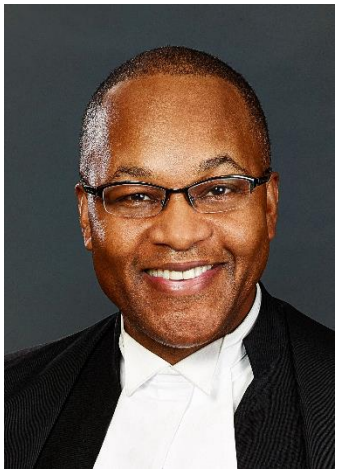
ONTARIO JUDICIAL COUNCIL

ANNUAL REPORT 2022



The Honourable Michael H. Tulloch

CHIEF JUSTICE OF ONTARIO

Co-Chair, Ontario Judicial Council

The Honourable Lise Maisonneuve

CHIEF JUSTICE

ONTARIO COURT OF JUSTICE

Co-Chair, Ontario Judicial Council

ONTARIO JUDICIAL COUNCIL

May 12, 2023

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-seventh 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 January 1 to December 31, 2022.

Respectfully submitted,

Michael H. Tulloch
Chief Justice of Ontario
President of the Court of Appeal for Ontario

Lise Maisonneuve
Chief Justice
Ontario Court of Justice

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1. INTRODUCTION

The Ontario Judicial Council is an independent body established by the Province of Ontario under the *Courts of Justice Act*, R.S.O. 1990, c. C.43, with a mandate to receive and investigate complaints about the conduct of provincially appointed judges. The *Courts of Justice Act* (also referred to as "the 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

The Act requires 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.

This Twenty-Seventh Annual Report provides information on the Council's membership, its functions, policies and procedures, and its work during the 2022 reporting year. During the period of time covered by this Report, the Ontario Judicial Council had jurisdiction over approximately 377 provincially appointed judges, including full-time and *per diem* judges.

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 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.

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

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 in 2022 was as follows:

Court of Appeal for Ontario

- The Honourable George R. Strathy, Chief Justice of Ontario (Co-Chair)
  (Until August 31, 2022)

- The Honourable Michael H. Tulloch, Chief Justice of Ontario (Co-Chair)
  (Effective December 19, 2022)

Ontario Court of Justice

- The Honourable Lise Maisonneuve, Chief Justice of the Ontario Court of Justice (Co-Chair)

- The Honourable Aston Hall, Associate Chief Justice of the Ontario Court of Justice

- The Honourable Justice Esther Rosenberg, Regional Senior Justice (Central East Region)

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

- The Honourable Justice Peter K. Doody (Ottawa)
  (Until December 2, 2022)

- The Honourable Justice Manjusha Pawagi (Toronto)

- The Honourable Justice Riun Shandler (Toronto)
  (Effective December 3, 2022)

Lawyer Members

- Teresa Donnelly, Treasurer of the Law Society of Ontario
  (Until June 28, 2022)

- Jacqueline Horvat, Treasurer of the Law Society of Ontario)
  (Effective June 28, 2022)

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.

- Victor Royce (Thornhill)
  Former President and CEO of Rolex Canada (retired)

- Jasmit (Jaz) Singh (Oakville)
  Financial Planning Analyst, Peel Regional Police

- Cameron MacKay (Toronto)
  Vice-President, Communications and Public Engagement, Waterfront Toronto
  (Effective January 6, 2022)

Temporary Members

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 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. COUNCIL ADMINISTRATION AND STAFF

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

- Alison Warner – Registrar
- Shoshana Bentley-Jacobs – Counsel & Deputy Registrar (on leave as of April 2022)
- Lauren Binhammer – Acting Counsel & Deputy Registrar (commencing April 16, 2022)
- Philip Trieu – Assistant Registrar
- Ana Brigido – Assistant Registrar

- Astra Tantalo – Administrative Assistant

Council staff are responsible for service delivery in a number of areas including:

- responding to telephone and written inquiries from the public regarding the Council's mandate and procedures and providing requested assistance to members of the public who wish to make a complaint to the Council
- performing a preliminary review of new complaints received by the Council
- redirecting complainants who are not complaining about judicial conduct to the appropriate complaint body and/or to available legal resources
- supporting members of the Council in the investigation and review of complaints (e.g., ordering court records, retaining investigation counsel, preparing complaint-related correspondence, etc.)
- supporting meetings of the full Council, as well as numerous meetings of complaint subcommittees and review panels of the Council held throughout the year
- supporting and attending hearings of the Council into complaints
- posting communications on the Council's website regarding public hearings and decisions
- facilitating the consideration of judicial requests for compensation of legal fees incurred in the complaints process
- retaining and instructing counsel in relation to judicial reviews and/or appeals of decisions of the Council
- onboarding new members of the Council and offboarding members of the Council after the expiry of their terms
- assisting with the preparation of the Annual Report of the Council

In addition to supporting the work of the Ontario Judicial Council, Council staff also support 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.

More information about each of the functions performed by the Council may be found in this Report.

The main function of the Judicial Council is to consider complaints about judicial conduct on the part of judges who preside on the Ontario Court of Justice. The Council's jurisdiction in this regard is limited to considering complaints about alleged judicial misconduct. Examples of judicial misconduct include inappropriate courtroom conduct (e.g., exhibiting a lack of restraint or civility in the courtroom, making discriminatory comments or engaging in discriminatory conduct towards any persons in the courtroom), or improper off-the-bench conduct.

The Council is not to be confused with an appellate court. The Council 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 Council cannot provide legal advice or assistance to individuals, or intervene in litigation on behalf of a party.

The legislation that governs the Judicial Council establishes a judicial 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. 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.

7. 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 *Courts of Justice Act* to implement and make public a plan for the continuing judicial education of provincial judges. The continuing education plan is developed by the Chief Justice in conjunction with the Education Secretariat. Pursuant to s. 51.10(1), the education plan must be approved by the Judicial Council.

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

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

8. 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 *Courts of Justice Act.*

A document entitled the *Principles of Judicial Office* was prepared by the Judicial Conduct Subcommittee of the Chief Judge's Executive Committee in consultation with the Judges' Association and the judges of the Ontario Court of Justice. The document was then submitted to the Ontario Judicial Council for its review and approval in the second year of the Council's operation, as required by 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.

In 2021, the Canadian Judicial Council adopted an updated version of the *Ethical Principles for Judges*, which provides guidance on the high standards of conduct expected of members of the judiciary both on and off the bench.

9. JUDICIAL APPOINTMENTS ADVISORY COMMITTEE

A member of the Ontario Judicial Council serves on the provincial Judicial Appointments Advisory Committee as its representative. Senior Advisory Family Justice Lise Parent (until December 2, 2022) and Justice Riun Shandler (effective December 3, 2022) acted as the Judicial Council's representative on the Judicial Appointments Advisory Committee during the period covered by this report.

10. 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.

Rule 27 of the Council's Procedures sets out the policy governing applications for an order of accommodation:

- 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.

11. 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. The OJC Procedures Document requires that complaints must be made in writing and states that the Judicial Council does not have the authority to investigate anonymous complaints.

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 a lawyer or paralegal, a police officer, a Crown Attorney, member of 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) Role of Complaint Subcommittees

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(6) of the Act requires that the complaint subcommittee's investigation be conducted in private.

Where a complaint involves allegations about a judge's conduct in the courtroom, the complaint subcommittee will review relevant court transcripts, documents, and/or the audio recording of the proceeding.

Section 51.4(3) of the *Courts of Justice Act* 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. If the subcommittee determines that the complaint lacks any merit, it may decide to summarily dismiss the complaint.

In some cases, the subcommittee may decide that further investigation into the complaint is needed. Pursuant to s. 51.4(5) of the Act, 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 submit a written response to the complaint. In such cases, 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 in responding to the complaint.

In cases where a complaint subcommittee determines that a complaint is not suitable for summary dismissal, the complaint subcommittee reports to a review panel of the Judicial Council. The report describes the allegations, the investigation, and recommends a disposition (i.e., dismissal, referral to the Chief Justice, or ordering the complaint to a hearing).

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.

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 served on the judge 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, no judge who was the subject of a complaint was suspended or reassigned to another court location pending the final disposition of the complaints process.

c) Role 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. Complaint subcommittee members who investigated the complaint do not sit on the review panel.

A review panel will review the report of the complaint subcommittee and all relevant materials considered by the subcommittee in its investigation.

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.

d) Tests Applied by Review Panels in Disposing of Complaints

The Procedures of the Council establish the following tests for the disposition of complaints.

i) Dismissal

A review panel may decide to dismiss a complaint on any of the following grounds:

- 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.

ii) Referral to the Chief Justice

A review panel may refer a complaint to the Chief Justice where a majority of the panel concludes that:

- referring the complaint to the Chief Justice of the Ontario Court of Justice is a suitable means of informing the judge that the judge's conduct was not appropriate in the circumstances that led to the complaint;
- the conduct complained of does not warrant another disposition; and
- there is some merit to the complaint.

A review panel may impose conditions of a referral to the Chief Justice, such as a requirement that the judge participate in a course of action or remedial training. Any condition of a referral to the Chief Justice may only be imposed with the judge's consent.

iii) Mediation

A complaint *may not* be referred to 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: s. 51.5(3) of the Act.

The Judicial Council has not established a mediation process pursuant to s. 51.5(1) of the Act.

iv) Order a Hearing

A review panel may order a hearing if a majority of the panel is of the opinion that:

- there has been an allegation of judicial misconduct that has a basis in fact; and
- such allegations, if believed by a Hearing Panel, could result in a finding of judicial misconduct

e) Reporting the Disposition of Complaints by Complaint Subcommittees and Review Panels

After a complaint subcommittee or 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.

f) 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 was 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 s. 51.6(7) of the *Courts of Justice Act* and r. 20.1 of the OJC Procedures Document, 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 30 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 office; or
- failure to perform the duties of their office.

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

12. COMPENSATION FOR LEGAL COSTS

When the Judicial Council has dealt with a complaint, s. 51.7 of the *Courts of Justice 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, three requests for compensation were received by review panels of the Council.

13. 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 2022, the Judicial Council continued to refine and develop its procedures and policies. The procedural amendments reflect the Council's commitment to ensuring public confidence in the effectiveness of the judicial complaints process for provincially-appointed judges.

- In June 2022, the Judicial Council adopted a new rule in its Procedures Document which establishes the test for judicial misconduct that hearing panels should apply. Rule 23 provides as follows:

> 23.1 To ensure that the Council may address misconduct of varying degrees of severity as contemplated by ss. 51.6(11)(a)-(g) of the *Courts of Justice Act*, the Council has adopted the following test for judicial misconduct that should be applied by Hearing Panels.
>
> 23.2 (1) If the Hearing Panel finds that
>
> (a) some or all of the alleged conduct has been proven on a balance of probabilities, and
>
> (b) some or all of the proven conduct is incompatible with judicial office,
>
> the Hearing Panel shall make a finding that the judge has engaged in judicial misconduct.
>
> (2) In determining whether the proven conduct is incompatible with judicial office, the Hearing Panel shall consider all the circumstances, including:
>
> (a) whether the conduct is inconsistent with the *Principles of Judicial Office* and/or any standards of conduct established by the Chief Justice of the Ontario Court of Justice and approved by the Judicial Council under s. 51.9(1) of the *Courts of Justice Act*;
>
> (b) whether the conduct is contrary to the impartiality, integrity, and/or independence of the judiciary;
>
> (c) whether the conduct undermines the public's confidence in the judge's ability to perform the duties of office; and

(d) whether the conduct undermines the public's confidence in the administration of justice generally.

- The Council amended the Procedures to confirm in new rule 4.10(d) that Council staff have the authority to screen out complaints that do not contain allegations about the conduct of a judge of the Ontario Court of Justice. This screening function is consistent with the *Courts of Justice Act* and allows the Council to screen out complaints that are clearly outside the jurisdiction of the Council: see *Fabrikant v. Ontario Judicial Council*, 2022 ONSC 336.

- The Council amended r. 22.26 to codify the discretionary power of a hearing panel to amend a notice of hearing on a motion by a party, or on the hearing panel's own motion, where there is a variance between the evidence taken at the hearing and the particulars of the allegations in the notice of hearing, or to correct any deficiencies as to form or substance in the notice of hearing. The amended rule provides guidance to parties and hearing panels on the factors that may be considered in deciding whether to amend a notice of hearing or an allegation in the notice.

- The Council amended r. 22.4 to confirm that hearings may be held in any combination of written, electronic or in-person format.

- The Council amended r. 12.2 to confirm that meetings between review panels and complaint subcommittee member(s) may take place in person or through electronic means, including telephone conferencing and video conferencing.

- The Council amended the Overview to the Procedures and r. 6.2 to ensure consistency with s. 51.3(5) of the *Courts of Justice Act*. Rule 6.2 states: "At any person's request, the Judicial Council may confirm or deny that a particular complaint has been made to it."

- The Council amended the Overview to the Procedures and rr. 6.1, 6.2, 6.5 and 7.4 to provide that notice that a public hearing has been ordered into the conduct of a judge will be provided after a Notice of Hearing is served on the judge. Prior to the amendment, the Procedures provided that a hearing becomes public after the Notice of Hearing is filed as an exhibit at the initial set-date proceeding presided over by the Hearing Panel.

- The Council amended the Overview to the Procedures and r. 13.1 to remove the requirement to remove information that could identify the subject judge and the complainant from the complaint file materials examined by review

panels. This amendment eliminates a prior inconsistency in the Procedures between r. 13.1 and r. 11.9.[1]

Pursuant to the Council's conflict of interest policy, a Council member who is assigned to consider a complaint is required to immediately advise Council staff if they have an actual or potential conflict of interest, for example, as a result of a relationship with the subject judge, the complainant, or a witness involved in the complaint, so that the complaint may be promptly reassigned to a different member of the Council for consideration.

- The Council amended r. 13.6 to confer discretion upon review panels to impose a disposition other than ordering a hearing where there is a basis in fact for an allegation of judicial misconduct and another disposition is appropriate. Rule 11.5 was likewise amended to confer discretion upon complaint subcommittees to recommend a disposition other than ordering a hearing where there is a basis in fact for an allegation of judicial misconduct in circumstances where another disposition is appropriate. This amendment reflects that the *Courts of Justice Act* and the OJC Procedures allow for complaints having some merit to be referred to the Chief Justice in accordance with s. 51.4(18)(c) of the *Courts of Justice Act*.

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

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

[1] Rule 11.9 states that the complainant and the subject judge may be identified to the review panel, regardless of whether the complaint subcommittee recommends holding a hearing, whereas former rule 13.1 stated that all identifying information should be removed from the materials examined by a review panel.

14. OVERVIEW OF COMPLAINT CASELOAD IN 2022

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

In 2022, the Judicial Council received, reviewed and addressed over 250 letters of complaint. In addition, Council staff received and responded to approximately 200 telephone inquiries from complainants and members of the public during the reporting period.

Many complaints received by the Council do not involve judicial misconduct. 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.

During the reporting period, 28 new complaint files were opened. In addition, 13 complaint files were carried forward from the previous reporting period, for a total of 41 open complaint files under consideration by the Council in 2022.

In the reporting period, the Council closed 21 complaint files. Of the 21 complaint files that were closed in 2022:

- 10 complaint files were opened between April 1, 2020 - December 31, 2021[2]
- 11 complaint files were opened in 2022

[2] 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. Accordingly, the reporting period for the 2020-2021 Annual Report was extended from March 31, 2021 to December 31, 2021.

OUTCOMES FOR COMPLAINT FILES CLOSED IN 2022

Disposition	Number of Cases
Summarily dismissed – Out of jurisdiction, frivolous or an abuse of process	10[3]
Dismissed by review panel – Out of jurisdiction, unfounded, not judicial misconduct	7
Referred to Chief Justice	1
Loss of Jurisdiction	3
Hearing	0
TOTAL	21

[3] This number includes one complaint file that involved allegations that were outside the Council's jurisdiction to consider. The file was opened in error and subsequently was administratively closed.

TYPES OF COMPLAINT FILES CLOSED IN 2022

Complaint Type	Number of Cases	% of Caseload
Criminal Court	16	76%
Family Court	3	14%
Provincial Offences Appeal Court	1	0.5%
Other – Outside of court	1	0.5%
TOTAL	21	100%

COMPLAINT FILE CASELOAD

	Fiscal year 2016/17	Fiscal year 2017/18	Fiscal year 2018/19	Fiscal year 2019/20	Apr.1/20 – Dec.31/21	Calendar Year 2022
Files opened during year	110*	31	25	27	41[1]	28
Files continued from previous year	18	100*	20	21	11[2]	13
Total open files during year	12	131*	45	48	52	41
Files closed during year	28	111*	24	37	39[3]	21
Files remaining at year end	100*	20	21	11	13	20

*In fiscal year 2017/18, 81 complaints addressed the conduct of Justice Zabel. The hearing took place in August 2017.

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[1] In fiscal year 2020/21, 26 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

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/

No formal hearings of the Council were held in 2022.

15. CASE SUMMARIES

The *Courts of Justice Act* requires that the names of the judge and the complainant in the case summaries of the Council are confidential, except where there is a public hearing.

Case No. OJC-26-023/21

The complainant was a 15-year-old young offender, who faced charges of using a firearm to commit a robbery. He appeared in Youth Court to enter a guilty plea before the subject judge to the lesser included offence of robbery simpliciter on the basis of a joint sentencing submission. The pre-sentence report indicated that the complainant had been diagnosed with Post-Traumatic Stress Disorder as a result of his traumatic childhood experiences in a refugee camp.

In a letter to the Council, the complainant alleged that the judge was unprofessional during the sentencing hearing and made derogatory comments about him as an immigrant. He alleged that the judge disregarded the trauma he experienced in his home country, and told him "none of that matters and that [he] should be assimilating" to the Canadian "way of life".

The complainant stated that the subject judge said the following statements during sentencing:

- "…you are a disgusting human being"
- "…I want immigrants in this country, but because people like you, [*sic*] people think all immigrants are the same"

- "…There are a lot of people who have experienced traumatic events in their life, but they don't act like you."

- "…I can't believe I'm talking to a 15-year-old".

- "…You come to this great country and commit these crimes."

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 the complaint letter. The subcommittee also ordered and reviewed the transcript and audio recording of the proceeding before the subject judge. As part of its investigation, the subcommittee invited the judge to respond to their concerns arising from the complaint and reviewed the response provided by the 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 complaint letter, the transcript of the sentencing proceeding, the letter inviting the judge to respond to the complaint, the judge's response, and the subcommittee's report to the review panel.

The review panel confirmed that the subject judge made remarks similar to those attributed to him by the complainant. The review panel further determined that the subject judge made other remarks during the sentencing hearing that were highly concerning to the complaint subcommittee and to the review panel, including:

> You can't see why people wouldn't think you'd be a disgusting human being to be involved in a robbery that involved pistol-whipping a white woman.
>
> …
>
> You know, this is the very thing that triggers emotions in people that see a problem with immigration. They sit there and think, 'Wait a minute. What are we doing allowing these folks to come into our country and cause this kind of mayhem to citizens of our community?'
>
> …
>
> There are lots of individuals that have come to this country from refugee camps. There's lots of individuals that have suffered all kinds of indignities in their life in their countries and what they've had to do to leave those countries to come to Canada, to be welcomed in Canada and what they do are the right things. They work hard, they behave themselves, and they learn our culture, our way of life so that they can contribute in a positive way to our country. And that's the problem I have. What's going to happen is, your situation is going to be seen by many individuals as a reason

> to tighten up immigration and what I've got to do is try and convince the community that you are the exception as opposed to the rule. That far more people come from countries that are going through all kinds of problems, end up coming to Canada, but don't do what you've done, which is go out and rob people and break the law, but do what we expect of people and that is to behave themselves, to educate themselves and to contribute to society. That's what the great majority of individuals who come from other countries to our country do. And that's what I'm trying to impress upon you. That you don't need to sit there and say, 'Well, I went through this experience, I went through that experience.' The experience you need to embrace is doing the right thing when given the opportunity to be part of this great country. Do you understand that?

In his sentencing reasons, the subject judge made the following statement:

> These are the kinds of things, as I indicated to this young person, that causes a lot of people in our community to wonder about the wisdom of our immigration policies.

Relevant Ethical Principles

The review panel noted that in the leading case on judicial conduct, *Therrien (Re),* 2001 SCC 35*,* [2001] 2 S.C.R. 3, at para. 111, the Supreme Court of Canada provided a general description of the conduct expected of a judge and the importance of being an example of impartiality and integrity. As the Supreme Court stated in *Therrien*, a judge has a duty to maintain a high standard of conduct and professionalism so as to preserve the integrity of the judicial office and the faith and trust of society in the persons who hold that office:

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

The review panel noted that each and every comment made by a judge, and their tone and manner in the courtroom, are all important elements of how a judge is perceived by members of the public. Because judges hold positions of power, they are expected to conduct themselves according to high standards of professional conduct. The Preamble of the *Principles of Judicial Office of the Ontario Court of Justice* states:

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

The *Principles* also provide:

1.1 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.

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

While the Canadian Judicial Council's *Ethical Principles for Judges* (2021) were written for federally appointed judges, their commentaries provide additional helpful guidance.

As the *Ethical Principles* state in the "Integrity" chapter, judges have an obligation to "conduct themselves respectfully and with integrity so as to sustain and enhance public confidence in the judiciary". The *Ethical Principles* further state that in considering the judicial conduct in issue, the following factors must be considered:

> Public expectations of the integrity of judges are understandably high. Behaviour considered acceptable if exhibited by some members of the public may not be appropriate for members of the judiciary. Judges should therefore be mindful of the ways in which their conduct would be perceived by reasonable and informed members of the community and whether that perception is likely to lessen respect for the judge or the judiciary as a whole. Behaviour that would diminish that respect in the minds of such persons should be avoided.

The "Equality" chapter in the *Ethical Principles* requires that "Judges conduct themselves and the proceedings before them to ensure equality according to law". The associated commentary directs that:

> Judges should avoid comments, expressions, gestures or behaviour that may reasonably be interpreted as showing insensitivity to or disrespect for anyone. Examples include inappropriate comments based on stereotypes linked to gender, race, ethnicity, religion, culture, sexual orientation, gender identity

> or expression, differing mental or physical abilities, age and socio-economic background, or other conduct that may create the impression that persons before the court will not be afforded equal consideration and respect. Inappropriate statements by judges, in or out of court, have the potential to call into question their commitment to equality and their ability to be impartial.

The review panel was very mindful of ensuring that the governing ethical principles for the judiciary should not be interpreted in a way that would limit the essential independence of judges in making judicial decisions, or in expressing themselves when giving reasons for their decisions. As observed by the review panel, judges are obliged to determine the cases that come before them without being deflected from that obligation by desire for popularity or fear of criticism. A wide latitude must be afforded by a judicial discipline body when it comes to applying the governing ethical principles to a judge's reasons for sentence.

Review Panel's Decision to Refer the Complaint to the Chief Justice

The review panel agreed with the observation of the complaint subcommittee that some of the words the subject judge used at the sentencing hearing, and the tone in which he uttered them, were inconsistent with the core judicial ethical principles of integrity, impartiality and equality.

All persons in the courtroom are entitled to be treated in a way that respects their dignity. Public perceptions of the administration of justice are affected by the comments, language and tone used by a judge in the courtroom. Where a judge makes comments that could be perceived as culturally insensitive, racist, intolerant, biased or derogatory, such conduct may negatively impact the perceived fairness of the proceedings, the legal interests of the parties, and public confidence in the administration of justice. Such conduct may also undermine the perceived integrity, dignity and impartiality of the judicial officer.

More particularly, the review panel was concerned that the subject judge's comments to a young person, and the tone in which they were uttered, could reasonably be perceived as racist, xenophobic, culturally insensitive, divisive, hurtful, gratuitous, closed-minded and antithetical to rehabilitative principles. These comments were particularly troubling given that they were directed at a young, racialized person who was suffering from Post-Traumatic Stress Disorder, and who was receiving psychiatric medical care to address the traumas he had experienced.

In his response to the complaint, provided to the Council, the subject judge advised that he was "deeply remorseful for the impact his words had on the young person". He indicated he was remorseful because the shortcomings he exhibited during the sentencing proceeding "are not reflective of the type of judge, and human being, he is." The subject judge commented that, as a member of a marginalized community himself and as someone who has worked towards ameliorating systemic discrimination in the justice system, "he is no stranger to the challenges faced by marginalized persons and

the intersection with the justice system, which makes the recognition of the harm he's caused all the more upsetting." The subject judge advised that he took "full responsibility for his conduct and, if given the opportunity, will unreservedly apologize."

In light of the circumstances set out above, the review panel considered a referral to the Chief Justice pursuant to s. 51.4(13)(b) of the *Courts of Justice Act* to be an appropriate disposition. The OJC Procedures state that a review panel will refer a complaint to the Chief Justice of the Ontario Court of Justice if a majority of the members of the review panel conclude that referring the complaint to the Chief Justice is a suitable means of informing the judge that the judge's conduct was not appropriate in the circumstances that led to the complaint, the complaint does not warrant another disposition, and there is some merit to the complaint.

The review panel determined that referring the complaint to the Chief Justice was a suitable means of informing the judge that his conduct at the sentencing hearing was not appropriate. Given the judge's response to the complaint, the review panel was of the view that the judge would benefit from reviewing his conduct with the Chief Justice and engaging in further education and/or counselling. The complaints process is intended to be remedial in nature, rather than punitive. The review panel agreed that by reflecting on his conduct, the judge could learn to improve his approach to situations and individuals in the future.

After obtaining the subject judge's consent under s. 51.4(15) of the *Courts of Justice Act*, the review panel directed that the subject judge must meet with the Chief Justice and to attend such education and/or counselling as suggested by the Chief Justice related to a trauma-informed approach to racialized youth in the criminal justice system. The review panel also provided that, after attending such education or counselling, the judge should have the opportunity to offer an unreserved apology as requested in his response letter.

Meeting with Chief Justice and Education Sessions

The Chief Justice met with the judge and provided a written report to the review panel. In her report, the Chief Justice informed the panel that, prior to meeting with the judge, she reviewed the complaint letter, the transcript of the sentencing proceeding, and the judge's response to the complaint. In addition, the Chief Justice listened to the audio recording of the sentencing proceeding.

The review panel noted that in their meeting, the Chief Justice discussed with the judge the complainant's concerns about the language the judge used during the sentencing. The Chief Justice emphasized to the judge how these comments would be perceived by the complainant and the public as inconsistent with the high standards of integrity and equality that apply to members of the judiciary. The judge acknowledged that his comments were inappropriate and unacceptable.

Following their meeting, the Chief Justice directed the judge to attend education sessions with a university professor on the subject of a trauma-informed approach to racialized youth in the criminal justice system.

The Chief Justice's report indicated that the education sessions attended by the subject judge covered the following topics: trauma and youth offending; immigration, settlement and anti-Black racism in Canada; procedural justice theory and criminal justice practice; and developing a trauma-informed approach to youth justice. The review panel noted that the report confirmed that the judge was engaged throughout the sessions, he had reflected on the situation with the complainant, he acknowledged that he did not handle the situation well, and he was committed to doing better in the future.

Based on the review panel's consideration of the report from the Chief Justice, the review panel was satisfied that, through his meeting with the Chief Justice and the education sessions he attended, the judge had gained a greater understanding of the impact of trauma and the effects of anti-Black racism in the criminal justice system and that he was committed to applying this learning in the future.

Based on all of the foregoing, the review panel was satisfied that the subject judge was remorseful for how he had conducted himself during the sentencing hearing. The review panel was also satisfied that the subject judge had learned through his experience with the complaints process and had acquired a better understanding of the effects of trauma on young persons, and of anti-Black racism in the Canadian justice system. As requested by the subject judge, the letter to the complainant informing of the Council's disposition of this complaint included an unreserved apology on the part of the judge for his conduct.

Given the steps taken by the subject judge to reflect upon and learn from this complaint, the review panel concluded that no further action was required. Accordingly, the complaints process was considered complete and the file was closed.

Case No. 26-025/21

In his letter to the Council, the complainant, a member of the senior administrative judiciary, expressed concern about a comment allegedly made by the subject judge to an individual he was sentencing. The subject judge was purported to have said that he was sure the business community was sorry that the individual's suicide attempt was not successful. The complainant commented that if the subject judge did utter those words, that may well amount to judicial misconduct.

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 the letter of complaint and the transcript of the proceeding before the subject judge. The subcommittee also retained investigating counsel to interview counsel for the defendant and reviewed a transcript of that interview. Finally, the subcommittee invited the subject judge to respond to the complaint and reviewed the subject judge's response.

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, the letter of complaint and correspondence between the subject judge and the subcommittee, including the judge's response.

Before the complaints process had concluded, 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.

Case No. 27-007/21

The complainant was convicted of breach of probation and criminal harassment by the subject judge. The complainant also appeared before the subject judge for a judicial pre-trial on another matter. In his complaint to the Judicial Council, the complainant alleged that the subject judge, among other things:

- denied him due process by subverting the opportunity for a fair and impartial pre-trial resolution on four separate occasions
- should not have presided over his judicial pre-trial as this was a conflict of interest as he previously appeared before the subject judge on another matter
- discredited credible medical reports/mental health diagnoses and recommendations given at trial with respect to *mens rea* and alternative measure solutions
- ignored the side-effect of the medication he was placed on in prison
- denied any police influence, misconduct and background involvement with the complainant's former girlfriend
- pressured him into sentencing without the cooperation of the complainant's former girlfriend and over-sentenced him without a victim impact statement, even stating on record that doing so he was on shaky ground
- allowed the Crown to speak false hearsay on behalf of the complainant's former girlfriend on multiple occasions
- allowed the Crown to misrepresent the Agreed Statement of Facts
- credited uncredible testimony, and ignored the statement of the complainant's former girlfriend that she called police for a wellness check and never intended for any of the charges to lead to convictions
- discredited his mother's testimony
- over-sentenced him and violated the jump principle
- denied him the right to speak in court on the date of his election as to mode of trial

- denied him multiple requests for a probation variation hearing
- denied him a fair opportunity at the judicial pre-trial due to the subject judge's friendship with the Crown's office, which compromised the judge's integrity. The Crown's office also withheld disclosure about police misconduct.

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 the correspondence provided by the complainant and the transcripts of the relevant proceedings 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, the letters of complaint, and the transcripts.

The review panel observed that the majority of the complainant's allegations were expressions of his disagreement with the subject judge's credibility and factual findings, as well as with procedural rulings that he made, and with the sentence he imposed. These are matters of judicial decision-making outside the jurisdiction of the Judicial Council to consider. Procedural rulings and evidentiary findings by a judge, including credibility findings and the weight assigned to expert reports, may be subject to appeal. However, they are not matters of judicial conduct within the Judicial Council's jurisdiction to consider.

The review panel observed from the subcommittee's report that the complainant's allegation that the subject judge denied him the right to speak in court on the date he appeared to enter his election as to mode of trial was not substantiated by a review of the record of the proceedings. The transcript of this appearance demonstrated that the subject judge provided the complainant with an opportunity to speak in court, notwithstanding that he was represented by counsel. After permitting him to speak at some length, the subject judge indicated that he was not prepared to have a general discussion with the complainant.

The review panel noted that a presiding judge has an obligation to ensure that proceedings are conducted in an orderly and efficient manner. The review panel shared the view of the complaint subcommittee that a judge is entitled to allow counsel to make submissions on behalf of their client.

The review panel accepted the complaint subcommittee's finding that there was no information that would substantiate the complainant's bald accusation that the judge's integrity was compromised by an alleged friendship with the Crown's office. To warrant consideration by the Council, a complainant must provide a valid and rational factual basis that concerns the conduct of a judge before a meaningful review can be done. A bare allegation, in of itself is not sufficient.

Finally, the review panel noted that the complainant's concerns about the criminal justice system and how it handles cases involving mental health issues fall outside the

jurisdiction of the Judicial Council. The Council has no authority to address complaints of a systemic nature about the operation of the criminal justice system.

The review panel concluded that there was no basis to support a finding of judicial misconduct by the subject judge, given that the allegations of misconduct were unsubstantiated and were otherwise outside the jurisdiction of the Council to consider.

The complainant was further advised by the Council that his allegations concerning the conduct of the Crown Attorney in his case were outside the jurisdiction of the Judicial Council to consider, as the Council's jurisdiction is limited to the conduct of judges.

Accordingly, the complaint was dismissed and the file was closed.

Case No. 27-008/21

The complainant complained about the subject judge who presided over her family law matter in 2010.

In her complaint to the Council, she made multiple allegations about the subject judge, including that he did not consider her background or religious beliefs and that he awarded full custody of her children to her abusive ex-husband. She further alleged that he decided to take her kids away from her even though he knew the Children's Aid Society was lying.

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.

Case No. 27-010/21

The complainant was the defendant in a criminal proceeding involving charges of impaired driving and over 80. The complainant's lawyer attended before the subject judge as agent for the complainant and entered a guilty plea without the complainant being present.

In his letter of complaint to the Council, the complainant alleged that the subject judge improperly allowed his lawyer to appear on his behalf without the complainant being present. The complainant further alleged that the subject judge should have asked the lawyer where his client was, and should have ordered his lawyer to have the complainant appear in court so he could defend himself.

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 complainant's correspondence submitted to the Council, the transcripts and audio of the guilty plea proceeding, and the written instructions filed by the complainant's lawyer with the court.

The subcommittee found the written instructions indicated the following:

- The complainant had reviewed his disclosure and instructed his lawyer to enter a plea of guilty on his behalf to impaired driving or over 80;
- The complainant realized by entering a plea he was giving up his right to a trial and agreed to having the facts read in by the Crown;
- The complainant understood he was receiving a $2000 fine, victim fine surcharge and 1 year driving prohibition;
- The complainant understood that this was a joint submission but that the ultimate sentence was up to the judge; and
- The complainant was freely and voluntarily entering a plea through his counsel.

The written instructions were signed by the complainant's lawyer on behalf of the complainant, with the word "Covid-19" written in ink beside the complainant's typed name. The complainant's lawyer also signed as a witness.

The transcript of the proceedings indicated that the subject judge confirmed whether the Crown was satisfied that the complainant's lawyer could enter the guilty plea on the complainant's behalf before accepting the plea.

The review panel agreed with the subcommittee's conclusion that the question whether the subject judge was entitled to proceed with the plea and sentence in the complainant's absence, based on the written instructions filed by the complainant's lawyer, involves a matter of judicial discretion and judicial decision-making that is outside the jurisdiction of the Judicial Council to review. The Council has no jurisdiction to consider legal, evidentiary or procedural determinations by a judge. Judges have decision-making independence in accordance with the *Constitution Act*, *1867*.

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

Case No. 27-011/21

The complainant, a self-represented defendant facing a charge of criminal harassment, alleged that the subject judge participated in *ex parte* communications with the Assistant Crown Attorney to make it difficult or impossible for him "to obtain relevant and/or exculpatory third party records." The complainant further alleged that the subject judge prohibited him from filing a third-party records application before his trial.

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 complainant's letter to the Ontario Judicial Council and multiple letters he sent to the Chief Justice of the Ontario Court of Justice. The subcommittee also reviewed the transcript and audio of the proceedings.

Based on its review of these materials, the complaint subcommittee prepared a report on its investigation to a four-person review panel of the Council, composed of two judge members, a community member and a lawyer member.

The review panel reviewed the subcommittee's report, the letters of complaint, and the transcript. The review panel accepted the subcommittee's findings that there was no information capable of substantiating the allegation that the subject judge had engaged in *ex parte* communications with the Assistant Crown Attorney to make it difficult or impossible for the complainant to file a third-party records application before his trial.

The transcript demonstrated that the appearance before the subject judge had been set in order for the complainant to file a draft third-party records application so that the subject judge could determine whether additional trial time would be needed to hear the application. Despite the Court and the Assistant Crown Attorney not having received the draft application in advance of the appearance, the subject judge allowed the complainant to provide copies of the proposed application in court that day. The subject judge heard submissions from the complainant and the Crown regarding the application. In particular, the subject judge heard from the complainant as to his reasons for seeking specific third-party records and endeavored to determine why the complainant believed these records were relevant to his case and what the records consisted of.

After retiring to consider the complainant's application, the subject judge concluded that the proposed application did not have sufficient merit to set aside additional trial time. The subject judge made it clear that he was not deciding the motion, and that the complainant would be able to bring the motion before the trial judge. The review panel accordingly found that the complainant's allegation that the subject judge prohibited the complainant from filing a third-party records application before his trial was not borne out by the record of proceedings.

The review panel agreed with the subcommittee's observation that the subject judge was patient and attentive to the complainant throughout the appearance. The transcript indicated that the subject judge had been pre-trying the matter for many months and had spent hours with the complainant, a self-represented defendant, to work through the many requests that he had made.

The review panel concluded that the complainant's allegations were unsubstantiated and the subject judge's decision was otherwise outside the Council's jurisdiction to review. Accordingly, the complaint was dismissed and the file was closed.

Case No. 27-012/21

The complainant pled guilty before the subject judge to six charges: operating a motor vehicle while impaired by a drug, failing to comply with a probation order, having care or control of a motor vehicle while impaired, assault, failing to attend court, and failing to appear. The complainant was represented by counsel at the guilty plea hearing. The subject judge accepted the parties' submission of a 12-month global sentence, and imposed a 3-year driving prohibition, as suggested by defence counsel (the Crown was seeking a 5-year prohibition), and a 12-month period of probation with conditions. In addition, as requested by defence counsel, the subject judge endorsed the warrant of committal to include that the accused have prescription medication that should be accessible to him.

In his letter of complaint, the complainant alleged that the subject judge was his defence lawyer in 1982. He alleged that, at that time, the subject judge colluded with the Federal Crown Attorney and the sitting judge. He stated that he pled guilty on a plea agreement of six months on three drug charges (possession of hash and two charges of selling to an undercover narcotics officer) and was sentenced to two years' federal time.

The complainant further alleged that at the guilty plea hearing before the subject judge, he advised his defence lawyer that the subject judge had a "marked conflict of interest"; however, his defence lawyer told him "to be quiet". He said he was sentenced to one year "even though (city) Police Constable testified – there was no one at the (city) detachment trained to test for impairment by a drug". He also stated that the complainant on the assault charge "didn't show up". The complainant further alleged that his lawyer should have sought a two-week remand since the complainant was going through withdrawal at the time of the hearing.

The complainant also alleged that the subject judge stated at the end of the hearing: "if you ever appear before me again, for any reason, even if you're in a wheelchair, I'm sending you back to the pen."

The complainant requested the Council to review the "judge's ethics, obvious discrimination and threat to send him back 'to the pen for any reason'". The complainant also stated that he intended on civilly suing the judge and is going to start a petition "for his outrageous behaviour".

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 complaint subcommittee reviewed the complainant's correspondence and the transcript of the hearing before the subject judge.

The subcommittee determined that the complaint was an expression of the complainant's disagreement with the judge's assessment of the case and/or the decisions made in his case and determined there was no issue of judicial conduct that engaged ethical concerns. Specifically, they determined that:

- The allegations that the disposition of the charges was unwarranted due to lack of supporting evidence raise issues of decision-making and are outside the jurisdiction of the Council.

- The complainant acknowledged that his own counsel did not raise the issue that the subject judge had acted as his defence lawyer in 1982 with the subject judge at the hearing. The transcript of the guilty plea proceeding confirms that defence counsel did not raise any issue about a possible conflict based on the subject judge having represented the complainant in criminal proceedings in 1982 as defence counsel. The Council has no jurisdiction to consider the propriety of the actions of the complainant's lawyer in his handling of this case, or to consider if the complainant's lawyer ought to have brought a recusal motion.

- The complainant's allegation that the subject judge threatened to "send him back to the pen" if he ever appeared before him again was unsubstantiated by the transcript of the proceedings. The transcript indicates that the judge said the following about a future penitentiary sentence:

> I do note that the drugs that he was consuming, by which he appears to have been impaired, were, in fact, prescription drugs. I'm not going to put a, any further prohibition in the probationary order, other than to reiterate to [name of complainant] that operating a motor vehicle while impaired by a drug is a serious offence and if he does that again, it would be a fifth offence and I would assume he'd be looking at a penitentiary sentence in his future.

The subcommittee accordingly summarily dismissed the complaint pursuant to s. 51.4(3) of the *Courts of Justice Act* and rule 11.1 of the Council's Procedures.

Case No. 27-013/21

The complainant alleged that the subject judge incorrectly applied the law in his case. He also made allegations about the conduct of the police. The complainant was advised that these allegations were outside the jurisdiction of the Ontario Judicial Council and therefore his complaint would not be investigated.

The file was opened in error and subsequently administratively closed.

Case No. 27-014/21

The complainant was the victim of an assault. The accused was alleged to have spat in the complainant's face during an altercation at a public tennis court during the COVID pandemic lockdown. The subject judge presided over the judicial pre-trial and a related guilty plea proceeding. The complainant attended the guilty plea proceeding. The judicial pre-trial was conducted *in camera*, and off the record.

In the letter of complaint to the Council, the complainant alleged that the subject judge should have recused himself from the case because he was personally familiar with the accused, and the accused's associates who frequented the tennis courts where the assault occurred. In particular, the complainant alleged:

1. The subject judge did not recuse himself as was his legal duty to do so.

2. The subject judge's sentencing suggestions at the JPT influenced the Crown which led the Crown to downgrade their position to a suspended sentence.

3. The subject judge personally manipulated the proceedings to grant maximum leniency to the spitter based on the subject judge's out-of-court and personal knowledge of the accused and his associates, as revealed in his comments during the proceeding.

4. The subject judge's clear and almost reckless bias was exhibited by his denial of the Crown's request for a DNA sample.

5. The conditions imposed by the subject judge were so "pretextual or non-existent they [were] tantamount to an absolute discharge."

6. The subject judge effectively eviscerated the complainant's victim impact statement by accepting two unsworn statements of the accused after his guilty plea in which he justified his actions.

7. The subject judge had an angry exchange with the complainant when the complainant questioned the probation order.

8. The subject judge blamed the complainant for antagonizing the guilty party.

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, and the transcripts and audio of the guilty plea before the subject judge.

Based on its review of these materials, the complaint subcommittee invited the subject judge to explain certain remarks that he made during the proceeding, including his comments that he was familiar with the culture at the tennis courts in question, that he had played on those courts, and that he had observed that the group of players to which the defendant belonged were "respectful, and while dominating … they have allowed many individuals within the group to play." The subject judge also commented that he was "kind of disappointed" that the complainant went to the court the defendant's group was using. According to the subject judge, the complainant's attempt to use that court rather than an empty court amounted to an attempt by the complainant to "antagonize" these players.

After completing its investigation, including the response provided by the subject judge, 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, the supporting transcript and the subject judge's response to the concerns the complaint subcommittee had identified about the comments that he made during the sentencing hearing.

The review panel observed that because the judicial pre-trial was held *in camera*, there was no transcript or audio of the proceeding to review. The review panel was satisfied that the allegations in the complaint regarding the judicial pre-trial did not necessitate any investigation into how the subject judge conducted this proceeding.

The review panel agreed with the conclusion reached by the complaint subcommittee that the merits of the subject judge's sentencing decision, including the conditions he imposed, are outside the jurisdiction of the Council to review. Only an appellate court may review the merits of a judge's decision, including the fitness of a sentence.

The review panel was satisfied that there was no evidence capable of supporting a finding of judicial misconduct on the grounds that the subject judge had a legal duty to recuse himself due to bias. In his response to the Council, the subject judge made it clear that he had no relationship with the defendant or any of the other tennis players who frequented the tennis courts in question, nor with anyone else involved in the matter.

Regarding the complainant's allegations that the subject judge's comments during the sentencing hearing gave rise to an appearance that he was biased in favour of the defendant and his associates, and further that his comments suggested that the complainant provoked the defendant's attack, the review panel observed from his response that the subject judge had carefully reflected on the impact of his comments on the complainant.

The subject judge expressly acknowledged that the complainant's disappointment with the result in this case was due to his personal failure to ensure that everyone who walks out of his courtroom "believes that they [are] fairly treated and that the proceedings [are] conducted fairly." The subject judge recognized "with the benefit of hindsight" the importance of avoiding comments reflecting any personal experience that may be even tangentially related to a court matter before him. The subject judge acknowledged that the complainant's disappointment with the result was compounded by the comments he had made. He expressed his commitment to treating his error as an opportunity to reflect on what had happened and to learn about what he could "do better next time."

The subject judge requested that the complaint subcommittee convey to the complainant his "genuine regret" that his comments meant that the complainant left the courtroom feeling that he had not been fairly treated.

Given his response to the concerns raised by the complaint subcommittee, the review panel determined that the subject judge had learned from the complaints process. The

review panel was satisfied that the subject judge had taken the complaint seriously, had demonstrated insight, had acknowledged areas in which he would strive to do better, and that he would treat this as a learning experience going forward.

The judicial complaints process is designed to be remedial rather than punitive. As a result of the subject judge's acknowledgement of the regrettable impact his comments had on the complainant, and his commitment to future improvement, the review panel was satisfied that no further action was required. The review panel therefore dismissed the complaint and closed the complaint file.

Case No. 27-015/21

The complainant appeared multiple times before the subject judge on a family matter between 2018 and 2021.

In his correspondence to the Council, the complainant alleged that the judge committed fraud and lied to him in order to stop him from appealing his case in a timely manner. He further asserted that the judge withheld recordings of the case "to cover up her lies" and to prevent him from filing an appeal. The complainant stated that the subject judge admitted that the case against him was not a legitimate child protection case yet continued with the "fraudulent case" to "help the other side". He further alleged that she lied to him to harm his position and acted against his "religious, parental and civil rights on multiple occasions".

The complaint was assigned to a complaint subcommittee, consisting of a judge member and a community member of the Council. The complaint subcommittee reviewed all the correspondence sent by the complainant, including documents he provided in support of his allegations. Based on its review of these materials, the subcommittee determined that the complaint was an expression of the complainant's disagreement with the judge's assessment of the case and/or the decisions made in his case. Specifically, they determined that:

1. The subject judge's alleged comment(s) about the ability of the complainant to appeal, even if incorrect, raised a legal issue and not a conduct issue;

2. The subject judge's alleged comment(s) about the legitimacy of the child protection case were, even if proven, part of the exercise of her judicial function and did not raise an issue of judicial conduct; and

3. The subject judge's alleged refusal to grant the complainant access to the recordings of the case involved the exercise of judicial discretion and was not a matter of judicial conduct.

The subcommittee noted that the complaints process is not an appeal process, and that the Judicial Council does not have jurisdiction to address complaints that take issue with the exercise of judicial discretion or judicial decision-making.

On the basis of the above, the subcommittee summarily dismissed the complaint pursuant to s. 51.4(3) of the *Courts of Justice Act* and rule 11.1 of the Council's Procedures on the basis that the complaint was clearly outside the Council's jurisdiction and was otherwise frivolous or an abuse of process.

Case No. OJC-001-22

The president of a legal association wrote to the Council on behalf of its members and raised issues with the subject judge's conduct prior to their appointment as an Assistant Crown Attorney during the prosecution of a sexual assault case. In the capacity of Assistant Crown Attorney, the subject judge had rescinded a plea agreement following a conversation with the complainant (*i.e.*, the complainant in the sexual assault matter). The defendant subsequently brought a motion seeking to stay the charges on an abuse of process motion, which was filed after the subject judge had been appointed to the Ontario Court of Justice bench. A judge of the Superior Court of Justice granted the abuse of process motion and stayed the charges.

In the complaint letter, the president of the legal association raised concerns about whether the subject judge's actions as an Assistant Crown Attorney conflicted with the ethical obligations and duties of a judge of the Ontario Court of Justice, and in particular:

- whether the subject judge had any involvement with the abuse of process motion after they were appointed to the bench;

- whether the subject judge disclosed the conduct that formed the basis for the abuse of process motion to the Judicial Appointments Advisory Committee prior to their appointment to the bench;

- whether the subject judge made "grave misrepresentations" to a judicial body as an officer of the court in their role as an Assistant Crown Attorney in explaining the basis for rescinding the plea agreement; and

- whether the subject judge's conduct as an Assistant Crown Attorney created a general concern about an apprehension of bias against those accused of sexual offences on the part of the subject judge.

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 retained independent investigating counsel to obtain and review the court record on the abuse of process motion.

The subcommittee reviewed the complaint letter, the decision of the Superior Court of Justice and the record that was before that court on the abuse of process motion, as well as two news articles regarding the abuse of process motion, which had been submitted to the Council along with the complaint letter. As part of its investigation, the subcommittee invited the subject judge to respond to the allegations and reviewed the response provided.

After the subject judge responded to the allegations, the president of the legal association wrote again to the Council to advise that after receiving a copy of the subject judge's response from the subject judge's counsel, the legal association no longer had any concerns about the subject judge's actions.

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 and enclosed news articles, the subcommittee's report, the decision of the Superior Court of Justice and the record that was before that court on the abuse of process motion, the letter inviting the judge to respond to the complaint, the written response provided from the subject judge, and the further correspondence from the legal association.

Based on this review, the review panel agreed with the view of the complaint subcommittee that there was no basis to support a finding of judicial misconduct by the subject judge. It was evident from the response that the subject judge had taken the complaint seriously and had provided a detailed and thoughtful response to the concerns raised in the complaint letter.

The subject judge advised of the steps they had taken in obtaining approvals from senior Crown counsel prior to making the decision to rescind the plea agreement. The subject judge confirmed they had no further role in how the case was prosecuted after learning that they may be a possible witness in the case. The review panel shared the conclusion of the complaint subcommittee that there was no basis for any concern about the subject judge having any involvement in the direction of the case after being appointed to the bench, nor was there any basis for concern about the subject judge having made "grave misrepresentations" to a judicial body as an officer of the court.

The subject judge also confirmed in the response provided that they were unaware of the abuse of process motion until months after their appointment to the bench. Accordingly, the review panel agreed with the finding of the complaint subcommittee that there was no basis for any concern that the subject judge ought to have disclosed to the JAAC the conduct underlying the abuse of process motion.

As part of the subject judge's response to the complaint, a number of criminal lawyers provided letters addressed to the Council attesting to the judge's fairness, impartiality and objectivity as an Assistant Crown Attorney when prosecuting sexual assault matters, and also as a judge presiding over such matters. The subject judge also spoke frankly and humbly about their awareness of, and commitment to, their ethical responsibilities as a judge, and their commitment to ensuring that all accused persons are treated with the utmost fairness and courtesy. The review panel agreed with the subcommittee that there was no basis for concern about an apprehension of bias on the part of the subject judge against accused persons appearing before them in sexual assault matters.

Finally, the review panel considered the letter submitted on behalf of the legal association to the Council advising that the legal association no longer had any concerns about the

subject judge's actions based on their review of the judge's response to the complaint and the letters of support filed on the judge's behalf.

The review panel adopted the finding of the complainant subcommittee that none of the concerns raised in the letter of complaint were justified. Given that the allegations of misconduct were unsubstantiated, the complaint was dismissed and the file was closed.

Case No. OJC-002-22

The complainant was charged with uttering a death threat. He appeared before the subject judge on various motions and applications related to the charge. The charge was subsequently withdrawn.

In his letters to the Council the complainant made numerous allegations about the subject judge, including that the judge:

- breached every rule in the *Criminal Code*;
- was biased, not impartial or fair, and favoured the Crown;
- failed to provide proper reasons for his decisions;
- refused to allow the complainant to speak and make oral arguments;
- permitted the Crown to hide crucial evidence;
- prevented the complainant from obtaining disclosure from the Crown;
- refused to issue the complainant a production order to obtain video at the scene of the incident;
- breached the complainant's *Charter* rights;
- refused to grant basic procedural orders;
- improperly assigned himself to preside over the trial even though he had heard various motions and applications relating to the evidence;
- breached his duties a judge of the Ontario Court of Justice and the Canadian Judicial Council's Ethical Principles when dealing with self-represented litigants and accused persons;
- dismissed the complainant's applications and denied him access to justice in retaliation for the complainant filing the present Ontario Judicial Council complaint;
- was biased against the complainant based on his race.

The complaint was assigned to a complaint subcommittee, consisting of a judge member and a community member of the Council. The complaint subcommittee reviewed the correspondence and documents sent by the complainant.

Based on its review of these materials, the subcommittee determined that the complainant's allegations that the subject judge erred in how he conducted the proceedings, his evidentiary rulings and his decisions on legal issues, including the adequacy of the reasons for his rulings, are matters of judicial decision-making outside the jurisdiction of the Council to review. Decisions pertaining to procedure, the conduct of a hearing, as well as the assessment of evidence, fall under the authority of the judge and should be appealed in court, if dissatisfied. It is the responsibility and duty of the judge to control proceedings to ensure an effective and efficient use of court time, as well as a fair hearing.

In relation to the complainant's allegations that the subject judge breached his ethical duties or was biased and/or racist, the subcommittee observed that the complainant provided no information capable of substantiating these allegations that the judge breached his ethical duties or was biased and/or racist. Bare statements in the absence of substantiating information are not sufficient indicators of judicial misconduct warranting investigation by the Council.

Having regard to these considerations, the subcommittee summarily dismissed the complaint pursuant to s. 51.4(3) of the *Courts of Justice Act* and rule 11.1 of the Council's Procedures on the basis that the complaint raised allegations that are clearly outside the Council's jurisdiction and that were otherwise frivolous or an abuse of process.

Case No. OJC-003-22

The subject judge presided over the trial of the complainant's friend (the defendant) on a charge of operating a conveyance with a blood alcohol concentration exceeding 80 mg of alcohol in 100 mL of blood, contrary to s. 320.14(1)(b) of the *Criminal Code*.

In his letter of complaint, the complainant alleged, among other things, that the judge did not permit him to assist the defendant at the trial, did not take sufficient time to review the material the complainant provided, and did not answer his questions on behalf of the defendant or allow a witness to answer such questions. The complainant further alleged that the judge told the defendant that he did not need to testify, which may have been a lie. Further, he asserts that the defendant's inability to read or write should have been a contributing factor in how the matter was determined. The complainant also alleged that the judge yelled at and scared the defendant, and disparaged the defendant's and the complainant's character. The complainant contended that the sentence imposed by the judge, which included a term of imprisonment, is an "absolute miscarriage of justice".

The complaint was assigned to a complaint subcommittee, consisting of a judge member and a community member of the Council. The complaint subcommittee reviewed the correspondence provided by the complainant, and the audio recording of the sentencing proceeding before the subject judge wherein he was alleged to have yelled.

Having reviewed these materials, the subcommittee noted that the complaints process is not an appeal process, and further noted that the Judicial Council does not have jurisdiction to address allegations concerning the exercise of judicial discretion or judicial decision-making. The Council does not have the mandate to review the judge's refusal to allow the complainant, who is not a lawyer or a paralegal, to act on behalf of the defendant. Nor may the Council review the judge's procedural rulings and/or credibility findings, or the merits of the judge's sentencing decision.

Based on a review of the audio of the sentencing proceeding, the subcommittee concluded that the complainant's allegation that the judge yelled at and scared the defendant and disparaged the complainant's and defendant's character was unsubstantiated. Rather, the subject judge was merely critical of the complainant's argument that the defendant should not be recognized as a subject of the government. The judge said nothing disparaging about the complainant's or the defendant's character.

On the basis of the above, the subcommittee summarily dismissed the complaint pursuant to s. 51.4(3) of the *Courts of Justice Act* and rule 11.1 of the Council's Procedures as being outside the jurisdiction of the Council and otherwise frivolous and without merit.

Case No. OJC-004-22

The subject judge was assigned to preside over an appeal under the *Provincial Offences Act* in which the complainant's son was the appellant. The subject judge dismissed the appeal as abandoned due to the non-attendance of the appellant.

In his letter of complaint, the complainant alleged that the subject judge "entered the fray" and improperly conducted the prosecution. He further alleged that the subject judge made decisions without any evidence being entered. The complainant alleged that the judge did not hear his son's new evidence and that his ruling was "preposterous" and indicated that the judge was "neurologically incapacitated". The complainant also alleged that the judge was not independent or impartial, and acted as though he were immune from the "consequences of his outrageous actions and statements". The complainant further complained that he had never received an answer to his question whether the person charged was the person "created and owned by God, or the one created and owned by the government".

The complaint was assigned to a complaint subcommittee, consisting of a judge member and a community member of the Council. The complaint subcommittee reviewed the correspondence provided by the complainant.

Based on this review, the subcommittee noted that the complaints process is not an appeal process, and further noted that the Judicial Council does not have jurisdiction to address allegations concerning the exercise of judicial discretion or judicial decision-making.

The complainant subcommittee concluded that the majority of the complainant's allegations relate to the exercise of judicial discretion and decision-making and are outside the jurisdiction of the Council. This included the allegations that the judge asked

questions of the complainant, made decisions without allowing evidence to be entered, did not permit the appellant to introduce new evidence, and made a "preposterous" ruling.

The subcommittee further observed that there was no information capable of corroborating the bald allegation that the subject judge was not independent or impartial or that he was "neurologically incapacitated". Bare statements are not sufficient indicators of a judge's partiality. To warrant consideration by the Council, a rational factual basis capable of supporting allegations of judicial misconduct must be present.

Having regard to these considerations, the subcommittee summarily dismissed the complaint pursuant to s. 51.4(3) of the *Courts of Justice Act* and rule 11.1 of the Council's Procedures as being outside the jurisdiction of the Council and otherwise frivolous and without merit.

Case Nos. OJC-012-22, OJC-013-22 and OJC-014-22

The complainant wrote to the Council complaining about three judges. The three files were assigned to a complaint subcommittee, consisting of a judge member and a community member of the Council. The complaint subcommittee reviewed the complaint letter provided by the complainant.

OJC-012-22

The complainant made various allegations related to his conviction and sentence on a charge of criminal harassment under s. 264 of the *Criminal Code*, including that the subject judge tried and convicted him on charges that do not exist, that the Crown should have known better than to proceed with the case, and that the subject judge was "pathetic". Insofar as the complaint related to the conduct of the trial judge, the complaint was assigned for review by a two-person subcommittee of the Council, composed of a judge member and community member.

Before the complaints process had concluded, 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.

OJC-013-22

The complainant appeared before the subject judge at a trial on three criminal charges, of which the complainant was found guilty.

In his letter of complaint, the complainant made the following allegations concerning the subject judge:

- The subject judge said that the complainant's behaviour and comments during the trial raised questions about his mental health.

- The subject judge started the trial without the complainant's consent. The subject judge entered a plea on his behalf of "not guilty" and then started the trial because the complainant did not answer the subject judge when he sought to start the trial.

- The subject judge appointed a Legal Aid lawyer as *amicus* even though the complainant plans on suing Legal Aid.

- Because the subject judge found him guilty, the complainant cannot sue the police.

- The subject judge's state of mind during the proceeding prevented "normal perception, behaviours, or social interaction".

- The subject judge engaged in unspecified "criminal behaviour" and should be put in jail.

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 complaint subcommittee observed that the complainant's allegations also included offensive anti-Semitic comments that did not warrant any form of consideration by the Council.

The subcommittee determined that most of the complainant's allegations involve matters of judicial decision-making outside the jurisdiction of the Council to review. Decisions pertaining to procedure, the conduct of a hearing, as well as the assessment of evidence fall under the authority of the judge and should be appealed if the litigant is dissatisfied.

The subject judge's decision to enter a plea on the complainant's behalf was dictated by s. 606(2) of the *Criminal Code*, which provides that where an accused refuses to plead or does not answer directly, "the court shall order the clerk of the court to enter a plea of not guilty". It is the responsibility and duty of the judge to control the proceedings to ensure an effective and efficient use of court time, as well as a fair hearing.

The subcommittee further found that the complainant made baseless and unsupported allegations against the subject judge, including that his state of mind during the proceeding prevented "normal perception, behaviours, or social interaction", that he is a disgrace to the profession, and that he engaged in unspecified criminal behaviour. The complainant provided no information capable of corroborating these allegations. Bald allegations in the absence of credible evidence are not sufficient indicators of judicial misconduct warranting investigation by the Council.

Based on the above, the subcommittee summarily dismissed the complaint pursuant to s. 51.4(3) of the *Courts of Justice Act* and rule 11.1 of the Council's Procedures as being outside the jurisdiction of the Council and otherwise frivolous and without merit.

OJC-014-22

The complainant appeared before the subject judge on a four-count information. His trial was completed before a different judge.

In his letter of complaint, the complainant alleged that at the outset of his appearance before the subject judge, the judge said that the current arrangement wasn't working and that the complainant needed an "assessment and other things." The complainant directed anti-Semitic language at the subject judge.

The complaint subcommittee found that the subject judge's comment that the complainant required an assessment is a matter of judicial decision-making or discretion and as a result is outside the jurisdiction of the Council. The subcommittee found that the complainant's remarks about the subject judge were anti-Semitic and offensive and did not warrant any form of consideration by the Council.

Based on the above, the subcommittee summarily dismissed the complaint pursuant to s. 51.4(3) of the *Courts of Justice Act* and rule 11.1 of the Council's Procedures as being outside the jurisdiction of the Council and otherwise frivolous and without merit.

Case No. OJC-015-22

The complainant is a process server who was assaulted by a person he was attempting to serve with court documents. He sustained physical injuries in the assault. The person who assaulted him was charged with causing bodily harm on a peace officer and mischief. She pled guilty before the subject judge to the lesser, included offence of assault.

After hearing submissions by the Crown and counsel for the accused on sentencing, the subject judge imposed a conditional discharge with 18 months' probation, an order for restitution, a two-year weapons prohibition, and an order for a DNA sample to be produced.

In his letter to the Council, the complainant alleged that the subject judge "inappropriately and inadequately adjudicated" the criminal proceeding. The complainant further alleged that the subject judge erred in adjudicating the matter and showed bias in favour of the accused person.

In support of his complaint, the complainant provided the Council with his victim impact statement, the transcript of the sentencing proceeding, and copies of letters he had sent to the subject judge and to the Crown Attorney detailing his dissatisfaction with their actions. In the complainant's letter to the subject judge, the complainant listed the following areas in which he asserted that she "fell short in adequately adjudicating" the matter:

- the judge should not have accepted the Crown's request to accept a plea to a lesser charge of assault;

- the judge should have overruled the Crown and required a plea to assault causing bodily harm;

- the judge failed to properly consider the contents of the complainant's victim impact statement and her findings did not reflect any concern for the impact the assault had on him;

- the judge failed to impose any substantial deterrents on the accused such as a fine or period of incarceration;

- the judge failed to order that the restitution be paid immediately;

- the judge was wrongly swayed by the comments of another judge made at a judicial pre-trial about the appropriate sentence and she should have stuck with her own view;

- the judge demonstrated extreme leniency and bias in favour of the accused, who was female; in the complainant's view, if he had assaulted the accused, he likely would have received a period of incarceration;

- the judge was biased in favour of the accused because of her family connections in the region; and

- the fact that the judge did not respond to his letter further demonstrates that the judge was biased during the proceeding.

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 the complaint letter and the transcript of the sentencing proceeding before the subject judge, including the reasons for sentence. As part of its investigation, the subcommittee invited the judge to respond to the allegations and particularly the allegation that the judge was wrongly swayed by the views expressed by another judge at a judicial pre-trial. The subcommittee reviewed the response provided by the 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 letter of complaint and the enclosed letters provided by the complainant, his victim impact statement and the transcript of the sentencing proceeding, the subcommittee's report, the letter inviting the judge to respond to the allegations, and the response provided by the subject judge.

The review panel observed that the majority of the complainant's allegations were expressions of disagreement with the subject judge's decision to accept the plea, and with the adequacy of the sentence she imposed. The Council has no jurisdiction to consider legal, evidentiary or procedural determinations by a judge, or to review or

otherwise interfere with a sentence imposed by a judge. Complaints about judicial decision-making and the exercise of judicial or Crown discretion are outside the jurisdiction of the Council.

The review panel accepted the complaint subcommittee's finding that there was no information that would substantiate the complainant's accusation that the judge was biased in favour of the accused person based on her gender or her family connections. The review panel agreed with the view of the subcommittee that a review of the transcript of the proceeding did not support an allegation of actual or apparent bias.

In this regard, the review panel noted the observation of the subcommittee that the sentence imposed by the subject judge exceeded the position of the defence in respect of the duration of the probationary period and in imposing an order requiring the accused to provide a DNA sample, over the objection of the defence. The review panel further observed that the subject judge noted on the record having read the complainant's victim impact statement, she repeatedly thanked the complainant for participating in the process, and she explicitly recognized the lasting and ongoing impact that the offence has had upon the complainant, noting that he was only trying to do his job when the assault occurred.

Regarding the allegation that the subject judge was unprofessional in failing to respond to the complainant's letter, the review panel agreed with the subcommittee that it would be improper for a judge to engage in private, out-of-court communications with a victim or complainant in a matter that the judge had decided. The principles of judicial independence and impartiality serve to prohibit a judge from engaging in private, out-of-court communications with a participant in a court proceeding in relation to that proceeding.

With respect to the allegation that the subject judge was improperly swayed by the views expressed by the pre-trial judge on the appropriate sentence, the complaint subcommittee and the review panel considered the following passage from the transcript of the sentencing proceeding:

> I will say though that but for Justice [name omitted] having pretried this, and I have known Justice [name omitted] my entire career, he is one of our very senior judges in the [X] Region, about to turn 75, so we are going to lose him. I know him to be a very thoughtful judge recognizing all of the principles and purposes of sentencing including proportionality, balancing deterrence and denunciation with the need for rehabilitation as well.
>
> So I will say that but for Justice [name omitted] indicating that he is of the view that this is a matter where a conditional discharge is appropriate, I would not have been of the view that a conditional discharge is appropriate.

The background to the subject judge's consideration of the pre-trial judge's opinion on the appropriateness of a conditional discharge, as noted by the complaint subcommittee and the review panel, was explained in the parties' submissions on sentence. Defence counsel informed the subject judge that the pre-trial judge had considered the matter to be appropriate for a conditional discharge. The Crown consented to defence counsel providing this information to the subject judge, and explained that the parties had intended to have the pre-trial judge preside over the plea and sentencing hearing, but that had not occurred due to the pre-trial judge's impending retirement.

The review panel considered the subject judge's response to the concerns of the subcommittee that her comments might suggest she had been improperly influenced by the pre-trial judge's opinion in reaching her sentencing decision. The review panel agreed with the view of the complaint subcommittee that, having reviewed the response provided by the subject judge, there was no basis for the concern that she had been improperly swayed by the pre-trial judge's view of the appropriate sentence.

In her response to the Council, the subject judge made it clear that she did not consider the views of her colleague to be binding on her. Rather, the subject judge was ensuring transparency by averting on the record to her consideration of the pre-trial judge's opinion in a case where the Crown and defence counsel acceded to the court being provided with the opinion of the pre-trial judge.

The subject judge acknowledged in her response that, in a busy plea court, her reasons may have been inadequate in explaining why she was persuaded to adopt in part the sentencing opinion of the pre-trial judge. Having reflected on the complaint, the subject judge acknowledged to the Council that she is more mindful now of the need to provide reasons that sufficiently explain some of the less commonly known or understood procedures of the criminal justice system, including explaining the operation of judicial comity in a case where she is asked to impose a sentence that a fellow judge has previously indicated is a fit one.

Having regard to the subject judge's response, and her acknowledgement of the need to explain in future decisions less commonly understood procedures of the criminal justice system, the review panel agreed with the complaint subcommittee's conclusion that the information reviewed did not give rise to any concern of judicial misconduct.

Given that the allegations raised by the complainant 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. OJC-017-22

The complainant was a self-represented defendant in a criminal trial facing a charge of criminal harassment. He appeared before the subject judge for a judicial pre-trial and for subsequent case management appearances. The proceedings ultimately resolved after the Crown stayed the charges.

In his initial complaint letter to the Council, the complainant advised that he intended to file a complaint regarding the conduct of a provincially-appointed judge, but he did not identify the judge or provide any further details. In response to the Council's request for further information, the complainant identified the subject judge but provided no information about the nature of the alleged misconduct. The complainant also sent correspondence to the Council on multiple occasions indicating that multiple complainants would be filing a complaint but provided no further details.

In response to an additional request from the Council for particulars about his complaint, the complainant alleged that the subject judge:

- engaged in deliberate acts of deceit, which are now a permanent part of the public record;
- engaged in commentary demonstrating an unacceptable disregard for the statutory authority of the Law Society of Ontario;
- failed to ensure licensees appearing before him were strictly complying with their professional and ethical obligations; and
- failed to report overt acts of professional misconduct to the attention of the Law Society, resulting in licensees evading investigations or prosecutions.

The complainant alleged that the subject judge breached the Principles of Judicial Office, and in particular, the requirement of being impartial and objective in the discharge of their judicial duties, avoiding any conflict of interest, and not abusing the power of judicial office.

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 the correspondence between the complainant and the Council, as well as the transcripts and audio recordings of the complainant's various appearances before the subject judge. Based on a thorough review of these materials, the subcommittee determined that there was no basis to substantiate the complainant's allegations that the judge engaged in acts of deceit, breached his ethical duties, or otherwise behaved inappropriately throughout the proceedings. The transcripts did not reveal any basis to support the complainant's allegations that the subject judge engaged in deliberate acts of deceit, nor did they reveal that the subject judge engaged in any commentary demonstrating an unacceptable disregard for the Law Society. A review of the transcripts revealed that the subject judge was committed to resolving disclosure issues in the proceedings, up until the Crown stayed the charges.

Having regard to these considerations, the subcommittee summarily dismissed the complaint pursuant to s. 51.4(3) of the *Courts of Justice Act* and rule 11.1 of the Council's Procedures on the basis that the complaint raised allegations that are clearly outside the Council's jurisdiction and that were otherwise unsubstantiated and therefore frivolous.

Accordingly, the complaint was dismissed and the file was closed.

Case No. OJC-018-22

The complainant was the victim in a criminal proceeding over which the subject judge presided. The accused was charged with two counts of assault, assault causing bodily harm, mischief, and failure to comply. The charges arose out of the disintegration of the accused and complainant's romantic relationship.

The subject judge conducted a judicial pre-trial, accepted a plea of guilt and sentenced the accused in accordance with a joint submission by Crown and defence counsel.

The sentencing of the accused was based on a joint submission by the Crown and defence counsel as follows:

- The charges of assault, assault causing bodily harm, and mischief were withdrawn at the request of the Crown, and the accused entered a one-year common law peace bond; and

- The accused entered a plea of guilty to the fail to comply charge, and a conditional discharge for a period of one year was imposed.

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

- The subject judge had a conflict of interest and should not have conducted the sentencing proceeding given his prior professional relationship with the accused. The accused person had previously worked as a court clerk and she had assisted the subject judge in his presiding functions. The accused person also knew the Crown.

- As a result of his prior working relationship with the accused person, the subject judge lacked judicial independence and impartiality.

- The subject judge's comments during the sentencing about the offender's great work in the courts were unethical.

- The subject judge put the Crown and the lawyer for the accused "on the spot" in asking if he should disqualify himself. The subject judge failed to ask the complainant for his views on this issue.

- The subject judge imposed a sentence that was very lenient given the multiple charges. The judge did not impose a condition

requiring the accused to take substance abuse counselling or to report to the court following this counselling.

- The subject judge did not care that the Crown failed to file his victim impact statement despite the court rules in the court location where the matter was proceeding.

- The subject judge failed to treat all persons equally, without discrimination. He states that he felt discriminated against as the victim.

- The subject judge discriminated against the complainant as the victim because the accused was given “a very soft sentence” based on incomplete facts.

- The complainant was not offered restitution despite the thousands of dollars he incurred as a result of this proceeding.

- The offender’s name was spelled incorrectly in the sentencing documents and there was an error in the “agreed fee for the conditional discharge” (i.e., the financial promise set for the peace bond), which was done in an attempt to protect the offender.

- The Crown failed to disclose the accused’s criminal record.

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 the complaint letter and enclosures. The subcommittee also reviewed the transcript and listened to the audio recording of the guilty plea and sentencing proceeding before the subject judge.

As part of its investigation, the subcommittee invited the subject judge to respond to the allegations that he ought to have recused himself because he had a conflict of interest and was biased based on his professional acquaintance with the accused. In inviting the judge to respond, the subcommittee noted the concern that the judge referred several times during the hearing to the accused’s employment in the courts and her familiarity with the judge and the Crown, noting that these comments may have contributed to the complainant’s view that the accused was given special treatment.

The subcommittee reviewed the written response provided by the judge. In the response, the subject judge gave details as to how the proceeding was scheduled before him; the mode of appearances for this proceeding; the participation of the complainant throughout the proceedings; and the ultimate resolution by joint submission.

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 letter of complaint and enclosures, the transcript, the letter inviting the judge to respond to the complaint, and the written response provided by the subject judge.

Based on its review of the materials, the review panel accepted the findings of the subcommittee that many of the concerns raised by the complainant are outside of the Council's jurisdiction. Specifically:

- The merits of the subject judge's sentencing decision relate to matters of judicial decision-making or discretion and are outside the jurisdiction of the Council to review. Only an appellate court may review the merits of a judge's decision, including the fitness of a sentence.

- The Council has no authority to address or otherwise remedy the inaccuracy of documents used in court proceedings, such as the errors in the sentencing documents here.

- The conduct of the Crown Attorney is not a matter within the Council's jurisdiction to consider.

With respect to the allegation that the judge had a conflict of interest or was not impartial as a result of his professional relationship with the accused person, the review panel observed that the *Principles of Judicial Office of the Ontario Court of Justice* state that judges "must be impartial and objective in the discharge of their judicial duties". The commentaries note that judges "shall not, by words or conduct, manifest favour, bias or prejudice towards any party or interest".

The Canadian Judicial Council's *Ethical Principles for Judges* (2021) note that judges' obligations with respect to conflicts of interest are not limited to actual conflicts:

> 5.C.2 The potential for a conflict of interest arises when the personal interest of the judge (or of those close to the judge) conflicts with the judge's duty to adjudicate impartially. Judicial impartiality is concerned with impartiality in fact and in the perception of a reasonable and informed person. As a result, judges should be attentive to both actual conflicts between their self-interest and their duty of impartial adjudication, and to circumstances in which a reasonable and informed person would reasonably apprehend a conflict.
>
> 5.C.3 Conflicts of interest may arise from: a pecuniary or non-pecuniary interest in the outcome; a close family, personal or professional relationship with a litigant, counsel, or witness; or the judge having expressed views evidencing bias regarding a litigant or an issue that is before the court.

The *Ethical Principles* further explain that the responsibility for determining whether a reasonable and informed person would reasonably apprehend a conflict lies with the judge, not the parties:

> 5.C.10 In certain situations, it may be appropriate for a judge to make disclosure of a potential conflict and invite submissions from the parties. However, judges, not the parties or their counsel, bear the burden of ensuring respect for the principle of judicial impartiality. Neither disclosure of a conflict of interest nor the consent of the parties necessarily justifies judges ignoring circumstances which reasonably call into question their ability to hear a case and decide impartially.

Having regard to the ethical principles governing conflicts of interest, and based on a review of the transcript of the proceeding and the subject judge's response to the Council, the review panel agreed with the observation of the complaint subcommittee that the subject judge acted appropriately in advising the parties of his prior relationship with the accused. He asked Crown and defence counsel if they consented to him imposing sentence notwithstanding his acquaintance with the accused. The Crown and defence consented. The subject judge also asked the accused if she had any concern with him conducting the sentencing and she indicated she did not.

The review panel further noted that in the subject judge's response to the Council, he advised that he did not have a personal relationship with the accused and had not seen her in several years. In addition, the transcript and audio of the proceeding clearly revealed that the subject judge did not recognize the accused until well into the sentencing process, as was confirmed by the subject judge in his response to the Council.

The review panel agreed with the complaint subcommittee's conclusion that the subject judge acted appropriately in satisfying himself that there was no actual conflict of interest before proceeding to complete the sentencing hearing after he became aware of his prior acquaintance with the accused person. The connection with the accused person was not of such a nature as to create a reasonable apprehension of bias, or call into question the fairness of the proceedings.

Moreover, the review panel shared the finding of the complaint subcommittee that the transcript and audio recording of the proceeding did not reveal any bias in favour of the accused in the context of a joint sentencing submission. The materials confirm that the subject judge imposed a condition that the defence had argued against, namely a prohibition on attending within 100 metres of any place the accused knew the complainant lives, works, attends school, or frequents.

The review panel observed that the subject judge emphasized in his response that he did not give the accused any special treatment. He acknowledged that he did not ask the complainant for his position on whether he could conduct the sentencing despite his acquaintance with the accused person. The subject judge advised that he was not aware that the Crown had told the complainant to mute his microphone and turn off his camera.

This was not conveyed to the subject judge at the time. The subject judge assumed that the complainant's camera was off because he did not wish to be seen by the accused during the hearing.

The subject judge further stated that if the complainant had indicated any difficulty with his involvement in the sentencing, he would have recused himself and remanded the joint submission to another judge.

The review panel accepted that the subject judge was unaware of any potential conflict of interest prior to the sentencing hearing. When his prior working relationship with the accused person was brought to his attention, he took the proper steps to bring this to the attention of Crown and defence counsel. The review panel shared the conclusion of the complaint subcommittee that there was no basis to find that the subject judge acted improperly once he became aware of his prior connection to the accused person. The prior relationship was not of such a nature as to create a reasonable apprehension of bias or call into question the fairness of the proceeding.

Finally, the review panel and subcommittee determined that the subject judge could not be said to have acted improperly in relation to the complainant's victim impact statement. The Crown read the admissible parts of the victim impact statement into the record and stated that she was doing so at the complainant's request.

The review panel concluded that the complainant's allegations about the sentence imposed and about the Crown conduct were outside the jurisdiction of the Council. The review panel further concluded for the reasons given that the allegation of a conflict of interest was unsubstantiated. The complaint was dismissed, and the file was closed.

Case No. OJC-021-22

The complainant was the respondent in a family matter that proceeded to trial before the subject judge. The subject judge released a decision on the issues before the court, namely decision-making authority and parenting time related to the complainant's minor child, as well as issues of spousal and child support.

In the lengthy complaint letter, the complainant questioned the composition and integrity of the Ontario Judicial Council including pointing out the number of complaints in the 2020-2021 Annual Report of the Council that were dismissed as frivolous. The complainant further asserted that his complaint has nothing to do with the judge's decision, nor with any error in evaluating the evidence or applying the law. The complainant alleged that the subject judge:

- engaged in "tempering of evidence" and misrepresented the facts in various respects;
- committed procedural errors;
- omitted evidence;

- “fictionalized the facts of the case”;
- accepted concocted evidence that the complainant’s former spouse was the victim of domestic violence;
- refused to listen to the complainant during the trial;
- used irrelevant recycled “boilerplate” judgments; and
- engaged in intellectual dishonesty.

The complainant asserted that the trial was unfair, and that well-informed members of the community would perceive a lack of impartiality and bias against him in reading the subject judge’s reasons for decision. According to the complainant, the most important issue the Council must consider is the subject judge’s reasonable apprehension of bias and how she crafted evidence to portray his character in a negative way.

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 the complaint letter and the reasons for judgment of the subject judge. The subcommittee also reviewed the audio recording of the trial proceeding, which was heard over four days.

Based on its review of these materials, the subcommittee determined that the majority of the complainant’s allegations were expressions of disagreement with the subject judge’s evaluation of the evidence presented at trial. The Council has no jurisdiction to consider evidentiary findings by a judge. Judges have decision-making independence in accordance with the *Constitution Act*, *1867*. Evidentiary findings by a judge, including credibility findings, may be subject to appeal. However, they are not matters of judicial conduct within the Judicial Council’s jurisdiction to consider.

In relation to the complainant’s allegations that the subject judge was biased against him, the subcommittee found no basis to support this allegation in the court record.

Having regard to these considerations, the subcommittee summarily dismissed the complaint pursuant to s. 51.4(3) of the *Courts of Justice Act* and rule 11.1 of the Council’s Procedures on the basis that the complaint raised allegations that are clearly outside the Council’s jurisdiction and that were otherwise unsubstantiated and therefore frivolous.

Accordingly, the complaint was dismissed and the file was closed.