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'Pistol-whipping a white woman': Ontario judge who made 'racist, xenophobic' comments is reprimanded in secret

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An Ontario judge who made comments about immigrants that could be perceived as "racist" and "xenophobic" when sentencing a young, racialized offender.

A justice of the peace who said Indigenous people have a "privilege" or "benefit" in the criminal justice system.

Both cases were dealt with behind closed doors by the Ontario Judicial Council and the Justices of the Peace Review Council. In both, the complaints against the jurists were substantiated and remedial action was taken.

But because their cases were never sent to a formal discipline hearing to determine if they committed judicial misconduct, their names have been shielded from the public, in line with Ontario laws that experts say need to change.

Summaries of the cases - without any identifying information including court locations - can be found in the two councils' annual reports for 2022, released in

June. The councils are responsible for investigating and disciplining provincial court judges and justices of the peace, though very few complaints ever make it to a public hearing.

"The offensive behaviour outlined in these investigations is troubling," said Daniel Brown, president of the Criminal Lawyers' Association. "Keeping their identities secret undermines the transparency of the judicial complaints process and makes it more challenging to ensure that the offending conduct isn't repeated."

Names should be publicized when some action has been taken, said University of Ottawa law professor Adam Dodek, pointing out that the two cases involve conduct that happened on the record, in open court.

Failure to release the names "makes a mockery of the principle of open justice," he said. "The public has a right to know these important matters of judicial conduct."

"The public has a right to know these important matters of judicial conduct," said University of Ottawa law professor Adam Dodek.

The reports provide a glimpse into how complaints are dealt with in private by committees made up of judicial officers, lawyers and members of the public. The bulk of the cases get dismissed due to lack of jurisdiction, the judges and JPs in question retiring, or the complaint being found frivolous.

A select few are singled out for further action, but fall short of a formal discipline hearing. In the case of the judge, he was told to get training on topics including anti-Black racism and immigration. The justice of the peace was given advice on being mindful about what she says in court.

On the question of releasing their names, the registrar for both councils, Alison Warner, reiterated that "the governing legislation precludes the councils from including such information in its

annual reports."

Requiring the councils to divulge names in cases like these would require a change to the laws that govern them, which both state that investigations "shall be conducted in private" and that summaries of the complaints included in the annual reports "shall not include information that might identify" the judicial officer or complainant.

Discipline hearings, however, are open to the public, but complaints rarely reach that stage.

Amending legislation is within the power of the legislature. A spokesperson for Attorney General Doug Downey said the councils are independent of government and it would be inappropriate for him to comment.

The judge

"You can't see why people wouldn't think you'd be a disgusting human being to be involved in a robbery that involved pistol-whipping a white woman," the judge said in court when sentencing a 15-year-old offender, who had pleaded guilty to robbery.

"You know, this is the very thing that triggers emotions in people that see a problem with immigration. They sit there and think, 'Wait a minute. What are we doing allowing these folks to come into our country and cause this kind of mayhem to citizens of our community?'"

The young person had been diagnosed with post-traumatic stress disorder as a result of experiences growing up in a refugee camp. The judge told him that there are many individuals who come to Canada from refugee camps and have

gone through traumatic experiences in other countries.

"They work hard, they behave themselves, and they learn our culture, our way of life so that they can contribute in a positive way to our country," the judge said.

The review panel dealing with the complaint said it "was concerned that the subject judge's comments to a young person, and the tone in which they were uttered, could reasonably be perceived as racist, xenophobic, culturally insensitive, divisive, hurtful, gratuitous, closed-minded and antithetical to rehabilitative principles.

"These comments were particularly troubling given that they were directed at a young, racialized person who was suffering from post-traumatic stress disorder, who was receiving psychiatric medical care to address the traumas he had experienced."

In his response to the panel, the judge said he was "deeply remorseful" and would apologize. He said that as a member of a marginalized community himself, "he is no stranger to the challenges faced by marginalized persons and the intersection with the justice system." (The report doesn't specify the community.)

The panel found that, given his response, "the judge would benefit from reviewing his conduct with the chief justice and engaging in further education and/or counselling."

He attended education sessions with a university professor "on the subject of a trauma-informed approach to racialized youth in the criminal justice system." Topics included anti-Black racism

and immigration.

In closing the file, the panel said: "Given the steps taken by the subject judge to reflect upon and learn from this complaint, the review panel concluded that no further action was required."

The justice of the peace

During the bail hearing for an Indigenous accused person, the justice of the peace referred to "the benefit they have, if I may say, or the privilege they have compared to other citizens just because they're Aboriginal," according to a transcript.

When a lawyer in court objected to the use of the word "privilege," the JP responded: "You have ask(ed) for special consideration, let's put it this way, OK."

The Criminal Code states that when making decisions about releasing people on bail, jurists must "give particular attention to the circumstances of Aboriginal accused, and accused who belong to a vulnerable population that is overrepresented in the criminal justice system."

The section is meant to address the fact that Indigenous, Black and other people of colour have long been overrepresented in the criminal justice system, and are disproportionately detained in jail pending their trials.

In complaining to the council, a lawyer said the JP's remarks "appeared bereft of any understanding of the history of Indigenous people in Canada or the case law and statutory framework meant to address their overrepresentation in the justice system."

The complaints committee told the JP that she could be viewed as having

failed to apply the law, and that her comments "undermined" her impartiality and integrity.

The committee found that the remarks "could reasonably be perceived as suggesting that the justice of the peace held the belief that Indigenous people receive an unjustified or unwarranted benefit or privilege in the criminal justice system."

The JP responded that she regretted her "inappropriate and injudicious" comments, and said she should have been aware of the rationale for that section of the Criminal Code. Since the complaint was filed, the JP said she had apologized and educated herself.

A majority of the committee decided that the JP should be provided with written advice "on the importance of being mindful of how her comments and choice of language in the courtroom may be interpreted or perceived, particularly when dealing with historically disadvantaged persons."

The courtroom comments are "incredibly inappropriate," Jonathan Rudin, special projects director at Aboriginal Legal Services, told the Star. He said what is missing from the case summary is any mention of the kind of training JPs receive on these issues, and whether the JP in question had participated in that prior to the offensive conduct.

The duties of a justice of the peace include signing off on search warrants and presiding over bail hearings. Unlike judges, JPs do not always have to be lawyers.

The comments "speak to the prevalence of these sorts of stereotypes and myths about Indigenous people as somehow being privileged - it's hard to believe

that people still think that in 2023, and it's almost incomprehensible how someone who sits on the bench could think like that," Rudin said.

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