

DECISION OF THE REVIEW PANEL

IN THE MATTER OF:

THE HONOURABLE CHARLES C. CHANG
OF THE SUPERIOR COURT OF JUSTICE OF ONTARIO
CJC File 23-0488

Review Panel Members:

The Honourable Associate Chief Justice Kenneth G. Nielsen

The Honourable Justice Johanna Price

Ms. Julia Pavlenko

Background

[1] In a complaint filed with the Canadian Judicial Council (Council) on September 12, 2023, the complainant alleged that Justice Chang behaved inappropriately during a family law hearing. Justice Chang was seized of an urgent motion for temporary orders respecting decision-making responsibility, parenting time and the children’s attendance at school and daycare.

[2] The complainant stated that Justice Chang was verbally abusive and intimidating during the hearing.

[3] Pursuant to s. 89 of the *Judges Act*, R.S.C., 1985, c. J-1 (*Act*), the complaint was referred to a Screening Officer.

[4] Pursuant to section 91 of the *Act*, and further to the review of the complaint, the Screening Officer referred the complaint for the designation of a reviewing member.

[5] In accordance with section 93 of the *Act* and section 7.3 of the “*Canadian Judicial Council Procedures for the Review of Complaints or Allegations About Federally Appointed Judges*” (*Review Procedures (2023)*), the reviewing member sought Justice Chang’s submissions as well as those of the Honourable Geoffrey B. Morawetz, Chief Justice of the Superior Court of Justice of Ontario.

[6] Further to the review of Justice Chang’s file, the reviewing member referred the complaint to the Council for the establishment of a review panel. The reviewing member did not believe the conduct of Justice Chang justified his removal from judicial office but did believe that an action under section 102 of the *Act* could be appropriate.

Ethical Principles for Judges

[7] The most current version of the Ethical Principles for Judges was adopted by Council in 2021 (*Ethical Principles 2021*).

[8] The relevant Ethical Principles in the present matter provide as follows:

2.C.1 A hallmark of judicial proceedings is that all participants, including judges, will conduct themselves in a manner that preserves the honour and dignity of both the individual proceedings and the administration of justice more generally. Judges should endeavour to treat all participants in the judicial process with civility and respect.

2.C.3 The circumstances of some cases and the conduct of counsel and parties sometimes require judges to act with an appropriate measure of firmness and to emphasize decisiveness, promptness, the prevention of abuse of process or improper treatment of participants in the adjudicative process. Maintaining civility and respect requires judges to ensure a proper balance between upholding the right of parties to be heard and ensuring the efficiency of the process.

[9] The *Ethical Principles 2021* are not a code of conduct. They provide aspirational guidance to federally appointed judges in relation to ethical issues.

Council’s Judicial Complaint Review Procedure Legal Framework

[10] The conduct review process for federally appointed judges is set out in sections 79 to 140 of the *Act*. It is supplemented by the *Review Procedures (2023)*.

[11] The first stage of review for a complaint related to judicial conduct is carried out by a screening officer. The jurisdiction of a screening officer to dismiss a complaint is found in section 90(1) of the *Act*:

90 (1) Subject to subsection (2), a screening officer may dismiss a complaint if they are of the opinion that it

- (a) is frivolous, vexatious or made for an improper purpose or is an abuse of process;
- (b) was not made for a reason referred to in paragraphs 80(a) to (d);
or
- (c) does not meet the other screening criteria specified by the Council.

[12] Where the screening officer does not dismiss a complaint, it is referred to the second stage of the process and Council will designate a “reviewing member” who is a member of the Judicial Conduct Committee to review the complaint. The reviewing member is required to give the judge who is the subject of the complaint an opportunity to make written submissions. Section 94(1) of the *Act* sets out the jurisdiction of the reviewing member to dismiss the complaint:

94 (1) The reviewing member shall dismiss the complaint if they are of the opinion that it should be dismissed for any reason set out in paragraphs 90(1)(a) to (c) or that it is wholly without merit.

[13] If the reviewing member does not dismiss the complaint, they shall refer it to the third stage of the process for the establishment of a review panel and provide the panel with their observations and any recommendation about how the complaint should be resolved.

[14] A review panel is established under section 98(1) of the *Act*. It is required to give the judge who is the subject of the complaint as well as their chief justice an opportunity to provide written submissions. Section 101 of the *Act* sets out the circumstances when a review panel shall refer the matter to Council for establishment of a full hearing panel:

101 The review panel shall refer the complaint to the Council for the establishment of a full hearing panel if it determines that the judge's removal from office could be justified.

[15] If the matter is not referred to a full hearing panel, the options available to the review panel are set out in section 102 of the *Act*:

102 If the review panel does not refer the complaint to the Council under section 101, it may dismiss the complaint or take one or more of the following actions if it considers it appropriate to do so in the circumstances:

- (a) issue a private or public expression of concern;
- (b) issue a private or public warning;
- (c) issue a private or public reprimand;
- (d) order the judge to apologize, either privately or publicly, by whatever means the panel considers appropriate in the circumstances;
- (e) order the judge to take specific measures, including attending counselling or a continuing education course;
- (f) take any action that the panel considers to be equivalent to any of the actions referred to in paragraphs (a) to (e);
- (g) with the consent of the judge, take any other action that the panel considers appropriate in the circumstances.

First Stage of the Judicial Conduct Review Process in this Matter

[16] On December 21, 2023, the screening officer appointed to review the complaint referred it to Council for designation of a reviewing member. The reasons for doing so stated in part that the conduct of Justice Chang could be interpreted as demonstrating disrespect for the parties, their counsel, and the hearing process. The screening officer referred to many interventions by Justice Chang that were of concern and could have been

interpreted as disrespectful or even involved yelling. The screening officer noted that the judge frequently interrupted counsel and raised his voice in an intimidating manner, as if he was asserting the power of his position over those in a subordinate position to him.

[17] Referring to the Ethical Principles 2.C.1 and 2.C.3, the screening officer concluded that Justice Chang repeatedly expressed his dissatisfaction with the fact that this was a “he said/she said” scenario with little or no neutral, external evidence to support the parties’ assertions.

[18] As a result, the screening officer recommended that the complaint be referred to the Council for the designation of a reviewing member pursuant to section 91 of the *Judges Act*.

The Second Stage of the Judicial Conduct Review Process in this Matter

[19] As required by the *Act* and the *Review Procedures (2023)*, the reviewing member sought submissions from Justice Chang and the Chief Justice of the Superior Court of Justice of Ontario, the Honourable Geoffrey B. Morawetz. Justice Chang’s counsel provided submissions on his behalf on April 12, 2024.

[20] Justice Chang’s counsel submitted that the context of the hearing ought to be considered in assessing whether the comments identified by the screening officer as raising concerns amounted to judicial misconduct.

[21] Justice Chang’s counsel submitted that this hearing was not a typical day in court as Justice Chang was informed that the Milton Courthouse, where the matter before Justice Chang was being heard, was to be closed indefinitely due to substance contamination in the building. Justice Chang’s counsel wrote that Justice Chang was “very distressed” about this development as this was the second time in the recent past that the Milton Courthouse was subject to closure as a result of issues related to the physical plant.

[22] Referring to the comments identified by the screening officer as raising concerns, Justice Chang’s counsel submitted that they were Justice Chang’s colloquial and direct way of expressing the concerns he had as the judge dealing with an application that he considered to have been poorly prepared and ill-considered.

[23] Justice Chang expressed the view that parties less familiar with the day-to-day ‘cut and thrust’ of a judicial colloquy might interpret his ‘firmness’ as crossing the line into actual disrespect. While that was never Justice Chang’s intent, he indicated that he has

reflected on this issue and sought out the assistance of a retired judicial colleague as a mentor on this area.

[24] Justice Chang's counsel submitted that, in the context of Principle 2.C.1, the comments were not made for the purpose or intent of intimidating or insulting counsel, nor were they intended to be uncivil when properly considered in the circumstances of the hearing. He explained that the identified comments were an effort by Justice Chang to engage the authority recognized by Principle 2.C.3 that recognizes the need for judges to have resort to "an appropriate level of firmness" in certain cases. Justice Chang's comments were made for the purpose of controlling and focusing the conduct and submissions of counsel in his courtroom in an urgent, contested application involving "extreme, extreme, extreme" allegations of abuse.

[25] In this regard, Justice Chang's counsel explained that Justice Chang would ask the reviewing member to consider whether the complaint could be dismissed pursuant to section 6.7(2) of the *Review Procedures (2023)* because, while the conduct is concerning, it does not rise to the level of judicial misconduct requiring discipline when the comments are considered in context.

[26] In his letter to the reviewing member, Justice Chang apologized to the complainant if she left the hearing feeling that she had been verbally abused and intimidated. Referring to the context of the hearing and indicating that counsel for both parties were not assisting the court, Justice Chang recognized that at times his words and tone were not appropriate. He wrote that he is mindful that all of a jurist's words during a court hearing not only impact participants, but may also affect the dignity and solemnity of the hearing itself and regretted that his approach may have caused any diminution of the public's respect for the court.

[27] The reviewing member considered the file and decided to refer the matter to a review panel.

[28] In relation to the closing of the Milton Courthouse, the reviewing member was of the opinion that while obviously causing a lot of rearrangement, reassignments and uncertainty, the closing of the courthouse cannot be given the emphasis that Justice Chang's counsel and Justice Chang put on this to justify the judge's interventions and tone in court. When called to preside over a case, a judge must be able to put aside the frustrations of the day, whether professional or personal, otherwise it becomes impossible to carry out their functions in compliance with Ethical Principle 2.C.1.

[29] In relation to the nature of the case to be decided, the reviewing member expressed that urgent family law matters can be a stressful situation for the parties involved and perhaps, at times, for the judges. However, these situations are not so unique and rare, especially in the family law context, that a judge is not able to deal with them, no doubt with a certain firmness, as recognized in Principle 2.C.3, but still with civility.

[30] In relation to the submission that there was lack of cooperation by counsel, the reviewing member stated that there is no doubt that without the cooperation of counsel, it becomes very difficult and frustrating for a judge to decide a matter, particularly in the family law context, as the decision can have serious consequences for the parties and their children. However, cases where there is limited proof and that contain “he says – she says” evidence are not so unique and rare that judges cannot get to the crux of the parties’ submissions by asking them, in a firm but appropriate way, the questions that may assist them in their decision-making. Judges must also keep in mind that counsel work with what is being provided to them by the parties, which can be minimal in some circumstances.

[31] The submissions from Justice Chang, while recognizing that the tone was not always appropriate, do not refer to the audio recording, but only to the transcript. If the whole context of the hearing is to be considered, the audio recording cannot be ignored and all interventions by Justice Chang must also be considered together.

[32] The reviewing member stated that when listening to the audio recording, it becomes apparent that Justice Chang was impatient and that his tone was inappropriate, abusive and intimidating at times, even more so towards the end of the hearing. His interventions go beyond what is usually considered the exercise of proper firmness, as recognized in Principle 2.C.3. His interventions did not preserve the honour and dignity of both the individual proceedings and the administration of justice more generally, as indicated in Principle 2.C.1. The fact that Justice Chang’s counsel submitted that Justice Chang’s many interventions were not directed towards the complainant cannot serve as a justification of his overall behaviour. Maintaining civility and respect requires judges to ensure a proper balance between upholding the right of parties to be heard and ensuring the efficiency of the process. Justice Chang’s interventions did not have the effect of maintaining such a proper balance.

[33] The fact that Justice Chang indicated that he sought the assistance of a retired judicial colleague as a mentor is certainly a step in the right direction. What is not clear, however, is who he consulted and whether this was a one-time request for assistance or whether it is meant to be on-going for a certain time.

[34] The matter is not trivial, Justice Chang is at the beginning of his judicial career and the Council cannot simply hope that this won’t happen again if Justice Chang faces yet

another urgent matter where counsel are ill-prepared, and if meaning is to be given to the Ethical Principles for Judges 2.C.1 and 2.C.3.

[35] The reviewing member recommended that the review panel use a remedy available under section 102 of the Act along with the encouragement to Justice Chang to get the proper mentoring from current or retired members of the court.

Third Stage of the Judicial Conduct Review Process: Review Panel

[36] As required by the section 99 of the *Act* and the *Review Procedures (2023)*, the review panel received all the materials provided to the reviewing member. In addition, we invited submissions from Chief Justice Morawetz and Justice Chang.

[37] In a letter dated May 28, 2024, Chief Justice Morawetz wrote that Justice Chang was known to be a very hard-working judge and always accepts all cases without complaint or hesitation, even last-minute assignments. That Justice Chang is well liked and respected by all his judicial colleagues. He added that Justice Chang has a strong sense of justice and common sense that he applies to all cases. By reputation, although he can be outspoken, he is always frank and clear to all parties and counsel — a quality appreciated by most counsel and indeed significantly praised by the Bar in Halton where he presides.

[38] Chief Justice Morawetz had no doubt that Justice Chang sincerely accepted the complaint as a lesson learned — a reminder that his commitment to fairness and access to justice must be tempered with patience and the dignity and solemnity of the court process.

[39] In a letter dated June 10, 2024, Justice Chang wrote that he accepted the reviewing member's evaluation of the circumstances and his assessment of the record and added that his original submissions were not intended to suggest that he did not accept those concerns identified by the reviewing member.

Decision of the Review Panel

[40] The review panel first considered whether the matter should be referred to Council for the establishment of a full hearing panel or, alternatively, dismissed.

[41] The criteria for recommending removal are onerous. They are encompassed in what is referred to as the *Marshall* test which can be found in many judicial conduct decisions, including *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11. It requires:

Conduct which is so manifestly and profoundly destructive of the concept of the impartially, integrity and independence of the judicial role, that

public confidence would be sufficiently undermined to render the judge incapable of executing the judicial office.

[42] The review panel agreed that removal from office is not justified in the circumstances. Therefore, the review panel concludes there was no basis to recommend appointment of a full hearing panel, which should only happen if it was determined that removal from office could be justified.

[43] The review panel also concluded the complaint should not be dismissed and agrees with and adopts the reviewing member's reasons explained above. The Council has an important role in maintaining the confidence of the public in the administration of justice. More specifically, the review panel believes that actions under section 102 of the Act are required:

- To remind Justice Chang of the importance of conducting himself in a manner that preserves the honour and dignity of both the individual proceedings and the administration of justice more generally. The words, vocabulary and tone of voice used in a hearing may have a detrimental impact on both the litigants and the confidence of the public in the administration of justice.
- To remind Justice Chang that maintaining civility and respect requires him to ensure a proper balance between upholding the right of the parties to be heard and ensuring the efficiency of the process. The nature of the case to be decided and what a judge may consider to be a lack of cooperation by counsel are no justification to brush aside principles of civility and respect.
- Justice Chang ought to have been aware that his behaviour during the hearing was contrary to the standards established in the *Ethical Principles 2021*.

[44] As stated by the reviewing member, this matter is not trivial. Justice Chang is at the beginning of his judicial career and the Council cannot simply hope that this will not happen again if Justice Chang faces yet another urgent matter with similar challenges, and if meaning is to be given to the *Ethical Principles 2021* 2.C.1 and 2.C.3.

[45] In choosing the appropriate action, we have considered the following circumstances:

1. The tone and interventions from Justice Chang at the hearing;
2. The need to reinforce the principles of respect and civility in court and in the administration of justice generally to foster public confidence;

3. The fact that Justice Chang recognizes that his tone and vocabulary were at times inappropriate;
4. The fact that Justice Chang wishes to apologize to the complainant;
5. The fact that Justice Chang agrees with the recommendation of the reviewing member;
6. The willingness of Justice Chang to receive coaching from a senior judge.

[46] We have considered all of the above and conclude that the removal of Justice Chang from office could not be justified. In the result, the complaint is not referred to the Council for the establishment of a full hearing panel pursuant to section 101 of the Act. However, we have determined that the complaint should not be dismissed. Pursuant to subsection 102(a) of the *Act*, the review panel will take an action of a private nature and also, pursuant to subsection 102(f), the review panel orders that Justice Chang engage in more coaching with a senior judge for a duration and frequency that is considered appropriate by his Chief Justice. We conclude that this outcome adequately reflects the nature of the misconduct as well as the role of the Council in maintaining the public confidence in the administration of the justice.

Dated this 4th day of September, 2024.

Original signed

The Honourable Associate Chief Justice Kenneth G. Nielsen

Original signed

The Honourable Justice Johanna Price

Original signed

Ms. Julia Pavlenko