the trial provided by the subcommittee and the transcript of the judge's Reasons for Decision.

The review panel observed that the judge heard evidence in the case for over forty-five days. The judge granted custody of the child to the complainant's spouse, made an order regarding the complainant's access and awarded the spouse child and spousal support.

The review panel observed that the complainant's allegations fell within two categories:

1. The judge's behaviour towards the complainant, and
2. Legal errors made by the judge during the trial and in his Reasons for Judgment.

The review panel observed that the subcommittee had conducted a careful review of the transcripts and the audio recordings and found that the court record did not support the complainant's characterization of the judge's behaviour. The subcommittee reported that the court record showed that the judge was mindful of the challenges that can arise when a self-represented litigant is conducting a trial.

The review panel noted that the subcommittee found that the judge overruled a number of objections raised by opposing counsel on the basis that the complainant was acting on his own behalf and not through counsel. The judge allowed the complainant latitude in the presentation of his case and, for the benefit of the complainant, the rules of evidence were relaxed.

The review panel noted that the subcommittee found that the court record showed that during the complainant's examination-in-chief, the judge assisted the complainant by asking questions directly bearing on the issues the Court had to decide. The review panel noted that the judge made comments to assist the complainant in keeping his case appropriately focused on the issues before the Court.

The subcommittee reported that the court record showed that the judge behaved in a calm and restrained manner.

The review panel noted that in the Reasons for Judgment, the judge found the complainant had been aggressive when cross-examining the respondent and some of her witnesses. The review panel did not find the judge's statements to be rude or demeaning in any way towards the complainant. The review panel accepted the findings of the subcommittee that the audio recording showed that the judge did not deliver the Reasons for Judgment in a belittling tone.

The review panel found that the record did not support the complainant's allegation that the judge treated the complainant as though he had engaged in criminal, or near criminal, activity. The review panel found that the judge said in his Reasons for Judgment that "*the issue of breaking a child's spirit is totally inappropriate and almost criminal".* The review panel observed that this comment was made in the context of the judge's assessment of the evidence. The review panel noted that the judge's assessment of the evidence and his decision in the case were matters of judicial decision-making outside the jurisdiction of the Council. If the complainant disagreed with decisions made in the case, the proper way to proceed was through remedies in the courts.

With respect to the allegation that the judge had presided over other matters involving the family in question many times and he should have recused himself, the review panel noted that in small towns it is not uncommon for judges to preside over multiple court cases involving the same families. The review panel noted that a party can bring a motion

if he or she is of the view that a judge should recuse himself or herself, and it is up to the party to establish legal grounds to support the motion.

With respect to the allegations that the judge referred to information that was not addressed at the trial and that he was in contact with the other party's lawyer or some other individual who had close ties to the case, the review panel observed that the Reasons for Judgment contained a review of the evidence presented, findings of fact based upon the evidence and an application of legal principles to the facts. The review panel noted that these allegations appeared to relate to the complainant's disagreement with the judge's decision in the case. The review panel noted that the subcommittee found no evidence in the court record to support these allegations. The review panel observed that if the complainant disagreed with decisions made in the case, the proper way to proceed was to seek remedies through the courts.

The review panel accepted the findings of the subcommittee. The review panel concluded that the record did not support the allegations about the judge's behaviour and the allegations related to decision-making were outside the jurisdiction of the Council. The complaint was dismissed.

CASE NO. 22-002/16

The complainant was a criminal defence lawyer. He represented a defendant in a criminal trial involving a witness who was a local lawyer. An out-of-town Crown Attorney and judge were brought in to try the case.

The complainant brought a recusal application on behalf of his client during the trial alleging reasonable apprehension of bias. The motion was dismissed. The defendant was convicted on one charge.

The complainant wrote to the Council and a file was opened. Subsequently, the complaint subcommittee learned that the defendant launched an appeal against conviction. Initially, defence counsel pursued the bias issue. The defence abandoned the ground relating to bias. The appeal from conviction was allowed and the defendant was acquitted.

After the appeal was completed, the subcommittee continued its investigation.

In his complaint, the complainant referred to comments made by the judge following the conviction but prior to sentencing. The complainant provided a copy of the transcript which showed that the judge said the following:

> *"Given that conclusion, as well, I just wish to add a further comment. Although it did not affect my apprehension of the facts and my judgment, I wish to reflect some accountability for the need to arrange for both out of town counsel for the Crown and an out of town judge. As in most organizations these days, both the judiciary and the Ministry of the Attorney General, and, frankly, defence counsel and the accused, to be sure, have limited resources. In that context, it is inconceivable to me in this case why the defence counsel insisted on such an arrangement. It is apparent from the evidence that [the defence counsel witness] could not and did not add any evidence to the identification issue of the driver of the motor vehicle nor any evidence in the manner in which that vehicle was operated prior to the collision.*
>
> *If the issue with [that defence counsel witness] was the credibility of whether or not the light was green or not for him, if that was the issue, it was not apparent since he was not in any way tested or attacked on that issue, nor was the cab driver, Mr.[name redacted], whose evidence was very straight forward. That, in conjunction with the accused's own statements on the red light issue, leaves the Court concerned about [defence counsel at trial's] assertion that my recusal was necessary to ensure the appearance of fairness for his client. In my view, it was both an unfortunate and costly process that was entirely unnecessary".*

The complainant alleged that the comments were "unnecessary, unprofessional and unbecoming of the judicial officer" and they disclosed, in his view, bias or a reasonable apprehension bias. He says that unnecessary commentary about counsel's conduct risks harming the appearance of fairness and exceeds the judge's "statutory jurisdiction" by embarking on an agenda not litigated before him. The complainant said that he felt he had no practical ability to respond to the judge. He further said that the comments were factually inaccurate as he was building a foundation for the calling of evidence.

The subcommittee reviewed the correspondence from the complainant,the transcripts of the trial, the judge's Reasons for Decision and the appeal decision. The subcommittee asked court staff to identify any edits made by the judge to the original transcript. The

subcommittee found that any edits were minor corrections to grammar or typing. 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 subcommittee's report, the correspondence from the complainant and the transcript of the Reasons for Decision that included the comments allegedly made by the subject judge.

The review panel observed that the judge's response showed that he made the comments based upon his assessment of the evidence in the case and the court resources utilized. The review panel noted that a trial judge is permitted to comment upon the efficient or inefficient use of court time. The panel was of the view that the comments reflected the judge's assessment in the particular circumstances and were not unprofessional or unbecoming of a judicial officer.

The review panel observed that the transcript showed that the comments were made after the finding of guilt and the finding was based upon the evidence presented during the trial. The review panel concluded that the comments did not evidence bias or partiality, or give rise to a reasonable apprehension of bias or unfairness.

The review panel noted that the case was adjourned to a subsequent date for sentencing. The complainant would have had an opportunity to respond to the judge when the comments were made or on the subsequent date. The judge's response showed that His Honour would have been open to further discussion of the matter if counsel had raised it.

The review panel noted from the judge's response that he indicated that if the Judicial Council determined that his comments were inappropriate, he offered his apology to the complainant.

The panel was of the view that the comments did not amount to judicial misconduct and dismissed the file.

A

CASE NO. 22-018/16

The complainant was a police officer who appeared as a witness before the subject judge on numerous occasions. He believed the subject judge was biased and prejudiced against him. As a result, he alleged that all the defendants in his cases were acquitted. He claimed to have a 90% “conviction rate” in his cases before other judges. He was of the view that the subject judge did not evaluate his evidence fairly and wanted her to recuse herself from any future cases.

The complainant indicated that in the most recent court matter, the judge submitted a complaint to police services that he was late for court. He said that he took responsibility for being late but alleged that even if he had attended court and testified, it was clear that another acquittal would have resulted.

The Registrar wrote to the complainant advising that the Judicial Council does not have any jurisdiction over the assignment of judges to require a judge to recuse himself or herself from hearing a case.

The complainant officer indicated that the subject judge was biased and prejudiced against him which began when he did not bring his notebook to Court in a case in which he was required to testify. He stated that although he offered an explanation, the judge did not accept it and subsequently acquitted the defendant due to the judge’s inability to rely upon the complainant’s evidence. The complainant asserted that the judge was prejudiced against him and as a result, rejected his evidence in other cases, resulting in acquittals.

Following his failure to bring his notebook to court, a complaint was made against the complainant to the Police Service Professional Standards Section. The investigation resulted in a finding of guilt of neglect of duty and the complainant received a penalty.

The subcommittee reviewed the letter of complaint and requested further information from the complainant. The complainant provided documentation relating to the complaints made against him and investigated by the Professional Standards Section. The subcommittee also ordered and reviewed the transcript of the court proceeding where the police officer was scheduled to be a witness and was late. Following its investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed correspondence from the complainant including the documentation relating to the complaints made against him to the Professional Standards Section, excerpts of the transcript of the most recent court proceeding and the subcommittee's report.

The review panel noted that the essence of the complaint made by the complainant about the judge related to his view that the subject judge did not accept his evidence given his note-taking practices. The review panel also noted that the complainant officer's own police force took issue with his note-taking practices.

The review panel observed that the transcript of the most recent court proceedings showed that despite having been subpoenaed as witnesses two police officers, including the complainant, were absent from the courtroom when the trial was called to start. The panel also observed that the transcript showed that efforts were made to reach the complainant when he did not appear for the trial. The judge indicated in open court that this was the first time she was aware that the complainant did not attend court and stated that that the problem is usually that the officer has no notes. The transcript indicated that the second officer eventually arrived late. The charges were ultimately dismissed. The judge expressed concerns about the conduct of the second officer. The judge indicated that she hoped the Crown Attorney would make a written report of what had happened that day.

The review panel concluded that the complainant's steadfast refusal to make proper notes despite being told to do so by his police service, and despite the obvious consequences in court, along with his failure to attend court, were the sources of his difficulties with the subject judge. The review panel concluded that the allegation of bias or prejudice was not supported.

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

CASE NO. 22-022/17

The complainant appeared before the judge for a trial on a charge of assault causing bodily harm. He was found guilty and convicted. The complainant was represented by counsel at trial and on an unsuccessful appeal. The complainant filed a complaint with the Council but disclosed that he was at that time the subject of a civil lawsuit arising from the incident that led to the criminal charges.

The Council's Procedures state that if a complaint raises allegations of conduct arising from a court proceeding over which the subject judge is presiding, the Registrar shall advise the complainant that the Judicial Council does not generally investigate such complaints until the court proceeding and any appeal thereof, or *other related legal proceedings,* have been completed. This approach prevents the Judicial Council's investigation from interfering with, or from being perceived as interfering with, any ongoing proceedings. As a result, the complaint was held in abeyance pending the completion of the civil case.

When the related civil case concluded, the subcommittee proceeded with its investigation of the complaint. The subcommittee reviewed the letters from the complainant and ordered and reviewed the transcripts of the trial. The subcommittee also obtained and reviewed a copy of the Reasons for Judgment of the appeal court. After completing its investigation, the subcommittee provided a report to a review panel.

The review panel reviewed the letters from the complainant, the report from the subcommittee, the transcript of the trial judge's reasons for judgment, and the Reasons for Judgment of the appeal court.

The review panel observed that many of the complainant's allegations were directed at the judge's decision-making, assessment of credibility of the witnesses and the outcome of the trial, which were all matters outside the Council's jurisdiction. If a person disagrees with decisions made by a judge, the proper way to proceed is through an appeal court, as the complainant had done. An appeal court has the jurisdiction to determine whether a trial judge made any legal errors..

The review panel accepted the findings of the complaint subcommittee that the complainant's allegations of judicial misconduct were not borne out by the trial record. The review panel noted that the complainant alleged that when his lawyer contacted the Crown Attorney to discuss the case, he was told that the matter was going to trial because "I got my judge." In his complaint, the complainant relied on that statement to suggest that the Crown Attorney may have manipulated the court schedule to ensure the trial was held before the subject judge in order to gain an advantage.

The review panel noted that pursuant to the *Courts of Justice Act,* scheduling of judges to courtrooms and cases is determined by senior members of the judiciary. A Crown Attorney does not have input into the cases assigned to a judge.

The review panel observed that the complainant alleged that constant eye contact during the trial between the judge and Crown Attorney suggested that they had "shared some sort of private discussion prior to the trial which would explain [the Crown Attorney's] 'my judge' comment." The complainant also alleged that the judge did not like his lawyer, looked at the complainant "with hatred" during the trial and, at various times throughout the trial, it appeared that neither the Crown Attorney nor the judge were "… even paying attention to the witnesses speaking as if they were exchanged [sic] some sort of non-verbal communication." Finally, the complainant stated that "if" the judge had reviewed the charges before the trial, had prior contact with the Crown Attorney or was "…privy to any information about me causing him to be even remotely bias *[sic]*…" towards the complainant or others who had the same occupation as the complainant, then he should have recused himself from the case.

After reviewing the materials provided by the subcommittee, the review panel accepted the findings of the subcommittee that there was nothing in the record that substantiated the complainant's allegations of bias, nor evidence of any discussions between the judge and the Crown Attorney about his case before the trial. The subcommittee found no evidence to support a conclusion that the judge had any prior knowledge of the charges, or had negative preconceptions about the complainant specifically or others who had the same occupation as him.

The review panel accepted the finding of the subcommittee that the trial record showed that the judge treated the lawyers, the witnesses and the accused with courtesy and respect. The subcommittee found no evidence to support the allegations that the judge was angry or that he bullied or intimidated the complainant's lawyer. The review panel noted that the judge's reasons for judgment demonstrated that he listened to the submissions of both counsel and based his findings on the evidence he heard at trial. The review panel agreed with the summary conviction appeal judge that there was nothing in the trial judge's reasons to support the complainant's allegation that he gave unequal consideration to the Crown and defence evidence.

The review panel dismissed the complaint on the basis that there was no evidence to support the allegations of judicial misconduct and the allegations relating to judicial decision-making were outside the Council's jurisdiction.

A

CASE NO. 22-026/17

This complainant appeared before the subject judge for a trial on charges of assault and issuing a death threat against his adult son. Following the trial, the complainant appeared before the judge in relation to his application to vary or terminate the three-year term of probation that was imposed in the sentencing.

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

- The judge *"displayed improper courtroom decorum at both hearings",* where the judge was *"rude, abusive and bias towards the accused".*
- The judge stated at trial that *"we do not want to hear about your disfunctional [sic] family",* which statement the complainant says, *"hurt like hell especially coming from a judge".* The complainant states in the letter that he was *"raped at age 6 and many times to the age 17".*
- The judge was *"racist and sexest [sic]"* and *"extremely abrupt".*
- The judge *"failed to consider the preceding factors that lead [sic] to the incident that cause him to be wrongfully charged with assault".*
- The guilty verdict and sentence imposed by the judge was based on a previous conviction 30 years earlier from a judge who was removed from the bench.

The complainant stated that the probation ordered by the judge took a significant physical, emotional, mental and financial toll on him. He also alleged that he was "*subjected to extreme police harassment over and over since as a result of her bad decision".* The complainant alleged that when he appeared before the same judge at a later date to request an early termination date of his probation, the judge failed to consider:

- His "*family relationships with his son and mother and the trauma",* he has endured *"as a result of both individuals, especially his mother",* and
- How *"the current sentence has affected his physical and mental health".*

The complainant also alleged that the judge "*displayed considerable bias towards m [sic] son",* refusing to consider *"the trauma"* the complainant has *"endured in the past as a result of* [his] *mother"* and the purpose of his request.

The complainant stated that he believes the judge's "*behaviour was unlawful and unethical",* which caused his depression and physical ailments to worsen. The complainant said he attempted suicide on a date after his trial and that all of the resources the judge *"recommended he needed, he tryed [sic] they all failed".* He stated that as a result of the judge's *"actions, misconduct",* he is *"in constant state of turmoil, unable to proceed with his life".*

The complaint subcommittee reviewed the Information, Adult Probation Order, the Notice of Hearing to Vary a Conditional Sentence Order or Probation Order and the Notice of Hearing to Vary a Conditional Sentence Order. A member of the subcommittee also reviewed the transcript of the complainant's trial and the transcript of the complainant's appearance before the same judge in relation to the complainant's application to vary or terminate the probation order against him. Following the investigation, the subcommittee submitted a report to the review panel.

The review panel reviewed the complainant's correspondence, the subcommittee's report, and excerpts of the transcripts of the two court proceedings before the subject judge that showed all of the judge's comments during the proceedings.

The review panel found no evidence to support any of the allegations made in the complaint or any judicial misconduct at either the trial or the other hearing. The review panel was of the view that the judge conducted a proper and orderly trial and hearing and showed no bias or disrespect in either proceeding towards the complainant. The review panel noted that the judge did use the phrase, *"dysfunctional family",* but it was in the context of admonishing the complainant, a self-represented accused, not to *"use this court as a forum to deal"* with family background issues, but rather, to focus on the matters directly before the Court.

At the hearing to vary the complainant's probation, the judge adjourned the hearing for three days because the Court had received no notice of the application and the complainant was unrepresented.

The review panel concluded there was no judicial misconduct and the allegations relating to the judge's decisions or how the judge weighed the evidence in this case were outside the jurisdiction of the Ontario Judicial Council. Matters of judicial decision-making are 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.

With respect to the complainant's concerns relating to *"extreme police harassment",* the complainant was informed that the Ontario Judicial Council only has the authority to investigate complaints about the conduct of provincially-appointed judges. He was informed that the Office of the Independent Police Review Director (OIPRD) oversees the investigation of public complaints against Ontario's police.

This complaint was dismissed and the file was closed.

CASE NO. 22-029/17 AND 24-011/18

The complainant wrote to the Council about the judge who presided over the judicial pre-trial in his case, and about another judge who presided over his trial.

File 24-011/18

The complainant alleged that the Crown Attorney and the pre-trial judge failed to "follow the rules of criminal law" and disclosure requirements. He was also alleging that they "manoeuvred to a pre-trial". At the time he made his complaint to the Council, his case was still before the courts.

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

When the court proceedings concluded, the subcommittee reviewed the complainant's letter and ordered and reviewed the transcript of the proceeding. When the subcommittee completed its investigation, it provided a report to a review panel.

The review panel reviewed the letter from the complainant and the report from the subcommittee.

The review panel noted that a judicial pre-trial is an essential step in the trial date-setting process. Pre-trials are held on the record for self-represented persons.

The review panel accepted the findings of the subcommittee that the transcript showed that the judge was at all times patient, providing guidance and information to the complainant and urging the Crown Attorney to assist the complainant in obtaining the disclosure that was sought.

The review panel noted that the allegation that the judge failed to follow the rules of criminal law was a matter of judicial decision-making outside the jurisdiction of the Council. If a person disagrees with how a judge applies or interprets the law, the proper way to proceed is to seek remedies in the courts, such as an appeal. The Council's jurisdiction is limited to judicial conduct.

The review panel noted that the complainant's concerns about the Crown Attorney and disclosure were outside the jurisdiction of the Council. The complainant was informed that if he wished to make a complaint about the conduct of the Crown Attorney, he may wish to contact the Director of Crown Law Office, Criminal.

The review panel concluded that there was no evidence of misconduct and the allegations related to judicial decision-making were outside the jurisdiction of the Council. The complaint was dismissed.

File 22-029/17

The complainant wrote to the Council about how his trial was conducted before a different judge. He again raised his concerns about inadequate disclosure, and took issue with errors in decision-making by the judge. After the trial, the judge dismissed the charge and imposed a peace bond. The complainant appealed the decision and the appeal was dismissed.

In his letter, the complainant said that he was not satisfied with the judge's decision. In addition to his concerns about disclosure, he expressed disagreement with how the judge applied the law and the *Charter.* He expressed concerns that the police were calling his brother and harassing his family members. He believed that there may be a conspiracy to jail or kill him. He alleged that the Crown Attorney was "running his case on false claims and only using small segments of the case." He also thought it was unfair because not all of the police witnesses were present for the court case.

The complaint subcommittee reviewed the letter from the complainant and ordered and reviewed the transcript of the trial. After completing its investigation, the subcommittee reported to a review panel.

The review panel reviewed the letter from the complainant and the report from the subcommittee.

The review panel noted that the subcommittee found that the transcript showed that the judge was very patient in ensuring that the complainant understood court practice and had a fair trial.

The review panel noted that the complainant was concerned about conduct relating to the police and the Crown Attorney. He was referred to the Office of the Independent Police Review Director (OIPRD) which receives, manages and oversees all complaints about police in Ontario. He was also referred to the Director of Crown Law Office, Criminal.

The review panel concluded that the complaint arose from the complainant's disagreement with how the judge applied the law and made decisions in the case. The review panel decided that the complaint should be dismissed as it was outside of the jurisdiction of the Council. The file was closed.

CASE NO. 23-002/17

The complainant was the father of a child in an acrimonious child protection matter. He alleged that the judge caused him to endure "racist, unfair, and unprofessional legal practices". He alleged that "the judge shut me off in a very rude manner. He told me he was not interested of my problem; besides my presents *[sic]* meant nothing, so even if I failed to attend court he will still make his decision."

The complainant alleged that when he asked the judge why he would not give custody to the complainant, the judge would not answer. He said that the judge was only interested in what the Children's Aid Society or other lawyers were telling him.

Before a final determination could be made on the complaint, the Judicial Council received confirmation that His Honour was no longer a judge of the Ontario Court of Justice. As a result, the Judicial Council had no jurisdiction to continue its complaints process in relation to the complaint. The complaint file was administratively closed due to a loss of jurisdiction.

CASE NO. 23-010/17

The complainant was a lawyer who acted for the mother for the latter part of a family law proceeding. The complainant filed a complaint about the case management judge. The complainant alleged that "in hearing after hearing, the judge manifested actual bias against and positive dislike of our client, delineated in the factum enclosed and evidenced by his recorded words in the transcripts and his Orders made, culminating in the bizarre and huge cost order against her, in favour of the opposing party." He alleged that the tapes showed that the judge was "sarcastic, scornful and generally negative" towards his client and her counsel. The complainant provided two volumes of materials from the court proceedings.

A file was opened. Subsequently, the subcommittee learned that the complainant appealed the costs order made by the judge and he was asking the judge to recuse himself from any further involvement in the case. Council staff informed the complainant that in accordance with the Council's procedures, when a complaint arises from a court proceeding, the Council does not generally investigate such complaints until the court proceeding and any appeal thereof, or other related legal proceedings, have been completed. This approach prevents the Council's investigation from interfering with, or from being perceived as interfering with, any ongoing proceedings. The complainant was informed that the matter would be held in abeyance and he was asked to inform the Council's office when the court case had fully concluded. When the court case finished, the investigation proceeded.

The complaint subcommittee reviewed the correspondence from the complainant and ordered and reviewed all of the transcripts of all the proceedings before the judge. The

subcommittee reviewed the court and appeal documents provided by the complainant, as well as the decisions of the higher courts that dealt with the appeal. After completing its investigation, the subcommittee provided a report to the review panel.

The review panel reviewed the complainant's letters, the subcommittee's report, complete transcripts of some proceedings and excerpts of transcripts of other proceedings as recommended by the subcommittee. The review panel also read the endorsement of the judge who dismissed the complainant's client's application for leave to appeal.

The review panel reviewed transcripts of the proceedings prior to the time when the mother retained the complainant to represent her. At that time, she was represented by another lawyer. The review panel saw that the judge encouraged both parties to be involved in the child's life and counsel for both parties did not disagree with that approach. The review panel was of the view that statements made by the judge should be taken in the context of the judge being presented with both parties' shared objective of having maximum contact with the child and the judge encouraging the parties to remember that it was in the child's best interest for the parties to a find a solution.

The review panel found that, in context, no comments made by the judge amounted to misconduct. The review panel observed that the judge acceded to the mother's former lawyer's request to take a break to allow her to speak to her client and offered to get them a private room.

The review panel concluded that the judge was balanced and appropriate in addressing both parties and their concerns. The panel observed that the parties were reaching a settlement with the assistance of counsel. The judge was fair, polite and even-handed. The judge commented on the appropriateness of both parties' submissions.

The panel observed that the parties agreed to a referral to a social worker and vacated their trial dates. The panel noted that the subcommittee found nothing to suggest bias or favouritism.

The transcript of a subsequent appearance showed that when the mother represented herself by teleconference at a settlement conference, the judge gave the mother time to explain her side and was polite and accommodating to the mother's schedule for the next court date.

The review panel found that a transcript of a later appearance showed that a costs order was made against the mother for not retaining counsel until a few days before a scheduled court appearance. The review panel noted that the determination of costs is a decision within the discretion of the judge that is outside the jurisdiction of the Council. The transcript did not reveal comments that demonstrated sarcasm towards or dislike of the mother.

The review panel's review of the transcript of a motion date related to costs showed that leave was granted to the mother to file a report from a psychologist. The review panel observed that the judge was courteous to the mother, who participated in the motion by teleconference.

The review panel saw that during one proceeding, the subject judge cautioned the parties that if there was contemptuous behaviour with the previous access order, the trial judge would hear about it. The review panel noted that this was a note of caution frequently expressed to parties in such cases. The review panel saw that there was also a discussion about non-payment of the previous costs order by the mother. The judge then indicated that he would make a further costs order based on written submissions. The review panel noted that in family court proceedings, costs are to be decided at each stage of the proceedings, so that process is not unusual.

The review panel noted that a case management judge is entitled to express an opinion on the direction that he or she feels a case will go at trial to assist the parties in reaching a settlement. The review panel observed that during an appearance, the judge's comment that neither side seemed to know how they would be using the proposed trial time did not demonstrate bias.

The review panel observed that the transcript of the trial management conference showed that the complainant was asking the judge to recuse one of his colleagues from hearing the trial because that judge heard the original ex parte motion a long time before on a "without prejudice" basis. In the end, the judge ruled that his colleague could hear the trial, and agreed that the mother could give her evidence by Skype further to the complainant's request.

The review panel concluded that the judge did not show bias, contempt or scornful behaviour towards the complainant or his client. The review panel accepted the subcommittee's finding that overall, the judge was courteous and respectful and there was no evidence of bias.

The review panel noted that the issue of alleged bias on the part of the judge was referred to by the appeal court in its decision. The appeal judge was of the view that the judge was entitled to decide that the mother arbitrarily frustrated access and acted in bad faith and that such findings did not make the judge biased.

The review panel dismissed the complaint as not supported by the evidence and closed the file.

CASE NO. 23-012/17, 23-013/17, 23-014/17, 23-015/17 AND 23-026/17

There were five related files relating to a criminal matter. One of the complainants was the victim of sexual assault in the 1970s, when the victim was an adolescent. The accused entered a guilty plea and the complainant appeared in criminal court to give a victim impact statement. A victim impact statement is a statement from a victim of crime that describes the physical or emotional harm, property damage or economic loss they have suffered as the victim of an offence.

The victim, a friend and three family members filed complaints about the manner in which the judge spoke to, and dealt with, the victim while he gave his victim impact statement to the court. All five complaints are detailed below:

File 23-012/17

A friend of the victim said in his letter of complaint that he had hoped that the sentencing day would be one of healing for his friend. He alleged that instead the judge “re-victimized” his “courageous yet fragile friend through bullying, thoughtless conduct”. The complainant alleged that His Honour grew tired and impatient while the victim was reading his statement, and told the victim to sit down before he was finished reading it. The complainant said that the victim apparently “crumbled” after the judge told him to sit down, and his family and friends “gasped in disbelief”. The complainant requested that His Honour take sensitivity training, anger management training, and apologize to the victim.

File 23-013/17

A relative of the victim alleged in her complaint that the judge showed a total lack of interest, even boredom and impatience, while the victim was sharing his immense mental and physical suffering. She alleged that the judge abruptly interrupted the victim and "waved his hand as if to shoo a naughty child away." She states the victim obeyed but was completely humiliated. The complainant requested that His Honour apologize to the victim.

File 23-014/17

A relative of the victim was present during the victim impact statement and noted that while he was reading his statement, police officers and court workers entered and exited the courtroom, which made the environment unsettling. In her letter to the Council, she said that the interruptions were so apparent that the victim stopped reading at one point; however, His Honour encouraged him to continue. The complainant felt that all eyes and ears should have been on the victim and that such disruptions should not have occurred.

The complainant alleged that, by cutting the victim off mid-statement, His Honour displayed "shocking behaviour" and acted in a manner that was "cold", with no empathy or compassion. She described his conduct as "inept, rude, unskilled and contemptuous courtroom management" such that His Honour owed the victim a written acknowledgement of how disruptive his behaviour was and an apology. She also felt that His Honour should be removed from office.

File 23-015/17

A relative of the victim indicated that the victim had been living with him and his wife since the victim's marriage ended, which the complainant said was largely a result of the victim's past sexual abuse. The complainant said that he and his wife both witnessed how agonizing it was for the victim to prepare his victim impact statement.

In his letter of complaint, the complainant said he was appalled by His Honour's decision to cut the victim short during the victim's one opportunity to voice the impacts of his childhood abuse. The complainant alleged that His Honour did not display the important

features of a judge such as “thoughtful analysis, judicial temperament, patience, open-mindedness, courtesy, tact, understanding, compassion, humility and common sense”. He felt His Honour should be removed from office.

File 23-026/17

This complainant was the victim himself. He alleged that the Crown Attorney advised him that both the Crown and defence counsel had reviewed his victim impact statement prior to the commencement of the proceedings. He stated that the Crown Attorney told him to take as much time as he needed to read the statement. The victim’s understanding was that, given that the parties had agreed to a joint submission on penalty, this was the victim’s time to voice the devastating impacts of his trauma in public court.

In his letter, the complainant said that when His Honour cut him off from finishing his statement and told him to sit down, he was humiliated and his “PTSD was triggered”. In his letter, he requested an opportunity to read his victim impact statement in its entirety before His Honour. He requested that His Honour be held accountable for his “lack of empathy, impatience and abrupt conduct”. The complainant hoped that His Honour would receive training to carry out his judicial duties with tact when adjudicating cases involving “trauma, major medical issues and lifelong impact of crime.”

The Investigation and Disposition

The investigating complaint subcommittee reviewed the complainants’ correspondence and ordered and reviewed the transcript of the court proceeding. One member of the subcommittee also reviewed the audio recording of the appearance before His Honour. The subcommittee invited the judge to respond to the complaints.

The subcommittee received and reviewed the judge’s response. After completing its investigation, the subcommittee provided a report to the review panel.

The review panel reviewed the complaint letters, the transcript of the proceeding and the report from the subcommittee on its investigation. The review panel also read and considered the judge’s response to the complaints.

The review panel noted from the transcript and from the report by the subcommittee that it

was emotionally difficult for the victim as he read his victim impact statement to the court.

The review panel observed that the transcript indicated that when the victim began making comments about the character of the offender, the judge interrupted him and stated in a calm demeanour:

> "All right, sir, the point of this process is to express how you feel and how it's impacted you, not for a commentary on [the offender]. I've let you get away and speak way outside the bounds of what a victim impact statement is about. I'm now ending it sir. Thank you very much for your comments. Please have a seat. Mr. Y ([Defence Counsel] any comments, please? Sir, go sit down please. Mr. Y, submissions please. Sir, go sit down please."

The review panel noted that a judge presiding over a court case has the authority to apply the law applicable to victim impact statements. The review panel also noted that a judge should be mindful that the manner in which a judge conducts himself or herself in the courtroom may impact a victim's perception of whether he or she has been heard and whether justice has been done. The review panel noted that while judicial officers should make efforts to dispose of cases prudently and efficiently, they should also be mindful of how their conduct affects public confidence in the judiciary and in the administration of justice.

The panel observed from the transcript that the victim impact statement was particularly lengthy. The panel noted that His Honour did not, at any time prior to interrupting the victim, comment on the nature or appropriateness of the statement. Nor did the judge guide the victim on the legal parameters of the statement, or provide a warning to him of the need to stay within the confines of the law.

After reviewing the judge's response to the complaints, the review panel could see that the judge had reflected on how he had handled the matter and on the concerns raised in the complaints. His Honour provided information in his response about his health conditions and personal stressors that he was dealing with at the relevant time but he recognized that as a judge, he was expected to refrain from letting his personal circumstances affect his behaviour toward persons appearing before him in the courtroom. His Honour took full responsibility for his conduct in the court proceeding and sincerely regretted how he had treated the victim.

The review panel concluded that the situation could have been handled with much greater sensitivity and tact. As indicated in paragraph 3.1 of the *Principles of Judicial Office,* judges "should maintain their personal conduct at a level which will ensure the public's trust and confidence." The panel noted that a judge must be mindful of whether his or her comments would be perceived by persons in the courtroom as respectful and judicious.

The complaints process through the Council is remedial; through the review of one's conduct, improvements are made as to how situations and individuals are treated and handled in the future. Pursuant to section 51.4(17)(c) of the *Courts of Justice Act,* the review panel decided to refer the complaints to the Chief Justice of the Ontario Court of Justice.

Under the Procedures of the Council, a review panel will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the majority of members of the review panel are of the opinion that the conduct complained of does not warrant another disposition and there is some merit to the complaint and the disposition is, in the opinion of the majority of members of the review panel, a suitable means of informing the judge that his/her course of conduct was not appropriate in the circumstances that led to the complaint.

Further, a review panel will recommend imposing conditions on its referral of a complaint to the Chief Justice of the Ontario Court of Justice where a majority of the members of a review panel agree that there is some course of action or remedial training of which the subject judge can take advantage and the judge agrees to the condition(s) in accordance with subsection 51.4(15). After considering all of the circumstances, the review panel informed His Honour that it was prepared to refer the complaints to the Chief Justice provided that he agree to: (a) meet with the Chief Justice; and (b) participate in counselling for stress management. His Honour accepted the review panel's conditions.

The Chief Justice met with the judge and provided a report to the review panel. In her report, the Chief Justice informed the panel that the judge had completed stress management counselling and education, which included discussions about the importance of being mindful of his role as a person in authority and the importance of having an awareness of the impact that his comments and conduct can have on persons in the courtroom, including victims of crime.

The review panel noted that the Chief Justice's meeting with the judge included a discussion of the complainants' concerns, as well as the high standard of conduct expected of judicial officers and the importance of ensuring that victims of crime are provided an opportunity to be heard.

The review panel was satisfied that His Honour had genuinely reflected upon his conduct and had taken the complaints process seriously. The review panel observed that the judge was deeply remorseful about how he conducted the proceedings. The panel noted that His Honour understood why his conduct was perceived as disrespectful, and he undertook not to repeat such conduct in the future.

With respect to the victim's desire to have an opportunity to read his entire victim impact statement to the judge, the review panel noted that neither the judge nor the Council had any legal authority to grant this request. If the law had been otherwise, the panel noted that the judge would have been willing to listen to the full victim impact statement and he would have conveyed his apology in person. As indicated above, the judge did express an apology to the complainants through the Council.

After receiving the report from the Chief Justice, the complaints process was completed and the review panel closed the files.

CASE NO. 23-022/18

The complainant was convicted after trial of impaired driving and failing to provide a breath sample. In the midst of his trial, he filed a letter of complaint to the Ontario Judicial Council advising that he intended to file an appeal on grounds relating to misconduct by the trial judge and the Assistant Crown Attorney. The complainant was informed of the Council's policy that 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 is to ensure that any investigation by the Council is not interfering or perceived to be interfering with any on-going court matters.

The complainant was represented by counsel at trial and represented himself on an unsuccessful summary conviction appeal. After his appeal was dismissed, the complainant wrote a second letter of complaint alleging misconduct by the trial judge.

The complainant alleged the following conduct by the trial judge:

- The complainant's trial was scheduled for one day but continued over four separate days spanning several weeks. As a result, he incurred additional legal fees.
- After waiting one year for his trial to be heard, the first trial date was "nothing more than unfair and unjustified conduct."
- The trial judge failed to properly "view or balance the evidence…"
- The trial judge was unprepared and unorganized for trial, especially given it relates to "a human beings life and livelihood and the future they are dealing with."
- The trial judge failed to properly weigh and adjudicate the evidence at trial.
- His civil rights were violated and the judge "..did not conduct or perform in a manner one would expect from someone of such great standards for judgment.." and,
- The complainant acknowledged that the Council cannot overturn the outcome of cases but he alleged that his conviction amounted to a miscarriage of justice and an unreasonable verdict.

The complainant also made reference to a case he read about in the newspaper which was presided over by the subject judge. He alleged that the newspaper story "raised awareness to the judgment or judging of the judge" and he asserted that was why his complaint should be looked into. He said "it would be nice to know that judges are penalized and have authorities of consequences for their negligence."

The subcommittee reviewed the letters from the complainant and ordered and reviewed the transcripts of the trial, the judge's Reasons for Sentence, and the Appeal Decision. Following the investigation, the subcommittee submitted a report to a review panel. The review panel reviewed the subcommittee's report, the letters from the complainant, excerpts of the trial transcripts, the transcript of the judge's Reasons for Sentence, as well as the Appeal Decision.

After its review, the review panel arrived at the following conclusions:

1) *Allegation about delay in scheduling and completing the trial*

The review panel found nothing in the scheduling or completion of the trial that raised issues of judicial conduct.

The review panel noted that the subcommittee reported that the complainant's trial began one year after he was charged. The case was scheduled to be completed within one and a half days. During that time, the Crown Attorney and defence lawyer each called three witnesses and the complainant's lawyer started but did not complete his submissions. The case was adjourned to a remand court to set a date for completion and on the final date the lawyers completed their submissions and the judge gave his reasons for judgment and imposed sentence.

The subcommittee reported that its review of the transcript showed that the case proceeded as it should have. The review panel found nothing to suggest that the judge did anything to lengthen or delay the trial. The review panel noted that the complainant was represented at trial. His lawyer did not complain about the pace of proceedings or bring a *Charter* application alleging unreasonable delay.

2) *The judge's conduct during the trial*

A review of the transcript disclosed that the judge treated the complainant, counsel and the witnesses with courtesy and respect throughout the trial. The review panel found nothing in the record to suggest that the judge treated any of the participants unfairly, that he "violated" the complainant's civil rights, or that he was "unprepared or unorganized", as alleged by the complainant.

3) *The judge's reasons and decision*

The review panel observed that the complainant was unhappy with how the judge assessed the evidence and with the result of the trial. The review panel noted that the complainant's allegations that the judge failed to properly weigh the evidence and that his conviction amounted to a miscarriage of justice were matters of judicial decision-making not conduct. The review panel concluded that these allegations were outside the jurisdiction of the Council.

Judges have decision-making independence in accordance with the *Constitution Act, 1867.* The Council's legislated jurisdiction is limited to the conduct of judges. A higher level court is the body with jurisdiction to determine whether a judge has made an error in law and, if so, to change the decision. In this case, the appeal court determined that there were no errors in law and dismissed the complainant's appeal.

4) *Reference to press coverage about the judge*

The complainant referred to a news report about the subject judge in relation to another case and appeared to be inferring in his letter to the Council that there was a pattern of inappropriate judgments by the judge.

The review panel noted that the appeal judge, who reviewed the judge's decision-making in the complainant's case, determined that the conclusions reached by the subject judge in the complainant's trial were supported by the evidence and, in law, were reasonable. The appeal judge also dismissed the complainant's appeal of the sentence.

The review panel found no evidence to support an assertion that the judge's decisions in the complainant's trial were part of a pattern of inappropriate decision-making. On the contrary, the appeal decision showed that the judge's decision-making in the complainant's case was upheld. The review panel noted that news reports criticizing the judgment of the judge in a different case would have had no bearing on the judge's conduct in the complainant's trial.

The review panel dismissed this complaint on the basis that there was no evidence to support the allegations of judicial misconduct and the allegations relating to judicial decision-making were outside the Council's jurisdiction. The file was closed.

CASE NO. 23-028/18

The complainant wrote a letter of complaint to the Council arising from comments made in a decision given by a judge acquitting an accused of criminal charges that included charges of sexual assault.

The complainant referred to two passages out of the decision given by the judge. The first passage was about the judge's assessment of credibility of sexual assault complainants in general. The complainant alleged that the comments made by the judge in presenting his reasons for judgment showed bias on the part of the judge and endorsed myths about sexual assault complainants.

The second passage he referred to dealt specifically with the assessment of the credibility of one of the complainants in the case. The individual making the complaint to the Council was of the view that the judge's assessment was in direct conflict with an initial statement made by the judge on how not to perform such an assessment.

The complainant was of the view that both passages represented misconduct by the judge.

The subcommittee reviewed the letter of complaint and the Reasons for Judgment issued by the judge. When the subcommittee completed its investigation, it provided a report to a review panel.

The review panel reviewed the letter of complaint, the report from the subcommittee and the Reasons for Judgment. The review panel concluded that both of the complainant's concerns were in regard to the judge's assessment of credibility of witnesses which was a matter of judicial decision-making.

The review panel observed that upon review of the entire Reasons for Judgment of the judge, there was no support for the allegation that the comments of the judge showed bias.

The review panel concluded that in this case the allegations related to matters of judicial decision-making in the course of the judge's duties, not judicial misconduct. Matters of judicial decision-making are 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 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. Since judicial decision-making is outside of the jurisdiction of Council, the review panel dismissed the complaint. The file was closed.

CASE NO. 23-029/18

The complainant represented himself on a family law matter before the subject judge. After attending two case conference meetings, the complainant failed to appear at a settlement conference. After hearing submissions from counsel for the complainant's wife, the judge ordered the complainant to satisfy an earlier costs order, pay costs with respect to his failure to appear at the settlement conference, and to serve and file his financial statements. The judge made it clear that if the complainant failed to comply with the order, the complainant's wife would be entitled to bring a motion to strike the complainant's pleadings and to apply for a final order. The complainant failed to comply with the judge's order. Ultimately, the judge granted a final order awarding sole custody to the complainant's wife and ordering the complainant to pay child support.

The complainant alleged that the judge: exhibited highly impartial behaviour and bias against him; systematically prevented him from making arguments in court; repeatedly turned a blind eye to the fact that the applicant's mother was not following the rules; issued an arbitrary cost order against him while ordering court staff not to accept any documents until the payment was made; denied his request to involve the Office of the Children's Lawyer; ignored the financial aspects of his circumstances; ignored the fact that the Children's Aid Society was involved; and disregarded the best interests of his child in making the final order as to custody and child support. He alleged that the decisions of the judge were irresponsible and were made without due diligence and without respect for the rights of the parties. He said that ordering court staff to decline to accept the filing of documents until he paid the outstanding costs order was a "ransom request Mafia-style".

The subcommittee reviewed the correspondence from the complainant, the transcripts of the proceedings and the judge's final order. After completing its investigation, the subcommittee provided a report to a review panel.

The review panel reviewed the subcommittee's report, the correspondence from the complainant, the transcripts of the proceedings and the judge's final decision.

The review panel observed that many of the allegations were directed at the correctness of the application of the law and decisions in the case - matters beyond the jurisdiction of the Council. If a person disagrees with decisions made by a judge, the proper way to proceed is through remedies in the courts.

The review panel observed that the allegations about the judge's conduct were not supported by the transcripts. The transcripts showed that the judge dealt with both parties fairly and impartially throughout the proceedings. At the settlement conference appearances, the judge ensured that the complainant had an opportunity to speak with Duty Counsel, explained why she would not order the Office of the Children's Lawyer to appear, and confirmed that the complainant understood what he was obligated to do in order to move the case forward. The review panel observed that before making the final decision on custody and child support, the judge confirmed that the complainant had been served with her earlier order requiring him to satisfy the outstanding costs orders and to file his financial documents.

The review panel noted that a judge is permitted to consider the circumstances of a case and to make an order that costs must be paid before further steps may be taken in the case. As indicated above, if the complainant disagreed with the decision, the proper way to proceed is by seeking remedies in the courts.

The review panel found no evidence in the court record to suggest the judge denied the complainant's rights or had predetermined the outcome of the case.

The panel concluded that the allegations made by the complainant about the judge's conduct were not supported by the evidence. The allegations related to the judge's application of the law and decision-making were outside the jurisdiction of the Council. The review panel dismissed the complaint and closed the file.

CASE NO. 23-030/18

A complaint was submitted that indicated that while presiding as a full-time judge of the Ontario Court of Justice, Justice Donald McLeod participated in the organization, founding, leadership and activities of the Federation of Black Canadians ("FBC"). The FBC is a national non-profit organization that advocates, including to governments and legislative bodies, for the advancement of social, economic, political and cultural interests of Canadians of African descent. It meets with politicians or public servants to advocate on laws, programs and policies that affect black Canadians and to recommend changes.

A public hearing into the complaint was ordered. The Hearing Panel determined that there are limits that govern judicial participation in civic and charitable activities and interaction with politicians and government officials. The Panel observed that prior to its decision, there may have been a lack of clarity about when a judge crosses the line into impermissible advocacy and political activity.

The Panel said that in its decision it provided clarity, setting a clear boundary that judges will be expected to respect. In the future, if a judge crosses the line that the Panel delineated, a Hearing Panel may indeed find that public confidence has been undermined and that the judge has engaged in judicial misconduct.

The Hearing Panel concluded that Justice McLeod's conduct was incompatible with judicial office, but that it was not so seriously contrary to the impartiality, integrity and independence of the judiciary that it rose to the level of undermining the public's confidence in his ability to perform the duties of office or the public's confidence in the judiciary generally. Accordingly, the Panel dismissed the complaint.

The full decision of the Hearing Panel is posted on the Council's website under the link Public Hearings Decisions at **www.ontariocourts.ca/ocj/ojc/public-hearings-decisions.**

CASE NO. 24-001/18, 24-002/18 AND 24-003/18

The complainant was before the court as an accused person in both family and criminal law proceedings. She filed complaints about the conduct of three judges who presided over her matters. The complainant alleged "ongoing abuse of process, abuse of powers and authority, ongoing allowance of repeated punishments, unusual treatment, threats, harassment, intimidation, and violations of rights" of herself, her husband and child over a long period of time.

The complainant wrote to the Council in 2016 while her court matters were still ongoing. Council staff explained to her that if a complaint raises allegations of conduct arising from a court proceeding over which the subject judge is presiding, the Judicial Council does not generally investigate such complaints until the court proceeding and any appeal thereof, or other related legal proceedings, have been completed. This approach prevents the Judicial Council's investigation from interfering with, or from being perceived

as interfering with, any ongoing proceedings. The complaints were held in abeyance until the court matters were completed. After they concluded, the investigation into the complaints proceeded.

The review panel accepted the findings of the complaint subcommittee that there was no evidence to support the allegations of "ongoing abuse of process, abuse of powers and authority, ongoing allowance of repeated punishments, unusual treatment, threats, harassment, intimidation, and violations of rights" of herself, her husband and child over a long period of time.

As well, the complainant made additional allegations about each of the judges, as set out below.

File 24-001/18

The complainant appeared before the judge for a guilty plea on criminal charges. Duty Counsel and the Crown Attorney proposed a joint submission on sentence. The judge accepted the joint position on sentence.

The review panel considered all of the complainant's allegations about this judge including the following:

a) The complainant alleged that the judge held a position of authority at the complainant's former employer and told the complainant's Union that he would get rid of the complainant. The complainant stated that this conflict of interest was never disclosed. The complainant also made other assertions of conflict of interest relating to positions held by the judge before his appointment.

   The review panel noted that such concerns should have been raised at the court appearance. The review panel observed that the transcript showed that the concern was never raised during the court proceeding. A decision of whether or not to recuse oneself from a case is a discretionary judicial decision. Judicial decision-making is outside the jurisdiction of the Council in the absence of evidence of judicial misconduct.

The review panel also noted that the proceeding was a guilty plea with a joint submission. The judge accepted the joint submission as proposed.

The review panel concluded that there was no evidence of judicial misconduct.

b) It was also alleged that the judge abused his position in favour of others, and used the complainant and her husband as "scapegoats" as the complainant had no lawyer. The review panel accepted the finding of the complaint subcommittee that these allegations were not supported by the evidence and dismissed this complaint.

c) The complainant alleged that the judge was in a conflict of interest because he said he knew a Children's Aid Society (CAS) worker but he proceeded anyway.

The review panel observed that the transcript showed that before the joint submission on sentence, the judge advised everyone in the courtroom that he knew one of the CAS workers, as their children attended the same school and sports activities. The Duty Counsel and Crown Attorney both agreed that there was no issue with the judge continuing and imposing the joint position on sentence. The review panel observed that before sentence was imposed, the complainant had an opportunity to speak and the complainant raised no concerns.

The review panel observed that the decision of the judge to continue presiding over the sentencing was a matter of judicial decision-making outside the jurisdiction of the Council, and there was no evidence of misconduct.

d) The complainant alleged that the defence side was not heard.

The review panel observed that the transcript showed that the defence was heard, and the complainant had the opportunity to speak directly to the judge.

e) The complainant alleged that the judge said "get used to the stress or [the complainant] will spend a long time in jail". The complainant indicated that the complainant felt that this was a discriminatory statement because stress debilitated the complainant. The complainant also alleged that the judge said, "the police will be watching [the complainant]".

The review panel observed that the transcript indicated that the judge's comments needed to be taken in the full context in which they were made. The review panel noted that the judge was speaking with the complainant at the time and it appeared that he was trying to help the complainant understand the seriousness of the complainant's conduct and the potential consequences of her actions.

f) The review panel noted that the complainant alleged that the judge came into the courtroom with a "bias influenced attitude" and stated in court, looking straight at her with anger, "there are too many self-represented".

   The review panel found that the allegations of bias, anger and the particular comment referenced were not supported by the transcript.

g) The review panel observed that the complainant alleged that the judge made a DNA order with no understanding as to why.

   The review panel observed that the transcript showed that the judge said, "In view of the history of the matter, there will be a DNA order." The review panel noted the law permitted a DNA order in the circumstances of this case. The review panel noted that the decision of the judge to order the DNA order was a matter outside of the jurisdiction of the Council.

The review panel observed that the transcript showed that when the complainant was given an opportunity to address the court before sentence was passed, she described her personal circumstances that led to the charges. The complainant apologized to the court for her conduct and took no issue with the proceedings that had been conducted or with the judge at that time.

The review panel concluded that there was no judicial misconduct and the allegations about the judge's decisions were outside the jurisdiction of the Council. The review panel dismissed the complaint and closed the file.

A

File 24-002/18

The complainant appeared before the judge on a family law matter on five dates. The allegations included the following:

- the judge allowed the Social Services Administration Board to file an application for custody and to file a fraudulent document;
- the judge made an order against the complainant without notice while the complainant was "representing her husband" on a CAS court file at the same time;
- the judge signed two different orders on the same date; and,
- the judge made an order that the case would go to trial; and, the judge ignored an endorsement made by another judge.

It was also alleged that at one court appearance, the judge did not allow her to cross-examine a CAS worker.

The complaint subcommittee reviewed the complainant's correspondence and materials, and ordered the transcripts of the appearance before the judge. After completing the investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed the complainant's correspondence and materials and the complaint subcommittee's report.

The review panel accepted the finding of the complaint subcommittee that the transcript did not support the allegation that the judge did not allow the complainant to cross-examine a CAS worker.

The review panel observed that the other allegations about the judge were matters of judicial decision-making outside the jurisdiction of the Council. The review panel dismissed the complaint and closed the file.

File 24-003/18

The complainant expressed concerns about the decisions rendered by the judge in criminal and family matters during nine court proceedings that took place over five years.

She alleged that on one date, the judge said, “we do not collect affidavits... you only like to complain”.

The complainant also alleged that the judge had a conflict of interest because he sat on a committee in the community and another member of that committee was a doctor whom the complainant reported to the College of Physicians and Surgeons. The complainant alleged that the judge had a “bias/prejudice attitude”. She indicated that as a result of the conflict of interest, she was requesting another judge, whom she named, to preside over her court case.

The complaint subcommittee reviewed the letters from the complainant and the materials provided by her, and ordered and reviewed the transcripts of her proceedings before the judge. After completing its investigation, the committee provided a report to a review panel.

The review panel reviewed the complainant’s correspondence and materials, the subcommittee’s report and two transcripts provided by the subcommittee.

With respect to the allegation that the judge said, “we do not collect affidavits... you only like to complain”, the review panel observed that the transcript of the relevant court appearance showed that the complainant, who was self-represented, wanted to file an affidavit without a motion or application, which were required by the *Family Law Rules.* The judge stated: “So what you’ve told me is that you’ve got an affidavit that you want to file, but it has to be attached to some sort of proceedings before the court. So we just don’t collect affidavits so that we have this growing record of affidavits... There’s an argument and a decision that has to be made by the court. It’s not simply the complaint department. So I’m not sure if that helps or not... I can’t give you legal advice.” The review panel concluded that the comments made by the judge were appropriate in directing the complainant on the process required by law. The review panel found that there was no misconduct.

With respect to the allegation that the judge had a conflict of interest, the review panel observed that the complaint subcommittee reported that when the complainant first raised this concern with the judge, she said that the judge sat on a committee with a doctor whom the complainant had reported to the College of Physicians and Surgeons three years earlier. The complainant indicated that she requested that another judge, whom she named, hear the case. The judge presiding over the case denied ever hearing

of the committee or persons on the committee that concerned the complainant. The judge informed her that she would get a fair trial and he would not recuse himself from the case.

The review panel observed that at the next court appearance, the judge advised the complainant that he had discovered the name of the committee that he belonged to and he indicated that it would not be a conflict of interest. He explained that he had never known the doctor whom she named to be at the meetings. He also told her that she does not get to pick her judge. The complainant then told the judge that she believed that he had met with a paralegal in private. The judge denied this,and ultimately assured the complainant that she would get an impartial judge and it would be him.

The review panel concluded that the concern that the complainant raised about the decision of the judge not to recuse himself was a matter of judicial decision-making outside the jurisdiction of the Council, not a matter of conduct. If a person disagrees with a decision, the proper way to proceed was through remedies in the courts.

With respect to the complainant's concerns about the decisions rendered by the judge in criminal and family matters in the various court proceedings over which he presided,, the review panel concluded that the concerns arose from her disagreement with judicial decisions. The review panel noted that, as indicated above, matters of judicial decision-making are outside the jurisdiction of the Council. The Council's authority is limited to matters of conduct.

The review panel concluded that there was no judicial misconduct and the allegations about the judge's decision-making were outside the jurisdiction of the Council. The review panel dismissed the complaint and closed the file.

CASE NO. 24-005/18

The complainant was a self-represented litigant who brought a family court motion to have his ex-wife held in contempt of a court order for denying his regular access. His motion failed.

The complainant subsequently filed a complaint about the judge who presided over and denied his motion. The complaint related to a specific comment allegedly made in the courtroom by the judge, prompting laughter.

The complainant alleged that at around a specified time during the proceeding, the judge referred to the complainant as a “perv”, causing laughter in the court. The complainant indicated in his letter that he was offended.

The complaint subcommittee reviewed the letter of complaint and ordered and reviewed the transcript of the proceeding. One member of the subcommittee also listened to the relevant portion of the audio recording of the proceedings. After completing its investigation, the subcommittee submitted a report to the review panel.

The review panel reviewed the letter of the complaint, the transcript of the proceeding and the report from the subcommittee. The review panel found nothing in the transcript to support the claim. Further, the review panel noted that transcripts are certified as accurate by court reporters.

The review panel noted that the transcript showed that the complainant’s ex-wife was represented by counsel. The transcript indicated at one point, that counsel referred to the complainant as “my friend”, a term usually used between counsel on opposite sides. The judge interrupted and said, “He is not your friend, he’s the party.” There was minor laughter by counsel at that point.

The review panel observed that the subcommittee reported that the particular comment was listened to repeatedly by a subcommittee member to ensure what was said. The review panel accepted the finding of the subcommittee member that the judge did not call the complainant a “perv”. The review panel concluded that the complainant misheard the comment. The review panel observed that there was nothing of relevance said at the particular time referred to by the complainant. The review panel noted that the comment made by the judge was not inappropriate; it was an explanation of common practice.

The review panel dismissed the complaint as unsubstantiated by the court record. The file was closed

CASE NO. 24-006/18

The complainant filed a letter of complaint following his conviction on an impaired driving charge. He asserted that he was wrongfully convicted by the trial judge. He asserted that “critical” evidence was lost by the police, a 911 call was not played in

court, and the judge "did not want to export the doctor's subpoena medical letters due to my medical panic attack". He alleged that his *Charter* rights were violated by the trial judge. He alleged that the judge lied and was biased against him during the trial, and that the judge wrongfully statedthat there were five charges on the complainant's record, when there were in fact four.

The complaint was assigned to a complaint subcommittee for investigation. The subcommittee became aware that the complainant had filed an appeal of the decisions made by the judge in his court case. The complainant was informed of the Council's policy that if a complaint raises allegations of conduct arising from a court proceeding over which the subject judge is presiding, the Council does not generally investigate such complaints until the court proceeding and any appeal thereof, or other related legal proceedings, have been completed. This approach prevents the Judicial Council's investigation from interfering with, or from being perceived as interfering with, any ongoing proceedings.

The investigation was held in abeyance until the appeal concluded. When the investigation proceeded, the complaint subcommittee read the letter from the complainant and ordered and reviewed the transcripts of the trial, the judge's reasons for finding the complainant guilty, and the sentencing. When the subcommittee completed its investigation, it provided a report to a review panel.

The review panel reviewed the letter from the complainant, the subcommittee's report and excerpts of the transcripts of the court proceedings.

The review panel noted that most of the allegations raised by the complainant related to judicial decision-making and were, therefore, outside of the jurisdiction of the Council. If a person disagrees with decisions made by a judge or how the judge assesses the evidence or applies the law, the proper way to proceed is through remedies in the courts, such as an appeal. Only a higher court has the authority to determine whether a judge has made errors in his or her decisions and, if so, to change the judge's decision.

The review panel accepted the finding of the complaint subcommittee that the judge did not inappropriately intervene during the trial and merely asked questions for clarification.

The review panel observed that the report from the subcommittee and the excerpts of the transcripts showed that the judge made rulings in favour of each party. The judge ruled in favour of the complainant in terms of how the *Charter* application was to proceed

and overruled an objection by the Crown Attorney and allowed the questioning of the complainant to occur by the defence lawyer.

During submissions by the lawyers at the end of the trial, the judge asked probing questions, as is his right, of both lawyers. The review panel accepted the finding of the subcommittee that there was nothing in the transcripts that supported the allegation of bias.

With respect to the allegation that the judge improperly characterized the complainant's criminal record, the review panel observed that the transcript showed that the complainant and judge agreed to the characterization of the record. Further, the review panel noted that the issue was a matter outside the jurisdiction of the Council and within the jurisdiction of an appeal court to consider. With respect to the allegation of bias, the review panel concluded that the allegation was not supported by the transcripts. The complaint was dismissed and the file was closed.

CASE NO. 24-009/18

The complainant was convicted of impaired care and control of a motor vehicle and refusing an evidentiary breath sample. He was self-represented at his trial and sentencing.

In his letters of complaint to the Council, the complainant made numerous allegations against the police involved in his case, and against the judge who presided over his trial and sentencing.

Overall, the allegations against the judge related to his decisions and assessment of the evidence throughout the proceeding. For example, the complainant stated that the verdict was unreasonable, the sentence was too harsh, and that the judge accepted the evidence of a witness who had lied throughout the proceeding. He also alleged that the judge "accepted every agreed order by" the police and the Crown Attorney, "forgot to complete the record", "erred in judgement", "placed too much faith in court appointed experts", "forgot other things", "tried too hard to look dignified" and "misunderstood his position".

Further, the complainant alleged that the judge permitted an attempted in-court intimidation of him during the trial. In particular, he stated that, after giving testimony, the breath technician, who was a police officer, "asked the presiding judge …if he can sit along or beside me, trying to intimidate me even further. Of course I declined!".

The complainant also alleged that the judge rudely and improperly rejected documents that he wished to put into evidence. He stated that he tried his "hardest and best … to show [the Judge] all my documents that supported my innocence, he still refused to look at them. That is not fair, unfounded and unprofessional…". He alleged that the subject judge "never bothered looking at my documents, he just [shoved] it back at my face …".

Finally, the complainant alleged that the judge defamed him by referring to him as an alcoholic. Specifically, the complainant stated that, "In the end, [the judge] echoed by 'defaming' me that he doesn't know whether I am a so called 'alcoholic' but recommended me to go seek counselling! Is he a Doctor? He has damaged my good name and reputation and character."

The complaint was assigned to a complaint subcommittee of the Judicial Council. The subcommittee reviewed the letters of complaint and the transcripts of both days of trial, including sentencing. When the subcommittee completed its investigation, it provided a report to a review panel of the Judicial Council.

The review panel reviewed the letters of complaint, the subcommittee's report and excerpts of the transcripts of the court proceedings.

The review panel noted that the complainant's allegations against the police were outside the jurisdiction of the Council. The complainant was informed that the Ontario Judicial Council only has the authority to investigate complaints about the conduct of provincially-appointed judges. He was informed about the Office of the Independent Police Review Director (OIPRD) that oversees the investigation of public complaints against Ontario's police.

With respect to the allegations against the judge, the review panel noted that, overall, the allegations related to judicial decision-making during the course of the trial or sentencing and were, therefore, outside the jurisdiction of the Council. If someone disagrees with decisions made by a judge or with how the judge assesses the evidence or applies the law, the proper way to proceed is to seek a remedy through the courts, such as an appeal. Only a higher court has the authority to determine whether a judge has made an error in his or her decision and, if so, to change a judge's decision.

The review panel accepted the subcommittee's finding that aspects of the allegations that could be perceived to be related to judicial conduct were not supported by the transcripts.

For instance, with respect to the allegation that the judge permitted the complainant to be intimidated by the breath technician, the review panel noted the following exchange from the transcript of the first day of trial:

> THE CROWN: Your Honour, I'll say it again in front of the defendant, but I was going to ask an exception for Officer [name of the breath technician] to sit by counsel table if that's not an issue then I would appreciate it.
>
> THE COURT: All right.

The transcript indicated that the complainant was paged to return to court after a recess and the matter was addressed by the trial judge as follows:

> THE COURT: All right, so ah [name of Crown prosecutor] wanted the officer, the breath technician, to sit beside him at counsel table, do you have any opposition to that?
>
> [COMPLAINANT]: Ah no. No.
>
> THE COURT: Okay. Granted.

With respect to the allegation that the judge improperly refused to admit the complainant's documents into evidence, the review panel observed that the record showed that after the complainant completed his testimony, the judge made the following remarks:

> THE COURT: Okay. You're closing your case then. Sorry. Perhaps I should ask you this. You said something about photographs earlier? And yesterday you said something about documents. Was there anything that you wanted to try to make admissible as exhibits …"

The complainant gave the court a series of documents, including what he referred to as *"the synopsis of* [his] *case",* to which the judge responded as follows:

> THE COURT: All right. I don't know that I can accept that, just because you're already given your verbal evidence.
>
> [COMPLAINANT]: Of course, yes.
>
> THE COURT: I don't need a summary of it in writing. Okay.

The review panel noted from the excerpts of the transcripts that the judge refused to admit into evidence materials that the complainant said he had taken from the internet concerning various legal concepts, as well as an email from a lawyer, consulted but not engaged by the complainant, commenting on a possible defence that he might consider adopting at trial.

The review panel observed that His Honour did admit into evidence a letter from a physician, dated prior to the date of the incident for which the complainant was arrested, but did not admit a letter from the same physician dated after the incident. His Honour also admitted a medical document referred to in the transcript as "Gam X-Ray Limited documents" produced by the complainant.

With respect to the complainant's allegation that the judge defamed him by "echoing" the issue of whether he was an alcoholic, the review panel accepted the subcommittee's observation that the complainant was likely referring to the prosecutor's comments on the question of the appropriate sentence for the two convictions:

> "I'd also be asking for a probation period given the fact that the defendant at least in my mind has an underlying alcohol problem, and probably could benefit from counselling."

In relation to whether the complainant was an alcoholic, the judge stated the following in his Reasons for Sentence:

> "I am imposing probation primarily for your rehabilitation. I think it is important you get to know your probation officer, that he or she gets to know you, and that they determine whether or not you have an alcohol abuse problem. You will take counselling that the probation officer directs you to take. ….

> And finally – again this is directed towards the allegations, the facts that I found – you will not possess alcohol outside of a residence. So, if you are an alcoholic, and I do not know if you are, if you need to have alcohol, and I do not know that you do, you will not consume or possess alcohol outside of a residence."

The review panel concluded that the allegations against the judge either related to judicial decision-making outside the jurisdiction of the Council, or, to the extent that any of the allegations could be seen to constitute judicial conduct, such allegations were not supported by the record.

The complaint was dismissed and the file was closed.

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,Sepmanifest 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.