

CANADIAN JUDICIAL COUNCIL REPORT TO CANADIANS

ON THE **Review of
Complaints**

AGAINST FEDERALLY APPOINTED JUDGES

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Introduction

Justice matters, not just because it is fundamental to our way of life as Canadians, but because it underpins our trust in our democratic way of life. Judges must rely only on the facts and the law in deciding all matters and remain free from all outside influence. Judges must also ensure that their conduct, both inside and outside the courtroom, reinforces the principles of fairness, integrity and independence.

The Canadian Judicial Council (Council) provides a process for ensuring that Canadians have a means to raise concerns or questions about judicial conduct. The judicial conduct review process provides a means for the public to voice concerns about judges, while giving those judges an opportunity to respond to those concerns.

The *Judges Act* establishes the Canadian Judicial Council's mandate to promote efficiency and uniformity across Canada's superior courts. The year 2023 heralded important changes to the *Judges Act* and the judicial conduct review process. These changes reflect improvements to reporting to the public; increased involvement of non-Council members in the review process; and a clearer appeal process which removes some of the burden that has been placed on the courts in recent years.

As stated by the Council Chairperson, the Right Honourable Richard Wagner, in an October 2023 News Release "*the new procedures reflect a balanced approach, offering greater transparency in the public interest while protecting judicial independence. Canadians expect transparency and accountability with respect to judicial complaints, and these new procedures will ultimately build more confidence in the justice system.*"

Highlights: Administering the new judicial conduct regime

Over the past number of years, Council had called for new legislation in order to improve the process by which concerns about judicial conduct were reviewed. After significant effort by the judiciary, government and the involvement of key stakeholders, June 2023 saw the enactment of important legislative changes in respect of the judicial conduct regime. Council subsequently published new *Review Procedures (2023)* in addition to supporting internal policies regarding the publication of judicial conduct decisions. The new procedures are designed to bring greater efficiency in the early screening process and modernize the process by which complaints are handled.

Readers are encouraged to consult Council's website for detailed information about the new regime: <https://cjc-ccm.ca/en/what-we-do/review-procedures>

1. Stages of the Complaint process:
2. Early screening by a screening officer
3. Consideration by a reviewing member
4. Consideration by a review panel
5. Consideration by a hearing panel
6. Consideration by an appeal panel
7. Appeal (with leave) to the Supreme Court of Canada
8. Report to the Minister of Justice
9. Response from the Minister of Justice to the report

The following page presents a flowchart that provides a comparison of the previous conduct review process and the new reforms that were enacted in June 2023.

OLD PROCESS

ESTABLISHED IN 1971;
AMENDED IN SUBSEQUENT YEARS

BILL C-9: NEW PROCESS

WHEN COMPLAINT IS RECEIVED:

**Canadian Judicial Council (CJC)
Executive Director conducts
initial screening**

1 CJC member conducts initial review and either dismisses complaint, or refers it to Review Panel if removal may be warranted
If misconduct is less serious, may negotiate with judge for appropriate remedy

REVIEW PANEL:

- conducts investigation
- refers to Inquiry Committee if removal could be warranted

REVIEW PANEL MEMBERSHIP:

- 3 CJC members
- 1 judge
- 1 layperson

INQUIRY COMMITTEE:

- may recommend removal, but cannot recommend any other sanctions.
- Issues report to rest of CJC, which issues final report with recommendation on removal to Minister of Justice

INQUIRY COMMITTEE MEMBERSHIP:

- 3 or 5 members
- majority CJC judges; minority Justice Canada-designated lawyers.

Rest of CJC:

- at least 17 CJC members with no prior involvement in considering the complaint.

JUDICIAL REVIEW OF CJC'S REPORT TO MINISTER:

judge can appeal CJC's recommendation through as many as three consecutive levels of Judicial Review

APPEAL PROCESS:

1. Federal Court
2. Federal Court of Appeal
3. Supreme Court of Canada (with leave)

Minister of Justice may initiate removal of judge. May respond publicly to report

**Canadian Judicial Council (CJC)
screening officer conducts
initial screening**

REVIEWING MEMBER:

1 CJC member conducts initial review and either dismisses complaint if wholly without merit or refers it to Review Panel

REVIEW PANEL:

- may dismiss complaint or impose sanctions short of removal
- must refer to Full Hearing Panel if complaint might warrant removal

REVIEW PANEL MEMBERSHIP:

- 1 CJC member
- 1 judge
- 1 layperson

REDUCED HEARING PANEL:

- Judge can appeal Review Panel's decision to the Reduced Hearing Panel, which can affirm, vary or overturn sanctions or refer to Full Hearing Panel if removal could be warranted

REDUCED HEARING PANEL MEMBERSHIP:

- 1 CJC member
- 1 judge
- 1 lawyer

FULL HEARING PANEL (IF REMOVAL IS POSSIBLE):

- may find that judge's removal is justified
- provides report and recommendation on removal of judge to Minister of Justice consistent with decisions by Appeal Panel and Supreme Court of Canada (if any)

FULL HEARING PANEL MEMBERSHIP:

- 2 CJC members
- 1 judge
- 1 lawyer
- 1 layperson

APPEAL PANEL:

- any Hearing Panel decision can be appealed to Appeal Panel, and from there to the Supreme Court of Canada (with leave)

APPEAL PANEL MEMBERSHIP:

- 3 CJC members
- 2 judges

Minister of Justice may initiate removal of judge and must respond publicly to Full Hearing Panel report

Reporting to Canadians

The *Judges Act* legislates that the Council report annually on its work to administer the judicial conduct process. Specifically, it provides the following with respect to public reporting:

Annual report

160 (1) The Council shall, within three months after the end of each calendar year, submit a report to the Minister setting out, in respect of the year, the number of

(a) complaints received;

(b) complaints dismissed by a screening officer;

(c) complaints dismissed by a reviewing member;

(d) complaints reviewed by review panels, hearing panels and appeal panels; and

(e) complaints in respect of which any of the actions referred to in paragraphs 102(a) to (g) were taken.

This reporting period covers June, 2023 to December 31, 2023 – from the date the amendments to the *Judges Act* were passed into law, up to the end of the calendar year. Henceforth, reports will reflect the caseload for a full calendar year.

New Council Policy on the Publication of Judicial Conduct Decisions

Further to the enactment of legislative changes in June 2023, Council also published new *Review Procedures (2023)* and a new policy on the publication of judicial conduct decisions. These new procedures are designed to bring more transparency as well as greater efficiency in the early screening process and modernize the process by which complaints are handled.

Policy regarding the Council Publication of Judicial Conduct Decisions

First Stage of the Review Process

At the screening officer level, the Council publishes, in a new annual report, anonymized summaries of the types of complaints that were dismissed in the previous year.

Second Stage of the Review Process

At the reviewing member level, the Council publishes in its annual report anonymized summaries of the matters dismissed in the previous year.

Third Stage of the Review Process

At the review panel level, the Council publishes decisions on its website.

In exceptional circumstances, at the stages mentioned above, the Chairperson of the Council's Judicial Conduct Committee (JCC) may determine that less – or more – information should be disclosed regarding a particular matter. Any such determination will be based on the relevant jurisprudence and, notably, in consideration of the following principles: transparency, the public interest, and judicial independence. Such decisions of the Chairperson, if any, will be referred to in the annual report.

Fourth Stage of the Review Process

At the reduced or full hearing panel level, the Council publishes decisions on its website.

Fifth Stage of the Review Process

At the appeal panel level, the Council publishes decisions on its website.

The Judicial Conduct Committee of Council

Council is chaired by the Chief Justice of Canada, the Right Honourable Richard Wagner, and is comprised of 44 chief justices and associate chief justices. The Judicial Conduct Committee is responsible for reviewing judicial conduct matters in a way that is fair, objective and efficient, and in accordance with the *Judges Act* and Council Procedures.

Committee Terms of Reference

The Judicial Conduct Committee Terms of Reference reflect its responsibilities to deal with complaints sent to the Council about the conduct of federally appointed judges in a manner that is fair to the judges subject to the complaints, sensitive to the complainants, respectful of judicial independence, and credible both to the judiciary and to the public.

Within this mandate, the Judicial Conduct Committee may:

- make recommendations as necessary to the Council for amendments to the Council's procedures and by-laws, if applicable, for dealing with complaints;
- promote understanding by the public and the judiciary of the Council's complaints process including, *inter alia*, producing information materials;
- revise from time to time as necessary the internal practices for dealing with complaints;
- consider and, as appropriate, make recommendations with respect to all other matters relating to the conduct of federally appointed judges.

Members of the Judicial Conduct Committee

The Honourable Christopher E. Hinkson (Chair)
Chief Justice of the Supreme Court of British Columbia

The Honourable Tracey K. DeWare
Chief Justice of the Court of King's Bench of New Brunswick

The Honourable Glenn D. Joyal
Chief Justice of the Court of King's Bench of Manitoba

The Honourable Catherine La Rosa
Associate Chief Justice of the Quebec Superior Court

The Honourable Faye E. McWatt
Associate Chief Justice of the Ontario Superior Court of Justice

The Honourable Kenneth G. Nielsen
Associate Chief Justice of the Court of King's Bench of Alberta

The Honourable J.C. Marc Richard
Chief Justice of New Brunswick

The Honourable Michael J. Wood
Chief Justice of Nova Scotia

The Council Chairperson extends his gratitude to every member of the Judicial Conduct Committee – both current and former – who undertake the important task of reviewing conduct complaints with diligence and care.

Roster of judges

The 2023 amendments to the review procedures now provide that Council shall establish a roster of Superior Court Judges to participate in the review of certain conduct matters. These judges on the roster must not be members of the Council and are named on the recommendation of the Canadian Superior Courts Judges Association. The number of judges on the roster is set at the discretion of the Council – Council has set the number at 50 – and remain on the roster for four years unless they cease to hold judicial office or request to be removed.

Below is the current judicial roster:

The Honourable William Goodridge, N.L.	The Honourable Gisele Miller, Ont.
The Honourable Valerie Marshall, N.L.	The Honourable Graeme Mew, Ont.
The Honourable Alphonsus Faour, N.L.	The Honourable Anne Turner, Man.
The Honourable Christa Brothers, N.S.	The Honourable Theodor Bock, Man.
The Honourable Pierre Muise, N.S.	The Honourable Diana Cameron, Man.
The Honourable John Bodurtha, N.S.	The Honourable Kaye Dunlop, Man.
The Honourable Kathleen Quigg, N.B.	The Honourable Allisen Rothery, Sask.
The Honourable Lucie LaVigne, N.B.	The Honourable Grant Currie, Sask.
The Honourable Bradley V. Green, N.B.	The Honourable Catherine Dawson, Sask.
The Honourable Ivan Robichaud, N.B.	The Honourable Naheed Bardai , Sask.
The Honourable Robert Dysart, N.B.	The Honourable Kent Davidson, Alta.
The Honourable Marie-Claude Belanger-Richard, N.B.	The Honourable Kim Nixon, Alta.
The Honourable Daniel Dumais, Que.	The Honourable John Little, Alta.
The Honourable Denis Jacques, Que.	The Honourable Bernie Ho, Alta.
The Honourable François Duprat, Que.	The Honourable Johanna Price, Alta.
The Honourable Gary D.D. Morrison, Que.	The Honourable Geoff Gaul, B.C.
The Honourable Guylaine Beaugé, Que.	The Honourable Miriam Gropper, B.C.
The Honourable Genevieve Cotnam, Que.	The Honourable Miriam Maisonville, B.C.
The Honourable Louis Lacoursière, Que.	The Honourable Sheri Donegan, B.C.
The Honourable Serge Gaudet, Que.	The Honourable Andrew Mayer, B.C.
The Honourable Suzanne Courchesne, Que.	The Honourable Ronald Tindale, B.C.
The Honourable Jamie Trimble, Ont.	The Honourable Nancy Key, P.E.I.
	The Honourable Jonathan Coady, P.E.I.

Involving laypersons in reviewing complaints

Maintaining and enhancing the public's confidence in the judiciary is a key pillar of respect for the Rule of Law. In an effort to increase transparency and accountability, the 2023 amendments to the *Judges Act* and the Council's *Review Procedures (2023)* now provide a role for members of the public who are not jurists, otherwise known as laypersons, in the review of complaints about judicial conduct. Laypersons participate and bring a valuable outside perspective to the consideration of allegations that reach Review Panels and Full Hearing Panels.

Laypersons named to the roster remain on it for four years unless they request to be removed or, in the opinion of the Council, they cease to meet the conditions set out in the criteria below. When the four-year term ends, the person may be renamed to the roster.

To be appointed to the roster of laypersons, an individual must:

- Never have been admitted to the bar of a province or of a territory, or to the *Chambre des notaires du Québec*;
- Never have worked as a paralegal in Canada;
- Contribute to the respect for the diversity of Canada's geographical regions;
- Have a university degree or a combination of experience as the academic equivalent;
- Possess knowledge of the Council's mandate;
- Demonstrate the ability to work as part of a team to find common solutions to complex issues;
- Have the ability to communicate effectively, both orally and in writing;
- Be physically and mentally capable of serving on a panel to carry out its objectives (including: the availability to attend meetings, and to travel if necessary; the ability to read long and sometimes complex texts in a limited timeframe, etc.);
- Not have been convicted of an indictable offence, unless they have subsequently been granted a record suspension or pardon under the *Criminal Records Act*;
- Not have been disciplined by a professional body or organization for conduct.

As well, in naming laypersons to the roster, the Council shall take into account that the proceedings of panels may be in either or both official languages. The Council shall also name to the roster laypersons who reflect the diversity of the Canadian population.

Below is the current list of laypersons

France Bilodeau

Dr Jennifer Davis

André Dulude

Jacqueline Foord

Curtis Kleisinger

Mary Kloosterman

Nancy Konan

Clarence LeBreton

Parand Maysemi

Pierre Riopel

Overview of judicial conduct complaints

The Council has the authority to receive and consider allegations of inappropriate behavior by any federally appointed judge. The Council receives responses to the allegations from the judge involved, and in the most severe cases where the judge has fallen short of expectations, can recommend to Parliament that the judge be removed from office. The review process must be efficient and fair.

This reporting period covers June, 2023 to December 31, 2023 – from the date the amendments to the *Judges Act* were passed into law, up to the end of the calendar year.

Henceforth, reports will reflect the caseload for a full calendar year.

More than 621 files were opened under the new regime during this reporting period of which 480 constituted complaints – the others were not specifically related to any conduct concerns.

A majority of the complaints, 285 of them, were dismissed under s.90(1) of the *Judges Act* because they were deemed to be frivolous, vexatious, made for an improper purpose or were an abuse of process or did not meet the criteria in subsection 6.7(2) of the *Review Procedures (2023)*. Many of these were, in effect, expressions of disagreement with the judges' decisions. Others provided no supporting evidence to substantiate their claims.

When disclosing specific information about complaint matters, the Council is mindful of the need to constantly balance accountability, privacy, fairness and transparency. The Council's approach is further grounded in jurisprudence, notably the 2013 Federal Court of Appeal case *Slansky v. Canada (Attorney General)*. That decision recognized that confidentiality in certain aspects of the review serves four important functions: it avoids disclosure of unsubstantiated complaints that could undermine a judge's functional authority; it improves the overall effectiveness of the investigation process and encourages full and frank disclosure by the judge at an early stage; it protects privacy concerns of the judge; and it protects judicial independence.

It would be unfair to the judge if every frivolous or unfounded complaint were to be published. But providing Canadians with information about important conduct matters is a key aspect in building and keeping the public's confidence. The Council must always strike a balance between transparency, fairness, privacy and the public interest.

Number of complaints

June 23, 2023, to December 31, 2023 (files created, opened and closed during this period only)

Correspondence received = **621**

Open COMPLAINT files = **480**

Complaint files referred to a reviewing member = **55**

Complaint files CLOSED by a reviewing member = **3**

(the remaining are either still under review or
were closed after the reporting date of
December 31, 2023)

Complaint files CLOSED by a Screening Officer = **285**

Complaint files CLOSED (in total) = **288**

There were no complaints closed by review panels, hearing panels or appeal panels. Therefore, since no files were considered by a review panel, no recommendations or actions were taken under section 102 of the *Judges Act*.

Complaint summaries

The following section describes complaints that were dismissed at the first stage because they were determined by a screening officer to be frivolous, vexatious, made for an improper purpose or were an abuse of process; were trivial or manifestly unsupported or without substance; related to judicial decision-making; did not involve judicial conduct; or contained foul or aggressive language or threats of violence. Other criteria for the dismissal of complaints under the authority of the screening officers and the reviewing member are established in subsection 90(1) of the *Judges Act* and in subsections 6.7(1) and 6.7(2) of the *Council's Review Procedures (2023)*.

Of the 285 complaints closed by a screening officer, the majority arose from family law matters in which the complainants were self-represented. In several instances, the same person made multiple complaints against the same judge or multiple judges.

When complaints are closed at the first stage, efforts are made to inform and educate the complainant about the duties and responsibilities of judges and the distinction between judicial conduct and judicial decision-making.

Sample of complaints closed at stage 1

Below are five examples of complaints closed at the first stage by a screening officer:

Example 1 disagreement with the judge's findings

In this complaint, there was an allegation the complainant was a victim of wrongful conviction. There was also an allegation that the courts (trial courts and appeal courts) handled the complainant's case in a prejudicial manner and treated the party unfairly. There was a further allegation that the court relied on faulty assumptions and reasoning in reaching its decision. The complaint expressed disappointment with the findings of the court and how these findings were reached.

In reviewing the matter, the screening officer noted that it is not for the Council to review a judge's decision, nor how they reached findings of fact and law. The Council has no jurisdiction to review judgments issued by judges. Rather, the screening officer noted that the conclusions and findings made by judges fall under their judicial decision-making responsibility and are not within the Council's mandate for review. The screening officer found that the complaint was: manifestly unsupported; related to judicial decision-making; and/or was not related to a matter of judicial conduct as per the *Review Procedures (2023)*. For these reasons, the complaint was dismissed.

Example 2 allegation relating to judge's comments

A complaint was submitted concerning an endorsement written by the judge in relation to a settled motion. The complainant alleged that the judge was biased and erred in the judgment based on consideration of the complainant's bankruptcy status. Specifically, it was alleged that some comments made by the judge were biased and partial. The complainant alleged that the judge erred in considering and mischaracterizing his bankruptcy status which was irrelevant to the matter being decided and which had not been resolved at the time the endorsement was written.

The screening officer found that the complaint was an expression of the complainant's concerns with the findings of the court, what factors it considered in reaching these findings, and how these findings were expressed. It is not for the Council to review a judge's decision, nor how they came to findings of fact and law. The Council has no jurisdiction to review judgments issued by judges. Rather, the screening officer noted that the conclusions and findings made by the judge fall under the judge's judicial decision-making responsibility and are not within the Council's mandate for review. As for the allegation of bias, the screening officer noted that impartiality is the fundamental qualification of a judge and a core attribute of the judiciary. When acting in the course of judicial duties, a judge is presumed to have acted in good faith and with due and proper consideration of the issues before him or her, unless the contrary is clearly demonstrated. In this instance, the screening officer noted that the complainant failed to provide any cogent evidence of a reasonable apprehension of bias. Rather, the complainant's allegations rested on a disagreement with the judge. Given that the complainant failed to provide sufficient evidence to corroborate his allegations, the screening officer found that the complaint did not warrant further consideration by the Council.

Example 3 allegation relating to judge's control of the proceedings

This complaint alleged that the judge spoke poorly to the complainant during the proceedings, mischaracterized the facts, and ignored medical evidence about the complainant's psychiatrist's concern regarding the effects of constant litigation and contact with abusers.

In dismissing this complaint, the screening officer noted that judges are responsible for controlling the proceedings and managing the parties before them to ensure an effective and efficient use of court time. It is also the responsibility and duty of the judge to rule regarding the admissibility of the evidence, the submissions from the parties, and to interpret and apply the rules of the court. These functions fall within the ambit of judicial discretion and are not issues of conduct that fall within the Council's mandate. As such, the screening officer noted that the proper recourse for concerns about a judge's exercise of judicial discretion is at the appellate level, when available. Consequently, Council was unable to assist in this matter.

Example 4 conflict of interest

In this complaint, it was alleged that the judge had a conflict of interest because they were previously the complainant's children's lawyer, and recused themselves from the case previously for this reason. It was also alleged that the judge's endorsement contained incorrect information, and that the decision was made without properly considering the evidence.

The screening officer noted that judges should recuse themselves in any case in which they believe they will be unable to judge impartially. If the potential for conflict of interest exists, the matter must be reviewed by the judge. It is then for the judge to decide whether disqualification is appropriate. Furthermore, a judge's impartiality is presumed and a party arguing for disqualification must establish that the circumstances justify such a finding. This determination does not fall within the mandate of the Council. Rather, the screening officer noted that this issue should be put before the judge himself or herself to make a determination, and their findings on this point may be brought before an appeal court, where available. As such, the screening officer noted that the complainant may wish to bring their concerns with this decision to an appeal court, if possible.

Example 5 self-represented litigant in a family matter

This complaint was related to a family law matter and alleged that the judge erred in making the decision and failed to consider that the complainant was self-represented. It was also alleged that the orders that the judge made in the complainant's favour were not enforced, and that the judge did not explain why they were not being enforced.

The screening officer noted that this complaint expressed disappointment with the judge's decisions and how these decisions were reached. However, it is not for the Council to review a judge's decisions, nor how they reached findings of fact and law. Council has no jurisdiction to review judgments issued by judges. Rather, the screening officer noted that the conclusions and findings made by the judge fall under the judge's judicial decision-making responsibility and are not within Council's mandate for review. Indeed, jurisprudence holds that dissatisfaction with a decision does not transform a judicial decision into judicial misconduct. To that end, the screening officer advised the complainant that they could appeal the judge's decision to a higher court, if possible.

As for the allegation that the judge failed to consider that the complainant was self-represented, the screening officer noted that, according to the Council's various Handbooks for Self-Represented Litigants, a litigant who is self-represented is responsible for learning about the court process, the rules, and the law that relates to his or her case. The fact that a self-represented litigant does not have a lawyer will not excuse them from having to follow court rules and processes. To this end, a judge cannot provide legal advice. Their role is to remain neutral and unbiased. As such, the screening officer noted that the judge could not be faulted for failing to provide additional support or assistance to a self-represented litigant.

Stage 2 review decisions

The *Judges Act* provides that any complaint that alleges sexual misconduct or sexual harassment or that alleges discrimination on a prohibited ground of discrimination within the meaning of the *Canadian Human Rights Act* (CHRA) must be referred to a reviewing member, i.e., a member of the Judicial Conduct Committee.

The CHRA describes the prohibited grounds of discrimination as: race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered. Council's new policy on the Publication of Judicial Conduct Decisions provides that at the second stage of the review process, i.e., at the reviewing member level, the Council will publish in its annual report anonymized summaries of the matters dismissed in the previous year.

In this reporting period, there were 58 matters that went to the second stage of review. Of those, three have been reviewed by a Judicial Conduct Committee member and disposed of by December 31, 2023. The remaining matters are either still under review or were closed after December 31, 2023 and will be reported on in future publications.

Below is a summary of each of the three matters that were opened and closed under stage 2 within this reporting period.

Complaint 1

This complaint came from a family law matter and included several wide-ranging allegations including: that the judge was unfair regarding the sharing of RESPs between the former spouses and parental rights; did not allow the complainant to fully present their evidence and submissions; indicated to the complainant that an appeal would likely not be successful; and went on to threaten that security and the Ministry of Children and Family Development would be called if the complainant were to not cooperate. The complainant also alleged that the judge interrupted frequently, was unfair, biased, and emotional and ultimately discriminated on the basis of her ethnicity. The complaint was referred to a reviewing member on the basis of the allegations of discrimination.

The judge was then provided the opportunity to respond to the complaint. In responding to the complaint, the judge indicated that there was no threat to have the complainant removed from the hearing. The audio and the transcripts confirm that the judge asked the complainant at least twice to sit down which the complainant did not do. The judge indicated they were concerned by the complainant's tone of voice, and noted that if the complainant were to not sit down, an option was to ask a sheriff to come to the courtroom. The audio and the transcripts also confirm that after dismissing the complainant's application, the judge indicated that they were entitled to appeal.

The reviewing member noted that there is no doubt that in family law cases where conflicts are largely prevalent, judicial decision-making is often made difficult by contradictory evidence, the position of the parties and the highly emotionally-charged issues before the court. The responsibility and duty of the judge is to rule regarding the admissibility of evidence and the submissions from the parties, to control the proceedings before them to ensure an effective and efficient use of court time, and to interpret and apply the rules of the court. In order to do that, a judge does not have to remain quiet. They have the discretion to comment and ask questions on the evidence and the submissions presented. The judge must sometimes use words and characterizations that may be disappointing to a litigant when assessing their credibility in order to decide legal questions. This is not a sign of disrespect. The reviewing member also noted that the audio and the transcript show that the judge was very respectful and accommodating to the complainant.

As for the allegation of discrimination, the reviewing member found that it was clear from the recordings and transcripts that the judge did not make a distinction, an exclusion or a preference, on the basis of ethnicity and that this allegation was unsubstantiated. Given that the allegations against the judge were unsupported, the reviewing member found that the complaint did not warrant further consideration by Council and it was therefore closed.

Complaint 2

The complainant alleged that the judge broke rules governing uncontested trials by searching through a court file to find filings from the respondent from 2020; failed to remain unbiased at an uncontested trial, making a judgment on the basis of gender; and acted as a lawyer for the respondent in this uncontested trial while sparing the respondent from any form of repercussions for not filing documents or following court orders. This complaint was referred to a reviewing member on account of the complainant's allegations of gender discrimination.

In responding to the allegations, the judge noted that the endorsement granted many of the orders sought by the complainant and that in making the final order, they were mindful of the Family Law Rules regarding the primary objectives of the Rules to deal with cases justly, the authority of the judge to make orders, and their duty to manage cases in the promotion of the primary objective. The judge also wrote that a party proceeding by an uncontested trial does not mean that the party is getting everything requested. The court must still find that there is a sufficient evidentiary basis for making the orders sought. Also, it does not absolve the court of its duty and obligations to take into account the best interests of the child, in accordance with the *Child's Law Reform Act (CLRA)*. The court must give primary consideration to the child's physical, emotional and physical safety, security, and well-being. Given the unique nature of the best interests litigation, the trial judge is required to take a more active role, and do what is reasonable to ensure that the decision is based upon the most relevant and helpful information available. Judges have an obligation to the child to acquire the most complete understanding of all the relevant circumstances. The judge indicated that when the uncontested trial came in chambers, all the relevant materials in the file were read and considered as well as the factors related to the circumstances of the child pursuant to the CLRA. The judge noted that as the party bringing the motion, the complainant had the burden of showing that there has been a material change in the circumstances, and that it was in the best interests of the child to make the significant changes to the status quo. While the judge regrets that the complainant was unhappy with the decision, the endorsement clearly shows that the decision was focused on the relevant factors that the court must take into account when considering the best interests of the child.

The reviewing member noted that judicial decision-making is often made difficult by contradictory evidence. The judge must weigh the admissible evidence and decide in the best interests of the children. The responsibility and duty of the judge is to rule regarding the admissibility of evidence and the submissions from the parties, to control the proceedings before them to ensure an effective and efficient use of court time, as well as a fair hearing, and to interpret and apply the rules of the court; this is part of the judge's judicial discretion.

The reviewing member also noted that the judge strongly denied being biased, and that impartiality is the fundamental qualification of a judge and a core attribute of the judiciary. It is key to our judicial process, and it is presumed. This presumption of impartiality carries considerable weight. When acting in the course of judicial duties, a judge is presumed, unless the contrary is demonstrated, to have acted in good faith and with due and proper consideration of the issues before them. The allegation of bias was deemed to be unsubstantiated. Moreover, the reviewing member noted that bias is an issue that should be raised before the courts at the first opportunity, and that can be pursued on appeal when such recourse is available.

As for the allegation that the judge discriminated against the complainant on the basis of gender, the judge emphatically denied doing so and added that the decision made had nothing to do with gender, and that nowhere in the decision was the gender of either party mentioned as having anything to do with the decision. The reviewing member found the complaint to be wholly without merit and that the allegations were not only unsupported but also frivolous, and made for an improper purpose. The complaint, therefore, did not warrant further consideration.

Complaint 3

In reference to a previous complaint relating to spousal payment, which was dismissed by the Council, a person wrote again to express disappointment with the concept of presumed impartiality and that their “complaints have been pretty much determined to be invalid as a result”, that they were “just exhausted” and “now more convinced there is unquestionable underlying sexism in the entire court system, as well as a lack of common sense.” The complainant added that perhaps the “complaint should be more directed toward the court system itself than the judge in question.” The complainant alleged that the court was sexist in deciding spousal support.

In his response, the judge noted that following a brief recess to further consider the request for a variance, on returning to the court, it was explained that based on the evidence, the judge did not agree to vary the order and that the hearings were adjourned to the afternoon to hear further submissions.

The reviewing member noted the complaint was about the decision and the judge’s judicial discretion in deciding the matter based on the evidence and the applicable law. While it was apparent that the complainant was unsatisfied with the outcomes of the hearing, the reviewing member found that there was no factor of preference, or partiality involved.

The reviewing member further noted that the Federal Court of Appeal has ruled that issues of impartiality and unfairness can be pursued through the normal appellate process, and that an “unbroken line of jurisprudence suggests that matters that can be appealed are not the proper subject of a judicial conduct complaint.”

The reviewing member also found that a mere allegation of discrimination or sexism in the court system is not sufficient to substantiate a complaint. In this matter, the complainant did not provide any evidence that could lead to a conclusion of discrimination. The judge did not make a distinction, an exclusion, or a preference, on the basis of sex (gender). A disagreement with the judge is not a basis for an allegation of discrimination. Therefore, the allegation was dismissed as it was wholly unsubstantiated and the reviewing member decided that the matter did not warrant further consideration by Council.

Media coverage of Council matters

While not a frequent event, allegations relating to a judge’s conduct may surface in media reports. When that happens and allegations – unfounded or otherwise – become public, the Council has additional responsibilities relating to transparency. This is both in response to the public interest and in fairness to the judge.

Complaint regarding political donations

In a 2023 article in the *National Post*, there were allegations relating to judges having made political donations which could be in conflict with the Council’s *Ethical Principles for Judges*, specifically, that judges must cease all partisan activity upon their assumption of judicial office. That review is still underway.

The matter involving former Justice Russell Brown

The Council announced on March 7, 2023, that it was reviewing a complaint into the alleged conduct of Justice Brown, stemming from events which took place while he attended a banquet in Arizona on January 28, 2023 and which were reported in the media. That complaint was referred to the Chairperson of the Council’s Judicial Conduct Committee, and on March 30, the Council announced that the matter had been referred to a Judicial Conduct Review Panel,. On June 12, 2023, the Canadian Judicial Council was informed of Justice Russell Brown’s decision to resign as a judge of the Supreme Court of Canada. Justice Brown’s resignation put an end to the Council’s jurisdiction over the complaint and, as such, proceedings before the Council that involved Justice Brown came to an end.

The matter involving Justice Dugré

Following a public inquiry into the conduct of Justice Gérard Dugré, the Canadian Judicial Council concluded in December 2022 that the misconduct of the judge had so undermined the public's confidence in the judiciary, that he was incapable of continuing to fulfill the duties of judge. The Council therefore recommended to the Minister of Justice that Justice Dugré be removed from office.

In accordance with Canada's Constitution, a judge may only be removed from office on address to the House of Commons and the Senate. Justice Dugré has challenged the Council's recommendation in court. Those proceedings continue.

Commentary on the link between judicial conduct and education, ethics, and judicial independence

The Council's mission is to improve the administration of justice in all of Canada's superior courts and to ensure that Canadians benefit from a professional, dedicated, independent and highly trained judiciary. Judges are expected to be aware and informed of the issues that are of immediate concern to them and to society at large.

Judicial Education: Key to preserving and enhancing Canadians' confidence in our justice system is having a highly trained and skilled judiciary. Judicial education is at the core of the Canadian Judicial Council's mandate and, along with dealing with judicial conduct questions, is a cornerstone of its work. Pursuant to the *Judges Act*, the Council establishes and approves national seminars for judges, and the National Judicial Institute and other similar organizations develop the programs. It is the Council's Judicial Education Committee that provides advice and recommendations to the Council with a view to ensuring that the federally appointed judiciary has access to high-quality, effective, ongoing judicial education and professional development. Individual courts across Canada also develop judicial education seminars for their own judges.

Readers who wish to know more about Council's judicial education work are encouraged to review our 2023 Report to Canadians on Judicial Education:

<https://cjc-ccm.ca/en/what-we-do/professional-development/programs>

Judicial Ethics: The Canadian Judicial Council plays a key role in providing ethical guidance for judges throughout the country. To this end, Council has adopted and published *Ethical Principles for Judges*. These principles are intended to provide clear language around what is expected of judges and to describe exemplary behaviour to which all judges must aspire. These Principles are founded on key concepts: integrity, independence, equality, diligence and impartiality. They also recognize that the work of judges is changing. So, too, is the public environment in which judges perform that work. The Council is mindful of the benefit in providing judges with a modern framework that offers guidance on ethical issues. A strong judiciary exists for the benefit of the public. Readers who wish to know more about Council's *Ethical Principles for Judges* are encouraged to consult the document at the following link:

<https://cjc-ccm.ca/en/what-we-do/initiatives/ethical-principles-judges-0>

Judicial Independence: A fundamental principle at the heart of the Canadian judicial system is its independence. The “separation of powers” guarantees Canadians that the legislative, executive and judicial powers in Canada will be autonomous and independent of each other. The legislature defines the law, the government ensures its application and the courts interpret it.

When a dispute is brought before the courts, both parties must be convinced that the judge will render a decision based only on the law and the evidence submitted. Judges must be completely impervious to any outside influence, whether governmental, political, family, organizational or other.

In short, judicial independence is essential for Canadians to have confidence in their justice system. We must be convinced that the judge will render a decision based on his or her conscience, in full respect of the oath of allegiance taken when the judge was appointed. Any breach of this fundamental principle may be reported to the Canadian Judicial Council.

Readers who wish to know more about Council’s work to protect judicial independence are encouraged to read the following:

<https://cjc-ccm.ca/sites/default/files/documents/2019/Why%20is%20Judicial%20Independence%20Important%20to%20You.pdf>

If you have any comments about this document

or

If you have a complaint about the conduct of a federally appointed judge

Please write to the Canadian Judicial Council at:

info@cjcc-ccm.ca

and

visit our website at:

www.cjcc-ccm.ca

