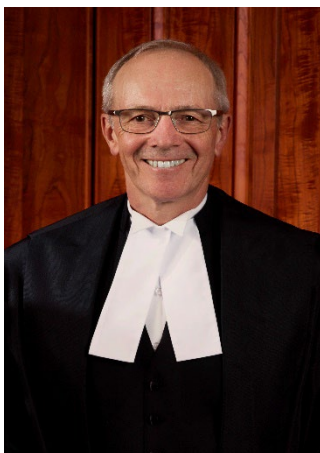




TWENTY-SIXTH ANNUAL REPORT APRIL 1, 2020- DECEMBER 31, 2021

ONTARIO
JUDICIAL COUNCIL

ISSN 1206-467X



The Honourable George R. Strathy
CHIEF JUSTICE OF ONTARIO
Co-Chair, Ontario Judicial Council



The Honourable Lise Maisonnette
CHIEF JUSTICE
ONTARIO COURT OF JUSTICE
Co-Chair, Ontario Judicial Council



ONTARIO JUDICIAL COUNCIL

March 22, 2022

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-sixth year of operation, in accordance with s. 51(6) of the *Courts of Justice Act*. The period of time covered by this Annual Report is from April 1, 2020 to December 31, 2021.

Respectfully submitted,

A handwritten signature in blue ink that reads "George R. Strathy".

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

A handwritten signature in blue ink that reads "Lise Maisonneuve".

Lise Maisonneuve
Chief Justice
Ontario Court of Justice



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1. INTRODUCTION

The period of time covered by this Annual Report is April 1, 2020 to December 31, 2021.¹

The Ontario Judicial Council is an independent body established by the Province of Ontario under the *Courts of Justice Act* (the “Act”) with a mandate to receive and investigate complaints about the conduct of provincially appointed judges. The Judicial Council does not have authority or jurisdiction to interfere with cases before the courts or to change a decision or order made by a judge. The Act provides for the Council to submit an Annual Report to the Attorney General on its affairs, including [case summaries](#) about complaints. Unless a public hearing has occurred, the Report must not include information that identifies a judge, a complainant or a witness.

Apart from investigating and disposing of complaints about judicial conduct, the Council also approves the continuing education plan for provincial judges and criteria for continuation in office for judges who have reached the mandatory age of retirement age.² In addition, the Judicial Council approves standards of conduct developed by the Chief Justice of the Ontario Court of Justice, called the *Principles of Judicial Office*.

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.

This Twenty-Sixth Annual Report provides information on the Council’s membership, its functions, policies and procedures, and its work during the 2020-2021 reporting year. Information is also included on accommodation orders made by the Judicial Council during the reporting year, if any. The Judicial Council has authority to make orders for accommodation of the needs of a judge who, because of a disability, is unable to perform the essential duties of judicial office. An accommodation order may be made as a result of a complaint or on application by a judge.

Provincial judges play an important role in the administration of justice in Ontario. They routinely preside over complex and serious family and criminal proceedings and perform difficult, and important work in the justice system. The judicial officers whose conduct is

¹ At a Judicial Council meeting in December 2021, the Council agreed to change its reporting year from the fiscal year to the calendar year on a go-forward basis. This has the salutary effect of aligning the reporting periods of the Ontario Judicial Council and the Justices of the Peace Review Council. Accordingly, the reporting period for the 2020-2021 Annual Report has been extended from March 31, 2021 to December 31, 2021.

² Pursuant to s. 47 of the *Act*, every provincial judge shall retire upon attaining the age of sixty-five years. Section 47(3) of the *Act* provides that a judge who has attained retirement age may, subject to the annual approval of the Chief Justice of the Ontario Court of Justice, continue in office as a full-time or part-time judge until they attain the age of seventy-five years.



under the jurisdiction of the Ontario Judicial Council preside over proceedings in the Ontario Court of Justice. The Ontario Court of Justice is the busiest trial court in Canada. In an average year, judges of the Court deal with over 230,000 adult and youth criminal cases and approximately 13,000 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.

During the period of time covered by this Report, the Ontario Judicial Council had jurisdiction over 380 provincially appointed judges, including full-time and *per diem* judges.

You may find out more about the Council by reading this Annual Report and by visiting the Council's website at:

- <https://www.ontariocourts.ca/ocj/ojc/>

The website contains:

- the Council's current policies and procedures
- updates about any public hearings that are in progress
- decisions made in public hearings
- the Principles of Judicial Office
- the Continuing Education Plan for judges of the Ontario Court of Justice; and
- a link to the Council's governing legislation



2. 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 Council 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 4-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.



3. MEMBERS

The membership of the Ontario Judicial Council between April 1, 2020 to December 31, 2021 was as follows:

Court of Appeal for Ontario

- ◆ The Honourable George R. Strathy, Chief Justice of Ontario (Co-Chair)

Ontario Court of Justice

- ◆ The Honourable Lise Maisonneuve, Chief Justice of the Ontario Court of Justice (Co-Chair)
- ◆ The Honourable Peter J. DeFreitas, Associate Chief Justice of the Ontario Court of Justice
(Until June 2, 2021)
- ◆ The Honourable Aston Hall, Associate Chief Justice of the Ontario Court of Justice
(Effective June 3, 2021)
- ◆ The Honourable Justice Patrick J. Boucher, Regional Senior Justice (East Region)
(Until December 10, 2020)
- ◆ The Honourable Justice Esther Rosenberg, Regional Senior Justice (Central East Region)
(Effective October 7, 2021)

Two judges appointed by the Chief Justice of the Ontario Court of Justice

- ◆ The Honourable Justice Peter K. Doody (Ottawa)
- ◆ The Honourable Justice Manjusha Pawagi (Toronto)

Lawyer Members

- ◆ Teresa Donnelly, Treasurer of the Law Society of Ontario

Lawyer member appointed by the Law Society of Ontario

- ◆ Christopher D. Bredt, Borden Ladner Gervais LLP



Community Members

- ◆ Mauro Di Giovanni (Bradford)
Former police officer (retired), President of Si2 Investigations Inc.
- ◆ Melikie Joseph, MSW, RSW (London)
Family Liaison Officer, Southwestern Ontario Military Family Resource Centre
(Until November 14, 2021)
- ◆ Judith LaRocque (Hawkesbury)
Government of Canada (retired)
(Until November 1, 2020)
- ◆ Victor Royce (Thornhill)
Former President and CEO of Rolex Canada (retired)
- ◆ Jasmit (Jaz) Singh (Oakville)
Financial Planning Analyst with Peel Regional Police
(Effective June 17, 2021)

Temporary Members

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

- ◆ The Honourable Justice Janet M. Simmons (Court of Appeal for Ontario)

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

During the period covered by this report, the following judge of the Ontario Court of Justice was appointed by the Chief Justice to serve on a hearing panel of the Council:

- ◆ The Honourable Justice Michael J. Epstein (Ontario Court of Justice - Kitchener)

During the period covered by this report, the following judge of the Ontario Court of Justice was appointed by the Chief Justice as a temporary member for purposes of meeting the quorum requirements of the legislation with respect to Judicial Council meetings and review panels:

- ◆ The Honourable Lise S. Parent, Senior Advisory Family Justice



4. ADMINISTRATIVE INFORMATION

Office space is shared by both the Ontario Judicial Council and the Justices of the Peace Review Council. The Councils use financial, human resources and technology support staff in the Office of the Chief Justice, as needed.

The office of the Council is used for Council meetings and for meetings with judicial officers that may result as part of the disposition of complaints. The Councils have a shared reception, toll-free number and fax number.

The Ontario Judicial Council and the Justices of the Peace Review Council share a staff consisting of a Registrar, a Counsel/Deputy Registrar, two Assistant Registrars and an Administrative Assistant:

- ◆ Marilyn E. King – Registrar – retired May 31, 2021
- ◆ Alison Warner – Registrar – started May 1, 2021
- ◆ Shoshana Bentley-Jacobs – Counsel & Deputy Registrar
- ◆ Michelle Boudreau – Assistant Registrar – until April 31, 2021
- ◆ Philip Trieu – Assistant Registrar – started October 17, 2021
- ◆ Ana Brigido – Assistant Registrar
- ◆ Ingrid Richards – Administrative Assistant (September 2020 to March 2021)
- ◆ Astra Tantalo – Administrative Assistant – started April 1, 2021

The period covered by this report saw a number of staffing changes. Marilyn King, who acted as Registrar since 2008, retired after a distinguished career in the Ontario public service. In addition, the Assistant Registrar, Michelle Boudreau, accepted a secondment opportunity at the Office of the Public Guardian and Trustee.

The Council welcomed a new Administrative Assistant, Astra Tantalo, on April 1, 2021, a new Registrar, Alison Warner, on May 1, 2021, and a new Assistant Registrar, Philip Trieu, on October 17, 2021.

Over the last 18 months, Council staff provided support on a lengthy Ontario Judicial Council hearing, 6 full Council meetings and numerous complaint subcommittee and review panel meetings, in addition to supporting the work of the Justices of the Peace Review Council.



5. FUNCTIONS OF THE JUDICIAL COUNCIL

The *Courts of Justice Act* prescribes the following functions of the Council:

- ◆ 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 complaints referred by the complaint subcommittees and decide upon dispositions under s. 51.4(18);
- ◆ to hold hearings under s. 51.6 when hearings are ordered by review panels pursuant to s. 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 s. 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 of the Ontario Court of 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 disposition of complaints about conduct. It does not have the power to interfere with a court case or change a decision made by a judge. If a person believes that a judge made an error in assessing evidence or in deciding a legal issue, the proper way to proceed is by pursuing available legal remedies through the courts, such as an appeal.

The legislation that governs the Judicial Council establishes a complaints process that is generally private and confidential in the investigation stages. If a hearing is ordered, the process becomes public, unless a 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.



6. COUNCIL PROCEDURES

Under s. 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 the 2020-2021 reporting year, the Judicial Council continued to refine and develop its procedures and policies. Several amendments were made to clarify the authority of hearing panels and improve the hearing process:

- ◆ The Council noted that presenting counsel has, on occasion, withdrawn allegations ordered to a formal hearing without input from the hearing panel. The Council considered that a review panel made the decision to order the allegations to a hearing after determining that the allegations have a basis in fact which, if believed by a hearing panel, could lead to a finding of judicial misconduct. The Council noted that if presenting counsel is permitted to unilaterally withdraw an allegation, members of the public may incorrectly believe that allegations were ordered to a hearing without evidence, or that a private agreement was reached between presenting counsel and the subject judge.

The Council therefore amended its procedures to confirm that presenting counsel is required to bring a formal motion to withdraw one or more allegations ordered to a hearing. This process allows for submissions from both parties, with the ultimate decision residing with the hearing panel. It also provides transparency for members of the public. Before withdrawing an allegation, a hearing panel must be satisfied that the allegation of judicial misconduct no longer has a basis in fact.

- ◆ The Council amended its procedures to provide that presenting counsel and the subject judge may not make joint submissions on disposition, and that the hearing panel is not bound by the submissions of either party as to disposition. The Council considered that presenting counsel should make independent submissions on disposition to avoid the perception that a deal or private agreement was made with the subject judge. Further, the Council noted that the decision on disposition rests with the hearing panel as part of its exercise of statutory authority.

Additional amendments to the Procedures were made to address the following issues:

- ◆ To provide guidance to hearing panels on when they may reject agreed statements of fact and a process by which parties may make submissions in this regard;

- 
- ◆ To provide authority to both the Registrar and the Deputy Registrar to issue summonses, to increase efficiency; and
 - ◆ To reflect changes to the *Courts of Justice Act* that came into effect on July 8, 2020 regarding applications for compensation from judicial officers.
 - ◆ To reflect the authority of complaint subcommittees to dismiss complaints that are clearly outside the Council's jurisdiction, frivolous or an abuse or process pursuant to s. 51.4(3) of the *Courts of Justice Act*.

A copy of the Council's current Procedures that incorporates these amendments is posed on the Judicial Council's website under the link "Policies and Procedures" at:

- www.ontariocourts.ca/ocj/ojc/policies-and-procedures/

7. COMMUNICATIONS

The website of the Ontario Judicial Council includes information about the Council, including the most current version of its policies and procedures, as well as information about hearings that are underway or that have been completed. Information on ongoing hearings is available under the link, "Public Hearings" at:

- <https://www.ontariocourts.ca/ocj/ojc/public-hearings/>

Information about decisions made during hearings are posted under the link, "Public Hearings Decisions" at:

- <https://www.ontariocourts.ca/ocj/ojc/public-hearings-decisions/>

Each Annual Report of the Council is made available on the Council's website at <https://www.ontariocourts.ca/ocj/ojc/annual-report/> no later than thirty days after it has been sent to the Attorney General.



8. EDUCATION PLAN

Control over judicial education is within the sole purview of the Ontario Court of Justice. The Chief Justice of the Ontario Court of Justice is required by s. 51.10 of the *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. Pursuant to s. 51.10(1), the education plan must be approved by the Judicial Council.

In 2019, a mentoring program was added to the Education Plan.

The most recent version of the continuing education plan can be found on the Council's website under the link, "Continuing Education Plan" at:

- <https://www.ontariocourts.ca/ocj/ojc/education-plan/>

9. STANDARDS OF CONDUCT

The Chief Justice of the Ontario Court of Justice is empowered to establish "standards of conduct for provincial judges" under s. 51.9 of the *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 s. 51.9(1) of the *Act*.

The *Principles* set out standards of excellence and integrity to which judges should subscribe. They are not exhaustive. Intended to assist judges in addressing ethical and professional dilemmas, they also serve to assist the public in understanding the standards of conduct expected of judges both on and off the bench.

The *Principles* are advisory in nature. A breach does not automatically lead to a conclusion that there has been misconduct. However, the principles do set out a general framework of values and considerations that are relevant in evaluating allegations of improper conduct by a judge. The *Principles of Judicial Office* are posted on the Council's website at:

- <https://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* (1998) form part of the ethical standards governing the conduct of judges of the Ontario Court of Justice. The Judicial Council agreed.



10. 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 Patrick J. Boucher, former Regional Senior Justice of the North East Region, the Honourable Justice Peter Doody, judge of the Ontario Court of Justice, and Senior Advisory Family Justice Lise Parent, acted as the Judicial Council's representative on the Judicial Appointments Advisory Committee during the period covered by this report.

11. APPLICATIONS FOR ACCOMMODATION

A judge who believes that they are unable, because of a disability, to perform the essential duties of office unless their needs are accommodated may apply to the Council under s. 45 of the *Courts of Justice Act* for an order that such needs be accommodated to enable them to perform the essential duties.

The Ministry of the Attorney General, with input from the Office of the Chief Justice, has a process that provides a consistent means for judicial officers to request accommodation of needs arising from disabilities. The Council recognizes that the Ministry has access to the expertise and resources to properly assess and address requests for accommodation of needs. For the Council to properly consider applications for accommodation, the applicant judge must first exhaust the accommodation of needs process that is available through the Ministry of the Attorney General. When that process has been completed, if the judge wishes to apply to the Council, they must provide a copy of all documentation from the Ministry's application process, including medical evidence and decisions.

The Council's Procedures include its policy governing applications for an order of accommodation at:

- <https://www.ontariocourts.ca/ocj/ojc/policies-and-procedures/>

No applications for accommodation orders to enable performance of essential duties were received during the reporting year.



12. THE JUDICIAL COMPLAINTS PROCESS

i. Who may file a complaint?

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 and the principles of natural justice do not provide for the Judicial Council to act on anonymous complaints or to initiate inquiries into the conduct of a judicial officer. Rather, an investigation conducted by the Judicial Council must be in response to specific allegations submitted by a named complainant or complainants.

ii. Does the Council have the legal authority to consider the complaint?

The Judicial Council has a legislative mandate to review complaints about the **conduct** of judges. The Council has no authority to review the **decisions** of judges to determine whether there were any errors in how the issues were determined or how conclusions were drawn. If a party involved in a court case thinks that a judge reached the wrong decision in the case, they may have legal remedies through the courts, such as an appeal or application for judicial review. Only a court can change a decision or order of a judge.

All correspondence sent to the Judicial Council is reviewed to determine whether a complaint is within the jurisdiction of the Council. In cases where the complaint may be within the jurisdiction of the Council, a complaint file is opened and a letter of acknowledgement is sent to the complainant.

If a complainant expresses dissatisfaction with a judge's decision in a court proceeding, a letter is sent advising the complainant that the Council has no power to change a decision made by a judge. In such cases, the complainant is advised that they may wish to consult legal counsel to determine what, if any, remedies may be available through the courts.

If an individual is complaining about their lawyer or paralegal, a police officer, a Crown Attorney, court staff or about another office, the complainant is generally given the contact information of the appropriate body that may address their concerns.

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 does not interfere and is not perceived to be interfering with ongoing court matters.

iii. What happens in the complaints process?

The *Courts of Justice Act* and the procedures that have been established by the Council provide the framework for addressing complaints about judges. If a complaint is ordered



to a public hearing, certain provisions of the *Statutory Powers Procedure Act* also apply. The complaints procedure is outlined below.

a) Preliminary Investigation and Review by Complaint Subcommittee

Once a complaint file is opened, it is assigned to a two-member complaint subcommittee of the Judicial Council for review. Complaint subcommittees are composed of a provincially appointed judge (other than the Chief Justice of the Ontario Court of Justice) and a community member. 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 subject judge.

Section 51.4(3) empowers the complaint subcommittee to dismiss complaints which are either outside of the jurisdiction of the Council 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. Section 51.4(6) of the *Act* states that the investigation must be conducted in private.

If a complaint arises from a court proceeding, the subcommittee orders and reviews transcripts of the court proceeding. The subcommittee may also order and listen to the audio recording of the proceeding. In some cases, the subcommittee may decide to conduct further investigation, such as interviewing witnesses. Under s. 51.4(5), the subcommittee may retain independent counsel to assist in the investigation, for example, by conducting interviews with witnesses.

The subcommittee may also decide to invite the judge to respond to the complaint in writing. If a response is requested, a copy of all 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 assistance responding to the complaint.

Once the investigation is completed, under s. 51.4(13) of the *Act*, the complaint subcommittee will report to a review panel of the Judicial Council. As part of its report, 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 their conduct, that it be referred for mediation, or that a hearing be held under s. 51.6.

b) Interim Recommendations

In the course of its investigation, the complaint subcommittee may also consider whether the allegation(s) warrant making an interim recommendation of suspension or re-assignment. Under s. 51.4(8) of the *Act*, the committee may make an interim recommendation to the Regional Senior Justice where the judge presides that the judge be suspended with pay or reassigned to another court location pending the final disposition of the complaint.



A Regional Senior Justice has discretion to accept or reject a complaint subcommittee's interim recommendation. If the Regional Senior Justice decides to suspend the judge pending the final disposition of the complaint, pursuant to the legislation, the judge will continue to be paid. If the Regional Senior Justice decides to reassign the judge, the legislation requires that the judge must consent to the reassignment.

In deciding whether to make an interim recommendation, a complaint subcommittee shall consider whether any of the following factors are present:

- ◆ the complaint arises out of a working relationship between the complainant and the judge and the complainant and the judge both work at the same court location;
- ◆ allowing the judge to continue to preside would likely bring the administration of justice into disrepute;
- ◆ the complaint is of sufficient seriousness that there are reasonable grounds for investigation by law enforcement agencies; and/or
- ◆ it is evident to the complaints committee that the judge is suffering from a mental or physical impairment that cannot be remedied or reasonably accommodated.

Where a complaint subcommittee is considering making an interim recommendation, it may (but is not required to) provide the judge with an opportunity to make written submissions on the issue before making its decision.

Particulars of the factors behind the complaint subcommittee's interim recommendation are provided to both the Regional Senior Justice receiving the interim recommendation and to the judge.

The Procedures of the Council recognize that an exception to the general requirement of confidentiality in the complaints process is warranted where an interim recommendation has been made *and* the complaint has been referred to a hearing. In such circumstances, once the Notice of Hearing has been filed and the complaints process has become public, the Council's website informs the public that the judge has been suspended or reassigned to a different location as a result of an interim recommendation.

Of the files closed in this reporting year, one judge was suspended or reassigned to another court location pending the final disposition of the complaints process.

c) 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 report of the subcommittee and all relevant materials considered by the subcommittee in its investigation. 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. Any identifying information is redacted from the materials provided to the review panel.

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 one is ordered.

Pursuant to s. 51.4(18), the review panel may:

- ◆ 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 the 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 exercised judicial discretion;
- ◆ it does not include an allegation of judicial misconduct;
- ◆ it 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.

Only in appropriate circumstances will complaints be referred to mediation. Under s. 51.5(3) of the Act, complaints should 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.

After a review panel determines the appropriate disposition of a complaint, it communicates its decision to the complainant and, in most cases, to the judge. Judges may waive notice of complaints made about their conduct in circumstances where the judge is not invited to respond to the complaint and the complaint is dismissed. In accordance with the Procedures, if the Judicial Council decides to dismiss a complaint, brief reasons will be provided in a disposition letter sent to the complainant (and the judge, if notice is not waived) and in a case summary that appears in the Annual Report.

Because of the role of the Council in balancing judicial independence and accountability for judicial conduct, the legislation provides that proceedings, other than public hearings, are generally private and confidential. Through the Annual Report, the Council informs the public about complaints received and disposed of during the reporting year. In accordance with the governing legislation and procedures, except where a public hearing is ordered, the Annual Report does not identify the complainant or the judge who is the subject of the complaint.

d) Hearings under s. 51.6 of the *Courts of Justice Act*

Hearings of the Judicial Council are presided over by four Council members who were neither part of the investigating complaint subcommittee nor the review panel. The Chief Justice of Ontario, or another judge designated by the Chief Justice, 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.

The legislation provides authority for the Chief Justice of the Ontario Court of Justice to appoint judicial members as “temporary members” of the Council where it is necessary to achieve quorum to meet the requirements of the Act. This also provides a means to ensure that none of the hearing panel members would have been involved in the earlier stages of the investigation.

With some exceptions, the *Statutory Powers Procedure Act* applies to hearings of the Judicial Council. Persons may be required by summons to give evidence under oath or affirmation at the hearing and to produce in evidence any documents or things which are relevant to the subject matter of the hearing and admissible at the hearing.



A hearing into a complaint is public unless a hearing panel determines, in accordance with criteria established under s. 9(1) of the *Statutory Powers Procedure Act*, that it should proceed in part or entirely in private. These criteria include whether the hearing involves matters of public security that may be disclosed, or whether intimate financial, personal or other matters may be disclosed of such nature that the desirability of avoiding disclosure of such matters, in the interests of any person affected or in the public interest, outweighs the desirability of following the principle that the hearing be open to the public.

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

The Judicial Council engages legal counsel, called presenting counsel, for the purposes of preparing and presenting the case about the judge to the hearing panel. The legal counsel engaged by the Judicial Council operates independently of the Judicial Council. The duty of presenting counsel is not to seek a particular order against a judge, but to see that the complaint about 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 their own behalf in any hearing under this procedure.

Under s. 51.6(11) of the Act, the hearing panel 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 following sanctions:

- ◆ 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.

A judge may be removed from office only if a hearing panel of the Judicial Council, following a hearing under s. 51.6, recommends to the Attorney General that the judge



should be removed on the ground that they have 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 their 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 their office.

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

13. COMPENSATION FOR LEGAL COSTS

When the Judicial Council has dealt with a complaint, s. 51.7 of the Act permits a judge to request compensation for legal costs incurred in connection with the investigation and/or hearing. 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 their legal costs and indicate the amount of compensation recommended. Pursuant to s. 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: s. 51.7(8).

Where a hearing has been ordered, s. 51.7(2) allows a hearing panel to recommend compensation for all or part of the cost of legal services incurred in connection with both the investigation and the hearing. Where a complaint was made on or after July 8, 2020, and a recommendation for removal from office was made by a hearing panel, compensation shall not be recommended by the hearing panel: s. 51.7(5.1).

During the period of time covered by this Report, one request for compensation was received by a review panel of the Council.



14. GOVERNING LEGISLATION

The *Courts of Justice Act* provisions establishing and governing the Ontario Judicial Council are available on the government's e-laws website at:

- <https://www.ontario.ca/laws/statute/90c43>

15. SUMMARY OF COMPLAINTS

The Ontario Judicial Council works hard to administer an efficient and timely process to review complaints against provincial judges that fall within its jurisdiction.

From April 1, 2020 to December 31, 2021, the Council received, reviewed and responded to 261 letters of complaint. In addition, Council staff received and responded to several hundred phone calls from complainants and members of the public during the reporting period.

Many complaints received by the Council involve matters that are outside its jurisdiction. For example, the Council receives a number of complaints that are about the decisions of provincial court judges rather than about their conduct. In addition, the Council receives complaints about federally-appointed judges, police, lawyers and Crown Attorneys, as well as complaints concerning administrative law proceedings. Council staff review all such correspondence and provide written responses to complainants advising them of the appropriate body to which they may wish to direct their complaints. Depending on the nature of the complaint, Council staff also provide information about legal resources that could possibly assist such complainants.

When the Council receives a complaint raising allegations that may be within the Council's jurisdiction to investigate, the complaint is assigned for review by a two-member complaint subcommittee of the Council. During the reporting period, 41 new complaint files were opened.³ In addition, 11 complaint files were carried forward from the previous reporting period, for a total of 52 open complaint files under consideration by the Council between April 1, 2020 – December 31, 2021.

³ Twenty-six complaints were referred to investigation between April 1, 2020-March 31, 2021. Fifteen complaints were referred to investigation between April 1, 2021-December 31, 2021, for a total of 41 open complaint files between April 1, 2020-December 31, 2021.



In the same period, the Council closed 39 complaint files.⁴ Of the 39 complaint files that were closed during the reporting period April 1, 2020 – December 31, 2021:

- 2 complaint files were opened in 2018-2019;
- 9 complaint files were opened in 2019-2020;
- 24 complaint files were opened between April 1, 2020 and March 31, 2021;
and
- 4 complaint files were opened between March 31-December 31, 2021.

⁴ Thirteen complaint files were closed during the period April 1, 2020-March 31, 2021. Twenty-six complaint files were closed during the period April 1, 2021-December 31, 2021.

DISPOSITIONS OF CASES CLOSED: April 1, 2020 to December 31, 2021

Disposition	Number of Cases
Dismissed – Out of Jurisdiction	2
Dismissed – Unfounded, not judicial misconduct, etc.	33 ⁵
Referred to Chief Justice	0
Loss of Jurisdiction	4
TOTAL	39

⁵ One complaint was dismissed by a hearing panel following a formal hearing, while the remaining 32 complaints were dismissed by review panels of the Council without a formal hearing.

TYPES OF CASES CLOSED April 1, 2020 to December 31, 2021

Types of cases closed	Number of Cases	% of Caseload
Criminal Court	22	56%
Family Court	12	31%
Provincial Offences Appeal Court	2	5%
Other – Outside of court	3	8%
TOTAL	39	100%

CASELOAD IN FISCAL YEARS

	Fiscal year 2015/16	Fiscal year 2016/17	Fiscal year 2017/18	Fiscal year 2018/19	Fiscal year 2019/20	Apr.1/20 – Dec.31/21
Files opened during year	21	110*	31	25	27	41 ¹
Files continued from previous year	25	18	100*	20	21	11 ²
Total open files during year	46	12	131*	45	48	52
Files closed during year	28	28	111*	24	37	39 ³
Files remaining at year end	18	100*	20	21	11	13

*81 complaints addressed the conduct of Justice Zabel. The hearing took place in August 2017. Hearing decisions can be found on the Council's website at <https://www.ontariocourts.ca/ocj/ojc/public-hearings-decisions/>.

¹In fiscal year 2020/21, twenty-six files were opened; from April 1, 2021-December 31, 2021, 15 files were opened.

² Eleven files were carried over from fiscal year 2019/20 into fiscal year 2020/2021. Thirteen files were carried over from fiscal year 2020/21 into the April 1, 2021-December 31, 2021 period.

³ Thirteen files were closed in fiscal year 2020/21. Twenty-six files were closed between April 1, 2021 – December 31, 2021.



FORMAL HEARINGS IN 2020-2021

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.

Hearing updates are available on the Council's website under the link "Public Hearings" at:

- <https://www.ontariocourts.ca/ocj/ojc/public-hearings/>

Decisions made in relation to each of the hearings are posted on the Council's website on the Public Hearings Decisions page at:

- <https://www.ontariocourts.ca/ocj/ojc/public-hearings-decisions/>

Hearing about the conduct of Justice Donald McLeod

During the reporting period, the Council held a hearing in relation to a second complaint about the conduct of the Honourable Justice Donald McLeod. The first complaint against Justice McLeod was dismissed by a hearing panel of the Council on December 20, 2018, for reasons that may be found here:

- <https://www.ontariocourts.ca/ocj/files/ojc/decisions/2021-mcleod-decision.docx>

The second complaint against Justice McLeod, which was made on March 27, 2019, was ordered to a hearing before a four-person hearing panel. Before the complaint was ordered to a hearing, and while it was under investigation, the complaint subcommittee of the Council recommended to the Regional Senior Judge that Justice McLeod be suspended with pay pending the disposition of the complaint. This recommendation was accepted by the Regional Senior Judge.

The hearing panel was composed of Justice Janet Simmons (judge of the Court of Appeal for Ontario), Justice Michael Epstein (judge of the Ontario Court of Justice), Malcolm Mercer (lawyer member of the Council) and Victor Royce (community member of the Council). The panel members considered whether the alleged conduct, as summarized below and set out more fully in the Notice of Hearing, occurred and, if it did, whether it constituted judicial misconduct:

On December 20, 2018, a Hearing Panel of the Council dismissed a complaint against His Honour regarding his involvement in, and leadership of, an organization called the Federation of Black Canadians ("FBC"), a national, non-profit organization that meets with government representatives to advocate for legal and social reform on behalf of Black Canadians. At the hearing, His Honour committed perjury and/or mislead



the Hearing Panel regarding his involvement in FBC's advocacy efforts in a deportation matter. He also misled the Hearing Panel about his disengagement from FBC after concerns were raised about his involvement.

Following the decision of the Hearing Panel, His Honour resumed a leadership role in the FBC and attended political events on its behalf. He engaged in behavior that was or could be perceived to be impermissible advocacy and lobbying by a sitting judge.

His Honour engaged in behavior that was or could be perceived as providing legal advice and/or furthering the advocacy of the FBC by counselling two individuals not to speak publicly about an alleged racist incident that occurred at the National Black Canadians Summit in February 2019.

The hearing was scheduled to proceed on several dates in July and August 2020. However, on June 12, 2020, the hearing panel heard submissions on when and how the hearing should occur in light of the COVID-19 pandemic. Counsel for Justice McLeod informed the panel that he would work with presenting counsel to identify possible venues where an in-person hearing could proceed. Counsel were asked to provide alternate dates in the fall of 2020 when all counsel would be available.

Ultimately it was determined that an in-person hearing would not be feasible in view of the public health situation, including the "lockdown" in effect in Toronto. The hearing panel ordered that the hearing would be hosted by Arbitration Place and proceed virtually by Zoom. The hearing was accessible to members of the public through a live-stream on YouTube.

The hearing commenced on December 8, 2020. Presenting counsel concluded calling evidence on December 21, 2020. Counsel for Justice McLeod called evidence over the week of February 22-26, 2020. Both counsel provided oral and written submissions.

On June 2, 2021, the hearing panel released reasons for decision concluding that two aspects of Justice McLeod's conduct were incompatible with judicial office, but were not so seriously contrary to the impartiality, integrity and independence of the judiciary that they undermined the public's confidence in His Honour's ability to perform the duties of office or in the administration of justice generally. The hearing panel therefore dismissed the complaint.

Given that the complaint was dismissed after a hearing, s. 51.7(5) of the *Courts of Justice Act* required the hearing panel to recommend to the Attorney General that Justice McLeod be compensated for his legal costs incurred in the complaints process and to indicate the amount. On July 29, 2021, the panel released a decision recommending to the Attorney



General that Justice McLeod be compensated in full for his legal costs, which were claimed in the amount of \$1,097,037.58, inclusive of fees, disbursements and HST. The hearing panel noted in the decision that the fees paid to presenting counsel were \$2,302,704.17, inclusive of disbursements and HST.

At the hearing, Justice McLeod was represented by Frank Addario and Wes Dutcher-Walls of Addario Law Group LLP, Sheila Block, Irfan Kara, R. Craig Gilchrist and Rebecca Amoah of Torys LLP, Faisal Mirza of Mirza Kwok and Kelly Gates of Gates Criminal Law.

Presenting Counsel were Guy J. Pratte, Nadia Effendi, Christine Muir, Veronica Sjolín and Mannu Chowdhury of Borden Ladner Gervais LLP.

All decisions, directions and orders of the Panel may be found here:

- https://www.ontariocourts.ca/ocj/ojc/public-hearings-decisions/#Justice_Donald_McLeod



16. CASE SUMMARIES

Files are given a two-digit prefix indicating the year of the Council's operation in which they were opened, followed by a sequential file number and two digits indicating the calendar year in which the file was opened (e.g., file no. 26-001/20 was the first file opened in the twenty-sixth year of operation and was opened in calendar year 2020).

The legislation requires that the names of the judge and the complainant are confidential, except where there is a public hearing.

CASE NO. 24-018/19

The complainant was the applicant mother in a custody and access dispute regarding her young daughter. The complainant's ongoing concern was that the child was being harmed in the respondent father's care, and the court was continually failing to act in the child's best interests to protect her daughter from the respondent.

The complainant appeared before the subject judge in 2017 and 2018 and made the following allegations of misconduct:

1. The judge changed the applicant's testimony;
2. The judge acted as a lawyer for the respondent instead of being impartial;
3. The judge refused to bring the Children's Aid Society to court for independent documentation relating to the decision he had to make about the child's best interests;
4. The judge refused to review an error regarding child support in his order;
5. The judge refused to follow court procedures he had set out and refused to discuss issues he said he would discuss;
6. The judge accepted filings in court from the respondent without allowing the applicant a chance to respond;
7. The judge changed the date of the respondent's filing;
8. The judge expressed inaccurate personal judgements and assumptions of the applicant's personal life.

The complaint subcommittee reviewed the complainant's correspondence and ordered and reviewed transcripts of the proceedings before the subject judge. Following the



completion of their investigation, they submitted a report to a review panel. The review panel reviewed the letter of complaint and the subcommittee's report to them, which included a detailed summary of the complainant's correspondence and the court appearances in question.

The review panel observed that the complainant appeared to be raising issues about the correctness of the trial judge's legal decisions. More specifically, the allegations included that the judge refused to bring the Children's Aid Society to court for independent documentation relating to the decision he had to make about the child's best interests, and that the judge refused to review an error in his order regarding child support. The review panel noted that these allegations do not raise issues of judicial conduct, but instead, relate to legal decisions outside the jurisdiction of the Judicial Council.

The review panel noted that judges have decision-making independence in accordance with the *Constitution Act, 1867*. The Council's legislated jurisdiction is limited to the conduct of judges. If a person is of the view that a judge erred in his or her rulings or decision, an appellate court is the body with jurisdiction to determine whether there was an error in law and, if so, to change the decision. Consequently, the legal issues raised by the complainant were outside the jurisdiction of the Council.

With respect to the allegations regarding the judge's conduct, the review panel accepted the findings of the complaint subcommittee that a review of the transcripts demonstrated that the judge appropriately kept focus on the issue of the best interests of the child, and considered all issues from this perspective throughout the proceedings. The transcripts showed that the subject judge was respectful and patient during the various court appearances and went to great lengths to try to encourage both parties to focus on the wellbeing of their child.

Examples of the judge's interactions during each of the court appearances were summarized in the subcommittee's report to the review panel. Having reviewed this report, the review panel agreed with the subcommittee that while the subject judge may not have accepted the complainant's testimony, he did not "change" it in anyway. Nor did he act as the respondent's lawyer or confer procedural advantages on the respondent.

The review panel accepted the observations of the subcommittee that the subject judge went to great lengths in each of the court appearances to assist both parties by explaining repeatedly the relevant court procedures. The review panel also accepted the findings of the subcommittee that the subject judge was careful to explain what issues would be discussed at each court appearance, and what issues had already been decided and could not be re-opened. In addition, the review panel accepted the subcommittee's observation from the transcripts that at no time did the subject judge express any personal judgements or make any assumptions about the complainant's personal life.



The review panel dismissed the complaint as there was no evidence to support the allegations of judicial misconduct. The allegations directed at judicial decision-making were outside the Council's jurisdiction.

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

CASE NOS. 25-002/19 & 25-005/19

The Council received two complaints about the conduct of the subject judge.

25-002/19

The complainant was a criminal defence lawyer who appeared with an Assistant Crown Attorney before the subject judge in chambers for a judicial pre-trial. In her letter to the Council, she explained that the Crown and defence positions were far apart on the appropriate sentence for the accused, her client. Accordingly, she asked the judge if a follow-up pre-trial could be scheduled.

The complainant alleged that as soon as she asked about scheduling a follow-up pre-trial:

[T]he judge's tone completely changed. He asked me why we needed one, and the response I gave was that I felt like we needed some more guidance so that we can speak to the client properly. He responded by leaning back in his chair and saying, "oh fuck off". That is verbatim. He continued getting upset with me saying generally, you want me to tell you what I am thinking on open submissions, at some point you have to trust in the judge and leave it to him. He also said, if you want to schedule a further judicial pre-trial go ahead but I don't need or want one. He then threw the file on his desk and yelled "get out of here". I quickly packed up my things, got up, said "thank you Your Honour" and left the office.

The complainant stated that she was very upset upon leaving the judge's chambers. She did not believe that she had done anything wrong by requesting a further pre-trial and stated that the judge's reaction was inappropriate.

The complainant said that she subsequently received an email containing an apology from the judge for his "disrespectful use of coarse language" at the pretrial. The email also indicated that he "truly regret[ed] the incident". The complainant expressed the view that the apology did not "erase or make up for what happened".



The complainant stated that following the pre-trial, she spoke with a number of other lawyers, including Crown Attorneys, who indicated that they had either experienced similar types of behaviour from the judge or had heard of colleagues experiencing something similar. She said: this “is especially concerning as many of the incidents seem to be happening to young counsel.”

The complainant, a racialized female, explained that she receives numerous comments about how young she looks. She concluded by stating that the judge’s “behaviour needs to be addressed as a person in that position should not be speaking and dealing with counsel, regardless of their background, gender, age etc., in that manner”.

The complainant also enclosed a letter of support from a colleague, who made the following comments:

I cannot understand the motivation behind the outrageous and mean comments made by the judge. However, I do not believe that such comments would be made to a middle-aged white man like myself. Whatever action is taken in relation to the complaint will send a message, be it a strong or weak one, as to how Judges who make ridiculous comments will be treated, especially when those comments are towards more vulnerable members of the profession.

The complainant’s colleague also indicated that he had personally witnessed inappropriate and over the top actions by the subject judge, and mentioned one incident which was also referenced in OJC File 25-005/19. He concluded by stating:

I imagine a member of the public, listening to the judge’s comments, would seriously question the temperament of the judge and his ability to do justice, rather than being subjected to the whims of his own temper. I felt frankly embarrassed on behalf of the administration of justice.

25-005/19

The Council received a complaint about the subject judge from a senior lawyer on behalf of a provincial ministry. In her letter to the Council, the complainant expressed concerns about the judge’s courtroom and in-chambers conduct. She referred to four particular incidents which, she alleged, “undermine the faith and trust society has placed in judicial officers”.

Among those incidents, the complainant referred to the judicial pre-trial involving the complainant in OJC File 25-002/19. The complainant stated that the judge: “denigrated a young, female, racialized counsel in front of her peer at an important stage in the proceedings. Defence counsel may have been left with the impression that the accused



and the case would not be judged with fairness and impartiality.” She continued that although her complaint centered around the pretrial incident, “the judge’s vitriolic displays are not an isolated incident.”

The complainant also referred to an incident in which the judge allegedly chastised an Assistant Crown Attorney for being late to court without providing him with an opportunity to provide an explanation for his lateness. The complainant stated that the Assistant Crown found the judge’s conduct “humiliating”. She also noted that two Deputy Crown Attorneys listened to the audio recording of the in-court exchange and agreed that the judge’s behaviour could “only be characterized as demeaning and overly aggressive”.

The complainant referred to another incident in which a different Assistant Crown Attorney appeared in court before the judge on a trial matter. The complainant alleged that while the Assistant Crown Attorney was examining a witness, the judge interjected and made the following comment: “No. Come on Mr. [redacted name of the Assistant Crown Attorney]. You went to law school. Use your brain...”. It was alleged that the judge’s tone toward the Assistant Crown was aggressive and demeaning. The complainant also noted that the judge’s conduct “may have left the [witness] with the false impression that his case was not properly represented or that His Honour was not fairly and impartially considering his evidence”.

Finally, the complainant referred to an incident in which the judge was allegedly rude to duty counsel in the courtroom. It was alleged that while duty counsel was attempting to relay a message to the court from defence counsel, the judge interjected and said words to the effect of, “Hang on. Shut up. I don’t want to hear any more from you. We will wait for defence counsel”. It was alleged that the judge subsequently said to duty counsel, “I didn’t mean to say ‘shut up’. I just didn’t want to hear from you”.

The complainant concluded that “the comments and tone used by His Honour in open court and in chambers may have a tremendous impact on the public’s perception of the proper administration of justice”.

Consideration of both complaints

The Council’s Procedures provide that if the Judicial Council receives a complaint about a judge who is already the subject of an open complaint file and the complaint is similar in nature to the outstanding complaint about that judge, the Registrar may assign the new complaint to the same complaint subcommittee that is investigating the earlier outstanding complaint. Accordingly, both complaints were assigned to the same subcommittee, consisting of a judge and a community member, for review and investigation.



The subcommittee reviewed both letters of complaint and the transcripts of all relevant court appearances before the subject judge. The subcommittee also retained investigating counsel to interview witnesses with potentially relevant information concerning the allegations, and reviewed transcripts of those interviews.

The subcommittee considered the principles and case law relevant to the conduct of the judiciary. The Supreme Court of Canada stated in *Re Therrien*, 2001 SCC 35, at paras. 110-12:

[T]he personal qualities, conduct and image that a judge projects affect those of the judicial system as a whole and, therefore, the confidence that the public places in it. Maintaining confidence on the part of the public in its justice system ensures its effectiveness and proper functioning. But beyond that, public confidence promotes the general welfare and social peace by maintaining the rule of law. In a paper written for its members, the Canadian Judicial Council explains:

Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. Many factors, including unfair or uninformed criticism, or simple misunderstanding of the judicial role, can adversely influence public confidence in and respect for the judiciary. Another factor which is capable of undermining public respect and confidence is any conduct of judges, in and out of court, demonstrating a lack of integrity. Judges should, therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality, and good judgment. (Canadian Judicial Council, *Ethical Principles for Judges* (1998), p. 14)

The public will therefore demand virtually irreproachable conduct from anyone performing a judicial function. It will at least demand that they give the appearance of that kind of conduct. They must be and must give the appearance of being an example of impartiality, independence and integrity. What is demanded of them is something far above what is demanded of their fellow citizens.

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



The preamble of the Principles of Judicial Office of Judges of the Ontario Court of Justice approved by the Ontario Judicial Council states:

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

The Principles also include the following:

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

COMMENTARIES:

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

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.

The Ontario Court of Appeal expressed the expectations of civility on the part of judges in *Chippewas of Mnjikaning First Nation v. Chiefs of Ontario*, 2010 ONCA 47, at paras 235-36, 240-42:

In its 2009 publication, “Principles of Civility for Advocates”, available online at «<http://www.advocates.ca>», the Advocates’ Society includes a section entitled, “What Advocates are Entitled to Expect of the Judiciary”. Under that heading, principle 73 reads: “Advocates are entitled to expect judges to maintain firm control of court proceedings and ensure that they are conducted in an orderly, efficient and civil manner by counsel and others engaged in the process.”

We agree with that principle. We would add that the parties and the public are also entitled to have these same expectations of trial judges.

.....

When trial judges do intervene, it is important that they do so in a judicious manner. They should avoid expressions of annoyance, impatience and sarcasm. Judges should provide leadership by example in promoting civil behaviour by those involved in the court processes. Judges cannot expect lawyers to behave civilly if they do not themselves.

In the “Principles of Civility” referred to above, the Advocates’ Society set out the two further principles that are worth repeating:

71. Advocates are entitled to expect judges to treat everyone before the courts with appropriate courtesy.

74. Advocates are entitled to expect that judges will not engage in unjustified reprimands of counsel, insulting or improper remarks about litigants and witnesses, statements evidencing prejudgment and intemperate or impatient behaviour.

Again, we would add that everyone involved in a trial is entitled to these expectations.

The subcommittee observed that the witness interviews and court transcripts appeared to support the allegations. The subcommittee provided the judge with disclosure of both complaints and the materials being considered in its investigation and invited him to respond to the allegations. The subcommittee reviewed the judge’s written response.

The subcommittee observed from his response that the judge acknowledged that he acted inappropriately in the tone and language that he used towards the female lawyer during the pre-trial conference. The judge also regretted using aggressive and sarcastic language towards counsel in the courtroom. The judge acknowledged that the phrases he used and comments he had made were inappropriate and had no place in the courtroom.

Upon conclusion of its investigation, the subcommittee prepared a report for a review panel of the Council, consisting of two judge members, a lawyer member and a community member.

Before the complaints process was completed, the Council received information that the subject judge no longer held judicial office. As a result, the Council lost jurisdiction to proceed and this file was closed.

The judge applied to the review panel for a recommendation to the Attorney General for compensation of the legal costs incurred by during the investigation of the complaint. The



request was denied by the review panel, taking into account all of the circumstances, including the nature and seriousness of the allegations.

CASE NO. 25-009/19

The complainant entered guilty pleas to two charges of uttering threats to cause death, contrary to s. 264.1 (1) of the *Criminal Code*, one in relation to unnamed RCMP personnel, and the other concerning unnamed Canadian military members. With the assistance of counsel, the complainant pleaded guilty to both charges. The parties agreed that after the pleas were entered, the Crown would apply to have the accused declared not criminally responsible by reason of mental disorder, pursuant to s. 16 of the *Criminal Code*. The application was opposed by the complainant.

The Crown called one witness on the application, a psychiatrist who had performed an evaluation on the complainant. After hearing from the psychiatrist and receiving submissions from the Crown and defence, the trial judge found the complainant to be not criminally responsible on account of mental disorder.

The complainant alleged that the judge was just “one more corrupt official in a chain” from the moment he was arrested and falsely charged to his current incarceration. The complaint letter contained rambling, anti-Semitic rhetoric and conspiracy theories. With respect to the conduct of the judge, the complainant alleged that:

- At the end of the trial, the judge said that he was going on vacation and they would convene three months later. This was “unfair jail time extended by three months at the trial and three more months to arrive at the sentencing”.
- The judge was “one more corrupt official in the chain” from the moment he was arrested. And false charges laid...”.
- The judge colluded with the complainant’s lawyer.
- The testimony of the doctor was completely false and the judge accepted the evidence because he “is in on the game” with the doctor.
- The judge is “a liar and a thief of my freedom”.
- The complainant concludes that he has suffered a great deal and seeks “reprimand for the evil unjust judge: demotion to lawyer.”

On the instructions of the subcommittee, the Registrar wrote a letter to the complainant asking him to explain what evidence he relied on to support his allegations that the judge was corrupt, that he colluded with the lawyer, and “was in on the game” with the doctor.



The complainant sent a letter that had no reference to evidence that would support his allegations. He expressed the view that the subcommittee was lapsing in its responsibility by asking him for more information to support his allegations. He also referred to “Jews and Masons colluding”.

The complaint was assigned to a subcommittee of the Council, composed of an Ontario Court of Justice judge and a community member. The subcommittee reviewed the complainant’s correspondence and excerpts from the court proceedings before the subject judge, including the judge’s reasons for finding the complainant not criminally responsible. Following its investigation, the complaint subcommittee submitted a report to a four-member review panel of the Council.

The review panel reviewed the letters from the complainant, the correspondence sent to him by Council staff, the subcommittee’s report, and the excerpts of the court transcripts.

The review panel observed from the court transcripts that while the judge stated that he had a busy schedule over the next several months which would require a three-month delay in the sentencing hearing, there was no evidence that the judge postponed sentencing to go on vacation, as alleged by the complainant.

The review panel also observed that the judge took pains to explain the complainant’s rights to him during the hearing and the consequences of a guilty plea. The complainant maintained his intention to plead guilty. The review panel observed that the judge reviewed all of the evidence prior to arriving at a decision, including a video made by the complainant and a videotaped statement given by him to the police following his arrest.

The review panel observed that the record showed that the complainant had a long history of mental illness and had been diagnosed as suffering from bipolar and schizoaffective disorder. In finding the complainant to be not criminally responsible, the judge accepted the testimony of the psychiatrist and concluded that “the accused fits squarely into the circumstances contemplated by the former s. 16(3) of the *Code* in that he has specific delusions which cause him to believe in the existence of a state of things, the threat of 309 million people worldwide, that if true, would have justified or excused his conduct.”

The review panel observed that the judge’s assessment of the evidence and interpretation of the law, including finding that the complainant was criminally responsible on account of mental disorder, were matters of judicial decision-making outside the jurisdiction of the Judicial Council. The Council’s legislated jurisdiction is limited to the conduct, not decisions, of judges. Judges have decision-making independence in accordance with the *Constitution Act, 1867*. The Council’s legislated jurisdiction is limited to the conduct, not decisions, of judges. Only a higher court has jurisdiction to determine if a judge committed an error in interpreting or applying the law.



Based on the materials reviewed, the review panel accepted the findings of the subcommittee that there was no evidence of corruption or collusion on the part of the judge. The review panel concluded that the allegations of misconduct were not substantiated by the record. The review panel dismissed the complainant. The file was closed.

CASE NO. 25-020/19

The complainant was a litigant in a family law dispute that lasted several years. In his letter to the Council, he complained about several judges that presided over his family law proceeding. With respect to the subject judge, the complainant alleged that the judge:

- Changed the date of a motion without notifying him. As a result, he was not able to attend the motion;
- Stated that he could have successfully appealed an earlier costs order made by another judge, even though it was the opposing party's responsibility to appeal the order in question.
- Ordered him to pay \$8,000 in costs, and threatened to order additional costs against him if he set the matter down for trial; and
- Indicated that he was obligated to pay both final orders.

The complainant further alleged that all the judges before whom he had appeared in his family law matter had engaged in racist conduct, stating that “there are no black, Asian, Middle-Eastern or Indian judges”. He requested the Council's consent to have human rights organizations “investigate this ‘GROUP’ [of judges] for their clearly racist conduct.”

The complaint was assigned to a subcommittee of the Council, composed of an Ontario Court of Justice judge and a community member. The subcommittee reviewed the letter of complaint and the endorsements and reasons for judgment arising from each appearance before the subject judge. The subcommittee also reviewed the full transcripts of the last two proceedings before the judge. Following its investigation, the complaint subcommittee submitted a report to a four-member review panel of the Council.

The review panel reviewed the subcommittee's report, the letter of complaint and the two court transcripts. The review panel agreed with the findings of the subcommittee that none of the allegations against the subject judge was supported by the record.

The review panel noted that the complainant was represented by counsel during his appearance before the subject judge. The review panel observed from the transcripts that the complainant's lawyer made no reference to the motion date having been changed. With respect to the allegation regarding the potential appeal of a prior costs order, the



review panel noted from the transcripts that while the subject judge questioned the earlier costs order, the judge did not definitively state that the complainant would have been successful had he appealed the order.

The review panel agreed with the subcommittee's findings that the subject judge did not threaten the complainant as alleged and was, at all times, courteous towards the parties. The review panel also agreed with the subcommittee that the subject judge clearly and thoroughly explained her reasons for ordering the complainant to pay \$8,000 in costs.

In any event, the review panel noted that the judge's application and interpretation of the law, including her assessment of an earlier costs order and her decision to order costs against the complainant, were matters of judicial decision-making 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, not decisions, of judges. An appellate court is the body with jurisdiction to determine whether a judge has erred in interpreting or applying the law.

Finally, with respect to the allegations of racism, the review panel noted that the subject judge did not directly address the complainant in court, as he was represented by counsel. The review panel found that the subject judge did not make any comments, or engage in any conduct, that supported an allegation of racism. With respect to the broader allegations about the racial composition of the bench, the review panel noted that this was a matter outside the jurisdiction of the Council. The Judicial Council can only investigate complaints of misconduct about a specific judge, and not a complaint about the racial composition of the judiciary as a whole.

The review panel concluded that the allegations of misconduct were not supported by the record and the allegations related to the subject judge's decision-making were outside the jurisdiction of the Council. The review panel dismissed the complaint and the file was closed.

CASE NO. 25-023/19

The complainant was the alleged victim of an assault. Following a trial, the subject judge acquitted the person accused of this assault. The complainant took issue with the conduct of the judge during the trial, alleging that she "was neither objective, impartial nor independent." The complainant alleged that the subject judge must have had a personal connection to the defence, given her decision to acquit the accused. He requested that the case be thoroughly reviewed, and a retrial ordered.

The complaint was assigned to a complaint subcommittee of the Judicial Council, consisting of a judge and a community member. The subcommittee reviewed the complaint letter as well as the documents provided by the complainant and the transcripts



of the trial proceedings. Upon conclusion of its investigation, the subcommittee prepared a report for the review panel.

The review panel reviewed the complaint letter and the documents provided by the complainant as well as the report from the subcommittee.

The review panel observed from the subcommittee's report that the transcripts did not support the complainant's allegations that the judge was not objective, impartial or independent. The review panel noted that the subcommittee found that the judge took time to consider the evidence and submissions of the parties before delivering her judgment. The subcommittee further found that the subject judge conducted herself appropriately during the trial, intervened seldomly, and was respectful of everyone in the courtroom.

The review panel agreed with the subcommittee that the decision of the subject judge, including her assessment of the evidence, findings on credibility and decision to acquit the accused, were matters of judicial decision-making outside the jurisdiction of the Council. The review panel noted that judges have decision-making independence in accordance with the *Constitution Act, 1867*. The Council's legislated jurisdiction is limited to the conduct, not decisions, of judges. An appellate court is the body with jurisdiction to determine whether a judge has erred in interpreting or applying the law. The Council has no discretion to act on complaints that do not fall within its jurisdiction.

The review panel concluded that the allegations of misconduct were not supported by the record and the allegations related to the subject judge's decision-making were outside the jurisdiction of the Council. The complaint was dismissed and the file was closed.

CASE NOS. 25-024/20, 25-025/20 & 25-026/20

The complainant alleged that three judges "prevented [him] from bringing [his] ex-wife to justice for carrying out a complex international abduction of [their] three children from [a foreign state] to Canada."

In his letters, the complainant requested that his court case be re-opened and that the Judicial Council provide him with cost-free professional resources so that he could appeal his court case.

In the letter sent to him to acknowledge receipt of his complaint, Council staff explained that the Ontario Judicial Council does not have jurisdiction to interfere with or assess the correctness of decisions made by a judge. Only a higher level of court can review the correctness of how a judge applies the law or renders decisions. Staff also informed him that the Judicial Council does not have any legal authority to provide a person with legal resources or to order that such resources should be provided for a person.



The complaint subcommittee reviewed the correspondence received from the complainant and, with respect to each judge, the complaint subcommittee obtained and reviewed the court endorsements for each appearance, where available, as well as the transcripts of the trial and the motion that were heard. Written judgments of the judges were also reviewed. After the subcommittee completed its investigation of the complaints, the subcommittee reported to a review panel.

The review panel concluded that most of the allegations against the three judges were related to their decision-making function and were, therefore, 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.

The review panel found no evidence of misconduct and dismissed the complaints with respect to all three judges.

25-024/20

The complainant alleged the following with respect to this judge (Judge #1):

- His actions were highly questionable and may not be limited to excessive bias and prejudice;
- He was harsh in his criticism and judgment;
- In several instances, he “facilitated the applicant mother and her lawyer’s attempt to legalize and fabricated false evidence” in order to win the trial;
- He “painted a fake portrait” on the complainant to denounce him in front of any case judges appointed following the February 2013 trial;
- He outright refused to listen to the complainant’s evidence that suggested his ex-wife was “a serial fraudster”;
- The judge’s “distorted profile on [him] in his Trial Reasoning had started an avalanche that buried [him] alive”;
- He classified key evidence following the trial to prevent him from being able to appeal. The complainant asks that the evidence be released;
- He refused to consider the complainant’s financial statement and “simply picked the complainant’s highest income ever” and “renormed” [sic] his obligation to pay child support based on that income;

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- He became annoyed with the complainant when he pointed out mistakes made by the interpreter; and
 - He was unfamiliar with the history of the case, including settlement negotiations (which is relevant to the costs award made by the judge).

The subcommittee reviewed the complainant's correspondence and ordered and reviewed the transcript of the proceedings at trial and the judge's written reasons for decision. The subcommittee also ordered and reviewed the judge's written endorsement following submissions on costs, as well as his written cost endorsement decision. After completing its investigation, the subcommittee reported to the review panel.

The review panel reviewed the correspondence received from the complainant, the report of the subcommittee and the judge's reasons for decision.

The review panel observed that the complainant had been in litigation with his ex-wife for almost two years by the time the matter came for a trial before this judge. The issues to be determined at trial were custody and access of their two children, as well as arrears of and quantum of ongoing child support.

The review panel accepted the findings of the subcommittee with respect to the conduct of Judge #1. The subcommittee reported that the transcript of the trial revealed the judge was very patient and explained court procedures, the rules of evidence and the Family Law Rules to the complainant, who represented himself. The judge was accommodating of the complainant and gave him more time than had been ordered for the trial because his cross-examination of his former spouse was longer than had been originally allowed.

The transcript showed that the judge was respectful of all parties during the trial and was patient with the complainant when the complainant had an emotional outburst while testifying. The judge did not interfere with the presentation of the evidence, except to guide the complainant or counsel for the other party when necessary.

The review panel observed that in his written decision after the trial, the judge carefully reviewed the evidence and history of the case. He outlined the applicable law and made findings of fact based on the evidence. The review panel noted that the judge's assessment of the evidence, his interpretation and application of the law and his decisions were matters of judicial decision-making outside the jurisdiction of the Council.

The review panel concluded that there was no evidence to support any of the allegations of misconduct made against Judge #1, including the allegations that the judge was biased, prejudiced and harsh and facilitated the applicant mother and her lawyer's attempt to fabricate evidence to win the trial. The complaint was dismissed and the file was closed.



25-025/20

This judge (Judge #2) case managed the file and presided over many motions brought by both parties over a three-year period.

The complainant alleged the following with respect to Judge #2:

- Her actions were highly questionable and may not be limited to excessive bias and prejudice;
- She was harsh in her criticism and judgment;
- In several instances, she “facilitated the applicant mother and her lawyer’s attempt to legalize and fabricated [sic] false evidence” in order to win the trial;
- She systematically removed him from the lives of his children;
- She “fell for [his] wife’s trickery and made sure that [he] got ridden [sic] of [his] rights to [his] children step by step”;
- She prevented him from representing himself and removed his counsel from the courtroom;
- She was influenced by judge #1’s decision and failed to properly consider the mother’s evidence;
- She allowed the hearing to turn into an outrageous abuse of process and his human rights. He was found in contempt of court and not allowed to participate further in the process, resulting in hospitalization due to the “torture”; and
- She continually refused to lower child support, resulting in him paying 3.5 times more than he should have paid.

The complaint subcommittee reviewed the correspondence received from the complainant and ordered and reviewed the endorsements for all of the court appearances, as well as the transcript of the access motion heard by the judge. After the subcommittee completed its investigation, it reported to a review panel.

The review panel reviewed the correspondence received from the complainant, the subcommittee’s report and the transcript of the access motion.

The review panel observed that the transcript for the motion revealed that the judge was patient and allowed the complainant to make fulsome, virtually uninterrupted, submissions on the motion before the court, including providing oral evidence.



While the judge was giving her decision on access, the complainant interrupted and advised he would not follow the court order and would not return the children. At the outset of the motion, the complainant told the court the children were in a particular city in Ontario. By the end of the motion, he admitted this was not true and that the children were fact in the foreign state, contrary to an order that he not remove the children from the Canadian city. He claimed he had obtained a sole custody order in the foreign state. He refused to produce this order.

The complainant began acting in what the judge described as a “threatening” manner in the courtroom. The review panel observed that in these circumstances, the judge was very patient and respectful with the complainant.

The judge ordered the return of the children by a certain date and set the matter for a few days later to determine if they had been returned. The children were not returned to the mother and accordingly the judge in court on the return date (Judge #1) set the matter for a contempt hearing before Judge #2. Judge #1 warned the complainant about the possibility of incarceration if he was found to be in contempt of the order.

The complainant failed to appear in court for the contempt hearing. After the hearing was concluded, Judge #2 found him in contempt, made orders preventing him from having contact with the mother and children, and adjourned the penalty portion of the hearing to a date when the complainant returned to court. The judge also ordered that the complainant could not bring any further matters before the court without the prior permission of the court.

The review panel concluded that the judge’s assessment of evidence, application of the law, and decisions were outside the jurisdiction of the Council.

There was no evidence to support any of the allegations of misconduct against the judge, including the allegations of bias and prejudice; that she was harsh in her criticism and judgment; or that she allowed the hearing to turn into an outrageous abuse of process and of the complainant’s human rights.

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

25-026/20

The complainant filed a motion with the court seeking leave to bring a motion to change custody, access and child support. This motion was heard in writing, in chambers, by Judge #3. By way of a written decision, the judge dismissed the motion.

The complainant took issue with the decision, alleging that Judge #3:

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- Made assumptions about the evidence in support of his decision;
 - Failed to properly consider, and make his own determinations on, the evidence;
 - Was overshadowed and influenced by Judge #1 and Judge #2; and
 - Continued the “legal blackmail scheme to halt [the complainant’s] case for good.”

The complaint subcommittee reviewed the correspondence received from the complainant and ordered and reviewed the judge’s written reasons in which the judge refused the complainant’s request for leave to bring a change motion and ordered that if he were to seek any further relief from the court pertaining to the mother or the children, the court would require him to seek leave from the court, without notice to the mother. After the subcommittee completed its investigation, it reported to a review panel.

The review panel reviewed the correspondence from the complainant, the subcommittee’s report and the judge’s decision.

The review panel noted that the judge’s consideration of the evidence and the decisions made by the judge were outside the jurisdiction of the Council.

The review panel found no support for the allegations of misconduct. The reasons showed that the judge outlined the history of the case, which was appropriate for the judge to do in a family law case. His Honour considered the law and the facts, and made his decision by applying the law to the facts before him. There was no evidence to support the allegations that the judge was overshadowed by the other judges or that he was part of a legal blackmail scheme to halt the case.

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

CASE NO. 25-027/20

The complainant filed an application for a restraining order against her spouse in the Ontario Court of Justice. She was self-represented in the proceeding. The complainant had also filed an application in the Superior Court of Justice for a divorce. She was represented by counsel in the Superior Court of Justice proceeding. The complainant’s spouse was represented by the same lawyer in both proceedings.

The complainant twice appeared before the subject judge. She alleged that the judge ignored and had no concern for her physical safety and berated and humiliated her for being self-represented during both court appearances.

The complainant believed the judge’s treatment of her was improperly influenced by the following: one of the affidavits filed by the complainant was sworn by the complainant’s



friend, who worked at the courthouse, to support the complainant's request for a restraining order.

The complainant alleged that the judge complained about her friend to the friend's supervisors so that they could use the information to harass the friend. The complainant alleged that the judge's bias towards the complainant's friend influenced her treatment of the complainant in the court proceeding. The complainant alleged that for those reasons, she abandoned her application for a restraining order.

The complaint subcommittee reviewed the letter of complaint, an article provided by the complainant called "Supreme Court of Canada's Endorses A New Approach to Self-Represented Litigants", the transcripts from the two appearances before the judge who was the subject of the complaint, and the endorsement of another judge who presided when the parties returned for a third court appearance. The subcommittee also retained independent counsel to conduct interviews of persons with relevant information about the alleged events. The subcommittee reviewed the transcripts of the interviews. When the subcommittee concluded its investigation, the subcommittee provided a report to the review panel.

The review panel reviewed the letter from the complainant, the article on self-represented litigants, the transcript of the second court appearance and the report from the subcommittee.

The subcommittee reported that on the first appearance in the Ontario Court of Justice proceeding, the subject judge raised two issues:

1. Whether the complainant's restraining order application should also be heard by the Superior Court of Justice to avoid the parties being involved in two hearings in two courts.
2. The complainant had filed affidavits when there was no motion before the court.

In response to the first issue, the judge adjourned the matter to another date so that the parties and counsel could discuss at their Superior Court of Justice case conference whether the complainant's application for a restraining order should be heard in the Superior Court of Justice or the Ontario Court of Justice. In the endorsement, the judge referred to the duplicity of proceedings and the adjournment so that the complainant could give a copy of it to her lawyer.

In response to the second issue, the Ontario Court of Justice judge told the complainant that filing the affidavits in the absence of a motion was improper, and she returned the affidavits to the complainant, including the affidavit from the complainant's friend.



The court transcript of the second court appearance in the Ontario Court of Justice showed that the complainant and her spouse's counsel advised the judge that during their Superior Court of Justice case conference, neither party had brought up the issue of whether the complainant's restraining order application should be heard in the Superior Court of Justice. The complainant acknowledged that she had not informed her lawyer of the application that she had brought in the Ontario Court of Justice.

Counsel for the respondent told the subject judge that they were planning to have a four-way meeting of all parties on a future date and would discuss it then. The judge expressed concern about the need for another adjournment, and about the possibility of duplicity of court proceedings. The subject judge adjourned the proceeding again to enable the meeting of the parties to take place, and told the complainant to give a copy of her endorsement to her lawyer, given the fact that a separate proceeding could impact on negotiations in the Superior Court of Justice. The subject judge explained to the complainant the meaning of duplicity in the context of having two court proceedings potentially dealing with a same issue.

The next appearance in the Ontario Court of Justice was before a different judge. The judge's endorsement indicated that the complainant's application for a restraining order was withdrawn on consent.

The subcommittee reported that the complainant's friend, who provided an affidavit and was an employee at the courthouse, also issued the complainant's application for a restraining order. The judge brought this fact to the attention of the friend's supervisors at the courthouse as a possible conflict of interest (for swearing an affidavit in support of an application she issued).

The subcommittee reported that the interviews of witnesses showed that the judge's only involvement in relation to the complainant's friend was to inform the supervisors of a potential conflict of interest arising from the friend both swearing the affidavit and issuing the court application. The review panel concluded that there was no evidence of misconduct on the part of the judge in raising the issue of a possible conflict of interest to the supervisors. The review panel noted that the judge had no further involvement in that matter. The possible conflict of interest on the part of the friend was not relevant for the judge to speak to during the court proceeding, as there was no motion properly before the court, and the affidavits were returned to the complainant and were not part of the court record.

The review panel accepted the subcommittee's finding that there was no evidence to support the allegation that the judge berated or humiliated the complainant. The judge expressed concern about potential duplicity of court proceedings and was not pleased with counsel for the respondent or the complainant after they failed to bring up the issue



of the restraining order application with the complainant's counsel in the Superior Court of Justice proceeding when expressly directed to do so. The judge admonished both sides, by reminding counsel for the complainant's spouse that each court appearance costs his client money and telling the complainant she needed to listen to what her counsel tells her "as opposed to believing that you know the law."

The review panel concluded that the judge did not ignore a threat to the complainant's safety. The complainant had not filed any motion for a restraining order; thus the issue of whether urgent relief should be granted was not legally before the court. The judge expressed the concern that there may be duplicity in having the issue before two courts, and decided to adjourn the case so that a decision could be made as to whether the application for a restraining order should be heard in the Superior Court of Justice.

The review panel noted that those matters related to the judge's application of the law and her decisions in the matter. These were matters of judicial decision-making outside the jurisdiction of the Judicial Council. The Council's legislated jurisdiction is limited to the conduct, not decisions, of judges. Judges have decision-making independence in accordance with the *Constitution Act, 1867*. Only a higher court has jurisdiction to determine if a judge committed an error in interpreting or applying the law.

The review panel determined that there was no evidence of misconduct and the judge's decisions were outside the jurisdiction of the Council.

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

CASE NO. 26-001/20

The complainant was convicted by a justice of the peace of angling for walleye (a type of fish) contrary to s. 15 of the *Ontario Fishery Regulations, 2007*, SOR/2007-237. He appealed his conviction before the subject judge.

After hearing oral submissions from the complainant and Crown counsel, the judge reserved her decision. The subject judge subsequently released a 6-page decision in which she dismissed the appeal. In the course of her reasons, the judge relied on the French version of the regulation to assist in interpreting its meaning. The complainant appealed the judge's decision to the Superior Court of Justice, which dismissed his appeal.

The complainant subsequently filed a complaint against various individuals involved in the legal proceedings, including the subject judge. With respect to the subject judge, the complainant alleged that she omitted factual evidence in arriving at her decision and misinterpreted or misapplied the law.



He also alleged that the judge was not impartial because she had a connection or allegiance to the trial justice of the peace. He indicated that a Google search revealed that they were both from the same city, they both previously served on the board of directors of a French Association, and the judge lived in the same community in which the justice of the peace had formerly practiced law. The complainant alleged:

There is no doubt in my mind the relationship between [the subject judge], [the trial justice of the peace] and the [Association] had played a big factor in why I had lost the appeal. How would it look to the rest of the [Association's] members if she had disagreed with a fellow **senior** board member? I think she went out of her way to justify his decision. Her decision took 6 months... [Emphasis in original.]

The complainant continued by stating that “a judge must be impartial for Canada’s legal system to work. Even the appearance of conflict of interest or bias is an offence”. He alleged that the subject judge should have recused herself from the hearing and made her relationship with the trial justice of the peace known.

The complaint was assigned to a complaint subcommittee of the Council, consisting of a judge and a community member, for review and investigation. The subcommittee reviewed the letter of complaint, the transcript of the appeal before the subject judge, and the reasons for dismissing the appeal. Upon conclusion of its investigation, the subcommittee provided a report to a review panel of the Council, consisting of two judge members, a lawyer member and a community member.

The review panel reviewed the letter of complaint, the reasons for dismissing the appeal, and the report prepared by the subcommittee. The review panel noted that a large part of the complaint concerned the judge’s application of the law and her decision to dismiss the appeal. The review panel observed that these were matters of judicial decision-making outside the jurisdiction of the Judicial Council. The Council’s legislated jurisdiction is limited to the conduct, not decisions, of judges. Judges have decision-making independence in accordance with the *Constitution Act, 1867*. Only a higher court has jurisdiction to determine if a judge committed an error in weighing the evidence or in interpreting or applying the law.

Further, the review panel observed from the subcommittee’s report and the reasons for decision that the judge was polite to both parties, listened to both parties’ submissions, and clearly explained why she did not accept the complainant’s position. She also explained her use of the French language version of the regulation. The review panel noted that, contrary to the allegations in the complaint letter, the judge did not state that the French version of the regulation was “better”. Rather, she stated that the French version was clearer.



Further, the review panel observed that the complainant's allegations of conflict of interest and reasonable apprehension of bias rested almost entirely on his assertions that the judge and the trial justice of the peace were both strong advocates for the Francophone community and had served together on the board of a French Association some 10 years before. He also asserted that they were both from the same city at that time, and the subject judge was from the same small community where the trial justice of the peace had, at one time, practised law. The complainant further noted that the subject judge participated in a continuing education panel dealing with access to justice which was organized by the Association.

The review panel observed that judges often have professional lives prior to their appointment to the bench in which they encounter and work with other lawyers. They have often been active in the community in which they practised and are often associated with particular communities or associations in Ontario. These things make them appropriate candidates for appointment. It does not necessarily make them ineligible to hear cases which involve other people with whom they came into contact in the course of those activities.

The review panel noted Cromwell J.'s decision in *Children's Aid Society of Cape Breton v. L.M.*, [1998] N.S.J. No. 191, in which he held that the trial judge in a child protection case was not required to recuse herself even though she had acted as a lawyer for the Children's Aid Society prior to her appointment and had a professional association with counsel representing the society in the case before her. He wrote:

The fact that a judge, at some time prior to appointment, acted as a lawyer for a party before the Court or had a professional association with a lawyer before the Court, does not, on its own, give rise to a reasonable apprehension of bias. There is no settled principle that judges must not hear cases involving former clients or former associates in practice. Frequently, judges will allow some period of time to elapse after their appointment as a judge before doing so: see *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369 at 388. There is no evidence that such a period did not elapse before the judge heard this case. There is nothing in this record to rebut the presumption that a judge will carry out his or her oath of office to render justice impartially.

The review panel concluded that the evidence did not support the complainant's allegations that the subject judge was, or appeared to be, biased or in a conflict of interest. Further, the allegations regarding the subject judge's interpretation and application of the law were outside the jurisdiction of the Council.

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



CASE NO. 26-002/20

The complainant, a retired police officer, appeared before the subject judge on behalf of his family member to ask for an extension of time to file an appeal of a *Provincial Offences Act* conviction.

The complainant said that during his appearance he was “humiliated, threatened [and] embarrassed in court” by the judge and Crown Attorney. He “shudders to think what they would have said or have done to me if they had known about my PTSD.” He alleged that they violated his right to be free from “cruel and unusual treatment or punishment” and must be replaced. He concluded by stating that he was “a victim of white RACISM, they would not have treated a black, yellow or any other coloured 78-year-old cripple the way they did.”

The complainant also included a letter he wrote to the judge after the application was denied, asking him for assistance in obtaining written reasons for the dismissal. The judge responded through his trial coordinator, informing the complainant of the process for requesting a transcript and enclosing the form needed to make that request. The letter concluded by saying, “His Honour would also like you to know that he appreciates your service to our country.” The complainant faxed a copy of that letter to the Council in support of his complaint and made a handwritten comment, stating “NB you crippled nut!”

In addition to reviewing the material filed by the complainant, the subcommittee reviewed the transcript and the audio recording of the court appearance before the judge. Upon conclusion of their investigation, the subcommittee prepared a report for the review panel.

The review panel reviewed the subcommittee’s report, the materials filed by the complainant, and the transcript of the court proceeding. The review panel observed from the transcript that while the judge was direct and perhaps curt with the complainant during the brief appearance, there was no support for the allegation that the judge had threatened him or that the judge was racist.

The review panel observed from the transcript that the judge asked the complainant for his grounds to justify extending the time to appeal. The complainant said that the delay was caused by his illness, which prevented him from attending court. In the course of his submissions, the complainant told the judge that he was going to sit down “because my back is killing me.” The judge told him that it was common practice to ask permission to sit. The complainant asked if he could sit and the judge said yes.

The provincial prosecutor opposed the application, noting that the matter had been before the court for almost three years, and that the delay appeared to be caused entirely by the complainant, even though his family member was the defendant. The judge questioned



whether, if the complainant could not properly represent his family member, he should be doing so.

After reviewing the unsworn affidavit filed by the complainant and his submissions, the judge dismissed the application.

The review panel observed that while the judge's question as to whether the complainant should be representing his family member may have caused the complainant some embarrassment, the comment was made in the context of lengthy delays in the court proceedings that appeared to be resulting from the complainant's representation of his family member.

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

CASE NO. 26-003/20

The complainant filed a letter of complaint with the Council. At the time, he was awaiting sentencing before the subject judge. The Council's policy is that it will not generally commence an investigation into a complaint until the court proceeding that gives rise to the complaint, and any appeal thereof, has been completed. This approach prevents the Judicial Council's investigation from interfering with, or from being perceived as interfering with, any ongoing proceedings. This was brought to the attention of the complainant and he was accordingly asked to advise the Council when the matter was finally completed.

The Council subsequently received a letter from the complainant confirming that all of his appeals had been exhausted.

The complainant alleged that the judge:

- Did not give him the option to proceed with his trial during the period of a religious holiday, thus keeping him in custody for a longer period of time;
- Was not impartial and "acted to protect the Crown";
- Was intimidated by the Crown Attorney and reacted against the complainant in any way that he could, or the judge was racist; and
- Failed to curb the abuse of the trial Crown Attorney.

The file was assigned to the complaint subcommittee for investigation. The transcripts of six days of trial were ordered for the subcommittee's review. Delay in receipt of the transcripts resulted from the ongoing COVID-19 pandemic.



Following its review of all of the transcripts, the subcommittee submitted a report to a review panel.

The review panel reviewed the subcommittee's report, the complainant's correspondence, and excerpts of relevant portions of the transcripts. The review panel noted that the complainant appeared before the judge for a trial on a number of criminal charges. The review panel noted that defence counsel was appointed to represent the complainant only in respect of his cross-examination. This cross-examination was completed on the first day of trial. The complainant completed the balance of the trial representing himself.

The review panel observed that the transcript showed that the judge granted the complainant's request to avoid scheduling the continuation of the trial during the period of a religious holiday and scheduled it on the first available court date when he was told that the Crown Attorney and a police witness were both available. The review panel noted that the decision by the judge on when the continuation should be scheduled was a decision outside the jurisdiction of the Council.

The review panel found no evidence to support the other allegations made by the complainant.

The review panel accepted the findings of the subcommittee that its review of the transcripts showed that the judge was patient, respectful and accommodating. The judge:

- Intervened to assist the complainant with the presentation of evidence;
- Provided him guidance with respect to the obtaining of a disclosure package from a correctional institution;
- Provided breaks so the complainant could review/prepare notes;
- Allowed the complainant to cross-examine for long periods uninterrupted;
- Allowed the complainant to enter otherwise prohibited territory during cross-examination because he was representing himself;
- Provided explanations with respect to the various procedural safeguards in place for the complainant (such as the choice to call or not call evidence);
- Allowed the complainant as much time as he needed to testify, and encouraged him to take his time;
- Allowed the complainant to make fulsome submissions after the presentation of evidence;

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- Was polite and respectful towards both parties. There was no evidence that the judge was intimidated by the Crown Attorney, that the judge acted against the complainant in any way that he could or that he was racist; and,
 - Reminded the complainant to remain calm and not to personalize any comments with respect to the trial Crown Attorney. He was otherwise complimentary of the complainant's behaviour and comportment during the trial.

The review panel found the allegations made by the complainant were not supported by the evidence.

The complaint was dismissed and the file was closed.

CASE NO. 26-004/20

The complaint arose from the successful appeal of a decision by the subject judge on a sentencing matter. The complainant was a senior member of the judiciary.

In his letter to the Council, the complainant indicated after the appellate court released its reasons on the appeal, the court emailed a copy of the decision to the parties and the subject judge. The complainant alleged that the subject judge replied to everyone on the e-mail chain, including counsel on the appeal and staff of the Court of Appeal, as well as one of the subject judge's judicial colleagues. It was alleged that the subject judge's email was highly critical of the appeal judgment and asserted that an appeal judge did not write the reasons.

The complainant alleged that the judge's email was inconsistent with her obligation to act with integrity and undermined public confidence in the judicial system. The complainant referred to the preamble to the *Principles of Judicial Office of Judges of the Ontario Court of Justice* which states, in part:

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 responsibility of judicial office.

The complainant also noted that Commentary 1.3 of the *Principles of Judicial Office* was applicable as well:

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



The complainant asserted that “Justice [name redacted], like all members of the judiciary, is obligated to conduct herself in a way that contributes to public respect and confidence in her integrity, impartiality, and good judgment. In sending an email critical of members of the appeal panel, Justice [name redacted] failed to meet that standard.”

The complaint was assigned to a complaint subcommittee of the Council for review and investigation. The subcommittee reviewed the letter of complaint and follow-up correspondence from the complainant to the subcommittee.

As part of its investigation, the subcommittee invited the judge to respond to the complaint. The subcommittee observed that in her response, the judge unreservedly apologized for her email and agreed that it constituted “judicially inappropriate behavior”.

Before the complaints process was completed, the Council received information that the subject judge had retired from judicial office. As a result, the Council lost jurisdiction to proceed and the file was closed.

CASE NO. 26-005/20

The complainant was involved in a child protection proceeding that commenced in 2015. It involved two children and allegations of risk regarding their mother. The two children were ultimately placed in the care of their respective fathers. The complainant is one of those fathers. The complainant alleged that the subject judge treated him unfairly compared to the other father because he is Black and his child is mixed race, while the other father and his child are white. The complainant further alleged that the subject judge treated him disrespectfully throughout the proceeding.

The complainant previously filed a complaint in 2017 about another judge who had also presided over this matter. That complaint was dismissed by the Council in 2018.

The complaint was assigned to a complaint subcommittee of the Council, consisting of a judge and a community member, for review and investigation. The subcommittee reviewed the letters of complaint, and all the transcripts before the subject judge. Upon conclusion of its investigation, the subcommittee provided a report to a review panel of the Council, consisting of two judge members, a lawyer member and a community member.

The review panel reviewed the complainant’s correspondence and the subcommittee’s report to them. The subcommittee’s report contained excerpts from the transcripts of the appearances before the subject judge. The review panel observed that none of the complainant’s allegations, including the allegations of racism, were supported by the record. Contrary to the complainant’s allegations, the transcripts showed that the subject



judge treated the complainant with courtesy, patience and respect, and took great pains to explain the process to him.

The review panel agreed with the subcommittee that the allegations relating to the decisions of the subject judge, including the decision to grant the mother unsupervised access and not send the case for a trial audit, were matters of judicial decision-making outside the jurisdiction of the Judicial Council. The Council's legislated jurisdiction is limited to the conduct, not decisions, of judges. Judges have decision-making independence in accordance with the *Constitution Act, 1867*. Only a higher court has jurisdiction to determine if a judge committed an error in interpreting or applying the law.

The review panel concluded that the complainant's allegations of misconduct were not substantiated by the record and the allegations related to judicial decision-making were outside the jurisdiction of the Council. The complaint was dismissed, and the file was closed.

CASE NOS. 26-006/20, 26-007/20, 26-008/20, 26-009/20, 26-010/20, 26-011/20, 26-012/20

The complainant was charged with aggravated assault, assault with a weapon, two counts of assault and three counts of breach of probation orders. He was also charged with assaulting a correctional officer in the execution of his duty and breach of probation in another jurisdiction. He represented himself on both sets of charges.

The complainant made seven complaints against seven judges who presided over his hearings or trials on these charges.

Pursuant to the Procedures of the Council, all seven complaints were assigned to the same complaints subcommittee of the Council, consisting of a judge and a community member, for review and investigation. The subcommittee reviewed transcripts of all the complainant's appearances before the subject judges. Upon the completion of their investigation, the subcommittee submitted a detailed report to a review panel of the Council, consisting of two judges, a community member and a lawyer member.

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

26-006/20 (Judge 1)

(a) Complaint re: appointing counsel

The complainant appeared before Judge 1 for a pre-trial hearing. The complainant alleged that Judge 1 arranged another pre-trial "for the purpose of appointing counsel for



the accused person” and did not ask for his decision/position on the appointment. He wrote that Judge 1 “obstructed justice in breaching court process”.

In a second letter to the Council, the complainant wrote that “the Justice arranged a pre-trial date of [date redacted] for the purpose of appointing my counsel. It is a conspiracy to obstruct justice, abetting by the Crown Attorney; presiding on [date redacted].”

The review panel observed from the report of the subcommittee that the transcript of the pre-trial hearing contained no discussion of appointing counsel for the complainant. Rather, the judge asked the complainant if he wanted to have a lawyer and he responded that he was self-represented.

The review panel noted from the report of the subcommittee that Crown counsel advised that they would be bringing an application to have counsel appointed to cross-examine the complainant under s. 468.3. That section allows the court to make such an order on application by the Crown if “the order would allow the giving of a full and candid account from the witness of the acts complained of or would otherwise be in the interest of the proper administration of justice.”

The review panel concluded that there was no evidence to support the allegations of misconduct on the part of the subject judge in conducting the pre-trial proceeding. The transcript showed that the judge was concerned about whether the complainant was fit to stand trial, and made relevant and appropriate inquiries in this regard.

(b) Complaint re: election of mode of trial

In a further letter to the Council, the complainant wrote that the subject judge “made a decision to arrange a jury-trial instead of a non-jury trial.” He wrote that jury trials increase the time to trial and are subject to cancellation in the event of a public health issue, noting that his trial had been cancelled because of COVID-19.

The review panel observed from the report of the subcommittee that this allegation was not substantiated by the record. The transcript showed that the subject judge asked the complainant whether he preferred “to have a trial in front of a judge alone in this court, or in Superior Court where you would have a choice of trial by judge and jury or judge alone. The complainant responded, “a judge alone, Provincial Court.” Later during the hearing, when the formal election request was put to the complainant, the complainant stated his election as “Provincial Court, judge alone.” The trial dates were then set, with the trial to be in the Ontario Court of Justice, as requested by the complainant.

The review panel concluded that the subject judge did not decide that the complainant would have a jury trial. The judge asked the defendant twice for his election as to mode



of trial, and both times the defendant said that he wanted a trial in the Ontario Court of Justice.

The review panel agreed with the findings of the subcommittee that the complainant's allegations were unsubstantiated by the record. The complaint was dismissed and the file was closed.

26-007/20 (Judge 2)

The complainant wrote three letters to the Council concerning Judge 2, who presided over the hearing to determine whether to appoint counsel to cross-examine witnesses under s. 486.3 of the Criminal Code.

The complainant made various allegations concerning how the subject judge conducted the hearing, including alleging that the judge was engaged in “the purpose of corrupting a judicial matter”, that he asked irrelevant questions, and that he arranged a pre-trial hearing for no specific purpose, violating his rights guaranteed by the Charter of Rights.

The review panel observed from the report of the subcommittee that the transcript of this appearance showed that the subject judge sought to ensure that the complainant understood the scope and purpose of the application being made by the Crown, and allowed the complainant to make submissions on whether the application should be granted.

After granting the application, the judge agreed with the suggestion by Crown counsel that a status hearing should be held to ensure that appointed counsel would be prepared to conduct the cross-examinations of the relevant witnesses. The complainant was opposed to the status hearing occurring before the trial date and threatened to bring a complaint to the Ontario Judicial Council if the status hearing were to occur on an earlier date.

The review panel agreed with the subcommittee's findings that the transcript showed that the judge behaved completely appropriately in relation to the conduct of the application and to scheduling the status hearing. The review panel concluded that the allegations about the subject judge were unsupported by the evidence and dismissed this complaint.

26-008/20 (Judge 3)

Judge 3 presided over the complainant's trial on charges brought in the first jurisdiction. The subject judge found him guilty of the charges. The review panel observed from the subcommittee's report that the allegations against the subject judge related to [his/her] decision to find the defendant guilty and [his/her] reasons for decision, including the judge's application of the law, consideration and assessment of the evidence. The review panel agreed with the subcommittee that such allegations were matters of judicial decision making outside the jurisdiction of the Judicial Council.

(i) Allegation that the complainant was not provided with disclosure

The complainant alleged that he was entitled to have disclosure provided to him at a location other than the court house, and that the failure of the judge to withdraw the charges and her decision to proceed to trial was “intentional bias of court process against an accused person”.

The review panel observed that the complaint subcommittee reported that before the complainant had been arraigned, the following exchange occurred:

The Court: So my first question to you is, have you received the disclosure?

Complainant: No.

The Court: Okay, you do not – did you get the disclosure in the jail that you were in?

Complainant: No.

The Court: Okay. Do you wish an opportunity, before we get started, to review the disclosure?

Complainant: No.

In any event, the review panel noted that it appeared the complainant had received disclosure prior to the appearance. The transcript of the complainant’s earlier court appearance before Judge 7 showed that duty counsel told the court, in the complainant’s presence:

I attended at the Trial Coordinator’s Office and I obtained a pre-trial date
He [The complainant] is unrepresented. And my friend provided me with a printed copy of the disclosure, that which they would provide, and I have given that to [the complainant] to review.

The review panel observed that the subject judge offered the complainant an opportunity to review the disclosure, which he declined.

(ii) Allegation relating to lifetime firearms prohibition not being delivered to the complainant

The complainant alleged that the subject judge ordered a lifetime firearms prohibition, but he (the complainant) did not receive any documents confirming this order from the court.

The review panel accepted the complaint subcommittee’s confirmation that the judge ordered the firearms prohibition. It observed, however, that court staff, and not a judge, are required to ensure that the order is given directly to a defendant before he or she leaves court or is sent to the institution where the defendant is incarcerated so it can be given to the defendant. The review panel concluded that this allegation, even if true, could not possibly be viewed as misconduct.

(iii) Allegation concerning the judge's reference to a mental health assessment in her reasons for sentence

The complainant alleged that Judge 3 stated that an underlying, untreated mental illness was the cause of his criminality. The review panel noted from the subcommittee's report that the judge gave a 16-page decision explaining her decision about the defendant's sentence. She referred to an assessment made in 2010 of whether he was criminally responsible, an assessment made in May 2020 of whether he was mentally fit to stand trial, and a discharge summary prepared by his attending psychiatrist after he had been treated at the hospital in 2018. She found it likely that the defendant suffers from a major mental illness that underlies his offending conduct.

The review panel concluded that this allegation related to the merits of the judge's sentencing decision and fell outside of the jurisdiction of the Council.

(iv) Allegation that the judge was biased

The complainant alleged that Judge 3's convictions and sentencing decisions were "due to malicious bias". He wrote that he was attacked five times during his pre-trial custody, and that this information would have been available to the judge during the trial and sentencing hearings.

The review panel concluded that the allegations of misconduct were not supported by the transcript, and that the allegations concerning the judge's decisions were matters of judicial decision making outside the jurisdiction of the Council. The review panel observed from the report of the subcommittee that the subject judge treated the complainant fairly and with respect throughout the proceedings. The complaint was dismissed and the file was closed.

26-009/20 (Judge 4)

The complainant appeared before Judge 4 for a judicial pre-trial hearing about the charges in the first jurisdiction. He wrote that the judge made statements in relation to his complaints to the OIPRD, saying that the complaints were a tactic of "diversion and negligence".

The subcommittee reported, and the review panel agreed, that the subject judge did not make any reference to the complainant's complaints to the OIPRD. The review panel concluded that the subject judge behaved at all times in a way which was entirely appropriate and that the allegations were not supported by the transcript. The complaint was dismissed and the file was closed.

26-012/20 (Judge 7)

The complainant made various allegations about Judge 7 including that he was abetting a conspiracy to obstruct justice and that the usual processes for providing disclosure had not been followed in his case.



The review panel observed from the subcommittee report that the transcripts showed that the complainant received disclosure on the hearing date in question. The review panel concluded that the allegations were not supported by the record and dismissed the complaint.

Complaints re charges in second jurisdiction

26-010/20 (Judge 5)

The complainant was before Judge 5 for his trial in the second jurisdiction on charges of assaulting the correctional officer with whom he had interacted, and breaching the terms of a probation order by failing to keep the peace and be of good behavior. The subject judge found him guilty and did not accept the complainant's defence that he had been defending himself from being assaulted by the correctional officer.

The complainant alleged that Judge 5 obstructed justice by his verdict and abetted the Crown Attorney in a conspiracy to obstruct justice. The complainant further alleged that the judge wrongly relied on comments in the transcript made by a judge in a previous court proceeding as legitimizing the use of force against the complainant by correctional officers.

Based on the report of the subcommittee, the review panel found no basis for the complaint against the subject judge. Contrary to the allegation of the complainant, the subject judge did not rule that the transcript from the prior hearing legitimized the use of force against the complainant. The complaint subcommittee reported that the subject judge received from the Crown the portion of the transcript from the prior hearing before Judge 4. In that hearing, Judge 4 had explained to the complainant that after he had refused to attend court that morning, Judge 4 had read s. 25 of the *Criminal Code* to the officer in charge. Section 25 authorizes everyone who is required or authorized to do anything in the enforcement of the law to use as much force as necessary for that purpose if they act on reasonable grounds.

The review panel concluded that the allegations related to conspiracy and obstruction of justice were not supported by the record, and that the judge's decision to reject the complainant's defence was a matter of judicial decision making outside the jurisdiction of the Council. The review panel dismissed the complaint and closed the file.

26-011/20 (Judge 6)

The complainant appeared before Judge 6 at a pre-trial hearing into charges against him in the second jurisdiction. The complainant alleged that the subject judge acted improperly in asking him if he would be testifying at trial and what his arguments would be. He also alleged that when he told the subject judge that his defence pertained to the



Charter of Rights, she said that a defence based on the *Charter of Rights* “would not be legitimate”.

As observed by the review panel, it is proper for a pre-trial judge to ask about the defendant’s witnesses and anticipated defence at a pre-trial hearing. When the complainant declined to provide that information, the subject judge did not press him to provide it.

The review panel agreed with the subcommittee that Judge 6 did not, as the complainant alleged, say that she understood that a judge had authorized the use of force against him. To the contrary, she asked if that was so. She suggested that such an order might not be legal, and ordered that if such an order had been made, it should be provided to the complainant.

The review panel agreed with the complaint subcommittee that the subject judge behaved appropriately at all times and that the allegations were not supported by the record. The complaint was dismissed and the file was closed.

CASE NO. 26-013/21

The complainant was counsel for the accused in a criminal trial on charges of sexual assault, criminal harassment and two counts of threatening death before the subject judge. The accused was convicted of all charges.

In his letter to the Council, the complainant referred to an incident on the first day of trial in which a Russian interpreter told his client (who is Russian) that judges in the subject judge’s jurisdiction do not treat out of town lawyers fairly and prefer to deal with local counsel. The accused was concerned by the comment. The comment was noted on record and the interpreter was then excused, and a different interpreter was engaged to interpret during the trial. The complainant stated that while he and his client “agreed to proceed to trial, we later realized that perhaps what we were told by the original interpreter may have been accurate”.

The complainant further alleged that the subject judge:

- Was a “Crown favouring judge”, and that “Her demeanor and body language was clearly not defence friendly”.
- Asked whether the complainant had any further questions shortly into his cross-examination of the Crown’s only witness, when there were many more areas to be explored.
- Failed to acknowledge the frailties with the victim’s evidence.

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- Attempted to “curtail” the complainant from putting documents into evidence.

In addition, the complainant asserted that the subject judge did not appear in court to render her judgment on the return date of September 20, 2019. He states that he, his client and his client’s wife travelled from out of town to attend court on that date, however, the accused’s name was not on any court list and the subject judge was not presiding that day. He alleges that the subject judge “knew full well we were travelling from outside of [the city in which she presides] and obviously significant costs were associated therein including hotels, flights and legal fees.”

The judgment was issued on November 15, 2019. On that date, Her Honour “rendered her decision without addressing her failure to attend on September 20, 2019 or for the lack of communication from either the trial coordinator’s or the Crown’s office.” The complainant stated that when he and the accused appeared for sentencing on January 15, 2020, he raised what had happened on September 20, 2019, but the judge showed no remorse for not appearing or for not notifying the defence that she would not be present. He alleged that while she responded that she “would take it into consideration” in a dismissive tone, she did not take this event into consideration, nor was it alluded to in her reasons for sentence; “her explanation and apology remains outstanding”.

Pursuant to r. 4.7 of the Council’s Procedures, the file was held in abeyance pending confirmation that the accused’s matter was no longer before the courts. The complaint was subsequently assigned to a two-person subcommittee of the Council, comprised of a judge and a community member. The subcommittee reviewed the letter of complaint, transcripts of the 3-day trial, Her Honour’s judgment released November 15, 2019 and the transcript of the sentencing hearing on January 15, 2020.

The subcommittee then prepared a report on its investigation for a four-person review panel of the Council, comprised of two judge members, a community member and a lawyer member. The review panel reviewed the subcommittee’s report, the letter of complaint, and excerpts of the relevant transcripts.

Based on its review of the materials, the review panel found no support for the allegation that the subject judge did not treat the complainant fairly because he was an out of town lawyer. The review panel noted from the transcript of the first day of trial that the interpreter’s comment in this respect was raised with the subject judge at the start of the proceedings by Crown counsel. Crown counsel also advised the subject judge that when he told the interpreter that he would be raising her comment with the court, the interpreter immediately withdrew from the case. The review panel observed that the complainant did not raise any concerns when this issue was raised, and in fact, commented that he



remembered Her Honour from when she was a prosecutor and stated, “I’m sure we’ll get a fair hearing...we’re all officers of the court here”.

The review panel similarly found no evidence in the transcripts to suggest that the subject judge in any way favoured Crown counsel or that she was not “defence friendly”. To the contrary, the review panel accepted the subcommittee’s findings that the record showed that the judge exercised patience with both counsel while maintaining control over her courtroom. For example, she stopped both counsel from engaging in repetitive or improper questioning and cautioned both counsel when they interrupted witnesses.

With respect to the allegations that the subject judge asked the complainant if he had further questions of the Crown’s witness shortly into his cross-examination, that she failed to acknowledge the frailties with the victim’s evidence, and that she attempted to restrain the complainant from putting documents into evidence, the review panel observed that these allegations concerned matters of judicial discretion and decision-making outside the jurisdiction of the Judicial Council. Judges have decision-making independence in accordance with the *Constitution Act, 1867*. If a person believes that a judge erred in his or her management or assessment of the evidence at trial, they may wish to seek remedies through the courts, such as an appeal.

Further, in respect of the allegations concerning the judge’s failure to render judgment on September 20, 2019, the review panel agreed with the subcommittee’s conclusion that this was an administrative issue and not a misconduct issue. The review panel observed from the transcript of the sentencing hearing that the complainant raised this issue with the subject judge and discussed the hardship caused by the missed appearance. Her Honour indicated that she “would take that into consideration”. The review panel observed that the issue of whether the subject judge ought to have considered or referred to this factor in her sentencing reasons was a matter of judicial decision-making outside the jurisdiction of the Council. While the review panel could understand why the complainant would be aggrieved by the rescheduling of the rendering of the judgment, the review panel observed that there was no basis to conclude that the judge had engaged in conduct that was incompatible with judicial office, or that she had conducted herself in a way that would undermine the public’s confidence in her ability to perform the duties of office, or in the administration of justice generally.

The review panel concluded that the majority of the complainant’s allegations were outside the jurisdiction of the Council or otherwise unsubstantiated, and that the allegation concerning the judge’s failure to apologize for the rescheduling of the hearing did not amount to judicial misconduct. Accordingly, the complaint was dismissed, and the file was closed.

CASE NO. 26-014/21

The complainant alleged that there is discriminatory content in a paper written by the subject judge in 2003 before her appointment to the bench in 2008. The paper related to dealing with “difficult clients” and was presented at a legal conference.

The complaint was assigned to a complaints subcommittee of the Council. The subcommittee reviewed the letter of complaint and the paper written by the subject judge while she was a lawyer. Upon the completion of its investigation, the subcommittee submitted a report to a review panel. The review panel reviewed the subcommittee’s report and the paper that was referred to in the letter of complaint.

In considering its jurisdiction over a complaint arising from an article written by a judge prior to their appointment to the bench, the review panel noted that the application to become a judge of the Ontario Court of Justice includes the following question:

Q7: Please disclose any matters that you reasonably and objectively feel might adversely reflect on the Ontario Court of Justice?

For the Council to have jurisdiction in this case, the judge would have had to have reasonably and objectively felt, at the time she applied to become a judge, that the content of the paper could adversely reflect on the Ontario Court of Justice. Based on the materials reviewed, the review panel found that there was nothing in the paper that would meet that threshold.

The review panel observed that the author of the article provided strategies for representing or dealing with a wide variety of potential clients. In the review panel’s opinion, the paper was practical, fair and measured throughout. The review panel concluded there was no discriminatory or inappropriate content in the paper and the author had no obligation to disclose the paper in her application to become a judge. Accordingly, the review panel concluded this was not a case where the judge’s conduct while a lawyer fell within the jurisdiction of the Council. Consequently, the review panel dismissed the complaint as out of jurisdiction.

CASE NO. 26-015/21

The complainant was involved in family court litigation with the father of their young child. The complainant alleged that the judge who presided over her case treated her unfairly, pressured her into concessions, and refused to accept her evidence. The complainant was represented by counsel for her first appearance before the judge and represented herself during three subsequent appearances, all of which took place by teleconference.

The complaint was assigned to a complaint subcommittee of the Council, consisting of a judge and a community member, for review and investigation. The subcommittee reviewed the letter of complaint and the relevant transcripts and endorsements. Upon



conclusion of its investigation, the subcommittee provided a report to a review panel of the Council, consisting of two judge members, a lawyer member and a community member.

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

Based on the materials reviewed, the review panel concluded that, the judge did not treat the complainant unfairly or pressure her into concessions. Rather, the review panel observed that throughout each of the hearings, the subject judge fully and fairly focused the attention of the parties on the issues of facilitating access and determining child support, with a particular focus on encouraging both parents to act in the best interests of the child.

For example, during the first appearance, the judge encouraged the parties to consider counselling for their child, with the input of both parents. She also ordered the complainant to facilitate weekly telephone access by the father with the child, and made minor changes to the father's access in order to accommodate last-minute changes caused by the father's work schedule. At the end of the hearing, with the assistance of her lawyer, the complainant agreed to a temporary consent order. The terms of that order formed the basis for the final order issued by the subject judge on the fourth appearance.

The review panel found that during all four appearances the subject judge treated both parents with courtesy and respect. To the extent the complainant disagreed with the subject judge's decisions, the review panel noted that nothing in those decisions raised issues of judicial misconduct. The review panel observed that the allegation related to the judge's refusal to accept the complainant's evidence was a matter of judicial decision making outside the jurisdiction of the Council. The review panel concluded that the allegations were not supported by the record and were otherwise outside the Council's jurisdiction. The complaint was dismissed and the file was closed.

CASE NO. 26-016/21

The complainant was a self-represented accused who appeared before the subject judge for a trial on charges of criminal harassment. The subject judge found the complainant guilty on August 3, 2018. On April 5, 2019, the complainant pled guilty to one charge of breaching his bail recognizance. He was sentenced for both offences to 60 days in jail to be served intermittently, followed by 3 years' probation.

In January 2021, the complainant filed a complaint with the Judicial Council about the behaviour of the subject judge and the Assistant Crown Attorney during the trial. The complainant was advised that the Council has no jurisdiction over the conduct of Assistant



Crown Attorneys and was told to contact the Director of Crown Operations should he wish to pursue that complaint.

As against the subject judge, the complainant alleged that she was prejudiced against him due to his place of origin and race. He also stated that the judge permitted Crown counsel to question his ability to comprehend English just because he is African, which he found to be condescending. The complainant alleged that when he notified the subject judge of his concern, she justified the Crown's position. Finally, the complainant took issue with the decision of the subject judge to find him guilty, stating that she disregarded evidence which was in his favour. He also challenged her decision to convict him for breaching his bail terms.

The complaint was assigned to a two-person subcommittee of the Judicial Council, composed of a judge member and a community member, for review and investigation. The subcommittee reviewed the letter of complaint, transcripts of the 5-day trial before the subject judge, the reasons for judgment of August 3, 2018, transcripts of the multiple appearances before sentencing, and the reasons for sentence of April 5, 2019.

After completing its investigation, the subcommittee provided a report to a four-person review panel of the Judicial Council, composed of two judge members, a lawyer member and a community member. The review panel reviewed the letter of complaint, the subcommittee's report detailing its investigation and supporting transcripts.

The review panel agreed with the subcommittee that the complainant's complaint about the decision of the trial judge to convict him was subject to appeal, and was outside the jurisdiction of the Council. The review panel further agreed that there was no evidence in the transcript capable of supporting the complainant's allegation that the trial judge was prejudiced against the complainant due to his place of origin and/or race. On the contrary, the review panel concluded that the trial judge was unfailingly courteous and respectful toward the complainant throughout the trial and consistently took steps to ensure that he understood the process and what the Crown was required to prove. The trial judge provided the complainant with numerous opportunities to consider his position, introduce evidence, and make submissions to the court.

With respect to the allegation that the subject judge justified the Crown's decision to question whether he (the complainant) understood English, the review panel noted that the issue arose when Crown counsel examined a police witness who testified that the complainant had a bit of an accent. When Crown counsel asked the officer if he had any concerns about the complainant's ability to understand what was being said, the complainant objected, stating that the questions about his accent made him feel like "I'm from this third world country" and that he was uncomfortable with such questions.



The review panel observed that the subject judge's response to the complainant was that sometimes there is an issue about whether someone whose first language is not English understands what an officer said to them. Crown counsel was seeking to understand the officer's appreciation of whether the complainant could understand what was being said to him. The trial judge thanked the complainant for bringing his concerns to her attention and said:

So, I understand why you're raising your concern with me, but I think it's something that's relevant in this case because the officer is relaying any thoughts he had about whether the two of you were able to communicate and understand each other. ... And I won't draw any kind of other inference that would be negative in any way because of any questions about whether or not English may be a first language or not, okay?

The review panel agreed with the subcommittee that there was nothing improper about the manner in which the subject judge dealt with this issue.

The review panel concluded that the allegations of misconduct were not supported by the record and that the allegations with respect to the judge's decision-making were outside the jurisdiction of the Judicial Council. The complaint was dismissed and the file was closed.

CASE NO. 26-017/21

The complainant's son was involved in a lengthy custody and access matter before the subject judge between June 2013 and January 2020. The complainant alleges that the judge, the child's mother, and the mother's lawyer abused their power by not permitting his son access to his child and that his son lost his job because the child's mother lied to the court. The complainant's son died in the fall of 2020.

The complainant sent a letter of complaint in January 2021, followed by additional materials in February 2021. The Deputy Registrar for the Ontario Judicial Council wrote to the complainant asking him to provide details as to how and when the judge abused his power and explained that he should contact the Law Society of Ontario if he wished to pursue a complaint against the lawyers involved in the family litigation.

The complaint was assigned to a complaint subcommittee of the Council, consisting of a judge and a community member, for review and investigation. The subcommittee reviewed the complainant's original handwritten letter of complaint and all the supplementary materials filed including:

- copies of court orders dated June 21, 2017 and January 10, 2020 signed by the subject judge,

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- an affidavit of the complainant's son,
 - a letter from Ontario Shores Centre for Mental Health Sciences confirming that the complainant's son was an in-patient in early 2020,
 - several text messages between the complainant's son and his former spouse,
 - an offer to settle the family litigation from the spouse's lawyer, and
 - a one-page note summarizing the son's medical evidence.

Upon conclusion of its investigation, the subcommittee provided a report to a review panel of the Council, consisting of two judge members, a lawyer member and a community member. The review panel reviewed the complainant's correspondence and the subcommittee's report.

The review panel found that there was no evidence to support the allegations of misconduct, including the allegation that the subject judge acted in an abusive fashion in the proceedings involving the complainant's son. The review panel noted that, to the extent the complainant challenged the decisions or outcome in the family court hearing, that was a matter of judicial decision-making outside the jurisdiction of the Council. The review panel concluded that the allegations of misconduct were not substantiated and the allegations related to decisions made in the proceeding were outside the jurisdiction of the Council. The complaint was dismissed and the file was closed.

CASE NOS. 26-018/21 & 26-024/21

The complainant was the accused in a criminal matter.

In his letter to the Judicial Council, he complained about his denial of bail, the conditions under which he was put in custody and his treatment by the presiding judges during various court appearances.

As the letter of complaint did not identify any judicial officers by name, Council staff called the complainant to confirm which judge(s) he wished to complain about. The complainant advised that he wanted to complain about the conduct of two specific judges: OJC Files 26-018/21 & 26-024/21.

As against the subject judges, the complainant appeared to allege that he "... experienced discrimination, racism, unjust and unfair behaviour..." and "was singled out...and mocked, mimicked and ridiculed...". He also referred to a judicial pretrial on November 26, 2019 and another appearance on December 10, 2019, which were allegedly conducted without being recorded. The complainant alleged that the lack of audio recording could have a substantial impact on his life as the matters discussed were pivotal and the presiding



judicial officer(s) were elusive and devious, abused their power and ignored their civil duties.

The complaint was assigned to a two-member subcommittee of the Council, composed of a judge member and a community member, for review and investigation. The subcommittee reviewed the complaint letter and the court endorsements and transcripts of all the complainant's appearances before the subject judges.

Upon conclusion of its investigation, the subcommittee provided a report to a four-person review panel of the Judicial Council, composed of two judges, a community member and a lawyer member. The review panel reviewed the subcommittee's report, the letter of complaint, and transcripts from the appearances before the subject judges.

26-024/21

The review panel agreed with the subcommittee's assessment that throughout the appearance before the subject judge, the judge treated the complainant with respect and civility. The judge granted the complainant's request to discharge his counsel of record and provided him with a reasonable amount of time to retain another lawyer.

The review panel concluded that there was no evidence to support the allegations that the subject judge had mistreated the complainant, or otherwise acted inappropriately or unfairly or in a discriminatory fashion. The review panel also observed that, contrary to the complainant's allegations, the appearance on December 10, 2019 before the subject judge was recorded, and a transcript of the proceeding was prepared.

Further, in respect of the allegation that the judicial pretrial on November 26, 2019 was not recorded, the review panel noted that the subject judge did not preside at that hearing. In any event, the review panel noted that the complaint subcommittee had requested and reviewed the transcript of the November 26, 2019 appearance and confirmed that the appearance was recorded.

Finally, in respect of the complainant's allegation that he was denied a fair bail hearing and should not have been detained in custody, the review panel observed that the subject judge did not preside at the complainant's bail hearing. Regardless, it noted that the decision to grant or deny bail is a matter of judicial discretion outside the jurisdiction of the Judicial Council. Judges have decision-making independence in accordance with the *Constitution Act, 1867*.

The review panel dismissed the complaint on the basis that the allegations were unsubstantiated. The complaint against the subject judge was dismissed and the file was closed.



26-018/21

Based on its review of the transcript of two appearances before the subject judge (these appearances took place a number of weeks after the appearance considered in OJC File 26-014/21), the review panel determined that the allegations of misconduct against this judge were not supported. The subject judge was clear in her language and direction. She remained professional and respectful toward the complainant at all times. The judge ensured that the complainant had been provided with disclosure and took steps to make sure she understood what he was requesting. While trying to move the process along to a judicial pretrial, Her Honour granted the complainant's adjournment request to allow him time to review the disclosure and obtain new counsel.

The review panel dismissed the complaint on the basis that the allegations were unsubstantiated. The complaint against the subject judge was dismissed and the file was closed.

CASE NOS. 26-019/21 & 26-020/21

The Council received a letter from the complainant regarding two judges that presided over proceedings during which the complainant pled guilty to criminal charges.

The complaint was assigned to a complaint subcommittee of the Council, composed of a judge member and a community member, for review and investigation. The subcommittee reviewed the letter of complaint and transcripts of the court appearances before the judges. Upon conclusion of its investigation, the subcommittee provided a report to a four-person review panel of the Council, composed of two judges, a lawyer member and a community member. The review panel reviewed the letter of complaint and the subcommittee's report.

26-019/21

The complainant appeared before the presiding judge on December 4, 2019 on a consent motion for an order removing his counsel from the record. Following the hearing of the motion, the complainant asked that the disclosure that was provided to his former counsel be given to him and not be returned to the Crown.

In his letter of complaint, the complainant alleged that in response to this request for the disclosure, the presiding judge told the Crown to speak to the complainant privately. He asserted that the Crown told him to plead guilty, which he refused to do. After speaking with the presiding judge, the Crown advised the complainant that he was not providing the disclosure even if the matter proceeded to trial.



The complainant asserted that he felt the Crown was “*squeezing the grip on me*” and that this was assisted by the behaviour of the presiding judge. He stated that he “*gave in*”, pled guilty and that his “*forcefully guilty plea*” was accepted by the presiding judge. The complainant asserted that he felt the subject judge “*pressurized and stifled*” him to feel guilty through the prosecutor. He further alleged that he was denied his right to a trial, to defend himself and to voice his concerns before the court.

The review panel observed from the subcommittee’s report that the transcript of the appearance showed that the complainant’s counsel advised the court that she had already provided the complainant with copies of all the information contained on the disclosure disks, although there were documents not printed from the disks that were to be returned to the Crown. The review panel noted that when the complainant requested full disclosure, the subject judge replied: “*I think [complainant’s counsel] proposal that she return Counsel disclosure to the Crown’s office and let the Crown’s office figure out the best way to disclose to you is appropriate, so thank you.*” The review panel observed that there was nothing improper about the subject judge’s response.

With respect to the allegations that the complainant felt pressured or forced to plead guilty and was thereby denied his right to a fair trial, the review panel accepted the findings of the subcommittee that such allegations were not supported by the record. To the contrary, the transcript showed that before the subject judge accepted the guilty plea, he took the time to explain to the complainant his options before entering a guilty plea, ensured that the complainant understood the consequences of his plea, confirmed with the complainant that his plea of guilt was being made freely and voluntarily, confirmed with the complainant that he understood that the decision to accept the plea was his alone and that he was not bound to accept it or the joint submission regarding sentence, and canvassed with the complainant whether he wished to consult counsel prior to entering his plea. At the conclusion of the hearing, the complainant thanked the presiding judge.

The review panel concluded that there was no basis to support the allegations and dismissed the complaint.

26-020/21

The complainant appeared before the second subject judge by video on additional charges relating to those in File #26-019/21. In his complaint, he alleged that during the video appearance, the presiding judge: declared that the complainant was there to plead guilty; refused the complainant’s request to speak to his lawyer; and did not reply to the complainant’s inquiry of whether disclosure had been provided to his lawyer.



The complainant further alleged that the subject judge “muted the volume” during the videoconference and asked the court clerk to “*walk [the complainant] through the guilty plea steps*”. He stated that he felt he was “*instructed to plead guilty again*” by a judge, that there was no presentation of evidence, no transparency in the process and no right to defend himself. The complainant asserted that the trial was a sham and had a predetermined outcome.

Based on its review of the materials, the review panel agreed with the subcommittee that the transcript of the appearance did not support the complainant’s allegations. To the contrary, the transcript indicated that the complainant’s counsel advised the court that the complainant proposed to enter a plea and then proceeded to conduct a plea inquiry. The complainant confirmed on the record that he was giving his counsel instructions to plead guilty, that he understood that by pleading guilty he was giving up his right to a trial, and that his instructions to plead guilty were made freely and voluntarily, without pressure from anyone. Following the hearing of submissions on sentence by both counsel, the presiding judge asked if the complainant had anything to say and permitted him to do so without interruption when he indicated he did.

The review panel accepted the subcommittee’s findings that there was no indication in the transcript to support the allegation that the judge “muted the volume” during the videoconference, or that he asked the court clerk to “walk [the complainant] through the guilty plea steps”.

The review panel agreed with the subcommittee’s findings that the subject judge did not indicate that the only option for the complainant was to enter a plea of guilt, nor did the judge prevent the complainant from speaking with his counsel. At no point during the proceeding did the complainant request to speak to counsel or raise the issue of disclosure. Finally, the transcript demonstrated that the complainant and his counsel were permitted to provide submissions on the issue of sentencing and, contrary to the complainant’s allegations, the outcome of the proceeding was not predetermined.

The review panel concluded that the allegations were not supported and dismissed the complaint.

CASE NO. 26-021/21

The complainant’s spouse was an alleged childhood victim of sexual offences committed against her by a family member. The defendant family member was charged with nine sexual offences and the trial of these charges took place before the subject judge. The trial consisted of the hearing of evidence over two days, followed by submissions on the third day. The subject judge delivered his written decision ten days later, dismissing all charges against the accused.



The complainant made various allegations concerning the subject judge and the defendant's counsel. Given that the jurisdiction of the Judicial Council is limited to complaints about judicial conduct, the Council focused on the following allegations in the letter of complaint:

- That the judge was “utterly unprofessional during this kangaroo trial and was visibly favoring the child rapist by his demeanor and his facial expressions”;
- That the judge showing “disrespect to my wife ... while displaying utmost respect to the child rapist... It was blatantly obvious from the moment my wife began her testimony that dishonorable [trial judge's name] had already decided on the acquittal of this child rapist.”;
- The trial judge's “reasons for his decisions were unacceptable, citing that my wife was not a credible witness, as she couldn't recall many details from when she was a child. This is absurd, as no one is able to recall every single detail from years and years ago, no matter how traumatic they might be. Also, people often repress memories of traumatic events. Interestingly enough, though, [the defendant] had a clear recollection of each and every incident during which he sexually assaulted my wife when she was a child and lied under oath, denying any wrong-doing (obviously). Dishonorable [trial judge's name] was also riddled with errors and false information. The entire proceedings were unprofessional and grossly one-sided.”;
- The trial judge is “completely incompetent as a judge, due to his inability to detect blatant lies.”

The complaint subcommittee reviewed the complaint letter, transcripts of the hearing dates, and the judge's reasons for decision. Based on its review of the transcripts and the reasons for decision, the subcommittee submitted a report to a review panel detailing their findings. The review panel reviewed the letter of complaint, the subject judge's reasons for decision, and the subcommittee's report to them.

In addressing the first two allegations in the complaint letter, the review panel accepted the findings of the complaint subcommittee that there was no evidence that the subject judge acted in a biased or unprofessional manner. The review panel observed that it is not possible to know the subject judge's demeanour or facial expressions because trial proceedings are not videorecorded. The review panel accepted the findings of the complaint subcommittee that there was no evidence in the transcript suggesting that the judge exhibited any disrespect toward the complainant's spouse, or that he favoured the defendant. To the contrary, the judge intervened very rarely and, when he did so, he was respectful towards the complainant's spouse, the defendant, the witnesses, and towards



both counsel. While the subject judge would sometimes ask clarifying questions of the complainant's spouse, the judge remained neutral throughout the proceedings.

Regarding the allegations in the complaint letter that the subject judge's decision was "riddled with errors and false information" and that the judge was unable to detect blatant lies, the review panel observed that these allegations raise issues that are outside the Council's jurisdiction. The jurisdiction of the Judicial Council is limited to assessing allegations of judicial misconduct. The Judicial Council has no authority to examine or review a trial judge's assessment of the evidence or their credibility findings. If a person is of the view that a judge erred in their rulings or decision, an appellate court is the body with jurisdiction to determine whether there was an error in law or in fact, and if so, to provide an appropriate remedy.

For the reasons noted above, the allegations contained in this complaint were dismissed as unfounded and as outside the jurisdiction of the Council and the complaint file was closed.

CASE NO. 26-022/21

The complainant was the self-represented applicant in a family court proceeding. The respondent – the complainant's ex-spouse – was represented by counsel.

The Council received a letter from the complainant in which she made various allegations about the subject judge's conduct during two court appearances. The complainant alleged that the subject judge:

- Should have recused herself because the judge's husband was a former coworker of the respondent and the judge's two stepsons had relationships with the complainant's daughters in high school.
- Penalized the complainant for following her guidance; the subject judge stated that the respondent should pay child support while the complainant's children were attending post-secondary school, which led the complainant to reject any settlement offers that did not provide for such support. The subject judge then penalized the complainant for not accepting the such offers to settle.
- Refused to award support payments for the complainant's eldest daughter, despite her entitlement to receive support.
- Accused the complainant of being a "parent alienator", yelled at and reprimanded her and treated her with disdain, causing the complainant to mute her phone and have a panic attack.

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- Showed bias by inviting counsel for the respondent to attend the courthouse in-person because she (counsel) was experiencing technical difficulties with Zoom, rather than asking counsel to dial-in to the proceeding as the complainant had done. The complainant had to wait twenty minutes while counsel for the respondent traveled to the courthouse. The respondent's counsel had in-person access to the subject judge, which placed the respondent in an advantageous position.
 - Showed bias by allowing the respondent's counsel almost an hour and a half for submissions while giving the complainant just a few minutes.
 - Appeared to have made her ruling before the hearing commenced.
 - Penalized the complainant for not complying with financial disclosure orders even though both parties didn't follow the orders. The subject judge did not properly address the issue of whether "fostering per diem" is considered "income."
 - Set unreasonable parameters in the final order with respect to when the complainant was required to pay back child support.
 - Did not allow the complainant to provide any input in the drafting of the final order, which was decided between the subject judge and the respondent's counsel.
 - Improperly conducted a trial, even though the date had been set for clarification of an order. The complainant was not given an opportunity to provide evidence or even a response.

The complaint was assigned to a two-person subcommittee of the Council, consisting of a judge and a community member, for review and investigation. The subcommittee reviewed the complaint letter and the transcripts and audio recordings of the appearances before the subject judge. The subcommittee also requested a response from the subject judge to the allegations, and reviewed her response.

Upon conclusion of its investigation, the subcommittee provided a report to a four-person review panel of the Council, consisting of two judges, a community member and a lawyer member. The review panel reviewed the letter of complaint, the report of the subcommittee, the letter inviting the judge to respond to the complaint, and the written response provided.

The review panel accepted the findings of the subcommittee that a number of the complainant's allegations were not supported by the record. In particular:

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- The subject judge did not accuse the complainant of being a “parent alienator”, yell at, reprimand, or treat the complainant with disdain. The judge was patient with the complainant throughout the proceedings and expressed concerns about how the conduct of both parents might be affecting the children. On one occasion when the subject judge raised her voice to the complainant, it was so she could be heard over the complainant’s interruption.
 - The subject judge did not allow the respondent’s counsel almost an hour and a half for submissions while giving the complainant just a few minutes. Rather, the transcript demonstrated that the complainant made submissions at length and the subject judge made a point of asking her at the end of the proceeding if she would like to say anything further.
 - The transcript did not support the complainant’s allegation that the subject judge appeared to have made her ruling before the hearing commenced.
 - The transcript did not support the allegation that the complainant had no say in the drafting of the final order. It is apparent from the transcript that the order was not decided between the subject judge and counsel.

The review panel accepted the subcommittee’s conclusion that the following allegations concerned matters of judicial discretion and decision-making outside the jurisdiction of the Judicial Council:

- The subject judge penalized the complainant for following her guidance or for not accepting offers to settle.
- The subject judge refused to order support payments for the complainant’s eldest daughter.
- The subject judge forced the complainant to give back child support and pay costs to the respondent.
- The subject judge penalized the complainant for not complying with financial disclosure orders even though both parties didn’t follow the orders. The subject judge did not properly address the issue of whether “fostering per diem” is considered “income.”
- The subject judge set unreasonable parameters in the final order with respect to when the complainant was required to pay back child support.

Judges have decision-making independence in accordance with the *Constitution Act, 1867*. If a person believes that a judge erred in assessing the evidence, applying the law



or deciding legal or factual issues, the person should pursue legal remedies, if available, through the courts, such as by way of an appeal.

With respect to the allegation that the subject judge ought to have recused herself, the review panel observed from the response received from the judge that she was unaware of the potential conflicts of interest raised in the complaint letter at the time she presided over the matter. Neither the complainant nor counsel for the respondent raised the potential conflict issue with the judge. Moreover, the subject judge advised in her response that she met her spouse several years after he had retired from the office where he had worked with the respondent. The subject judge had never heard the complainant's name or the respondent's name prior to presiding over the proceeding, nor did she know of any prior relationship between her stepsons and the complainant's children.

The subject judge further stated that, had she been aware of these potential conflicts, she would have invited submissions from the parties about whether she could continue to preside, and she would in all likelihood have recused herself so as to avoid even the appearance of bias.

The review panel accepted that the subject judge was unaware of any potential, actual or perceived conflict of interest at the time she presided over the proceeding, and the issue was not brought to her attention outside of the judicial complaints process. Having regard to the subject judge's response, the review panel concluded that the information reviewed did not give rise to any concern of judicial misconduct in the circumstances.

With respect to the allegation that the subject judge was biased in only inviting respondent's counsel to attend court in-person, the review panel observed that the judge noted in her response that she was trying to address a technological issue quickly in a context where everyone was new to virtual hearings. The subject judge explained that she did not extend the same invitation to the complainant because (a) she was having no difficulty hearing the complainant (unlike respondent's counsel) and (b) she felt it would be an imposition to ask the complainant to bear the costs, time and safety risk of attending in person.

The subject judge stressed that respondent counsel's in-person attendance did not affect the final outcome of the case. However, she acknowledged how the complainant could have perceived that she was put at a disadvantage. Having reflected on why the complainant felt disadvantaged, the subject judge acknowledged to the Council that she would handle the same situation differently today.

The review panel observed from her response that the judge had carefully reflected on what had transpired and recognized that she could have asked the respondent's counsel to phone in or, alternatively, she could have asked the complainant to also attend the



courthouse. Given her response to this allegation, the review panel determined that the judge had learned from the complaints process and concluded that no further action was required.

Regarding the allegation that the subject judge conducted a trial on a date set for clarification of an order, the review panel observed from the subcommittee's report that the judge did not conduct a trial at this appearance and that this allegation was unsupported by the transcript of the proceeding.

Although the complainant's allegation that the subject judge had improperly conducted a trial was unsubstantiated, the subject judge nevertheless recognized in her response to the Council that she could have better explained the nature of the appearance to the complainant, using plain language. She indicated that in the future she would do things differently, including: explaining the purpose of the appearance; asking the self-represented litigant if she had any questions; ensuring that the self-represented litigant understood the process, issues, evidence and arguments; and explaining any rulings, and how to review the rulings in event of disagreement.

The review panel observed that the subject judge had demonstrated insight, had acknowledged areas in which she would strive to do better, and had provided concrete steps she would take in the future to ensure that every litigant who appears before her, especially those who are self-represented, is heard and feels heard.

Given that the allegations were unsubstantiated by the record, outside the jurisdiction of the Judicial Council, or did not raise conduct concerns warranting further action by the Council, the review panel dismissed the complaint and closed the file.

CASE NO. 26-026/21

The complainant was convicted of criminal harassment by the subject judge. In his complaint to the Judicial Council, the complainant alleged that the subject judge, among other things:

- Did not give him a fair trial;
- Suppressed his evidence by interrupting him when he was giving evidence, ruling evidence out as irrelevant, and not accepting his evidence saying it was "new" evidence;
- Obstructed justice;
- Was biased and colluded with the Crown Attorney to cover up police misconduct;

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- “Custom tailored the trial to convict [him] through preventing [him] from telling him all of my evidence...altering court transcript...ruling out charter violation as irrelevant and not allowing him to question [a witness]”;
 - Had a “hidden agenda” and was intent on convicting him regardless of his evidence; and
 - Demonstrated “gross negligence of the law.”

The complaint was assigned to a two-person subcommittee of the Council, composed of a judge member and community member, for review and investigation. The subcommittee reviewed all the correspondence provided by the complainant, including the transcript of the proceeding before the subject judge. Upon conclusion of its investigation, the subcommittee provided a report to a four-person review panel of the Council, composed of two judge members, a lawyer member and a community member. The review panel reviewed the subcommittee’s report and the letter of complaint.

The review panel observed that the complainant’s allegations about the judge’s evidentiary rulings, including that he suppressed the complainant’s evidence, prevented him from questioning a witness and failed to accept, or ruled out, certain evidence as “new” or “irrelevant”, raised matters of judicial decision-making outside the jurisdiction of the Council. Judges have decision-making independence pursuant to the *Constitution Act, 1867*. If a person believes that a judge erred in assessing or interpreting the evidence or in applying the law, they should seek remedies, if available, through the courts, such as an appeal. The review panel noted that in this case the complainant did appeal his conviction, however, his appeal was dismissed by a higher court.

The review panel observed from the subcommittee’s report that the subject judge did not rule any *Charter* violation to be “irrelevant”, as alleged by the complainant. Rather, the judge repeatedly advised the complainant that, as he had not filed a *Charter* application, the issue was not properly before the court. In any event, the review panel noted that this was a matter of judicial decision-making outside the jurisdiction of the Council.

Finally, the review panel accepted the findings of the subcommittee that there was no evidence to support the allegations that the subject judge had altered the court transcript. There was no record that any transcripts were sent to the subject judge for review. Further, the transcript did not support the allegations that the judge was biased or colluded with the Crown Attorney.

The review panel concluded that the allegations were unsubstantiated and otherwise outside the jurisdiction of the Council. The complaint was dismissed and the file was closed.



CASE NOS. 27-001/21 & 27-002/21

The complainant was one of the respondent parents in a child protection proceeding that took place between January and March 2021. The applicant in the proceeding was a child protection agency.

In his letter to the Council, the complainant made various allegations about persons involved in the hearing, including the conduct of two judges who presided over the proceeding.

As against the first subject judge (OJC File No. 27-001/21), the complainant alleged that the judge:

- engaged in hurtful and abusive behaviour, did not allow the complainant to speak, discuss his disability and the accommodations he required, or his request for assistance while in crisis;
- “thwarted” his efforts to speak by telling him that they had “30+” cases to hear that day; the complainant felt rushed and that there was no time for him to disseminate his information, to think slowly about what he needed to say or for his emotions to settle;
- mocked and harassed him and “discriminated against [his] gender and disability on multiple occasions;
- treated him with ableism and disregarded the fact that he (the complainant) did not have internet access and was homeless;
- Mocked and discriminated against him when the complainant discussed the issues he had with his ex-wife and the children’s stepfather by saying, “what do you want me to do, put the kids in foster care?”

The complainant’s concerns about the second subject judge (OJC File No. 27-002/21), were contained in the following statements:

“The actions of both Justices were that of someone who holds extreme bias towards men in a family situation. Their legal lens clouded on the societal definition of a primary caregiver, that an individual regardless of their gender can be a primary caregiver, a victim of family violence, of workplace harassment, of societal discrimination. Because I am a male and have a penis, these Justices automatically slotted me into a caste position of ‘bad dad’ or ‘bad man’ without knowing one iota of truth or fact about me as an individual.”



The complaint was assigned to a two-member subcommittee of the Judicial Council, composed of a judge member and a community member, for review and investigation. The subcommittee reviewed the letter of complaint and various items of correspondence between the complainant and Council staff. The subcommittee also reviewed transcripts of the appearances before the subject judges. Following its investigation, the subcommittee submitted a report to a four-person review panel, composed of two judge members, a lawyer member and a community member. The review panel reviewed the letter of complaint and the subcommittee's report on its investigation.

27-001/21

Based on its review of the materials, which included excerpts of the transcripts, the review panel observed that the complainant was permitted to speak uninterrupted and at length on various occasions throughout the proceedings. The complainant discussed the effects of his disability at length, and the subject judge made numerous inquiries of him to find out what accommodation he was seeking. The review panel further observed that the subject judge provided the complainant with multiple adjournments and extensions of time to file his responding materials.

The review panel determined that there was no evidence to support the allegations that the subject judge engaged in hurtful or abusive behaviour, discriminated against the complainant due to his gender and/or disability, thwarted his efforts to speak, mocked and harassed him, or treated him with ableism and disdain. While the subject judge was clear in his language and direction and tried to move the process along, he was extremely patient with the complainant throughout the proceedings, did not reprimand him for interrupting the court on numerous occasions, and requested that his matter be called first on one of the appearance dates.

The review panel agreed with the subcommittee's findings that there was no evidence to support the allegations of misconduct. The complaint was dismissed and the file was closed.

27-002/21

The review panel observed that the complainant did not appear before the subject judge. Rather, counsel appeared on his behalf and requested an adjournment to allow the complainant to file responding materials. The adjournment request was granted by the subject judge.

The review panel concluded that there was no evidence to support the allegations of misconduct against the subject judge. The complaint was dismissed and the file was closed.

CASE NO. 27-005/21

The complainant was the accused in a sexual assault trial before the subject judge. The subject judge acquitted the complainant.

In his letter of complaint to the Council, the complainant alleged that the subject judge “materially and voluminously” misrepresented facts or used incorrect facts in her judgment 41 times, used stereotypes five times and personal biases three times. The complainant further alleged that the subject judge made a personal statement that was beyond the authority of a judge. The “personal statement” that the complainant took issue with was “...if the civil standard of proof, namely, on a balance of probabilities were the test to be applied, then I would have convicted.”

The complaint was assigned to a two-person subcommittee of the Council, composed of a judge member and a community member, for review and investigation. The subcommittee reviewed the letter of complaint and the subject judge’s reasons for judgment. Upon conclusion of its investigation, the subcommittee prepared a report for a four-person review panel of the Council, composed of two judges, a lawyer member and a community member. The review panel reviewed the subcommittee’s report, the letter of complaint and the reasons of the subject judge.

The review panel did not find any evidence to support the allegations that the subject judge referenced stereotypes or displayed personal biases at any point in her written decision.

With respect to the judge’s statement that she would have convicted the complainant if the balance of probabilities (*i.e.*, the civil standard of proof) were the test to be applied, the review panel observed that this was not a “personal statement”, as alleged. Further, the review panel determined that such a statement was not inappropriate or beyond a presiding judge’s authority within the context of a criminal trial. Such a statement is frequently used by judges to demonstrate the higher threshold of “proof beyond a reasonable doubt” required in order for a criminal conviction to be entered.

Moreover, in relation to the allegation that the subject judge “materially and voluminously misrepresented facts or used incorrect facts of the case for a total of 41 times”, the review panel observed that this allegation raised issues outside the jurisdiction of the Council. Judges have decision-making independence pursuant to the *Constitution Act, 1867*. If a person believes that a judge has made factual or legal errors in their decision, they should seek remedies through the courts, such as by way of appeal.

The review panel dismissed the complaint on the basis that the allegations were unsupported and were otherwise outside the jurisdiction of the Judicial Council.

CASE NO. 27-009/21

The complainant appeared before the subject judge in respect of her family law matter. In her complaint to the Council, she made multiple allegations about the subject judge, including that he did not deal with her case fairly, was partial, did not take her kids into consideration, failed to consider the materials she filed and did not allow her to speak. The complainant further alleged that the judge was only concerned about the financial side of things, only listened to the lawyers, and showed no empathy for her learning disability or mental health.

The complaint was assigned to a complaint subcommittee of the Council, composed of a judge and a community member.

Before a final determination could be made on the complaint, the Ontario Judicial Council received confirmation that the subject judge was no longer a judge of the Ontario Court of Justice. Accordingly, the Ontario Judicial Council lost jurisdiction to continue with the complaints process. The complaint file was administratively closed due to a loss of jurisdiction.