Annual Report

APRIL 1, 2013 TO MARCH 31, 2014

SCROLL DOWN

TABLE OF CONTENTS

01/

INTRODUCTION

"The ability of Canada's legal system to function effectively and to deliver the kind of justice that Canadians need and deserve depends in large part on the ethical standards of our judges".

The Right Honourable Beverley McLachlin
Ethical Principles for Judges
Canadian Judicial Council

Indeed, the public's respect for the rule of law depends largely on the confidence that they hold in their judges. Canadians expect that their judges will be competent, fair, courteous and efficient. Allegations of judicial misconduct must be addressed fairly and transparently. This is a key mandate of the Canadian Judicial Council.

02/

PUBLIC CONSULTATION ON JUDICIAL CONDUCT

Council takes the review of complaints about judicial conduct very seriously. In many ways, that work comprises a key aspect of our core mandate.

While Council's work in the area of judicial conduct is governed by well-defined Procedures and By-laws, Council came to the view that the time was right to update those documents. As the Council's Chairperson, the Right Honourable Beverley McLachlan noted in March "the Canadian Judicial Council plays a pivotal role in ensuring that judges maintain the highest standards of conduct, which is essential to maintaining the rule of law and public confidence in the administration of justice". In March, 2014 Council launched a public web-based consultation to seek the input of Canadians about the process of review of complaints against federally-appointed judges.

This review was undertaken to ensure that Council keeps pace with the public's evolving expectations of fairness, efficiency and transparency in the process. The consultation sought input on all aspects of the process, from the front-end screening through to the public inquiry stage. All interested individuals were encouraged to submit their views by using the consultation website. A detailed Background Paper was also made available on the Council's website and laid out the Constitutional and legal context for the process of

review of judicial conduct matters. Council plans on unveiling its revised procedures in the near future and we thank all participants for having time to contribute to this important initiative.

From March to July, nearly 200 individuals visited the judicial conduct review website to submit their views. These individuals represent varied backgrounds (e.g. retired lawyers, a librarian, academics, dissatisfied litigants, students) and most provided thoughtful submissions. These were considered as part of the redrafting process. Highlights of the input received include:

1. More transparency is needed (about process, nature and disposition of complaints)
2. Lay person participation is very important
3. Early screening process should be more efficient
4. Overall, there should be fewer steps in the process
5. Complainants should not have standing in the proceedings (except in very special circumstances before an Inquiry Committee)
6. A lawyer presenting the case to an inquiry committee should take an active role in trying to prove misconduct on the part of a judge
7. There should be an internal mechanism of review for certain steps

03/

CASELOAD SUMMARY

Number of complaints carried over from the previous fiscal year:

42

Number of complaints opened in the fiscal year:

159

Total complaints in 2013/2014:

201

Number of complaints closed during

fiscal year:

138

Total complaints remaining open at the end of the fiscal year:

63

Total correspondence received:

555

Number of “mandate letters” sent:

222

Number of complaints deemed

irrational:

19

Number of letters which did not require
a response:

108

04

SAMPLE OF COMPLAINTS RECEIVED AND CONSIDERED BY COUNCIL

Early in the 2013-14 fiscal year, Council received a complaint from an organization representing certain First Nations communities. Members of that organization informed us that they had been present during a potentially volatile court proceeding which was highly attended by several First Nations community members. Having attended as observers, the organization wrote to Council to complain that they thought the presiding Chief Justice "constantly interrupted" the defence lawyer's presentation and that when the gallery began to voice unease with these interruptions, that the presiding Chief Justice would have exclaimed "..if you are going to interrupt me, you will be out of this court so fast your heads will spin" and added "if you can't understand that, raise your hand and I will explain one more time". These comments were received particularly poorly by some Aboriginal audience members for whom those remarks reminded them of the intimidation and verbal abuse they sustained as children attending Residential Schools. The complainant alleged feeling threatened, belittled and uncomfortable given such a hostile environment and that the presiding Chief Justice's comments revealed a deep ignorance of the horrific legacy that many First Nations survivors of Residential Schools continue to live with everyday. In considering this complaint, the Vice-Chair of the Judicial Conduct Committee asked the judge to comment on the events. He

stated that his interactions with counsel were part of a robust and direct process of oral debate and exchange intended to gain a full appreciation of the arguments being put forward. However, he also acknowledged that during these exchanges with counsel, some members of the gallery began to exhibit some noticeable impatience and frustration which began to grow and manifest in disruptive reactions such as the shaking of heads, conversations between members, and the emittance of groans and gasps. Despite the Chief Justice's warnings at the outset of the proceeding that no interruption from the packed and visibly engaged gallery would be tolerated, he again felt the need given the growing unease, to intervene to reclaim control of his courtroom. He asserts that he would have given the same type of warning in any similar case where his court was being disrupted and where he was being prevented from gaining a full understanding of the issues being presented. He rejects that his comments may have been motivated by stereotyping and indicates a complete misinterpretation on the part of the complainant. However, the impugned Chief Justice also professes that in his 15 years on the Bench, he has always strived to honour, validate and be sensitive to the history, dignity and standing of First Nation citizens and that he never meant to convey, directly or indirectly, any insensitive comment and that he regrets that his comments made the complainant relive a painful experience.

With regard to the allegation that the judge continually interrupted the defence counsel thereby possibly appearing to suggest he was not receptive to the arguments being made, the Vice -Chair of the Judicial Conduct Committee reviewing the matter accepted the Chief Justice comments that this part of his work to understand the issues and indicated to the complainant that in any courtroom proceeding,

questioning of counsel does not necessarily occur on an equal basis and is dependent on the nature of the legal arguments being presented.

With regard to the words and tone used by the presiding judge to reclaim control, the Vice-Chair acknowledged that judges are to avoid comments, expressions, gestures or behaviour which may be interpreted as showing insensitivity or disrespect. However, he also accepts that a judge has a duty to maintain order and proper decorum in the courtroom. A delicate balance between both considerations must be maintained. In this case, the Vice Chair acknowledged that the judge's response to the outburst was too forceful and his tone exceeded what was necessary or desirable. This assessment was shared with the judge. Given the judge's full and complete consideration of the complaint, and given the judge's apology despite the fact the comments in question were not intended to be harmful, the Vice-Chair considered this an isolated incident and not of such a nature as to warrant further action by the Council. The complainant was informed of this decision and genuinely thanked for his earnest effort to sensitize judges to the impact that interventions may have on observers in the courtroom.

Council received a letter from an individual living with Asperger's syndrome who believed that his judge acted in a discriminatory manner towards him as a result of his disclosing his diagnosis in court. Specifically, the complainant suggests that when he referred to his opponent as "her" instead of by name, the judge responded in a

condescending tone of voice, insisting that the complainant address the respondent by her name in court. The complainant thought this to be unreasonable and indicates that he saw nothing offensive in using a personal pronoun instead of a person's name. This "arbitrary and unnecessary" decision was seen by the complainant as a manifestation of the judge's discrimination on the basis of his disability. The complainant also wrote to the Minister of Justice to urge that additional resources be devoted to delivering disability awareness training sessions for federally-appointed judges noting that many current judges have little awareness of mental disabilities and of how to deal with litigants who have differences arising from disability.

In considering this complaint, the Vice Chair of the Judicial Conduct Committee acknowledges that all judges have an obligation to maintain firm control over judicial proceedings and to ensure that all participants follow appropriate courtroom procedure and decorum. The Vice Chair concluded that requiring a person to address someone else in court by name could not be considered as discriminatory as alleged. He added that using appropriate methods of addressing parties plays an important role in ensuring that all parties are treated respectfully in court proceedings. Accordingly, the complaint was found to be without merit.

Council also replied to the complainant's letter to the Minister regarding his suggestion of increasing professional education for judges on disability issues. To this suggestion, Council responded that ongoing professional education for judges is an important aspect of maintaining high standards of competence in the judiciary and that Council's *Judicial Education Guidelines* encourages judges to participate in up to 10 days of educational programs per year (plus additional time for new judges). Some of the educational programs

followed by judges is provided by the National Judicial Institute who offers a variety of courses which aim to sensitize judges about the evolving social context faced by judges in the courtroom - including disability issues. Reference resources are available to judges to assist them in improving access to justice for persons with physical, mental and cognitive disabilities and all new judges are provided with disability awareness training delivered by subject matter experts. Council agrees that education programs help to ensure that judges have the knowledge and tools necessary to carry out their duties with appropriate consideration for all persons, including those living with disabilities.

Council considered a somewhat unusual complaint this year, involving a judge's signature having been evidently forged on an fake endorsement and the judge's launching of criminal charges as a result. Essentially, a real estate and a paralegal had commenced a civil litigation lawsuit against a number of parties following a failed real estate deal. They sought an *ex parte* motion from a judge. Soon after, the complainants indicate that the judge approved their motion and signed his judgement which included awarded them monetary damages. As the legal proceedings continued, the opposing lawyer came to the view that the judgement appeared to have been faked. Having been alerted, the judge adjourned the matter and provided all parties with the opportunity to rectify any procedural inconsistency. When the parties returned before the judge, concurred that his signature had indeed been falsified, citing that is was an attack on the

administration of justice, set aside his falsified previous judgement and granted costs to the defendants. The judge then filed a complaints with both the Law Society and the Real Estate Council. In an exchange with the Law Times, the judge discussed the seriousness of this event. It is the judge's reactions to his signature being forged which prompted the complainants to write to Council. Their complaint was that they believed it was the judge who initiated the call to the Law Times in an attempt to publicly shame, humiliate and embarrass them for having uttered forged documents. Further, they resented the judge for having lodged complaints about them with their respective professional disciplinary bodies.

While the complainants denied that they had forged the judge's signature, it was clear that the judge had made a thoughtful determination of facts on this point based on his careful assessment of the evidence. In reviewing the complaint, the Vice-Chairperson explained that it was not his role to review the judge's decision relating to the impugned forgery. The Vice-Chair however agreed that a finding of such serious action would warrant a forceful reaction from any judge and would further compel the judge to alert appropriate governing bodies. As such, the judge's referral of the matters to the Law Society and to the Real Estate Council was deemed to be both appropriate and necessary. With respect to the allegation that the judge attempted to publicly shame, humiliate and embarrass the complainants by communicating with the Law Times, the Vice-Chair determined that court decisions are public documents available for all to read and report on. The fact that judge's decision regarding the forgery was reported on, was not an issue of misconduct, regardless of how the media may been made aware of the decision.

A Regional Chief of an Ontario First Nations community complained to Council about remarks delivered by a judge (and reported in the media) which he deemed to be inappropriate, incendiary, unnecessary and provocative. The complainant alleged that the judge's comments contributed to the ongoing "degrading debate"surrounding Aboriginals in Canada.

By means of background, the judge named in this complaint was seized with a motion by a mining firm for an injunction to remove certain individuals (who were of Aboriginal descent) from a blockade which they had set up to protest the mine's operations. In considering the injunction, the judge noted that this was not an instance of a protest based on Aboriginal or Constitutional concerns, as he had confirmed with the local Chief and with AFN Counsel. Rather, it became evident that this was an unorganized action by a few individuals displeased with certain contractual aspects to which they had previously agreed. The judge heard from a number of parties on several different opportunities prior to agreeing to issue a injunction prohibiting the blockage. Several days after his order, the judge notes that he was pleased to hear that the parties had agreed to remove blockade without the need for any intervention by the Police or other potentially aggravating actions.

The media were reporting on the proceedings throughout and reprinted some of the judge's comments with regard to his findings that the blockade was not an organized protest sanctioned by the nearby First Nations community. His findings, corroborated with community leaders, led him to state that the protest was based on

“private financial interests”, that it was a instance of a few individuals “holding a large multinational corporation to ransom”, that it smelled of “coercion” and “extortion” and that he would take steps to ensure that the police would help enforce the injunction and would be encouraged to not fall prey to “Caledonia-style shyness”.

While the complainant was not present in the courtroom during the proceedings, he read media reports which prompted him to write to Council. In considering this complaint, the Chairperson of the Judicial Conduct Committee requested comments from the judge as well as the transcripts and audio recordings. In his comments, the judge objects strongly to the characterization of his comments regarding Aboriginals and suggests that they were unfair and unfounded. He asserts that by relying on hearsay and disjointed media reports, the complainant arrived at an unjustified conclusion. In delivering his comments, the judge wanted to convey that instigating blockades as a private resolution mechanism to a contract dispute between individuals is not an appropriate response and could, in fact, be detrimental to the peace and order enjoyed by communities. The judge added that the response to his comments from Aboriginal members who were in his courtroom was quite different with many expressing their gratitude for his interventions. The transcripts and the audio recordings similarly did not corroborate the complainants’ view. To the contrary, the judge was courteous, temperate, sensitive and respectful at all times. By extracting short comments without appropriate context, the media may have inflamed and issue which was otherwise benign.

The matter was closed.

Council received a number of complaints all relating to the same high profile matter.

The Royal Ontario Museum had organized a mock trial of David Suzuki's "carbon manifesto" as an "artistic exploration of the debate surrounding climate change". This mock trial was to be argued by lawyers, with expert witnesses providing testimony, and was to have a sitting judge preside. The event received significant attention, particularly after a known media personality publicly criticized the event as being a purely political one. It was put forward that the judge who was to preside was participating in a highly partisan activity - one which would give rise to a possible apprehension of future bias if she were ever to be called to decide any issue relating to climate change. Further, it was argued that the judge's husband was a leading environmental lawyer, which further put the judge's required neutrality in question. Faced with the media attention, the judge decided to withdraw her planned participation. However, a different judge agreed to take her place. The decision of this second judge also generated complaint letters for essentially the same reasons: that this mock trial was in reality a political platform for Dr Suzuki and other like-minded environmental activists.

In carefully considering this matter, the Chair of the Judicial Conduct Committee was mindful of the need for judges to exercise restraint and caution when agreeing to participate in activities designed to generate public debate. Council's *Ethical Principles for Judges* provides clear guidance to judges to avoid participating in outside activities that have the potential to become political, that may put in question

the judge's impartiality on an issue that could come before the court, or that could expose the judge to political attack.

However, the Chair of the Judicial Conduct Committee also accepted both judges' assertions that they genuinely believed that they were participating in a educational event and that their role was limited to that of instructing the mock jury as appropriate. Neither judge agreed that this was a politicized event and rejected entirely the premise that the event was political under the guise of education. In further commenting on the event, the judges' Chief Justice also pointed to the event's description by a sponsoring foundation as a public engagement project.

From their comments, it was clear that these judges genuinely believed that they were participating in a public education event and that their role as judge was to be minimal. The motivation for both judges' participation were proper and by participating, they believed that they were helping to foster fair and open debate. The participation of judges in mock trials is not prohibited. In fact, the role of judges in educating the public is encouraged and may well help to promote a better understanding of the justice system in Canada. In this instance, the judges had taken steps to reassure themselves that the event was to be an educational and balanced one. The judges' explanations were accepted and it was acknowledged that they had agreed to participate in good faith. While it was unfortunate that the event became politicized, due in part to the media attention attracted to it, it was agreed that taking into account all of the circumstances, the judges' involvement was not unreasonable.

05

MANDATE TYPE LETTERS

An important function of Council is to educate complainants about the scope of Council's authority to review concerns about their judges. While concerns about judicial conduct may fall within Council's mandate to review, complaints about a judge's legal or procedural decisions do not. Council receives numerous letters each year from individuals who disagree with their judge's interpretation of the facts, assessment of testimony, consideration of evidence. They may disagree with their judge's findings, various rulings or other procedural decisions such as the granting, or not, of a delay. They may write to Council seeking its intervention or assistance in securing a new or different judge to hear their matter or may seek Council's help in forwarding certain information directly to a judge on their behalf. In all these instances, Council office staff takes some time to explain that it is not Council's role to comment on whether or not a judges' decisions are correct. When someone believes that their judge may have erred in their decisions, the proper recourse is to raise those concerns in court, usually by means of appeal. The section below presents an illustration of this type of Council correspondence.

In an ongoing family court matters involving the care and access to children, a gentleman wrote to Council to complaint that the judge appeared to favour his former wife's testimony, suggesting that the judge was "manipulated" and fooled by his opponents' ability to "prey on the judge's emotions". In responding to those concerns, Council office staff explained that a key function of a judge is to consider the evidence and testimony put forward by parties and witnesses and to made decisions about the credibility of that evidence. This is at the core of judicial decision-making. If someone believes that a judge has misinterpreted testimony, they may raised those concerns in court. This is outside of Council's authority to comment upon.

Council is also of the view that it is up to the complainant to submit credible and tangible information about their concerns and that vague allegations, without more substance, may not be sufficient from which the launch the review process. For instance, one writer wrote to Council to complain the in his child custody matter "the custody assessor, the lawyer and the judge were of the same nationality as the plaintiff" which led him to level an allegation of generalized "collusion". In responding to this concern, Council office staff indicated that the complainant would have to submit more specific information to support such a grave allegation and that simply saying it was not sufficient. Other complainants write to Council simply to indicate that they say they thought their judge was "rude" or "arrogant" but without specifying what they may have done or said to give such an impression. Again in these cases, Council office staff will

provide the complainant with the opportunity to provide supplementary information.

-4-

On occasion, Council office receives letters from individuals who are expressing their general concerns with Canada's justice and court systems. They are not so much specific concerns about a particular judge, rather act as a platform for an expression of general grievances. Council usually responds to such letter by thanking the writing for sharing their views.

-5-

Some individuals use their letters to raise with Council their concerns about officials and organizations within the justice system, often including police, lawyers, court-appointed family psychologists or other family-related agencies. As Council authority extends to federally appointed judges only, we inform them that we are unable pursue investigations relating to those other organizations, but may direct them to the appropriate resource if possible.

06/

COMPLAINTS WHICH ARE CLEARLY IRRATIONAL OR AN ABUSE OF THE COMPLAINTS PROCESS

Occasionally, certain complainants have difficulty accepting Council's determination of their concerns.

They may seek a reconsideration of their initial complaint. If they submit new or additional information, there may well be some scope for another review by the Vice-Chair of the Judicial Conduct Committee who originally reviewed the matter. While not frequent, some persons who continue to write to Council appear to do so with the intent of continuing to engage in a debate. Under section 2.2 of the Council's Complaints Procedures, the Executive Director has the duty to not open a file for complaints which, although naming one of more federally appointed judge, are clearly irrational or an abuse of the complaints process.

07

FINANCIAL STATEMENT

FISCAL YEAR 2013-2014

$1,111,007

Salaries and Benefits

$109,000

Transportation and Communications

$23,500

Information

$251,894

Professional and Special Services

$10,000

Rentals

$12,300

Purchased Repair and Upkeep

$30,200

Utilities, Materials and Supplies

$45,000

Construction, Acquisition of Machinery and Equipment

TOTAL

$1,592,901

Thank you