

ONTARIO JUDICIAL COUNCIL

CITATION: *Re RSJ Currie*, 2025 OJC 1
DATE: 20250317

IN THE MATTER OF A HEARING UNDER SECTION 51.6 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C. 43, as amended

Concerning a Complaint about the Conduct of Regional Senior Justice Paul Currie

Before:

Justice Paul Rouleau, Chair
Court of Appeal for Ontario

Justice Christine Pirraglia,
Ontario Court of Justice

Ena Chadha,
Lawyer Member

Jovica Palashevski,
Community Member

Hearing Panel of the Ontario Judicial Council

INTERIM RULINGS

Counsel:

Gerald Chan and Alexandra Heine, Presenting Counsel

Brennan Smart and Hal Mattson, Counsel for Regional Senior Justice Paul Currie

Daniel Goldbloom and Alexa Klein, Counsel for the Primary Witness

Justin Manoryk, Counsel for Toronto Star Newspapers Limited (having filed written materials but no one appearing)

Emma Romano, Counsel for CTV, a division of Bell Media Inc., the Canadian Broadcasting Corporation, and The Globe and Mail Inc. (collectively the “media coalition”)

Heard: February 24, 2025

I. OVERVIEW

[1] A review panel of the Ontario Judicial Council (“OJC” or “Council”) directed that a hearing be held under s. 51.6 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (“CJA”), regarding a complaint about the conduct of Regional Senior Justice Paul Currie of the Central West Region of the Ontario Court of Justice. A hearing panel of the Council convened on February 24, 2025 to consider preliminary motions filed by the parties and to set dates for the hearing.

[2] This decision deals with the following preliminary matters:

- The request of the primary witness in this hearing to impose a publication ban on information that might identify the primary witness, pursuant to s. 51.6(9) of the *CJA*.
- RSJ Currie’s motion for an order that the particulars of the allegations against him, which are set out in Appendix “A” to the Notice of Hearing, “be excluded or excised from the public filing”.
- RSJ Currie’s motion for a stay of the Ontario Judicial Council proceedings until the final resolution of proceedings he commenced in the Superior Court of Justice; or, in the alternative, an order that certain paragraphs from Appendix “A” to the Notice of Hearing be excised.
- Presenting counsel’s motion for directions regarding the proper procedure for pre-screening any evidence of other sexual activity or private records that counsel for RSJ Currie may wish to lead on behalf of his client.

[3] At this appearance, and in accordance with r. 4.5 of the Ontario Judicial Council’s Procedures Document (“OJC Procedures”), presenting counsel filed the

complaint letter and the enclosures to the complaint letter. Presenting counsel also filed the Notice of Hearing and Appendix “A” to the Notice of Hearing. Appendix “A” describes the particulars of the allegations about RSJ Currie’s conduct, which a review panel ordered be considered by the hearing panel.

[4] For identification purposes on the preliminary motions, we directed that the Notice of Hearing be marked as Exhibit A, that Appendix “A” to the Notice of Hearing be marked as Exhibit B, and that the complaint letter and enclosures to the complaint letter be marked as Exhibit C.

[5] In addition, we ordered that Exhibits B and C be sealed pending our decision on the motions.

[6] Finally, we address in this ruling the matter of fixing dates for the hearing.

II. BACKGROUND

[7] On April 12, 2023, former Chief Justice Lise Maisonneuve of the Ontario Court of Justice sent a letter to the OJC Registrar advising that RSJ Paul Currie had been arrested on April 11, 2023 for assault causing bodily harm, contrary to s. 267(b) of the *Criminal Code*, and for simple assault, contrary to s. 266 of the *Code*. The complaint letter (Exhibit C) states: “I am bringing it to the attention of the Council as I am required by s. 51.3 of the *Courts of Justice Act*”. The existing court documents pertaining to the charges were enclosed with the complaint letter.

[8] Following the filing of the complaint, RSJ Currie was suspended from judicial duties with pay pending the final disposition of this complaint pursuant to s. 51.4(8) of the *CJA*.

[9] On June 20, 2023, an out-of-province Crown withdrew the criminal charges against RSJ Currie on the basis that, having met with the complainant, there was no reasonable prospect of conviction.

[10] After the prosecutor withdrew the criminal charges, a complaint subcommittee of the OJC – composed of a judge and a community member of the Council – investigated the complaint. The complaint subcommittee retained investigation counsel to assist in their investigation. A review panel of the Council – composed of two judges, a lawyer member, and a community member of the Council – considered the results of this investigation and ultimately determined that a hearing should be held under s. 51.6 of the *CJA*. RSJ Currie was informed of the review panel's decision by letter dated September 18, 2024.

[11] In accordance with r. 15.1 of the OJC Procedures, the Council retained independent presenting counsel to conduct the hearing. Presenting counsel drafted the Notice of Hearing, which was approved by the review panel in accordance with r. 17.1 of the OJC Procedures. Appendix "A" to the Notice of Hearing includes the particulars of the allegations against RSJ Currie that the review panel ordered to a hearing.

[12] On October 28, 2024, presenting counsel served the Notice of Hearing together with Appendix “A” on RSJ Currie, pursuant to rr. 17.3-17.4 of the OJC Procedures.

[13] On October 31, 2024, RSJ Currie filed a notice of motion seeking an order that Appendix “A” remain confidential and subject to a publication ban pursuant to rr. 18.5 and 21.8 of the OJC Procedures.

[14] On December 6, 2024, RSJ Currie filed a second notice of motion seeking an order to stay the OJC proceeding until the resolution of a Superior Court of Justice proceeding that he commenced by application filed on September 17, 2024.

[15] On December 9, 2024, counsel for the primary witness filed a notice confirming a request for a publication ban pursuant to s. 51.6(9) of the CJA.

[16] On February 10, 2025, presenting counsel filed a motion for directions to determine the proper procedure for pre-screening any evidence of other sexual activity or private records of the primary witness that RSJ Currie may wish to lead.

III. REQUEST OF PRIMARY WITNESS FOR A PUBLICATION BAN

[17] The particulars of the allegations in Appendix “A” to the Notice of Hearing include an allegation that RSJ Currie sexually and physically assaulted the primary witness in this hearing, causing the primary witness injury. The alleged injury

arising from this incident formed the basis for the assault *simpliciter* charge that was withdrawn by the Crown.¹

[18] Section 51.6(9) of the *CJA* states:

51.6 (9) If the complaint involves allegations of sexual misconduct or sexual harassment, the Judicial Council shall, at the request of a complainant or of another witness who testifies to having been the victim of similar conduct by the judge, prohibit the publication of information that might identify the complainant or witness, as the case may be.

[19] Presenting counsel and counsel for the primary witness took the position that, because the allegations against RSJ Currie include an allegation of sexual misconduct on the part of the judge, a publication ban under s. 51.6(9) is mandatory upon the primary witness's request.

[20] The primary witness requested being referred to in the public version of Appendix "A" to the Notice of Hearing by initials that do not correspond to the primary witness's name. The primary witness further requested that the publication ban apply to information that might identify the witness. In this regard, the primary witness requested that certain information in paragraph 1 of Appendix "A" that might identify the primary witness be redacted. The primary witness did not otherwise seek a publication ban in relation to the contents of Appendix "A".

¹ Although the date range identified in the criminal information for the assault *simpliciter* charge is different than the date of the alleged sexual assault referred to in Appendix "A" to the Notice of Hearing, counsel for RSJ Currie acknowledged that the sexual assault allegation in Appendix "A" is contemporaneous to the date range identified in the criminal information.

[21] In addressing the requested publication ban, the panel noted that s. 51.6(9) of the *CJA* does not directly apply to the circumstances of this case, since the complainant did not allege that the judge had engaged in sexual misconduct or sexual harassment. Presenting counsel's response to this observation was that, even if s. 51.6(9) does not technically apply, all of the animating considerations and policy rationales for imposing a publication ban to protect the identity of an individual who is alleged to have been sexually assaulted by a judge apply equally in this case. In these circumstances, presenting counsel and counsel for the primary witness urged the panel to exercise its discretion and afford the primary witness the same protection as would have been available under s. 51.6(9).

[22] Subject to the relief being sought in his two motions, RSJ Currie did not oppose the publication ban proposed by presenting counsel.

[23] The media coalition argued that, if we are to find that s. 51.6(9) does not apply in the circumstances of this case and that the publication ban is discretionary, the panel must apply the framework for assessing discretionary limits on the open courts principle. This framework is found in the Supreme Court of Canada's decision in *Sherman Estate v. Donovan*, 2021 SCC 25, [2021] 2 S.C.R. 75, at para. 38:

... In order to succeed, the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:

- (1) court openness poses a serious risk to an important public interest;
- (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
- (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.

Only where all three of these prerequisites have been met can a discretionary limit on openness — for example, a sealing order, a publication ban, an order excluding the public from a hearing, or a redaction order — properly be ordered. This test applies to all discretionary limits on court openness, subject only to valid legislative enactments (*Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41, [2005] 2 S.C.R. 188, at paras. 7 and 22).

[24] The media coalition submitted that the open courts principle applies to the hearing, and that there are no “exceptional circumstances” present in this case that warrant restricting the open courts principle. The media coalition acknowledged that, in cases involving allegations of sexual assault, there are valid public policy reasons to protect the identity of complainants.

[25] According to the media coalition, in this case, the concerns about the need to protect a complainant’s identity are mitigated by the fact of the earlier criminal charges and related court documents, as well as news articles that mentioned the primary witness, albeit without naming the primary witness. Although the criminal charges did not include an allegation of sexual assault on the part of the judge, the media coalition submitted that it would be easy for anyone inquiring into the matter to discover the primary witness’s identity. As a result, the media coalition argued

that the benefit of the proposed publication ban would be limited and would not outweigh the negative effects of an order prohibiting the publication of the primary witness's identity.

[26] We accept that OJC hearings are presumptively subject to the open courts principle. Section 49(11) of the *CJA* provides that Council hearings are to be open to the public, unless s. 51.6(7) applies. Section 51.6(7) allows the Council to hold all or part of a hearing in private in exceptional circumstances. No request was made to hold all or part of the present hearing in private.

[27] As the Ontario Judicial Council's decision *In the Matter of Application Brought by the Toronto Star and the Criminal Lawyers' Association*, (October 14, 2015), explains, at para. 129, when a hearing into the conduct of a judge takes place under s. 51.6 of the *CJA*, "there is a presumption of an open hearing". In that decision, the Council noted having "acknowledged and incorporated the open courts principle" in its Protocol Regarding the Use of Electronic Communication Devices in OJC Hearing Proceedings. This Protocol states, in part:

This Protocol is founded on the "open courts" principle, which requires transparency and accountability in the judicial system to foster public confidence in the administration of justice.

(1) Application

This Protocol applies to all persons attending or participating in a location where public proceedings are being held before a Hearing Panel of the Ontario Judicial Council (OJC) regarding the conduct of a judge of the Ontario Court of Justice.

[28] Furthermore, r. 6.1 of the OJC Procedures Document states:

If a review panel has ordered a hearing, after the Notice of Hearing is served on the judge, the hearing becomes public, unless there are exceptional circumstances and a Hearing Panel orders otherwise.

[29] Section 51.6(9) of the *CJA* creates a statutory exception to the open courts principle that otherwise applies to OJC hearings. This exception is engaged where a complainant makes allegations of sexual misconduct or sexual harassment against a judge and the complainant requests a publication ban, as well as where a witness “testifies to having been the victim of similar conduct by the judge” and the witness requests a publication ban.

[30] As noted, the complainant in this case is the former Chief Justice of the Ontario Court of Justice. The former Chief Justice did not allege that the judge had engaged in sexual misconduct or sexual harassment. It would therefore not be strictly accurate to say that the primary witness is expected to testify “to having been the victim of similar conduct by the judge”.

[31] Although not specified in former Chief Justice Maisonneuve’s complaint letter, the allegations ordered to a hearing include an allegation of sexual misconduct on the part of a judge. As discussed further in the next section of these reasons, the sexual misconduct allegation came about as a result of the complaint subcommittee’s investigation into the complaint letter received from former Chief Justice Maisonneuve. We consider that the rationale underlying s. 51.6(9) of the *CJA* for imposing a mandatory publication ban of the nature requested by the

primary witness is squarely engaged in the present case given that the witness is alleging sexual assault by the judge.

[32] Even if we were to accept the point made by the media coalition that the primary witness's identity may be inferred based on earlier media reports and publicly accessible court records, imposing a publication ban of the nature requested will prevent broad dissemination of the primary witness's identity. At the same time, the media's ability to report on these proceedings will be minimally affected by the ban.

[33] The panel therefore exercises its direction to grant a publication ban over the primary witness's name, as well as information that would identify the primary witness. The panel directs that, in the public version of the record of proceedings in this matter, the primary witness should be referred to as "A.A.". In addition, the panel directs that the two words in paragraph 1 of Appendix "A" that tend to disclose the primary witness's identity should be redacted from the public record.

[34] The panel directs presenting counsel to prepare a public version of Appendix "A" to the Notice of Hearing (Exhibit B) and a public version of the complaint letter and enclosures (Exhibit C) that accord with the terms of this publication ban. The redacted versions should be submitted to the Registrar so that the hearing panel may confirm that the redactions comply with the terms of this publication ban, prior to making these exhibits publicly available.

IV. RSJ CURRIE'S MOTION TO EXCISE APPENDIX "A" OF THE NOTICE OF HEARING

[35] On October 31, 2024, RSJ Currie filed a notice of motion seeking an order that Appendix "A" to the Notice of Hearing remain confidential and be subject to a publication ban pursuant to rr. 18.5 and 21.8 of the OJC Procedures.

[36] In the moving party factum, RSJ Currie requested the following relief:

- i. That there is no jurisdiction to include in the Notice of Hearing a document in the form and content of Appendix "A" as is presently filed with the Ontario Judicial Council ("OJC") ("the existing Appendix 'A'"); therefore, the existing Appendix "A" should be excluded or excised from the public filing; and
- ii. In the alternative, should the OJC disagree with the exclusion of the existing Appendix "A", that portions of same should be subject to a publication ban or otherwise not be disclosed to the public by way of redaction due to exceptional circumstances.

[37] A hearing panel's authority to impose a publication ban on a motion by a party is recognized in r. 18.5 of the OJC Procedures, which states:

18.5 The Hearing Panel may, on motion by any party and at any time during the hearing, order that certain information or documents remain confidential or be subject to a publication ban, including information contained in the allegations in the Notice of Hearing.

[38] In light of the request for non-disclosure of information in Appendix "A" to the Notice of Hearing, the panel directed counsel for RSJ Currie to provide the media with notice of the motion, in recognition of r. 21.8 of the OJC Procedures

and the open courts principle that applies to Council proceedings. Rule 21.8 provides:

21.8 Any party to the hearing may, by motion not later than 10 days before a set-date, bring any procedural or other matters to the Hearing Panel as are required to be determined prior to the hearing of the complaint, including, without limiting the generality of the foregoing, a motion for the purposes of,

...

g) seeking a publication ban or an order that the hearing or part thereof be in the absence of the public, in which case the Judicial Council shall provide public notice of any motion for a publication ban on its website; ...

[39] Counsel for Toronto Star Newspapers Limited and counsel for the Media Coalition responded to this notice and submitted written submissions opposing RSJ Currie's motion.

[40] On December 5, 2024, counsel for RSJ Currie advised presenting counsel and counsel for the media that he was no longer seeking a publication ban or confidentiality order over Appendix "A" to the Notice of Hearing. Instead, in written submissions, he took the position that the only document that should be appended to the Notice of Hearing is the letter of complaint. He submitted that, because the allegations in the existing Appendix "A" include allegations that are not in the letter of complaint, the existing Appendix "A" is improper and cannot be included as part of the Notice of Hearing.

[41] At the hearing, RSJ Currie expanded this point and further argued that the hearing panel only has jurisdiction to consider the allegations in the letter of

complaint, which refer to the criminal charges of assault and assault causing bodily harm. According to RSJ Currie, the hearing panel has no jurisdiction to consider the sexual assault allegation found in Appendix “A” of the Notice of Hearing because this allegation is not referred to in the letter of complaint.

[42] RSJ Currie submitted that this approach flows from a proper interpretation of the various provisions of the *CJA* and the OJC Procedures Document. In his submission, ss. 51.3 to 51.6 of the *CJA* set out the procedure to be followed after the OJC receives a letter of complaint. Because these provisions refer throughout to “a complaint” or “the complaint”, any reference to “complaint” is a reference to the original letter of complaint. RSJ Currie argues that nothing in the *CJA* or in the OJC Procedures Document allows a complaint subcommittee or review panel to expand the allegations to be considered at a hearing beyond the allegations in the original letter of complaint.

[43] RSJ Currie further submitted that r. 17.2 of the OJC Procedures Document, which describes the content of the Notice of Hearing, is consistent with his argument. This provision states that “the particulars of the allegations against the judge” are to be set out in the Notice of Hearing:

17.2 The Notice of Hearing shall contain,

- a) the particulars of the allegations against the judge;
- b) a reference to the statutory authority under which the hearing will be held;

- c) the time and place of the commencement of the hearing;
- d) a statement of the purpose of the hearing;
- e) a statement that if the judge does not attend at the hearing, the Hearing Panel may proceed in the judge's absence and the judge will not be entitled to any further notice of the proceeding.

RSJ Currie argued that the phrase "particulars of the allegations" in r. 17.2(a) refers only to the allegations found in the complaint letter.

[44] According to RSJ Currie, r. 4.5(a) provides further support for the interpretation being advanced. Rule 4.5(a) reads as follows:

4.5 If a public hearing into a complaint is ordered by a review panel, the letter of complaint shall be filed by Presenting Counsel as an appendix to the Notice of Hearing at the initial set-date appearance, subject to any order of the hearing panel, and subject to the following:

- a) If there are allegations in the letter of complaint that are not part of the alleged conduct ordered by a review panel to a hearing, such allegations shall be redacted in the copy of the letter filed as an appendix to the Notice of Hearing.

[45] This section provides for the redaction of some of the allegations contained in the letter of complaint if the review panel, after investigation, finds no support for those allegations. However, there is no equivalent provision in the OJC Procedures Document that would allow for the addition of allegations beyond those in the original letter of complaint. Having regard to these provisions, RSJ Currie requested the panel to strike Appendix "A" from the Notice of Hearing and replace

it with the letter of complaint, which sets out the only allegations that may be considered by the hearing panel.

[46] We do not accept RSJ Currie's proposed interpretation of the applicable legislative and procedural provisions. On his proposed interpretation, allegations of serious misconduct, which arise during the course of the OJC's investigation, and which directly relate to the allegations in the letter of complaint, could not be considered by a hearing panel. In our view, such a restrictive interpretation would be contrary to the spirit and intent of the CJA and the OJC Procedures Document, as it would tend to weaken public confidence in the judge and in the administration of justice.

[47] As explained by the Court of Appeal in *Sazant v. College of Physicians and Surgeons of Ontario*, 2012 ONCA 727, 113 O.R. (3d) 420, at para. 101, professional discipline statutes should be interpreted "with a view to ensuring that such statutes protect the public interest in a proper regulation of the professions".

[48] It would be contrary to the broad wording of s. 51.4(4) of the CJA and the intention of the legislature to limit a complaint subcommittee of the OJC to the allegations set out in a complaint letter. Section 51.4(4) reads as follows:

51.4(4) If the complaint is not dismissed under subsection (3), the subcommittee shall conduct such investigation as it considers appropriate.

[49] A complaint subcommittee of the OJC has broad discretion to investigate a complaint "as it considers appropriate". Information gathered at the investigation

stage may reveal that some of the allegations in a letter of complaint are inaccurate or unsubstantiated. On the other hand, an investigation may reveal additional areas of concern that are not specifically set out in the complaint letter, but that are similar or related to the allegations in the complaint letter.

[50] We also note that r. 17.2(a) provides that the Notice of Hearing must contain “the particulars of the allegations against the judge”. In other words, the Notice of Hearing must give the judge fair notice of the allegations that the judge will be called upon to address at the hearing. This requirement is consistent with the rules of natural justice that apply at a hearing of this nature.

[51] It would make no sense for r. 17.2(a) of the OJC Procedures Document to be read as providing that the complaint letter constitutes the “particulars of the allegations against the judge”, having regard to the interplay between that provision and r. 4.5. Rule 4.5 requires presenting counsel to file the letter of complaint as a separate appendix to the Notice of Hearing at the initial set-date appearance. There would be no need to append the letter of complaint to a Notice of Hearing if the particulars of the allegations were, as suggested by RSJ Currie, that same letter of complaint.

[52] For these reasons, we do not accept RSJ Currie’s position that the existing Appendix “A” should be excised from the Notice of Hearing. Nor do we accept RSJ Currie’s position advanced during oral submissions that the hearing panel lacks jurisdiction to consider allegations arising from the complaint subcommittee’s

investigation that were not referred to in the letter of complaint. We therefore dismiss the motion to remove Appendix “A” from the Notice of Hearing.

V. THE RULE 4.7 MOTION

[53] We turn now to RSJ Currie’s motion to stay this proceeding until the conclusion of a civil proceeding he commenced in the Superior Court of Justice. In the alternative, RSJ Currie asked the panel to excise the allegations at paragraphs 1-5 from Appendix “A” of the Notice of Hearing, which he submitted are being litigated in the Superior Court proceeding.

[54] In asking the hearing panel to stay the Council hearing until his Superior Court proceeding is finally determined, RSJ Currie relied on r. 4.7 of the OJC’s Procedures Document. This rule states:

4.7 Where any allegations in a complaint to the Judicial Council relate to an ongoing court, tribunal or other legal proceeding, the Registrar shall advise the complainant that the Judicial Council does not generally consider such complaints until the proceedings, and any appeal or judicial review thereof, have been completed. This approach prevents the Judicial Council’s consideration of a complaint from interfering with, or from being perceived as interfering with, any ongoing legal proceedings.

[55] RSJ Currie submitted that the response to the claim that RSJ Currie filed in the Superior Court proceeding raises issues that are inextricably linked to the matters before the hearing panel. According to RSJ Currie, any adverse finding by the OJC on these overlapping issues would be unfair to him in the Superior Court proceeding, because findings by the OJC hearing panel would interfere with, or be

perceived as interfering with, the Superior Court's decision on the related issues. According to RSJ Currie, r. 4.7 is intended to address the potential unfairness of OJC proceedings having an impact on other court proceedings.

[56] In his factum filed on the motion, RSJ Currie also relied on s. 107(1) of the *CJA* and s. 9.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 ("*SPPA*") in support of the argument that the OJC hearing cannot be conducted simultaneously with the Superior Court proceeding. Based on these provisions, RSJ Currie submitted that the law is clear that where simultaneous proceedings are based on the same or similar questions of fact, the proceedings should either be consolidated or heard at separate times.

[57] Finally, RSJ Currie submitted that while there is a public interest in having an expeditious hearing, there is a greater public interest in having a fair hearing, which requires that the Superior Court proceeding be completed prior to the OJC proceeding. RSJ Currie argued that any finding made by this hearing panel would be relied on in the Superior Court proceeding and would therefore affect those proceedings. RSJ Currie also pointed to differences in the rules of evidence between the Superior Court and an administrative tribunal operating under the *SPPA*, in support of his position that proceeding with this hearing would be unfair.

[58] In response, presenting counsel argued that neither r. 4.7 of the OJC Procedures Document, nor s. 107(1) of the *CJA* or s. 9.1 of the *SPPA*, applies to this matter. Presenting counsel further argued that exceptional circumstances

would be required to justify a stay of the OJC hearing, such as specific prejudice to fair trial rights, and that no such circumstances exist here.

[59] We do not accept RSJ Currie's position with respect to the applicability of r. 4.7. We conclude that r. 4.7 does not apply once an OJC proceeding has moved past the investigation stage and into the hearing stage. This is clear from the wording of the provision, which requires the Registrar to notify a complainant of the Council's policy that complaints are not generally considered until the ongoing proceedings, and any appeal or judicial review thereof, have been completed. Once a review panel has ordered a complaint to a hearing, the Registrar does not have authority to advise the complainant that the hearing will not proceed. Once a hearing is ordered, the hearing panel is seized with the complaint and determines the progress of the hearing.

[60] Furthermore, the rationale behind r. 4.7 is not engaged in this case, where the related court proceeding was not ongoing at the time the OJC complaints process began, and where the judge commenced the related proceeding knowing he was under investigation by the Council.

[61] Turning next to RSJ Currie's reliance on s. 107(1) of the *CJA* and s. 9.1 of *SPPA*, we agree with presenting counsel that neither of these provisions apply in this case. Section 107(1) of the *CJA* deals with proceedings pending "in two or more different courts", and the ability to seek consolidation or a stay of one proceeding until the other is heard. A motion for a stay of any proceeding must be

made to a judge of the Superior Court of Justice: s. 107(4). This provision only applies when there are two court proceedings, which is not the situation here.

[62] Section 9.1 of the *SPPA* refers to parallel tribunal proceedings involving similar questions. The provision allows a tribunal to combine or hear together multiple proceedings involving similar questions of law or fact. Again, this provision does not apply to a case such as this, where there is a parallel Superior Court proceeding and an administrative law proceeding.

[63] Finally, there is no basis at common law for justifying a stay of this proceeding. Even when there are parallel criminal and civil proceedings, there is a high threshold for justifying a stay of a civil proceeding pending the outcome of a related criminal prosecution. The accused must show specific prejudice to their fair trial rights in the criminal proceeding that cannot be adequately addressed by the rules governing the civil proceeding or by a remedy available to the accused in the criminal process: see *Nash v. Ontario* (1995), 27 O.R. (3d) 1 (C.A.), at p. 7; *Schreiber v. Federal Republic of Germany*, 2001 CanLII 20859 (Ont. C.A.), at para. 4. As explained in *Schreiber*, extraordinary or exceptional circumstances must be shown to justify a stay and the mere fact that there may be inconsistent findings is not sufficient:

[T]he case authorities are clear that the threshold test for granting a stay is a high one, requiring the demonstration of extraordinary or exceptional circumstances. In *Nash v. Ontario* (1995), 27 O.R. (3d) 1, this court stated at p. 7:

...

The cases are clear that the threshold test to be met before a stay is granted is high. The mere fact that criminal proceedings are pending at the same time as civil proceedings is not sufficient ground for a stay of the latter: *Stickney v. Trusz, supra* [(1974), 3 O.R. (2d) 538 (Div. Ct.)]. Even the potential disclosure through the civil proceedings of the nature of the accused's defence or of self-incriminating evidence is not necessarily exceptional: see *Belanger v. Caughell, supra* [(1995), 22 O.R. (3d) 741 (Gen. Div.)]; *Stickney v. Trusz, supra*; *Seaway Trust Co. v. Kilderkin Investments Ltd., supra* [(1986), 55 O.R. (2d) 545 (H.C.J.)]. This high threshold test should not be relaxed merely because it is the Crown that requests the stay. An applicant, whether it is the Crown or the accused, must meet the same burden of proving extraordinary or exceptional circumstances.

[64] We find that RSJ Currie has not demonstrated extraordinary or exceptional circumstances that would warrant granting a stay of the OJC proceeding. He has not shown how he would be prejudiced in the Superior Court proceeding if the OJC hearing were to proceed while that proceeding is ongoing. The two proceedings are quite distinct. Before us the only issue is whether the judge engaged in judicial misconduct, and if so, what disposition should follow from this finding.

[65] The possibility that this hearing panel may make a factual finding that will also be in issue in the Superior Court proceeding is not sufficient to establish prejudice that justifies staying the OJC proceeding. Nor is the risk of inconsistent findings enough to warrant staying a proceeding. Similarly, the fact that different rules of evidence apply in Superior Court proceedings and administrative

proceedings governed by the *SPPA* would not amount to an exceptional or extraordinary circumstance warranting a stay.

[66] Meanwhile, there are strong considerations militating against imposing a stay. Staying the OJC hearing will likely result in many months or years of delay, given that the Superior Court proceeding is at a very early stage and there is no suggestion that it will be resolved in the near future. A lengthy delay in conducting this hearing would undermine the Council's mandate to protect public confidence in the judiciary. Also telling against a stay is the consideration that RSJ Currie has been suspended with pay from his judicial duties as the Regional Senior Judge of the Central West Region since the complaint was filed with the Council, and this suspension remains in effect until the complaint is disposed of by the hearing panel.

[67] In our view, it is in the public interest that this hearing be resolved in a timely manner. The hearing process should not be delayed because of a proceeding filed by RSJ Currie well over a year after the complaint against him was made to the Council.

[68] For these reasons, the motion to stay the OJC proceeding is dismissed. For the same reasons, we reject RSJ Currie's alternative argument that the panel should excise paragraphs 1-5 from Appendix "A" of the Notice of Hearing because the allegations in these paragraphs are being litigated in the Superior Court proceeding.

VI. PRESENTING COUNSEL'S MOTION FOR DIRECTIONS

[69] Presenting counsel filed a motion for directions requesting that the panel determine the proper procedure for pre-screening any evidence of other sexual activity or private records of the primary witness that counsel for RSJ Currie may wish to lead on behalf of his client.

[70] While noting that the *Criminal Code* regimes in ss. 276, 278.92, 278.93 and 278.94 for pre-trial screening of such evidence do not strictly apply to this proceeding, presenting counsel submitted these procedures should apply in substance, though not in exact form. Presenting counsel observed that the procedures that have been codified in the *Criminal Code* are in large part rooted in the common law, and that some form of pre-screening is consistent with the common law requirement of ensuring that evidence of "other sexual activity" does not engage the "twin myths", namely that: (i) a complainant is more likely to have consented to the sexual activity in question because the complainant had consented to other sexual activity and; (ii) is less worthy of belief because the complainant consented to other sexual activity (*R. v. Barton*, 2019 SCC 33, [2019] 2 S.C.R. 579, at para. 80; *R. v. J.J.*, 2022 SCC 28, at para. 74; *R. v. Seaboyer*, [1991] 2 S.C.R. 577.)

[71] Similarly, presenting counsel submitted that some pre-screening of private records over which the complainant has a reasonable expectation of privacy is necessary and to guard against other myths and stereotypes that have historically

prevented victims of sexual offences from coming forward: *R v. J.J.* Such concerns are also at play in the judicial disciplinary context.

[72] In proposing a process for determining the admissibility of other sexual activity evidence, presenting counsel suggested that RSJ Currie be required to bring a pre-hearing motion supported by an affidavit containing the particulars of any proposed cross-examination on prior sexual history. The matter would be heard *in camera* to determine admissibility and the primary witness would be entitled to appear and make submissions. The hearing panel would, in effect apply the provisions of s. 276 of the *Criminal Code* in determining admissibility.

[73] As for the admissibility of private records, presenting counsel proposed that RSJ Currie be required to bring a mid-hearing motion and provide particulars of the proposed evidence in an *in-camera* voir dire, with the primary witness being entitled to appear and make submissions. The hearing panel would apply the criteria set out in s. 278.92(2) and (3) of the *Criminal Code* in deciding the question of admissibility.

[74] RSJ Currie did not object to the procedures being proposed by presenting counsel, though he commented that adopting such procedures could prolong matters and that the issues could be dealt with under the common law regime.

[75] At this stage, we do not know if counsel for RSJ Currie is intending to cross-examine the primary witness on other sexual activity, nor do we know if counsel for RSJ Currie intends to lead private records of the primary witness.

[76] We agree that some vetting of any proposed cross-examination on prior sexual history would be appropriate having regard to the substantive purposes underlying the *Criminal Code* regime in s. 276. We also agree that issues of relevance and probative value may arise if counsel for RSJ Currie intends to introduce private records of the primary witness into evidence. However, in our view, any required vetting can be done in a somewhat less formalized manner than that proposed by presenting counsel.

[77] We direct that, to the extent that counsel for RSJ Currie proposes to cross-examine the primary witness on other sexual activity or proposes to introduce records in relation to which the primary witness has a reasonable expectation of privacy, counsel must give reasonable notice of the particulars of such proposed evidence in writing to presenting counsel and counsel for the primary witness. This notice is required so that any concerns about admissibility may be addressed by the panel in advance of such evidence being called or tendered at the hearing. Any ruling we make may be revisited if circumstances change in the course of the primary witness's testimony.

VII. SCHEDULING

[78] Based on the mutual availability of the parties, and subject to any further order of the panel, the hearing on the merits will take place on April 14, 15, 24, and 25, and June 4, 5, 6, and 27, 2025.

VIII. DISPOSITION

[79] For these reasons, we impose a publication ban preventing the publication of the primary witness's name and information that would identify the witness.

[80] RSJ Currie's request to excise the allegations in Appendix "A" to the Notice of Hearing is dismissed, as is his motion to stay this proceeding pending the outcome of his civil proceeding in the Superior Court of Justice.

Released: this 17th day of March, 2025