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'Sweeping' secrecy surrounding complaints against judges challenged by Star

The Star is asking the Ontario Judicial Council to lift a "general order" sealing the vast majority of complaints against provincial judges, and to make public all records relating to complaints against a Toronto judge.



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Reporter Rachel Mendleson explains why the Toronto Star is asking the Ontario Judicial Council to lift a "general order" sealing the vast majority of complaints against provincial judges.

By: Rachel Mendleson News reporter, Published on Fri Oct 10 2014

The Star is challenging a "sweeping confidentiality order" that shrouds in secrecy the vast majority of complaints against provincial court judges, arguing that it violates the Charter of Rights and Freedoms and "harms public confidence in the administration of justice."

The submissions filed with the Ontario Judicial Council on Thursday take aim at the "presumptive secrecy" of the council, which has refused to make public the details surrounding a complaint against a [repeatedly upbraided Toronto judge](#).

According to the council, which probes complaints against Ontario's roughly 330 provincially appointed judges, it has imposed a "general order" sealing all complaints — except the rare few that result in a public hearing.

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The Star has previously revealed how Ontario court Judge John Ritchie, left, has been chastised by Superior Court judges for recycling “boilerplate” decisions, for legal errors and for the appearance of bias, but was spared a formal disciplinary hearing. Ritchie said, on the advice of the Ontario Judicial Council, he took a refresher course on how to write better judgments.

The Star argues in its submissions that this kind of “blanket order” is not allowed under provincial law, is “inconsistent” with the constitutional right to freedom of expression, and “must be rescinded.”

“The presumptive secrecy imposed by the (council) ... represents a severe restriction on the public’s right to know and harms public confidence in the administration of justice,” the submissions state.

The Star is also asking that the council make public all records and information related to the complaint against the Toronto judge, “without restriction.”

“The conduct and competence of judges is of enormous public interest,” Star lawyer Paul Schabas said. “The public has a right to know how the judicial council deals with complaints, especially when the complaint results in remedial action. The process must be transparent if the public is to have confidence in our judges, and in the judicial council.”

The Star’s battle to lift the veil began this summer, when a reporter received a manila envelope from an unknown source. The documents inside revealed how a Toronto judge, who had been previously chastised by Superior Court judges for recycling “boilerplate” decisions, for legal errors and for the appearance of bias, was spared a formal disciplinary hearing.

In an interview in July, Judge John Ritchie confirmed that he had been the subject of a complaint by the Criminal Lawyers’ Association about two years earlier. On the recommendation of the council, Ritchie said he took a refresher course on how to write better judgments.

Ritchie, who declined to comment for this story, told the Star in July that he is “a good judge,” and said the council did not question the substance of his rulings. He continues to hear cases at Old City Hall.

Judicial Council registrar Marilyn King previously said she could not comment on the existence of complaints that don’t result in a public hearing, and pointed to a confidentiality provision in the legislation.

Although the legislation states that the council “may order” that documents and information related to disciplinary proceedings be kept secret, King said the council had imposed a “general order” sealing all proceedings. She said this order was not specific to any one case, and reflects the “legislative provisions and framework that governs the council.”

“The provisions of the [Courts of Justice Act](#) recognize the need to balance constitutionally protected judicial independence with judicial accountability for conduct,” she said at the time.

The Star rejects this interpretation. A decision to keep disciplinary proceedings secret must be made “on a case-by-case basis,” and only after the media has had an opportunity to weigh in, the submissions argue.

“There is nothing in this provision that gives the council authority to make a sweeping confidentiality order ... in all cases, and which ignores the facts, evidence and argument in a particular case,” the submissions state. “This is a clear contravention of due process and natural justice.”

According to Iris Fischer, another Star lawyer, “The council’s order turns the presumption of openness on its head.”

“How can we hold our judges to account, or scrutinize the complaints process itself, without any information?” Fischer said.

Anthony Moustacalis, president of the Criminal Lawyers’ Association, declined to comment on the specific case. However, he said, “Life appointment of judges protects judicial independence very robustly.”

“There is no need to protect judges from the publication of complaints, and the results of them, including internal discipline,” he said.

The council determined how it would handle the Star’s application for disclosure at a closed-door meeting in September, according to correspondence from King. The council will now share the Star’s submissions with the judge named in the complaint, who will have 30 days to provide his own submissions. The Star will then have 15 days to respond.

Once all the material has been received, the council will consider the application at its next meeting, and “shall render its decision in writing” to the Star and the judge, King wrote in the September letter.

Some of the city’s top criminal defence lawyers have taken the unusual step of going public with their concerns about Ritchie.

In an interview on Thursday, Toronto lawyer Reid Rusonik, who first spoke out about the issue in July, said, “The problem with Justice Ritchie is, by all accounts, he can’t bring himself to apply the fundamental criminal law protection against wrongful conviction of proof beyond a reasonable doubt.”

In August, [Toronto lawyer James Lockyer](#), founding director of the Association in Defence of the Wrongly Convicted, said the judiciary must do more to address the “legitimate concern” that Ritchie is convicting innocent people.

For his part, Ritchie told the Star in July that he convicts only “when the Crown proves the case beyond a reasonable doubt.”

Neither the judicial council nor the Ministry of the Attorney General keeps statistics on the conviction rates for provincially appointed judges. The spokeswoman for Ontario court Chief Justice Annemarie Bonkalo previously told the Star that the court “does not release data about individual judges’ decisions.”

The judicial council, which follows standards developed by the chief justice of the court of Ontario, receives an average of 40 new complaints each year. It has concluded only six public hearings in the past decade.

Complaints that don’t result in a public hearing are summarized in a report to the attorney general each year, but neither the judges nor the complainants are identified.

Following the Star’s story in July, [critics at Queen’s Park](#) called on the province to end the secrecy surrounding these investigations.