

DECISION OF THE REVIEW PANEL

IN THE MATTER OF:

THE HONOURABLE DIANA PICCOLI
OF THE SUPERIOR COURT OF JUSTICE OF ONTARIO
CJC File 23-0399

Review Panel Members:

The Honourable Chief Justice Michael J. Wood

The Honourable Justice Catherine L. Dawson

Ms. Parand Meysami

Background

[1] Justice Diana Piccoli was appointed to the Ontario Superior Court of Justice in May of 2019 where she has presided as a judge of the Unified Family Court in the central south region of Ontario.

[2] On August 15, 2023, Justice Piccoli wrote to the Canadian Judicial Council (“Council”) raising the issue of political donations which she had made following her judicial appointment. The letter stated in part:

I would be grateful if you would consider this letter as my ‘self-report’ related to certain actions by me which appear to be inconsistent with the *Ethical Principles for Judges (2021)*.

...

As has been noted in certain media reports (that the Council is aware of) it has been brought to my attention that in 2019 and in 2021, I donated a total of \$700.00 to the Liberal Party of Canada (apparently in the amount of \$300 in 2019, and \$100 and \$300 in 2021).

I have carefully reviewed the *Ethical Principles for Judges* and, in particular, “Part V: Impartiality”. Having reviewed the Principles, I recognize that under title 5.B.2 “Political Activity”, the Principles make it clear that such donations, even in modest amounts, are inappropriate. They have the potential to create the impression that the judge making such a donation is politically active in a way that is inconsistent with the judge’s role.

[3] On September 19, 2023, Justice Piccoli sent another letter to Council indicating that she had reviewed her records and located a receipt for a \$200 donation to the Liberal Party of Canada, which she made in December 2020. Her correspondence indicated she had no specific recollection of the donations but speculates they might have been in response to telephone solicitations.

[4] Justice Piccoli, through legal counsel, also contacted The Honourable Justice Gary T. Trotter of the Court of Appeal for Ontario with the request that he consider meeting with, and possibly mentoring, her on ethical matters. Justice Trotter agreed and met with Justice Piccoli three times in October 2023.

Ethical Principles for Judges

[5] The *Ethical Principles for Judges* (“*Ethical Principles 2021*”) were adopted by Council in 2021. They replaced a version which had been published in 1998 and

updated in 2004. The 1998 and 2004 principles included comments about judges' political activity:

3. Judges should refrain from:

(c) contributing to political parties or campaigns;

[6] The *Ethical Principles 2021* are not a code of conduct. They provide aspirational guidance to federally appointed judges in relation to ethical issues. With respect to political activity, the *Ethical Principles 2021* repeat the admonition found in the 1998 and 2004 documents:

Political Activity

5.B.2 Judges must cease all partisan political activity upon the assumption of judicial office. Moreover, judges refrain from conduct that, in the mind of a reasonable and informed person, could give rise to the appearance that the judge is engaged in political activity. For this reason, judges must refrain from: (i) membership in political parties and political fundraising; (ii) attendance at political gatherings and political fundraising events; (iii) contributing financially or otherwise to political parties or campaigns; (iv) signing petitions to influence a political decision; and (v) taking part publicly in controversial political discussions, except in respect of matters directly affecting the operation of the courts, the independence of the judiciary or fundamental aspects of the administration of justice.

CJC Complaint Review Procedure

[7] The conduct review process for federally appointed judges is set out in sections 79 to 140 of the *Judges Act*, R.S.C., 1985, c. J-1 (“the *Act*”). It is supplemented by the procedures adopted by Council in June 2023, which are entitled “*Canadian Judicial Council Procedures for the Review of Complaints or Allegations About Federally Appointed Judges*” (“Review Procedures (2023)”).

[8] 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.

[9] Section 90(1)(c) contemplates that Council may establish additional criteria for dismissal of complaints. These are set out in section 6.7(2) of the Review Procedures (2023) and includes where the matter is “trivial, manifestly unsupported or without substance”.

[10] Where the screening officer does not dismiss a complaint, it is referred to Council for the designation of a “reviewing member” who is a member of Council. 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.

[11] If the reviewing member does not dismiss the complaint, they shall refer it to Council for the establishment of a review panel.

[12] After a review panel is established, section 97 of the *Act* requires the reviewing member to provide the panel with every document in their possession related to the complaint. They may also provide the panel with their observations and any recommendation about how the complaint should be resolved.

[13] 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.

[14] 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.

Decisions of the Screening Officer and Reviewing Member Concerning Justice Piccoli

[15] On September 29, 2023, the screening officer appointed to review the complaint referred it to Council for designation of a reviewing member pursuant to s. 91 of the *Act*. The reasons for doing so stated in part:

Justice Piccoli's donations may be in conflict with Council's *Ethical Principles for Judges (Ethical Principles)*. Specifically, Section V of the *Ethical Principles* notes that it is important that "judges are impartial and appear to be impartial in the performance of their judicial duties".

...

Consequently, Justice Piccoli's donations to the Liberal Party of Canada at the time she was appointed to the bench were not in line with Council's *Ethical Principles*. Justice Piccoli's donations may therefore constitute judicial misconduct.

[16] As required by the *Act* and the *Review Procedures (2023)*, the reviewing member sought submissions from Justice Piccoli and the Chief Justice of the Superior Court of Justice of Ontario, The Honourable Jeffrey B. Morawetz.

[17] Chief Justice Morawetz provided a letter dated November 1, 2023, which included the following:

I have consulted with RSJ Sweeny who reports that “Madam Justice Piccoli is a dedicated, hard-working member of the Family Court chambered in Kitchener. She is well respected by the Bench and Bar and has a well-earned reputation for assisting in the resolution of difficult family cases. She is well liked by her colleagues and her advice is regularly sought by her colleagues on family matters. Madam Justice Piccoli has a reputation as fair, balanced and even-handed judge.”

I have reviewed Justice Piccoli’s self-reporting regarding political donations she has made after her appointment. I accept that she regrets her lapse in judgement on these issues and has taken steps to ensure she is fully versed in the Ethical Principles for Judges.

[18] Justice Piccoli retained legal counsel, Mr. Scott Hutchison who provided submissions on her behalf by letter dated November 20, 2023. The letter enclosed correspondence from Justice Trotter outlining his discussions and meetings with Justice Piccoli as well as 11 letters of support from her judicial colleagues, including Chief Justice Morawetz.

[19] Mr. Hutchison suggested any breach of the *Ethical Principles 2021* should be considered trivial because the amounts of the donations were modest, the conduct review arose out of Justice Piccoli’s self-reporting and the lapse was due to inadvertence rather than an intention to circumvent the principles. He referred to the supportive comments from Justice Trotter and other members of the judiciary in support of his submission that the reviewing member should dismiss the complaint as being trivial as that term is understood in the context of the Review Procedures (2023).

[20] Mr. Hutchison’s letter summarized his rationale for describing the conduct as trivial as follows:

It is respectfully submitted that the present matter is ‘trivial’ in this sense in that, on sober reflection, it is a relatively minor and attenuated transgression by a judge universally regarded as an outstanding jurist, and who has taken active steps to address any lingering doubt about her commitment to the highest standards of judicial ethics.

[21] Justice Trotter’s letter indicated his discussions with Justice Piccoli included reviewing materials on judicial ethical issues. He stated Justice Piccoli had a firm understanding of her ethical obligations as a judge, and he had no concerns with respect to her “ethical compass”. He said it was highly unlikely that she would be involved in conduct which ran afoul of the *Ethical Principles* in the future.

[22] The letters of support provided on behalf of Justice Piccoli consistently emphasize her good character and integrity. She is described as a valuable member of the court who is highly respected by her colleagues and the bar. By way of example, the letter from Justice Alex Pazaratz, who has been a member of the Superior Court of Justice, Family Branch, in Hamilton since December 2006, says:

Without hesitation I would characterize Justice Piccoli as an excellent and meritorious addition to our bench. She knows the law and is skilled in her application of the court's rules and procedures. She is an extremely hard worker, and I have always been impressed by her dedication, sensitivity and creativity in dealing with families – and in particular victims of family violence and children in need of protection. She has enjoyed notable success in our court's all-important case management process, largely because of her excellent people skills, practicality, patience and compassion. She has an overwhelmingly favourable reputation among judges, lawyers, court staff, and perhaps most importantly, litigants.

I am aware of the issue which has arisen relating to political contributions subsequent to Justice Piccoli's appointment. I share the CJC's view that this is a serious matter. But having discussed these events with Justice Piccoli, there is no doubt in my mind that any breach of ethical standards was the result of insufficient consideration and a lack of awareness – rather than a conscious disregard of ethical principles.

I have reviewed all of this with Justice Piccoli in some detail. I can tell you she is absolutely devastated by her mistake, and the embarrassment it has created for the administration of justice. I commend her for her immediate willingness to accept full responsibility, and her resolve to scrupulously maintain the highest standards in the future.

There's no doubt that Justice Piccoli made a serious mistake. Equally, there's no doubt that she's an excellent judge. In every other respect she has served the community well, with expertise, commitment and integrity. I am more than confident that if given a chance, Justice Piccoli can and will get past this isolated lapse of judgment, and that she will continue to be an invaluable asset to our judicial system.

[23] Despite the request on behalf of Justice Piccoli that the complaint be dismissed as trivial, the reviewing member did not do so and referred the matter to a review panel. The reasons for doing so were as follows:

My reasons for the referral are based, in part, on Council's publication *Ethical Principles for Judges*, which provides (at page 43):

Political Activity

5.B.2 Judges must cease all partisan political activity upon the assumption of judicial office. Moreover, judges refrain from conduct that, in the mind of a reasonable and informed person, could give rise to the appearance that the judge is engaged in political activity. For this reason, judges must refrain from: (i) membership in political parties and political fundraising; (ii) attendance at political gatherings and political fundraising events; (iii) contributing financially or otherwise to political parties or campaigns; (iv) signing petitions to influence a political decision; and (v) taking part publicly in controversial political discussions, except in respect of matters directly affecting the operation of the courts, the independence of the judiciary or fundamental aspects of the administration of justice.

...

Contributing financially to political parties is not “technically” inconsistent with *Ethical Principles for Judges*. *Ethical Principles for Judges* is clear... “...judges must refrain... from contributing financially”. The financial contributions were made to a political party after Justice Piccoli’s appointment, and are in breach of 5.B.2 of the *Ethical Principles for Judges*.

Also of concern is the fact that Justice Piccoli was appointed in May 2019, made donations in 2019 and 2021, and did not disclose these donations until certain media reports were brought to her attention, in August 2023.

Consequently, this matter is not trivial, and cannot be dismissed as such. Had I had jurisdiction to do so, I would have issued an expression of concern. Only a review panel has jurisdiction to do so under s. 102 of the Judges Act. I note, however, that pursuant to s. 97 of the Judges Act that I may provide my observations to the review panel about the complaint and my recommendations about how it should be resolved. My recommendation to the review panel is that the complaint be dismissed, but that an expression of concern be issued to Justice Piccoli.

Review Panel Procedure and Disposition

[24] As required by 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 Piccoli. Chief Justice Morawetz referred to his earlier submissions to the reviewing member.

[25] Mr. Hutchison, on behalf of Justice Piccoli, also relied on his earlier submissions to the reviewing member. In addition, he wrote:

Justice Piccoli respectfully accepts and agrees with the recommendation by the Reviewing Member that the Review Panel dismiss the matter and respectfully leaves it to the Panel to determine whether, in light of her pro-active approach to

the issues raise in this matter, it is necessary for the Panel to offer an expression of concern to Justice Piccoli.

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

[27] We concluded there was no basis to recommend appointment of a full hearing panel, which should only happen if we were to determine that removal from office could be justified. 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.

[28] The review panel agreed there was no possible basis on which Justice Piccoli's removal from office could be justified in the circumstances.

[29] We also concluded the complaint should not be dismissed. The factors which led us to this decision include:

- Although the amount might not seem large, a political donation by a judge is not “trivial” because it has the potential to undermine public confidence in the independence of the judiciary from the other branches of government.
- Justice Piccoli made political donations shortly after her judicial appointment as well as in the next two years.
- She ought to have been aware that political donations were contrary to the standards found in the ethical principles which were in place at the time of her appointment in 2019 as well as the subsequent *Ethical Principles 2021*.
- The fact of Justice Piccoli's political donations might undermine public confidence in the independence of judiciary. It is crucial that the actual and perceived separation of the judiciary from the other branches of government be protected. Donations such as those made by Justice Piccoli create the risk this distinction may be blurred resulting in harm to the administration of justice.

[30] Although the reviewing member recommends dismissal of the complaint, he also recommends the issuance of an expression of concern. The reviewing member notes he does not have the authority to issue an expression of concern and says this is the reason for his referral to a review panel. Our interpretation of section 102 of the *Act* is that an expression of concern is not available if a complaint is dismissed.

[31] With respect to the range of actions available in section 102, the panel is satisfied that Justice Piccoli's self-reporting, her judicial mentorship initiatives and the positive letters of support satisfy us that none of the additional measures contemplated by subsections (e) and (f) of section 102 are required.

[32] Subsections (a) to (c) of section 102 set out the alternative actions of an expression of concern, warning or reprimand. We find these are hierarchical in nature with an expression of concern being the least serious. In choosing the appropriate sanction we must consider the circumstances, including:

- a) The seriousness of the conduct,
- b) The need for deterrence,
- c) The amelioration of any harm to the administration of justice or the reputation of the judiciary,
- d) The self reporting and subsequent training in relation to ethical issues for judges,
- e) The reputation of Justice Piccoli in the legal community.

[33] We have considered all the above and conclude an expression of concern is the appropriate sanction. This recognizes the serious nature of the conduct and the potential loss of public confidence in the independence of the judiciary. An expression of concern is the lowest level of sanction available to a review panel and would reflect the corrective actions taken by Justice Piccoli and her positive reputation.

[34] The potential impact of the conduct as well as the media attention requires a response by Council that is open and transparent. We believe this is satisfied by making the expression of concern public.

[35] On balance, we conclude that imposing a public expression of concern pursuant to section 102(a) of the *Act* adequately reflects the nature of the

misconduct as well as the mitigating circumstances raised on behalf of Justice Piccoli.

Dated this 25th day of June, 2024.

Original signed

The Honourable Chief Justice Michael J. Wood

Original signed

The Honourable Justice Catherine L. Dawson

Original signed

Ms. Parand Meysami