

OJC



ANNUAL REPORT

1996 – 1997

ONTARIO JUDICIAL COUNCIL



ANNUAL REPORT

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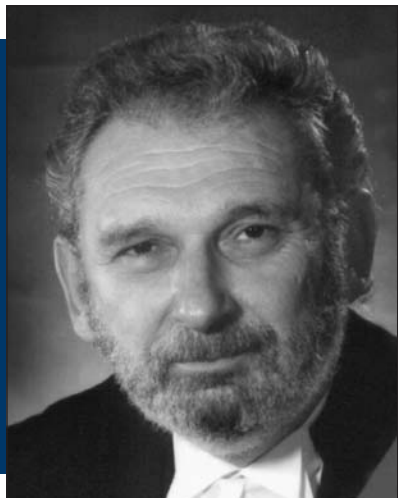
ONTARIO JUDICIAL COUNCIL



The Honourable R. Roy McMurtry

CHIEF JUSTICE OF ONTARIO

Co-Chair, Ontario Judicial Council



The Honourable Sidney B. Linden

CHIEF JUDGE

ONTARIO COURT OF JUSTICE

PROVINCIAL DIVISION

Co-Chair, Ontario Judicial Council



ONTARIO JUDICIAL COUNCIL
CONSEIL DE LA MAGISTRATURE DE L'ONTARIO

The Honourable Charles A. Harnick
Attorney General for the Province of Ontario
720 Bay Street, 11th Floor
Toronto, Ontario M5G 2K1

Dear Minister:

It is our pleasure to submit to you the Annual Report of the Ontario Judicial Council concerning its second year of operation, in accordance with subsection 51(6) of the *Courts of Justice Act*. The period of time covered by this Annual Report is from April 1, 1996 to March 31, 1997.

Respectfully submitted,

Handwritten signature of R. Roy McMurtry in black ink.

R. Roy McMurtry
Chief Justice of Ontario

Handwritten signature of Sidney B. Linden in black ink.

Sidney B. Linden
*Chief Judge
Ontario Court of Justice
Provincial Division*



THE ONTARIO JUDICIAL COUNCIL

Back row, standing (L-R)

REGIONAL SENIOR JUDGE DONALD EBBS, BETTY WHETHAM,
THE HONOURABLE JUDGE RODERICK CLARKE, SUSAN ELLIOT,
ASSOCIATE CHIEF JUDGE BRIAN W. LENNOX, DOLORES BLONDE,
ISHBEL SOLVASON-WIEBE

Front row, seated (L-R)

VALERIE P. SHARP, REGISTRAR, CHIEF JUDGE SIDNEY B. LINDEN,
THE HONOURABLE JUDGE LYNN KING, MASTER ROSS B. LINTON, Q.C. (TEMPORARY MEMBER)

Absent

CHIEF JUSTICE ROY MCMURTRY, MARY ANNE SANDERSON, JUDY REBICK.



INTRODUCTION

The period of time covered by this Annual Report is from April 1, 1996, to March 31, 1997.

The Ontario Judicial Council investigates complaints made by the public against provincially appointed judges and masters. In addition, it approves the education plan for provincial judges on an annual basis and has approved criteria for continuation in office and standards of conduct developed by the Chief Judge of the Provincial Division. The Judicial Council may make an order to accommodate the needs of a judge who, because of a disability, is unable to perform the duties of judicial office. Such an accommodation order may be made as a result of a complaint (if the disability was a factor in a complaint) or on the application of the judge in question. Although the Judicial Council itself is not directly involved in the appointment of provincial judges to the bench, a member of the Judicial Council serves on the provincial Judicial Appointments Advisory Committee as its representative.

The Ontario Judicial Council had jurisdiction over approximately 260 provincially-appointed judges and masters during the period of time covered by this Annual Report.



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1996 – 1997

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1. Composition and Terms of Appointment

The Ontario Judicial Council includes:

- ◆ the Chief Justice of Ontario (or designate from the Court of Appeal)
- ◆ the Chief Judge of the Provincial Division (or designate)
- ◆ the Associate Chief Judge of the Provincial Division
- ◆ a Regional Senior Judge appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General
- ◆ two additional provincial judges appointed by the Chief Judge
- ◆ the Treasurer of the Law Society of Upper Canada (or designate) and another lawyer appointed by the Law Society
- ◆ four persons, neither judges nor lawyers, who are appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General

The Chief Justice chairs all proceedings dealing with complaints against specific judges, except for the review panel meetings which are chaired by a provincial judge designated by the Judicial Council. The Chief Justice also chairs meetings held for the purpose of dealing with applications to accommodate a judge's needs resulting from a disability or meetings held to consider the continuation in office of a Chief Judge or an Associate Chief Judge. The Chief Judge chairs all other meetings of the Judicial Council.

2. Members - Regular

The membership of the Ontario Judicial Council in its second year of operation (April 1, 1996 to March 31, 1997) was as follows:

Judicial Members:

CHIEF JUSTICE OF ONTARIO

Roy McMurtry(Toronto)

CHIEF JUDGE OF THE PROVINCIAL DIVISION

Sidney B. Linden.....(Toronto)

ASSOCIATE CHIEF JUDGE OF THE PROV. DIV

Brian W. Lennox(Ottawa)

REGIONAL SENIOR JUDGE

Donald A. Ebbs(London)

TWO JUDGES APPOINTED BY THE CHIEF JUDGE

The Honourable Judge Lynn King.....(Toronto)

The Honourable Judge Roderick Clarke....(Thunder Bay)

Lawyer Members:

TREASURER OF THE LAW SOCIETY OF UPPER CANADA

Susan Elliott(Kingston)

LAWYER DESIGNATED BY THE LAW SOCIETY OF UPPER CANADA

Mary Anne Sanderson.....(Toronto)

Community Members:

DOLORES J. BLONDE(Windsor)
Director of Research, Faculty of Law
University of Windsor

JUDY REBICK.....(Toronto)
Broadcaster and Journalist (to September, 1996)

ISHBEL SOLVASON-WIEBE(Ottawa)
Executive Director, Elizabeth Fry Society

BETTY WHETHAM(Parry Sound)
Retired, (former Court Services Manager) (from July, 1996)

Members - Temporary

Sections 87 and 87.1 of the *Courts of Justice Act* gives the Ontario Judicial Council jurisdiction over complaints made against every person who was a master of the Supreme Court prior to September 1, 1990 and every provincial judge who was assigned to the Provincial Court (Civil Division) prior to September 1, 1990. When the Ontario Judicial Council deals with a complaint against a master or a provincial judge of the former Civil Division, the judge member of the complaint subcommittee is replaced by a temporary member appointed by the Chief Justice of the General Division – either a master or a provincial judge who presides in “Small Claims Court”, as the case may be.

During the period covered by this report, the following individuals were appointed to serve as temporary members of the Ontario Judicial Council when dealing with complaints against these provincially-appointed judges and masters: -

MASTERS

Master Basil T. Clark, Q.C.

Master R. B. Linton, Q.C.

JUDGES

The Honourable Judge
Reuben Bromstein

The Honourable Judge
M. D. Godfrey

The Honourable Judge
Pamela Thomson

Subsection 49(3) of the *Courts of Justice Act* permits the Chief Judge of the Provincial Division to appoint a provincial judge to be a temporary member of the Ontario Judicial Council to meet the quorum requirements of the legislation with respect to Judicial Council meetings, review panels and hearing panels. The following judges of the Provincial Division have been appointed by the Chief Judge to serve as temporary members of the Ontario Judicial Council when required:

The Honourable Judge Joseph C. M. James

The Honourable Regional Senior Judge Bernard M. Kelly

3. Administrative Information

Separate office space adjacent to the Chief Judge’s office in downtown Toronto is utilized by both the Ontario Judicial Council and the Justices of the Peace Review Council. The proximity of the Councils’ office to the Chief Judge’s office permits both Councils to make use of clerical and administrative staff, as needed, and computer systems and support backup without the need of acquiring a large support staff.

Councils’ offices are used primarily for meetings of both Councils and its members. Each Council has a separate phone and fax number and its own stationery. Each has a toll-free number for the use of members of the public across the province of Ontario and a toll-free number for persons using TTY/teletypewriter machines.

In the second year of operation, the staff of the Ontario Judicial Council and the Justices of the Peace Review Council consisted of a registrar, a part-time assistant registrar and a secretary:

VALERIE P. SHARP, LL.B. – Registrar
PRISCILLA CHU – Assistant Registrar (part-time)
SONYA RIGHI-CONLIN – Secretary

4. *Communications Subcommittee*

A subcommittee to assist the Council in developing the public outreach material required by the legislation continued its work during the second year of Council's operation. This subcommittee developed an informational brochure which was publicly distributed and which outlines the mandate of the Council and briefly states its procedures in investigating complaints. A copy of the brochure is included as Appendix "A".

The Judicial Council's first Annual Report, which included a summary of all complaints received and dealt with during the first year of operation (February 28, 1995 to March 31, 1996) was submitted to the Attorney General early in 1997 and tabled in the Legislative Assembly shortly thereafter.

5. *Procedures Subcommittee*

A subcommittee to establish guidelines, rules of procedures and criteria for the use of complaint subcommittees, review panels and hearing panels continued its work during the second year of operation. This subcommittee prepared a procedures document for the use of complaint subcommittees, review and hearing panels. That document is included as Appendix "B". The work of this subcommittee continues to develop policies to ensure Council's procedures comply with the governing legislation.

6. *Chief Judge's Programs*

Mandatory Programs: -

CRITERIA FOR CONTINUATION IN OFFICE

The Ontario Judicial Council no longer has a role in the annual continuation of judges past the age of retirement. The Chief Judge was given the authority to continue judges who are past retirement age on an annual basis and was required to develop criteria for so doing. The criteria developed by the Chief Judge for continuing judges in office past retirement age were approved by the Judicial Council in the second year of its operation, in accordance with subs. 47(7) of the *Courts of Justice Act*. A copy of the "Criteria for Continuation in Office" can be found at Appendix "C".

EDUCATION PLAN

The Chief Judge is required, by section 51.10 of the *Courts of Justice Act*, to implement, and make public, a plan for the continuing judicial education of provincial judges and such education plan is required to be approved by the Judicial Council as required by subs. 51.10(1). A continuing education plan was developed by the Chief Judge in conjunction with the Education Secretariat of the Provincial Division and the continuing education plan has been approved by the Judicial Council. A copy of the Provincial Division's continuing education plan for 1996-97 can be found at Appendix "D".

As part of its continuing education plan for 1996-97, the Ontario Court of Justice (Provincial Division) held a conference entitled "The Court in an Inclusive Society" in May of 1996. A copy of the program for that conference can be found at Appendix "E".

Optional Programs: -

STANDARDS OF CONDUCT

The Chief Judge is empowered to establish "standards of conduct for provincial judges" by section 51.9 of the *Courts of Justice Act* and such standards are to be approved by the Judicial Council, as required by subs. 51.9(1). A document entitled, "Principles of Judicial Office" was prepared by the Judicial Conduct Subcommittee of the Chief Judge's Executive Committee in consultation with the Judges Associations and the judges of the court. The document was then submitted to the Ontario Judicial Council for its review and approval in the second year of its operation. A copy of these "standards of conduct", may be found at Appendix "F".

PERFORMANCE EVALUATION

Pursuant to section 51.11 of the *Courts of Justice Act*, the Chief Judge has discretion to develop a judicial performance evaluation program. If a plan is developed, it must be approved by the Judicial Council before implementation, as required by subs. 51.11(1). The Chief Judge has asked the Judicial Conduct Subcommittee of the Chief Judge's Executive Committee to consider this issue, including a review of the voluntary pilot project which has been established in the Province of Nova Scotia. With the exception of Nova Scotia's pilot project, there are no other jurisdictions in Canada that have developed a performance evaluation program. The work of the subcommittee continues.



7. *Judicial Appointments Advisory Committee*

Since proclamation of amendments to the *Courts of Justice Act* in February, 1995, the Judicial Council no longer has any direct involvement in the appointment of provincial judges to the bench. However, a member of the Ontario Judicial Council serves on the provincial Judicial Appointments Advisory Committee as its representative. The Honourable Judge Lynn King serves as the Judicial Council's representative on the Judicial Appointments Advisory Committee.

8. *The Complaints Procedure*

A complaint subcommittee of Judicial Council members, comprised always of a provincially-appointed judicial officer (a judge, other than the Chief Judge, or a master) and a lay member, screens all complaints made to the Council. The governing legislation empowers the complaint subcommittee to screen out complaints which are either outside the jurisdiction of the Council (i.e., complaints about federally appointed judges, matters for appeal, etc.) or which, in the opinion of the complaint subcommittee, are frivolous or an abuse of process. All other complaints are investigated further by the complaint subcommittee. A copy of the Judicial Council's procedures document is included as Appendix "B".

Once the investigation is completed, the complaint subcommittee may recommend the complaint be dismissed, refer it to the Chief Judge for an informal resolution, refer the complaint to mediation or refer the complaint to the Judicial Council, with or without recommending that it hold a hearing. The decision of the complaint subcommittee must be unanimous. If the complaint subcommittee members cannot agree, the complaint subcommittee shall refer the complaint to the Council to determine what action should be taken.

A mediation process may be established by the Council and only complaints which are appropriate (given the nature of the allegations) will be referred to mediation. The Council must develop criteria to determine which complaints are appropriate to refer to mediation.

The Council (or a review panel thereof), will review the recommended disposition of a complaint (if any) made by a complaint subcommittee and may approve the disposition or replace any decision of the complaint subcommittee if the Council (or review panel), decides the decision was not appropriate. If a complaint has been referred to the Council by the complaint subcommittee, the Council (or a review panel thereof), may dismiss the complaint, refer it to the Chief Judge or a mediator or order that a hearing into the complaint be held. Review panels are composed of two provincial judges (other than the Chief Judge), a lawyer and a lay member. At this stage of the process, only the two complaint subcommittee members are aware of the identity of the complainant or the subject judge.

Complaint subcommittee members who participated in the screening of the complaint are not to participate in its review by Council or a subsequent hearing. Similarly, review panel members who dealt with a complaint's review or referral will not participate in a hearing of the complaint, if a hearing is ordered.

By the end of the investigation and review process, all decisions regarding complaints made to the Judicial Council will have been considered and reviewed by a total of six members of Council - two members of the complaint subcommittee and four members of the review panel.

Provisions for temporary members have been made in order to ensure that a quorum of the Council is able to conduct a hearing into a complaint if a hearing has been ordered. Hearing panels are to be made up of at least two of the remaining six members of Council who have not been involved in the process, thus far. At least one member of a hearing panel is to be a lay member and the Chief Justice, or his designate from the Court of Appeal, is to chair the hearing panel.

A hearing into a complaint is public unless the Council determines, in accordance with criteria established under section 51.1(1) of the *Courts of Justice Act*, that exceptional circumstances exist and the desirability of holding an open hearing is outweighed by the desirability of maintaining confidentiality, in which case the Council may hold all or part of a hearing in private.

Proceedings, other than hearings to consider complaints against specific judges, are not required to be held in public. The identity of a judge, after a closed hearing, will only be disclosed in exceptional circumstances as determined by the Council. In certain circumstances, the Council also has the power to prohibit publication of information that would disclose the identity of a complainant or a judge. The *Statutory Powers Procedure Act*, with some exceptions, applies to hearings into complaints.

After a hearing, the hearing panel of the Council may dismiss the complaint (with or without a finding that it is unfounded) or, if it finds that there has been misconduct by the judge, it may impose one or more sanctions or may recommend to the Attorney General that a judge be removed from office.

The sanctions which can be imposed by the Judicial Council for misconduct are as follows:

- ◆ a warning
- ◆ a reprimand
- ◆ an order to the judge to apologize to the complainant or to any other person
- ◆ an order that the judge take specific measures, such as receiving education or treatment, as a condition of continuing to sit as a judge
- ◆ suspension, with pay, for any period
- ◆ suspension, without pay, but with benefits, for up to thirty days
NB: any combination of the above sanctions may be imposed
- ◆ a recommendation to the Attorney General that the judge be removed from office
NB: this last sanction is not to be combined with any other sanction

The question of compensation of the judge's costs incurred for legal services in the investigation of a complaint and/or hearing into a complaint may be considered by the review panel or by a hearing panel when a hearing into the complaint is held. The Council is empowered to order compensation of costs for legal services (based on a

rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services) and the Attorney General shall pay compensation to the judge in accordance with the recommendation.

The legislative provisions of the *Courts of Justice Act* concerning the Ontario Judicial Council are included as Appendix "G" to this Report.

9. Summary of Complaints

The Ontario Judicial Council received 71 complaints in its second year of operation, as well as carrying forward 21 complaint files from its first year of operation. Of these 92 complaints, 51 were closed before March 31, 1997, leaving 41 complaints to be carried over into the third year.

O. J. C. COMPLAINT FILES

FISCAL YEAR:	95/96	96/97
Opened During Year	54	71
Continued from Previous Year	n/a	21
Total Files Open During Year	54	92
Closed During Year	33	51
Remaining at Year end	21	41

Files which were opened in the first year of operation were given the prefix "01", followed by a three digit number and by two digits indicating the calendar year in which the file was opened (i.e., file no. 01-054/96 was the fifty-fourth file opened in the first year of operation and was opened in calendar year 1996.). Files opened in the second year of operation, were given the prefix "02", followed by a three digit number and by two digits indicating the calendar year in which the file was opened (i.e., file no. 02-071/97 was the seventy-first file opened in the second year of operation and was opened in calendar year 1997.).



An investigation is conducted in all cases. The complaint subcommittee reviews the complainant’s letter and, where necessary, reviews the transcript and/or the audio-tape of the proceedings that took place in court in order to make its determination about whether or not the complaint concerned judicial misconduct or was a matter of an unsatisfied litigant complaining of the result in a court proceeding. In all cases, the four members of each review panel agreed with the recommended disposition of the complaint by the complaint subcommittee after the review panel examined the complaint and the investigation which had been conducted. In certain instances, the review panel directed the complaint subcommittee to conduct further investigation before the review panel agreed with the recommended disposition.

Approximately thirty-three (33) per cent of complaints disposed of by the Ontario Judicial Council during the period of time covered by this report (17 complaints) were found to be outside the jurisdiction of the Council.

These complaints actually concerned matters that would be more appropriately dealt with by way of appeal to another court (for example, a complainant did not agree with the sentence a judge handed down or a decision that had been made) or because no actual allegation of judicial misconduct had been made or the judge complained against had died before the complaint could be resolved. Five of these 17 complaints combined an unfounded allegation of bias, improper actions, involvement in a conspiracy and/or the judge’s manner with a complaint about an appealable matter which was outside the jurisdiction of the Judicial Council.

This is a decrease from last year’s activities, where fifty-eight (58) per cent of complaints disposed of by the Ontario Judicial Council (19 complaints) were complaints about matters that were found to be outside the jurisdiction of the Council as they actually concerned matters that would be more appropriately dealt with by way of appeal to another court.

Approximately sixty-six (66) per cent of complaints disposed of by the Ontario Judicial Council during the period of time covered by this report (34 complaints) were determined to be unfounded.

These complaints dealt with allegations of bias, allegations of “improper actions” being taken by the judge throughout the course of a proceeding (eg., judge following rules of procedure or practice of the court over a complainant’s objections), allegations that a judge was rude, belligerent, etc., or allegations that a judge’s decision was made as a result of his or her involvement in a conspiracy with either the police, the Crown Attorney, the Children’s Aid Society, etc. There were three files in which there was more than one such allegation made that was determined to be unfounded following investigation.

This is an increase from the first year of operation, in which twenty-one (21) per cent of complaints disposed of dealt with allegations of bias or undue influence.

10. Case Summaries

In all cases that were closed during the year, notice of the Judicial Council’s decision, with the reason(s) therefor, was given to the complainant and to the subject judge, in accordance with the judge’s instructions on notice (please see page B-19 of the O.J.C. Procedures Document, Appendix “B”).

Details of each complaint, with identifying information removed, follow.





CASE SUMMARIES

CASE NO. 01-002/95

The complainant was involved in a matrimonial dispute and appeared before the master on a motion during the course of those proceedings. The master ruled in favour of the complainant's wife. The complainant appealed the master's ruling and the appeal was dismissed, with costs. The complainant alleged that his counsel advised him that he (the counsel) had heard the master refer to the complainant as "a damn Greek" while the complainant was not present in the courtroom. As a result, the complainant alleged that the master demonstrated bias against him and his bias led to the decision in the matter before him. The master categorically denied making any such reference to, or remark about, the complainant and there was no objective evidence to support the complainant's allegations. The members of the subcommittee examined the complaint and the master's response to it. The subcommittee recommended that the complaint be dismissed as they did not find any basis for the complaint and the review panel agreed with this disposition.

CASE NO. 01-014/95

The complainant, who was charged with a criminal offence, alleged misconduct by the judge before whom he appeared because the judge had forced him on to trial without his having received full disclosure from the Crown on the charges he was facing. The complainant also complained that the trial judge made inappropriate orders during the course of the trial. The members of the subcommittee examined the complaint and the transcripts of the proceedings. The subcommittee recommended that the complaint be dismissed as the transcript revealed nothing constituting judicial misconduct on the part of the judge during the course of the proceedings and the judge apparently had declared a mistrial after he had been advised by the com-

plainant that he had made a complaint about the judge to the OJC. Further, the subcommittee advised that the complainant appeared to have received full disclosure from the Crown, although he was not told by the Crown that he had received full disclosure, and he was also not represented by counsel, although he had been earlier in the proceedings. The review panel agreed with the subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-019/95

The complainant was the unrepresented plaintiff in a construction lien action which took place before a master. After a lengthy trial, the master found that the plaintiff's contract with the defendant was illegal and her claim for damages to be totally without merit. As a result, the plaintiff could recover nothing against the defendant, and was ordered to pay party-and-party costs to the defendant. The master also stayed the defendant's counterclaim. The complainant (plaintiff) alleged that the master had treated her disrespectfully and abusively throughout the trial and was unnecessarily harsh with her. The complainant further alleged that the master treated her in the manner in which he did as a form of revenge for his mistaken belief that she had accused another master, who withdrew from hearing the case, of bias. The subcommittee ordered a copy of the transcript of the proceedings and reviewed it and the complaint. The subcommittee recommended that the complaint be dismissed as they could find no foundation for, or substantiation of, the complaint in the transcript. The complainant subcommittee was of the opinion that the master had shown extraordinary patience with the complainant, considering the complexity and length of the trial and the fact that the complainant was unrepresented by counsel and the review panel agreed with this disposition.



CASE SUMMARIES

CASE NO. 01-024/95

The complainant is the mother of a young offender who appeared in court for sentencing on a minor criminal matter. The judge had rejected a joint submission made by the Crown and defence counsel and gave the accused a sentence that was, in the complainant's opinion, harsh. The complainant alleged that the judge was influenced by the fact that the accused young offender appeared in court wearing a T-shirt that the judge found to be offensive and, that as a result, he sentenced her son based on his reaction to the offensive T-shirt and not based on the crime he had committed and his record. The subcommittee ordered a copy of the transcript of the court proceedings and reviewed same. The subcommittee recommended that the complaint be dismissed as there was no evidence of judicial misconduct on the part of the judge. The judge gave clear reasons as to the sentence he gave and explained his sentence on the basis of the offence and the young offender's record. The judge did remark on the inappropriateness of the T-shirt as court attire but the subcommittee did not find that it bore any relation to the sentence imposed. The review panel accepted the subcommittee's recommendation to dismiss the complaint as there was no evidence of judicial misconduct in the judge choosing not to accept a joint submission and imposing sentence based on the previous record.

CASE NO. 01-026/95

The complainant was an appellant on a *Provincial Offences Act* appeal from a conviction under the *Trespass to Property Act*. He asked for an adjournment on the date set down for the appeal. The complainant's grounds for the adjournment were that Legal Aid had refused to fund the complainant to subpoena witnesses and the

complainant did not have funds to subpoena the witnesses himself. The judge indicated that the normal practice on *P.O.A.* appeals was to proceed on the basis of the transcript of the trial, which was available, and saw no reason to do otherwise in this case. As a result, the adjournment request was not granted, the complainant was unwilling to proceed without witnesses and his appeal was dismissed. The complainant alleged the judge obstructed justice and violated the public trust in his actions of forcing the complainant to proceed when he was not prepared. The subcommittee members examined the transcript of the proceedings which were provided by the complainant and came to the conclusion that the judge's decisions were within his jurisdiction and that there had been no judicial misconduct in the exercise of the judge's discretion. The subcommittee recommended that the complaint be dismissed and the review panel agreed with this disposition.

CASE NO. 01-034/95

A municipal police association complained on behalf of one of its officers who was criticized in court by the judge for making an "arbitrary" arrest. The complainant took no issue with the criticism for the arrest by the judge, but took issue with the manner in which it was done, stating that the judge "spoke extremely loudly to the point of shouting...humiliating the officer and treating the officer in a most unprofessional manner". A copy of the transcript of proceedings was provided by the complainant and the subcommittee obtained a copy of the audio tape of the proceedings from the court reporter. A copy of the audio tape of the court proceedings, together with the written transcript, was sent to the judge for his response. After reviewing the judge's response to the complaint, the complaint subcommittee recommended that the



CASE SUMMARIES

complaint be dismissed. It was of the opinion that, although the response of the judge to the witness was somewhat unusual, it occurred in circumstances where the judge clearly felt the police officer's actions had been racially motivated. The judge explained that his reaction to the police witness was a response in kind to what appeared to him to be inappropriate behaviour on the part of the police officer, both during the arrest in question and in his apparently rude manner towards the court at trial. The review panel agreed with the subcommittee's recommendation that the complaint be dismissed as there was no evidence of judicial misconduct in the circumstances.

CASE NO. 01-038/95

The complainant was the unsuccessful plaintiff in a civil dispute in Small Claims Court. He alleged that the judge acted improperly in calling the parties into chambers before the trial began and by warning him that he would likely be unsuccessful. The complainant also alleged that the judge cut him short during the presentation of his evidence and also did not permit him to cross-examine the defendant. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence, together with an audiotape of the court proceedings. The subcommittee recommended that the complaint be dismissed as the judge had not acted improperly in having a pre-trial discussion in his chambers and the inquisitorial method the trial judge followed was appropriate in the circumstances of this particular case. In the subcommittee's opinion, the other matters complained of, if true, are more properly the subject matter of an appeal and, because there is no evidence of judicial misconduct, outside the jurisdiction of the Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-041/95

The complainant was the applicant in a lengthy family court trial for access and custody. The complainant alleged as follows: the judge and the respondent's lawyer were acquainted, the judge was a criminal court judge and not a family court judge, the judge made rude, degrading and vulgar comments, the judge broke up testimony to ask questions of witnesses, the judge interrupted the trial to deal with criminal matters, the complainant (who was represented by counsel throughout, as was the other party) objected to the final settlement that was reached between the parties, the judge maintained control of the file, the judge "ignored" the assessment officer's testimony, the judge's trial notes were sealed and the judge refused to hear a witnesses' testimony because it was hearsay. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended that this complaint be dismissed as none of the complaints that might have led to a finding of judicial misconduct were borne out by the lengthy transcript which they reviewed. The complaint subcommittee noted that it is not unusual for a judge to retain a file in a family law case or to have the notes from the trial sealed and they also noted that the judge inquired several times if the complainant understood the settlement that was reached. The complaint subcommittee also noted that if errors in law were committed by the judge in rejecting the assessment, such errors are outside the jurisdiction of the OJC and could be remedied on appeal. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed and the complaint subcommittee's recommendation that a letter be sent to the judge by the OJC advising that even though no judicial misconduct was found, the Council



CASE SUMMARIES

found the numerous personal comments and observations made during the course of the trial to be gratuitous and unnecessary and advising the judge to temper such comments in the future.

CASE NO. 01-042/96

The complainant is the father of an accused young man who was charged with uttering a death threat over the telephone. The complainant alleged that the judge imposed a peace bond, with conditions, at the end of the trial which, according to the complainant, was evidence of a conspiracy with the complainant-victim and the police. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended to the review panel that the complaint be dismissed as being without foundation. The accused was represented by counsel who was allowed great leeway by the judge in his conduct of the trial on behalf of his client. After the testimony of the accused, the court confirmed that the relationship between the parties was over and that the accused had no problems staying away from the complainant-victim and the court then imposed a common-law peace bond on the accused (as a result of which the accused suffered no conviction or finding of guilt). The judge did not invite legal argument as to whether he should exercise his jurisdiction to impose a peace bond, but the complaint subcommittee was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion and if errors in law were committed by the judge in exercising his jurisdiction to impose a peace bond, such errors are outside the jurisdiction of the OJC and could be remedied on appeal. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-043/96

The complainant had read a media report of a judge's comments at the conclusion of a trial of charges that resulted from a riot that erupted at an anti-racist demonstration. The complainant felt that the judge's comments, as reported in the media, showed a lack of concern for police safety. The media reported the judge as saying that "...It would have made more sense to make an arrest at the scene instead of allowing mayhem to proceed..." and that because the police did not wade into the altercation to arrest those responsible, he had no alternative than to acquit the accused before him as they could not be identified as the instigators of the riot with enough certainty to permit him to register a conviction. The subcommittee ordered and reviewed a copy of the transcript of the judge's reasons for sentence. It was the subcommittee's opinion that there is no basis for the complaint and they recommended that it be dismissed. The transcript clearly revealed that any comments concerning police action or the lack thereof were made within the context of the judge's reasons for judgment in his attempt to explain how the police action came directly to bear on the uncertainty of the identification of the accused. In the subcommittee's view, the judge was simply saying that had the police taken different action on the occasion in question, identification might not have been an issue at trial and the outcome of the trial may have been different. The media reports were also not an accurate summary of the judge's comments. The review panel agreed with the subcommittee's recommendation that the complaint be dismissed as there was no evidence of judicial misconduct.



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CASE NO. 01-044/96

The complainant was before the court on a charge of assault. The complainant was no longer represented by counsel and was appearing in court to ask for an adjournment on a date set for trial. The complainant stated he was not prepared to proceed to trial as he claimed he had not been given full disclosure by the Crown and the police had not brought his witness from New York State to testify on his behalf. The complainant alleged that the judge granted him the adjournment reluctantly and that the judge “bellowed” rather than using the microphone in the courtroom. The complaint subcommittee ordered a copy of the transcript of the proceedings in court and reviewed same. The complaint subcommittee advised that, in their opinion, the complainant’s letter to the OJC and submissions in court were rambling and disjointed and the complainant himself appears to have been belligerent and argumentative. The judge found that the complainant had been given full disclosure and that the complainant’s witness had not been properly subpoenaed and was, therefore, not within the jurisdiction of the court. The complaint subcommittee recommended the complaint be dismissed as there was no judicial misconduct evident in the exercise of the judge’s discretion and the decisions made were within the judge’s jurisdiction. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 01-045/96

The complainant was the victim of a domestic assault. The accused before the court was a criminal defence lawyer and the complainant alleged that the trial judge, who found the accused not guilty after trial, showed extreme bias and prejudice towards her husband and against her throughout the trial. The complainant provided the complaint subcommittee with voluminous material relating to her marital, medical and psychiatric history in an attempt to refute the findings made by the judge at trial. Before the complaint subcommittee had concluded its investigation, the judge complained against died and, as a result, the complaint subcommittee recommended that the complaint be dismissed as the OJC no longer has jurisdiction. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 01-047/96

The complainant has commenced a Federal Court action against numerous individuals and institutions and governmental departments and officials. The complaint subcommittee advised that the complainant’s correspondence to the OJC outlines his belief that a national conspiracy is directed at him, which involves many members of the judiciary. The complaint subcommittee found the correspondence from the complainant to be without specifics and particulars and in large part totally unintelligible and without any basis for a complaint of misconduct. At best, the correspondence includes examples of rulings that have been made against the complainant and which are, in the opinion of the complaint subcommittee,



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tee, properly the subject matter(s) for appeal(s). The complaint subcommittee recommended that the complaint be dismissed as being without foundation. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-049/96

The complainant was the plaintiff in a civil dispute in Small Claims Court. He alleged that the judge before whom he appeared improperly and unjustly allowed the defendant's motion to set aside his default judgment and also struck one of the defendants from the plaintiff's statement of claim. The subcommittee reviewed the court file and found that the decisions made by the judge on this file were routine and proper, in accordance with the Rules of Procedure. The subcommittee was of the opinion that the complainant misunderstood the court process and that if the judge had denied the defendant's motion to set aside the default judgment, he would have made an error in law which could have been appealed by the defendant. The subcommittee was of the opinion that the judge had not, as the complainant alleged, ignored everything the complainant said but had made a proper decision in law. The review panel agreed with the subcommittee's recommendation that the complaint be dismissed as there was no evidence of judicial misconduct in the exercise of the judge's discretion and the OJC has no jurisdiction to intervene in judicial proceedings or direct any judicial officer in the exercise of his or her discretion.

CASE NO. 01-050/96

The complainant, a lawyer of ten years' standing, was representing a criminal accused on a bail hearing. The lawyer alleged that the judge's conduct on the bail hearing was "appalling" and that he acted improperly in refusing to hear her legal arguments and in declaring a mistrial because, as she alleged, he wanted to go home at 3:30 p.m. on the Friday of a long weekend. She also inferred in her letter to the OJC that the judge did not want to deal with the legal argument because he was incapable of understanding it and that perhaps the Council should "seriously reconsider his appointment". The complainant further alleged that the Crown Attorney advised her that she (the Crown) was prepared to deal with the argument, she felt the judge's behaviour was "outrageous" and she supported the complainant's decision to file a complaint with the OJC. The subcommittee reviewed the transcript of the proceedings and the material which had been submitted by the complainant, the Crown Attorney and the subject judge. The subcommittee was of the opinion that there was no evidence of misconduct on the part of the judge and the complaint should be dismissed. The subcommittee was of the view that the complainant-lawyer may have misled the court on the occasion in question and exaggerated in her complaint to the Ontario Judicial Council. Her allegations were not borne out by the transcript, the judge had declared a mistrial because he had been misled by the complainant and the Crown Attorney wrote to the OJC and vociferously denied the accuracy of the remarks



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attributed to her by the complainant. The review panel agreed with the subcommittee's recommendation that the complaint be dismissed as there was no evidence of judicial misconduct.

CASE NO. 01-051/96

The complainant was before the court on a child welfare case. One of her children died and the remaining children were apprehended by the Children's Aid Society. The complainant alleged that the family court judge hearing the child welfare case "tried to be amusing, humorous and always making a joke", which she felt to be inappropriate under the circumstances and she also objected to the fact that the judge withdrew from the child welfare case when assigned to hear certain proceedings involving criminal charges. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended that the complaint be dismissed as the transcript offered no support for the allegations of the judge making humorous comments or jokes and the complaint subcommittee felt that the judge had no choice but to be removed from the record under the circumstances. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-053/96

The complainant, who was the victim of an assault, disagreed with the court's dismissal of the charge of assault. The subcommittee was of the opinion that most of the contents of the complaint concerned matters that were not known to

the judge and that the complaint was really with regard to the Crown Attorney's performance. The subcommittee was of the opinion that there is no evidence of misconduct on the part of the subject judge in the exercise of judicial discretion in dismissing the charge, based on the evidence led in court. The review panel agreed with the subcommittee's recommendation that the complaint be dismissed as there was no evidence of judicial misconduct in the exercise of the judge's discretion and because the OJC has no jurisdiction to intervene in judicial proceedings or direct any judicial officer in the exercise of his or her judicial discretion.

CASE NO. 01-054/96

The complainant is the father of children who were taken from their mother's custody and placed in his custody, under the court-ordered supervision of the Children's Aid Society. The complainant alleges that he and his children are under constant harassment by various social service agencies and workers who are complying with the dictates of the family court. The complainant also alleges negligence and misconduct on the part of his own (former) lawyer and on the part of the Official Guardian's lawyer. The subcommittee reviewed the file and was of the opinion that there was no evidence of judicial misconduct on the part of the subject judge and that the complaint should be dismissed. The review panel agreed with the subcommittee's recommendation that the complaint be dismissed as there was no evidence of judicial misconduct in the exercise of the judge's discretion and the OJC



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has no jurisdiction to interfere with the exercise of a judge's discretion. The complainant will be advised that he can write to the Law Society and L.P.I.C. to complain about the conduct of his legal counsel.

CASE NO. 02-001/96

The complainant was an appellant on a *Provincial Offences Act* appeal, which was dismissed by the appeal judge. The complainant advised the OJC that he felt the judge was too abrupt and too "pro-Crown", since he dismissed almost all of the appeals that came before him. The subcommittee was of the view that there was no judicial misconduct in the exercise of the judge's discretion in dismissing the complainant's appeal and the complainant can appeal the dismissal if he feels the judge made the wrong decision. The review panel agreed with the subcommittee's recommendation that the complaint be dismissed.

CASE NO. 02-002/96

The complainant is the mother of a young offender who was denied bail and placed in secure detention. The subcommittee reviewed the file and advised that the subject judge had not changed the detention order and had dismissed two previous bail applications. The subcommittee was of the view that there was no judicial misconduct in the exercise of the judge's discretion in denying bail and, since there was no finding of judicial misconduct and the complainant can appeal the judge's order if she feels the judge made the wrong decision, the OJC has

no jurisdiction to deal with the complaint and it should be dismissed. The review panel agreed with the subcommittee's recommendation that the complaint be dismissed.

CASE NO. 02-003/96

The complainant is a family law lawyer who objected to the fact that the case management judge who had been assigned to her case spoke to her client directly, without a court reporter present, to ascertain if it was the client's express wish to proceed with a trial rather than settle the dispute. The subcommittee reviewed the file and advised that in case management procedure, the rules require clients to be in attendance when a judge speaks to counsel and that there is never a court reporter present during discussions at a case conference. The subcommittee was of the view that there was no evidence to support a complaint that the judge acted improperly, given the rules of case management and family court procedure, and the complaint should be dismissed. The review panel agreed with the subcommittee's recommendation that the complaint be dismissed as there was no evidence of judicial misconduct.

CASE NO. 02-004/96

The complainant is the mother of two children and is complaining about the legal representation provided to her by her counsel and the decisions made in her family court case by the subject judge. The complainant advises that she unwillingly signed an agreement giving her former spouse increased access to the children of their



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marriage while she attended college to upgrade her nursing credentials. Upon completion of her schooling, she was offered a good-paying job outside Canada and applied to the court for a variation of the signed agreement. Her application for variation was denied. She is unable to find gainful employment in the location where she is now restricted to living. The members of the subcommittee were of the view that there was no judicial misconduct evident in the judge's exercise of his discretion and that her only recourse is to appeal the judge's decision to another court. Since the complainant can appeal the judge's order if she feels the judge made the wrong decision and there was no finding of judicial misconduct, the OJC has no jurisdiction to deal with the complaint and it should be dismissed. The review panel agreed with the subcommittee's recommendation that the complaint be dismissed. The complainant will be advised that she can write to the Law Society & L.P.I.C. to complain about the conduct of her legal counsel.

CASE NO. 02-005/96

The complainant was before the court on an appeal from a conviction with respect to a parking offence. The complainant stated that he couldn't understand the reasons why the appeal judge dismissed his appeal. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended that the complaint be dismissed because, although the judge's reasons are curt and without elaboration, there is nothing

in either the complaint or in the transcript which would reveal misconduct by the presiding judge. Although it would have been preferable to elucidate why the complainant's argument was in error, particularly since the complainant was unrepresented, the lack of such reasons does not equal misconduct and if errors in law were committed by the judge in dismissing the appeal, such errors are outside the jurisdiction of the OJC and could be remedied on appeal. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 02-006/96

The complainant is the father of a young offender who had been convicted on two occasions by the same judge. The complainant alleged that the judge appeared to take great pleasure in imposing a period of probation, made insulting remarks about the youth's mother and made insulting remarks about the youth's lawyer. The complainant also alleged that the judge had probably made a decision about the case before coming into court, didn't listen to the proceedings and seemed more interested in looking out the window. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended to the review panel that the complaint be dismissed as being without foundation after determining that the inappropriate remarks attributed to the judge by the complainant had not been made and there was nothing in the transcript to suggest that the judge's decisions in



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the case were inappropriate in the circumstances. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 02-007/96

The complainant father is involved in a custody battle with his wife, involving their two children. He complained that all of the judges he has appeared before have mistreated and misunderstood him and his children and condoned a conspiracy by his wife and the police to kidnap and brainwash his children. The subcommittee reviewed the file and the material submitted by the plaintiff, including court transcripts, and was of the view that there had been no judicial misconduct evident on the part of any of the subject judges in the exercise of their judicial discretion. The subcommittee also noted that the decisions made in the complainant's case may all be appealed. The review panel agreed with the subcommittee's recommendation that the complaint be dismissed as there was no evidence of judicial misconduct.

CASE NO. 02-009/96

The complainant alleged that the judge made inappropriate comments to her daughter during a child welfare hearing. The file and the transcript of the court proceedings were reviewed by the subcommittee members who were of the opinion that, in the context of the court proceedings, the judge's comments did not constitute misconduct and the complaint should

be dismissed. The review panel agreed with the subcommittee's recommendation that the complaint be dismissed as there was no evidence of judicial misconduct.

CASE NO. 02-010/96

The complainant was convicted of dangerous driving. He alleged that the trial judge "changed key parts of evidence", disallowed or ignored evidence that could have helped him, made a gratuitous comment that he (the complainant) "could go on welfare" and further alleged that the amount of the fine imposed on him could have been a possible bribe offered to the judge. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended that the complaint be dismissed as there was no judicial misconduct evident in the exercise of the judge's discretion in convicting the complainant. The complaint subcommittee found that while the judge made findings of fact and credibility that were adverse to the accused and while some of the matters of complaint raised by the complainant could provide possible grounds of appeal, the transcript revealed no evidence of misconduct on the part of the trial judge. The transcript also does not reveal any comment by the judge about the complainant "going on welfare". The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.



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CASE NO. 02-011/96

An anonymous complaint that a judge had lent the title and office of “judge” to a commercial enterprise was received, together with a copy of the print advertisement. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The judge was asked to respond to a survey while in a new store location and was apparently interviewed and photographed along with other customers. Although no consent was given by the judge to the store to use the photo or testimonial, the store did so. The judge complained in writing to the store shortly after publication of the advertisement and received a written apology from the store which was forwarded to the complaint subcommittee by the judge. The complaint subcommittee recommended that the complaint be dismissed as it was satisfied that there was no judicial misconduct on the part of the judge as the judge had not given consent to the use of the survey information. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed. No notice of the OJC’s decision may be given to the complainant, as the complainant chose to remain anonymous.

CASE NO. 02-012/96

The complainant is having difficulty obtaining legal aid as well as independent legal advice and counsel in a family law matter. The complainant advises that the judge refused him standing as a party in a matter before the court. The complaint

subcommittee recommended that the complaint be dismissed as there was no judicial misconduct evident in the exercise of the judge’s discretion in denying the complainant standing before the court. If errors in law were committed by the judge in denying him party status, such errors are outside the jurisdiction of the OJC and could be remedied on appeal. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 02-013/96

The complainant was engaged in a difficult access battle with her in-laws, the parents of her deceased husband. She complained about ill treatment by her former lawyers and about the legal rulings made by the judge. The complaint subcommittee reviewed the material provided by the complainant, which included copies of relevant transcripts of the evidence. The complaint subcommittee recommended the complaint be dismissed as there was no judicial misconduct evident in the exercise of the judge’s discretion in the case and the decisions made were within the judge’s jurisdiction. If errors in law were committed by the judge, such errors are outside the jurisdiction of the OJC and could be remedied on appeal. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.



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CASE NO. 02-014/96

The complainant wrote to the OJC and asked it to investigate why her driver's license had been suspended as a result of the non-payment of a speeding ticket. She made no allegations of misconduct against any of the judges or justices before which she appeared. The subcommittee was of the view that since there was no allegation of misconduct made against a judge, the OJC does not have jurisdiction to deal with this matter and recommended that the "complaint" be dismissed. The review panel agreed with the subcommittee's recommendation that the complaint be dismissed.

CASE NO. 02-016/96

The complainant is a young offender in detention who complains that the judge in question is sexist. The complainant alleges that every time he has appeared in court before this judge, he has observed that the judge is much more lenient with female offenders than with male offenders. The complainant alleges that the judge is much harder on male offenders and he is afraid of receiving an unfair, lengthy sentence from this judge. The complaint subcommittee recommended that the complaint be dismissed as it is too vague and subjective and based on the youth's impressions from periodic appearances in court. No details which would justify or permit any form of inquiry were provided, nor can they be obtained as the complainant has apparently moved and mail sent to his last address has been returned to the Council. The review panel agreed with the complaint subcommittee's recommen-

ation that the complaint be dismissed. A copy of the letter to the complainant dismissing the complaint will be kept on file in the event that he contacts the OJC again and provides his current address.

CASE NO. 02-017/96

The complainant was involved in a family court matter and objected to the fact that she had not been notified of a confirmation hearing of a provisional support order which was made in another locale and she also objected to remarks the judge made at the end of the confirmation hearing to the effect that the judge felt that it was possible the complainant had not sought assistance from a shelter for abused women and children for the right reasons. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended that the complaint be dismissed as the complainant had no right to be notified of the confirmation hearing and, although the remark about the possible misuse of a women's shelter was made by the judge and based on evidence before the court, it was made at the end of the hearing and, in the opinion of the complaint subcommittee, in no way affected the decision made by the judge. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.



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CASE NO. 02-018/96

The complainant came before the court on three different occasions, before three different judges to regain custody of her child who had been apprehended by the Children's Aid Society shortly after his birth. On each occasion, the complainant was unsuccessful in her attempt to regain custody and alleged that she was never given a fair chance to prove she could care for her child. The complainant was represented by counsel on all court appearances. The complaint subcommittee recommended that the complaint be dismissed as there was no judicial misconduct evident in the exercise of the judges' discretion in denying the complainant custody and no allegation of any judicial impropriety in the complaint. If errors in law were committed by any of the judges in denying custody to the complainant, such errors are outside the jurisdiction of the OJC and could be remedied on appeal. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 02-019/96

The complainant has many outstanding lawsuits against Assistant Crown Attorneys, Provincial Prosecutors, Ministry of the Attorney General employees, and at least one judge, for millions of dollars in damages. The complainant alleges that the judge before whom he appeared on a simple assault charge is a party to one of the many conspiracies against him. The complainant also states that during his trial the judge told him to "shut

up". The complaint subcommittee requested and received specific particulars concerning the alleged conspiracies as well as a transcript of the proceedings before the judge complained against. The transcript does reveal that the judge did tell the complainant to "shut up". The transcript also reveals that throughout the hearing of the evidence of one witness (which took virtually the whole of one day) the complainant was obstreperous and continually argued with both the witness and the judge (the complainant was unrepresented by counsel). It is clear that the judge told him to "shut up" in an effort to get the complainant to stop arguing with the judge and the witness and to get on with his cross-examination. The complaint subcommittee recommended that the complaint be dismissed because, in the context of the proceedings in court on the date in question and a review of the materials in the file, the complaint subcommittee is not prepared to make a finding of judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 02-021/96

The complainant alleged that she and her agent had been harassed by the judge before whom they appeared and alleged that the judge had been in collusion with the Crown in an attempt to interfere with the defence of criminal charges and in an attempt to prejudice the accused's defence. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended that the



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complaint be dismissed as there was no evidence of judicial misconduct on the part of the judge in the transcript and, on the contrary, the complaint subcommittee was of the opinion that the transcript revealed that the judge had dealt fairly with the complainant and her agent. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 02-022/96

The complainant alleged that the judge engaged in a number of "bad acts" calculated to undermine his rights at trial (for example, allowing the Crown to harass and slander him, allowing the Crown to slander his witness, conspiring with the Crown to violate his rights). The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended that the complaint be dismissed as the transcript revealed no impropriety or misconduct on the part of the judge and, on the contrary, revealed that the judge had acted in a fair and reasonable manner. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 02-023/96

The complainant brought a s.810 C.C.C. application (peace bond) against his parents and he complained that the presiding judge ordered him to enter into a recognizance as well. He and his parents were both represented by counsel. The

complainant later registered a complaint against his lawyer with the Law Society of Upper Canada. The complaint subcommittee obtained and reviewed the Law Society's complete file (with the consent of the complainant and the lawyer involved). The Law Society matter proceeded to a hearing before a Complaints Commissioner and was dismissed. The complaint subcommittee advised that it was clear from the Law Society file that the judge invited counsel to chambers for a pre-trial conference. After hearing from both counsel, the judge suggested that they should attempt to resolve the issue as, based upon the evidence presented, the judge would not be inclined to grant the complainant's application. After being advised of the result of the pre-trial conference and after receiving further legal advice from his counsel, negotiations with opposing counsel took place. The result was that both the complainant and his father voluntarily entered into a recognizance. The complainant's application against his mother was withdrawn. As it was of the view that there was no evidence of judicial misconduct on the part of the judge complained against, the complaint subcommittee recommended that the complaint be dismissed. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 02-024/96

The complainant had lost custody of her son while the Children's Aid Society were investigating allegations of assault which were made by the



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child. She objected to the fact that the judge, who was a former CAS lawyer, was presiding over CAS matters in family court and was biased in favour of the CAS as a result of that background. The complainant was represented by counsel. The complaint subcommittee recommended that the complaint be dismissed because if there was bias or an apprehension thereof on the part of a presiding judge, an appropriate court application could have been made. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 02-025/96

The complainant was the complainant on a charge of assault with a weapon which was dismissed. The complainant alleged that he told the court he was hard of hearing but was ignored, that the judge would not allow him to call a supporting witness and that he was excluded from the court when the accused and his witness were not. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended that the complaint be dismissed as there was no evidence of misconduct on the part of the judge. The judge dismissed the charges because of a reasonable doubt after hearing conflicting evidence on the facts. While the complainant did not specifically advise that he was hard of hearing, he did on a number of occasions state "pardon me" in response to a question. The questions were repeated and the complainant's hearing disability

does not appear to have interfered with his ability to testify or his comprehension during examination-in-chief or cross-examination. Although the complainant did mention a potential supporting witness when called briefly in reply, the Crown made no attempt to call the witness. Further, the complainant was excluded from court as a result of an order excluding witnesses. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 02-026/96

The complainant was before the court on an application for access to his children and objected to the fact that he was ordered to pay court costs when he missed a scheduled court date because he'd had to leave the country for a period of time. The complaint subcommittee recommended that the complaint be dismissed as the matter of court costs is outside the jurisdiction of the OJC and is a matter that is appealable. The complaint subcommittee also stated that there was no judicial misconduct evident in the exercise of the judge's discretion and no allegation of any judicial impropriety in the complaint. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 02-029/96

The complainant was before the family courts and disagreed with decisions made in her case by several judges. The complaint subcommittee reviewed the material that was provided to them



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by the complainant. The complaint subcommittee recommended that the complaint be dismissed as there was no judicial misconduct evident in the exercise of the judges' discretion in the decisions made in the file and if errors in law were committed by the judges complained against, such errors are outside the jurisdiction of the OJC and could be remedied on appeal. The complaint subcommittee also stated that there was no judicial misconduct evident in the exercise of the judges' discretion and no allegation of any judicial impropriety in the complaint. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 02-030/96

The complainant was at a courthouse in order to serve a statement of claim on a number of judges and justices of the peace. When the complainant tried to serve the judge in question, the judge's secretary refused to allow access to the judge's office and refused to accept service of the statement of claim. The judge had security called and the complainant was removed from the courthouse and told not to return. The complainant alleges that the judge is part of a conspiracy to affect the complainant's rights of appeal on two civil files. The complaint subcommittee recommended that the complaint be dismissed as it was of the opinion that the judge was not obliged to permit the complainant into the judge's office or to accept service and may not have been incorrect in calling security under the circum-

stances. The members of the review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

CASE NO. 02-031/96

The complainant was the chair of a special interest group who accused the judge of ignoring the submissions of a victim impact statement by area residents who were protesting against the effects of street prostitution in their neighbourhood. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that the judge followed the proper sentencing criteria and the judge did not ignore the special interest group in imposing boundaries within which the accused was banned. The complaint subcommittee was also of the view that the remarks about prostitution and its prevalence in society made by the judge, to which the special interest group also objected, were not inappropriate in the context of the court proceedings and were not evidence of any judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 02-032/96

The complainant and his wife were charged with fraud and the complainant objected to remarks made by the judge about his wife while sentencing her. The complainant objected to the judge's



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remarks that the accused had planned to get pregnant during the period of time before the matter came before the court for sentencing in an attempt to gain the sympathy of the court and, perhaps, a more lenient sentence. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended that this complaint be dismissed as they felt there was no judicial misconduct evident in the comments made on sentence by the judge, taken in context. The complaint subcommittee was also of the view that the judge had applied the correct sentencing principles to the imposition of sentence and the comment concerning a planned pregnancy was, perhaps, unwise but did not amount to judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 02-035/96

The complainant was an accused person who alleged that the judge acted in collusion with the Crown Attorney to harass and deny him his legal rights. The file was not available in court due to a mix-up. The accused/complainant refused to wait until the file could be brought into the courtroom for pre-trial and disclosure and the judge adjourned the matter from Friday to the following Monday morning. The accused/complainant objected to the setting of the date. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended that the complaint be dismissed as no evidence of mis-

conduct on the part of the judge was revealed by the transcript and the complaint subcommittee was of the view that the judge dealt appropriately with the matter. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 02-039/96

The complainant alleged that the judge was rude, belligerent, argumentative and biased. The complainant specifically complained about being reprimanded for showing sympathy to his ex-wife and also, for not being allowed to give his evidence in the form of a statement. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended to the review panel that the complaint be dismissed as being without foundation after determining that the inappropriate remarks attributed to the judge by the complainant had not been made. The complaint subcommittee advised that the presiding judge had shown a great deal of patience with both parties, neither of whom were represented by counsel. The transcript also did not support the complainant's allegation of being prevented from giving his evidence. Despite repeated help, instruction and direction from the judge as to what constituted proper evidence, the complainant became belligerent and eventually walked out of court in anger before all outstanding issues had been dealt with. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.



CASE SUMMARIES

CASE NO. 02-040/96

The complainant was an accused person before the courts. The complainant was convicted and jailed for fraud offences. His passport had been surrendered as a condition of bail but the judge had granted a motion to return the passport to him upon completion of the scheduled trial, on consent. The complainant who was now on parole asked for the return of his passport and alleged that he was advised by a court employee that the judge had told her not to release it to him. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The judge advised that it had been expected that the complainant's application for return of his passport would be dealt with on the record and had asked court staff to have the complainant appear in court. The complainant did not so appear and the passport was not returned. The judge advised that the complainant was expected to return and material had been kept available for him but the judge wanted the matter dealt with in court. The passport has since been returned to the complainant as a result of other steps taken by him. The complaint subcommittee recommended that the complaint be dismissed as there was no evidence of misconduct on the part of the judge. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 02-048/97

The complainant alleged that the judge was not impartial and that the judge obstructed him in his cross-examination of the complainant in a charge of assault against him. The complaint subcommittee reviewed a copy of the transcript of the evidence that was provided by the complainant. The complaint subcommittee recommended that the complaint be dismissed as there was no evidence of judicial misconduct on the part of the judge. The transcript revealed that the complainant was obstreperous and abusive towards the judge, the crown and the witness. His conduct was such that the judge cited him for contempt of court and sentenced him to serve a term of imprisonment as a result. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 02-050/97

The complainant disagreed with the decision of the trial judge before whom he appeared and appealed his conviction on two counts of improper storage of guns and one count of improper storage of ammunition. The complaint subcommittee recommended that the complaint be dismissed as there was no judicial misconduct evident in the exercise of the judge's discretion in convicting the complainant. If errors in law were committed by the judge, such errors are outside the jurisdiction of the OJC and could be remedied on appeal. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.



CASE SUMMARIES

CASE NO. 02-052/97

The complainant was the mother of three children that had been apprehended by the Catholic Children's Aid Society. The complainant stated that the judge's finding that the children were in need of protection was in error and she also disagreed with several other findings made by the judge. She also complained about the manner of the CCAS investigation. The complaint subcommittee recommended that the complaint be dismissed as there was no judicial misconduct evident in the exercise of the judge's discretion. If errors in law were committed by the judge, such errors are outside the jurisdiction of the OJC and could be remedied on appeal. The complaint subcommittee also noted that the OJC does not have jurisdiction over the manner in which the CCAS conducts its investigation. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.



ONTARIO JUDICIAL COUNCIL

1996 – 1997 ANNUAL REPORT

APPENDICES

APPENDIX “A”	<i>Brochure</i>
APPENDIX “B”	<i>Procedures Document</i>
APPENDIX “C”	<i>Criteria for Continuation in Office</i>
APPENDIX “D”	<i>Continuing Education Plan</i>
APPENDIX “E”	<i>The Court in an Inclusive Society</i>
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APPENDIX-A

ONTARIO JUDICIAL COUNCIL –
DO YOU HAVE A COMPLAINT?

BROCHURE

ONTARIO JUDICIAL COUNCIL – DO YOU HAVE A COMPLAINT?

The information in this brochure deals with complaints of misconduct against a Provincial Judge or a Master.

Provincial Judges in Ontario – Who are they?

In Ontario, most criminal and family law cases are heard by one of the many judges appointed by the province to ensure that justice is done. Provincial Judges, who hear thousands of cases every year, practised law for at least ten years before becoming judges.

Ontario's Justice System:

In Ontario, as in the rest of Canada, we have an adversarial justice system. In other words, when there is a conflict, both parties have the opportunity to present their version of the facts and evidence to a judge in a courtroom. Our judges have the difficult but vital job of deciding the outcome of a case based on the evidence they hear in court and their knowledge of the law.

For this type of justice system to work, judges **must** be free to make their decisions for the right reasons, without having to worry about the consequences of making one of the parties unhappy - whether that party is the government, a corporation, a private citizen or a citizens' group.

Is a Judge's Decision Final?

The judge's decision can result in many serious consequences. These can range from a fine, probation, a jail term or, in family matters, placement of children with one parent or the other. Often, the decision leaves one party disappointed. If one of the parties involved in a court case thinks that a judge has reached the

wrong conclusion, they may request a review or an **appeal** of the judge's decision in a higher court. This higher court is more commonly known as an appeal court. If the appeal court agrees that a mistake was made, the original decision can be changed, or a new hearing can be ordered.

Professional Conduct of Judges

In Ontario, we expect high standards both in the delivery of justice and in the conduct of the judges who have the responsibility to make decisions. If you have a complaint about the conduct of a **Provincial Judge** or a **Master**, you may make a formal complaint to **The Ontario Judicial Council**.

Fortunately, judicial misconduct is unusual. Examples of judicial misconduct could include: gender or racial bias, having a conflict of interest with one of the parties or neglect of duty.

The Role of the Ontario Judicial Council

The Ontario Judicial Council is an agency which was established by the Province of Ontario under the *Courts of Justice Act*. The Judicial Council serves many functions, but its main role is to investigate complaints of **misconduct** made about provincially-appointed judges. The Council is made up of judges, lawyers and community members. The Council does **not** have the power to interfere with or change a judge's decision on a case. Only an appeal court can change a judge's decision.

APPENDIX - A

ONTARIO JUDICIAL COUNCIL – DO YOU HAVE A COMPLAINT?

Making a Complaint

If you have a complaint of misconduct about a Provincial Judge or a Master, you must state your complaint in a signed letter. The letter of complaint should include the date, time and place of the court hearing and as much detail as possible about why you feel there was misconduct. If your complaint involves an incident outside the courtroom, please provide as much information as you can, in writing, about what you feel was misconduct on the part of the judge.

How are Complaints Processed?

When the Ontario Judicial Council receives your letter of complaint, the Council will write to you to let you know your letter has been received.

A subcommittee, which includes a judge and a community member, will investigate your complaint and make a recommendation to a larger review panel. This review panel, which includes two judges, a lawyer and another community member, will also carefully review your complaint prior to reaching its decision.

Decisions of the Council

Judicial misconduct is taken seriously. It may result in penalties ranging from issuing a warning to the judge, to recommending that a judge be removed from office.

If the Ontario Judicial Council decides there has been misconduct by a judge, a public hearing may be held and the Council will determine appropriate disciplinary measures.

If after careful consideration, the Council decides there has been no judicial misconduct, your complaint will be dismissed and you will receive a letter outlining the reasons for the dismissal.

In all cases, you will be advised of any decision made by the Council.

For Further Information

If you need any additional information or further assistance, in the greater Toronto area, please call 416-327-5672. If you are calling long distance, please dial the toll-free number: 1-800-806-5186. TTY/Teletypewriter users may call 1-800-695-1118, toll-free.

Written complaints should be mailed or faxed to:

The Ontario Judicial Council
P.O. Box 914
Adelaide Street Postal Station
31 Adelaide St. E.
Toronto, Ontario M5C 2K3
416-327-2339 (FAX)

Just a reminder...

The Ontario Judicial Council may only investigate complaints about the **conduct** of provincially-appointed Judges or Masters. If you are unhappy with a judge's **decision** in court, please consult with a lawyer to determine your options for appeal.

Any complaint about the **conduct** of a federally-appointed judge should be directed to the Canadian Judicial Council in Ottawa.



APPENDIX-B

ONTARIO JUDICIAL COUNCIL –
PROCEDURES DOCUMENT

A P P E N D I X - B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT

B

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APPENDIX - B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT

Please Note: All statutory references in this document, unless otherwise specifically noted are to the Courts of Justice Act, R.S.O. 1990, as amended.

COMPLAINTS

GENERALLY

Any person may make a complaint to the Judicial Council alleging misconduct by a provincial judge. If an allegation of misconduct is made to a member of the Judicial Council it shall be treated as a complaint made to the Judicial Council. If an allegation of misconduct against a provincial judge is made to any other judge, or to the Attorney General, the recipient of the complaint shall provide the complainant with information about the Judicial Council and how a complaint is made and shall refer the person to the Judicial Council.

subs. 51.3(1), (2) and (3)

Once a complaint has been made to the Judicial Council, the Judicial Council has carriage of the matter.

subs. 51.3(4)

COMPLAINT SUBCOMMITTEES

COMPOSITION

Complaints received by the Judicial Council shall be reviewed by a complaint subcommittee of the Judicial Council which consists of a judge, other than the Chief Judge, and a lay member of the OJC (the term “judge” includes a master when a master is the subject of a complaint). Eligible members shall serve on the complaint subcommittees on a rotating basis.

subs. 51.4(1) and (2)

ADMINISTRATIVE MATTERS

Detailed information on administrative procedures to be followed by members of complaint subcommittees and members of review panels can be found at pages B-17 – B-20 of this document.

STATUS REPORTS

Each member of a complaint subcommittee is provided with regular status reports, in writing, of the outstanding files that have been assigned to them. These status reports are mailed to each complaint subcommittee member at the beginning of every month. Complaint subcommittee members endeavour to review the status of all files assigned to them on receipt of their status report each month and take whatever steps are necessary to enable them to submit the file to the OJC for review at the earliest possible opportunity.

Investigation

GUIDELINES AND RULES OF PROCEDURE

The *Regulations Act* does not apply to rules, guidelines or criteria established by the Judicial Council.

subs. 51.1(2)

The Judicial Council’s rules do not have to be approved by the Statutory Powers Procedure Rules Committee as required by sections 28, 29 and 33 of the *Statutory Powers Procedure Act*.

subs. 51.1(3)

A complaint subcommittee shall follow the Judicial Council’s guidelines and rules of procedures established for this purpose by the Judicial Council under subsection 51.5(1) in conducting investigations, making recommendations regarding temporary suspension and/or reassignment, making decisions about a complaint after their investigation is complete and/or in imposing conditions on their decision to refer a complaint to the Chief Judge. The Judicial Council has established the following guidelines and rules of procedure under subsection 51.1(1) with respect to the investigation of complaints by complaint subcommittees.

subs. 51.4(21)

APPENDIX - B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPLAINT SUBCOMMITTEES

AGREEMENT ON HOW TO PROCEED

Complaint subcommittee members review the file and materials (if any), and discuss same with each other prior to determining the substance of the complaint and prior to deciding what investigatory steps should be taken (ordering transcript, requesting response, etc.). No member of a complaint subcommittee shall take any investigative steps with respect to a complaint that has been assigned to him or her without first discussing the complaint with the other complaint subcommittee member and agreeing on the course of action to be taken. If there is a dispute between the complaint subcommittee members regarding an investigatory step, the matter will be referred to a review panel for its advice and input.

DISMISSAL OF COMPLAINT

A complaint subcommittee shall dismiss the complaint without further investigation if, in its opinion, it falls outside the Judicial Council's jurisdiction or if it is frivolous or an abuse of process.

subs. 51.4(3)

CONDUCTING INVESTIGATION

If the complaint is not dismissed, the complaint subcommittee shall conduct such investigation as it considers appropriate. The Judicial Council may engage persons, including counsel, to assist it in its investigation. The investigation shall be conducted in private. The *Statutory Powers Procedure Act* does not apply to the complaint subcommittee's activities in investigating a complaint.

subs. 51.4(4), (5), (6) and (7)

PREVIOUS COMPLAINTS

A complaint subcommittee confines its investigation to the complaint before it. The issue of what weight, if any, should be given to previous complaints made against a judge who is the subject of another complaint before the OJC, may be considered by the members of the complaint subcommittee where the Registrar, with the assistance of legal counsel (if deemed necessary by the Registrar), first determines that the prior complaint or complaints are strikingly similar in the sense of similar fact evidence and would assist them in determining whether or not the current incident could be substantiated.

INFORMATION TO BE OBTAINED BY REGISTRAR

Complaint subcommittee members will endeavour to review and discuss their assigned files and determine whether or not a transcript of evidence and/or a response to a complaint is necessary within a month of receipt of the file. All material (transcripts, audio tapes, court files, etc.) which a complaint subcommittee wishes to examine in relation to a complaint will be obtained on their behalf by the Registrar, on their instruction, and not by individual complaint subcommittee members.

TRANSCRIPTS, ETC.

Given the nature of the complaint, the complaint subcommittee may instruct the Registrar to order a transcript of evidence, or the tape recording of evidence, as part of their investigation. If necessary, the complainant is contacted to determine the stage the court proceeding is in before a transcript is ordered. The complaint subcommittee may instruct the Registrar to hold the file in abeyance until the matter before the courts is resolved. If a transcript is ordered, court reporters are instructed not to submit the transcript to the subject judge for editing.

RESPONSE TO COMPLAINT

If a complaint subcommittee requires a response from the judge, the complaint subcommittee will direct the Registrar to ask the judge to respond to a specific issue or issues raised in the complaint. A copy of the complaint, the transcript (if any) and all of the relevant materials on file will be provided to the judge with the letter requesting the response. A judge is given thirty days from the date of the letter asking for a response, to respond to the complaint. If a response is not received within that time, the complaint subcommittee members are advised and a reminder letter is sent to the judge by registered mail. If no response is received within ten days from the date of the registered letter, and the complaint subcommittee is satisfied that the judge is aware of the complaint and has full particulars of the complaint, they will proceed in the absence of a response. Any response made to the complaint by the subject judge at this stage of the procedure is deemed to have been made without prejudice and may not be used at the hearing.

APPENDIX - B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPLAINT SUBCOMMITTEES

GENERALLY

Transcripts of evidence and responses from judges to complaints are sent to complaint subcommittee members by courier, unless the members advise otherwise.

A complaint subcommittee may invite any party or witness to meet with it or communicate with it during its investigation.

The OJC secretary transcribes letters of complaint that are handwritten and provides secretarial assistance and support to members of the complaint subcommittee, as required.

ADVICE AND ASSISTANCE

A complaint subcommittee may direct the Registrar to retain or engage persons, including counsel, to assist it in its investigation of a complaint. The complaint subcommittee may also consult with members of the Procedures Subcommittee to seek their input and guidance during the investigative stages of the complaint process.

subs. 51.4(5)

MULTIPLE COMPLAINTS

When a judge is the subject of three complaints from three different complainants within a period of five years, the Registrar will bring that fact to the attention of the Judicial Council, or a review panel thereof, for their assessment of whether or not the multiple complaints should be the subject of advice to the judge by the Council or the Associate Chief Judge or Regional Senior Judge member of the Judicial Council.

INTERIM RECOMMENDATION TO SUSPEND OR REASSIGN

The complaint subcommittee may recommend to the appropriate Regional Senior Judge that the subject judge be suspended, with pay, or be reassigned to a different location, until the complaint is finally disposed of. If the subject judge is assigned to the region of the Regional Senior Judge who is a member of the Judicial Council, the complaint subcommittee shall recommend the suspension, with pay, or temporary

reassignment to another Regional Senior Judge. The Regional Senior Judge in question may suspend or reassign the judge as the complaint subcommittee recommends. The exercise of the Regional Senior Judge's discretion to accept or reject the complaint subcommittee's recommendation is not subject to the direction and supervision of the Chief Judge.

subs. 51.4(8), (9), (10) and (11)

COMPLAINT AGAINST CHIEF JUDGE ET AL – INTERIM RECOMMENDATIONS

If the complaint is against the Chief Judge, an Associate Chief Judge or the Regional Senior Judge who is a member of the Judicial Council, any recommendation or suspension, with pay, or temporary reassignment shall be made to the Chief Justice of the Ontario Court, who may suspend or reassign the judge as the complaint subcommittee recommends.

subs. 51.4(12)

CRITERIA FOR INTERIM RECOMMENDATIONS TO SUSPEND OR REASSIGN

The Judicial Council has established the following criteria and rules of procedure under subsection 51.1(1) and they are to be used by a complaint subcommittee in making their decision to recommend to the appropriate Regional Senior Judge the temporary suspension or re-assignment of a judge pending the resolution of a complaint:

subs. 51.4(21)

- where the complaint arises out of a working relationship between the complainant and the judge and the complainant and the judge both work at the same court location
- where allowing the judge to continue to preside would likely bring the administration of justice into disrepute
- where the complaint is of sufficient seriousness that there are reasonable grounds for investigation by law enforcement agencies
- where it is evident to the complaint subcommittee that a judge is suffering from a mental or

APPENDIX - B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPLAINT SUBCOMMITTEES

physical impairment that cannot be remedied or reasonably accommodated

INFORMATION RE: INTERIM RECOMMENDATION

Where a complaint subcommittee recommends temporarily suspending or re-assigning a judge pending the resolution of a complaint, particulars of the factors upon which the complaint subcommittee's recommendations are based shall be provided contemporaneously to the Regional Senior Judge and the subject judge to assist the Regional Senior Judge in making his or her decision and to provide the subject judge with notice of the complaint and the complaint subcommittee's recommendation.

Reports to Review Panels

WHEN INVESTIGATION COMPLETE

When its investigation is complete, the complaint subcommittee shall either:

- dismiss the complaint,
- refer the complaint to the Chief Judge,
- refer the complaint to a mediator, in accordance with criteria established by the Judicial Council pursuant to section 51.1(1), or
- refer the complaint to the Judicial Council, with or without recommending that it hold a hearing

subs. 51.4(13)

GUIDELINES AND RULES OF PROCEDURE

The *Regulations Act* does not apply to rules, guidelines or criteria established by the Judicial Council.

subs. 51.1(2)

The Judicial Council's rules do not have to be approved by the Statutory Powers Procedure Rules Committee as required by sections 28, 29 and 33 of the *Statutory Powers Procedure Act*.

subs. 51.1(3)

The Judicial Council has established the following guidelines and rules of procedure under subsection 51.1(1) with respect to the making of decisions with respect to a complaint and the reporting of a complaint subcommittee's decision to the Judicial Council, or a review panel thereof.

subs. 51.4(21)

PROCEDURE TO BE FOLLOWED

One member of each complaint subcommittee will be responsible to contact the Assistant Registrar by a specified deadline prior to each scheduled OJC meeting to advise what files, if any, assigned to the complaint subcommittee are ready to be reported to a review panel. The members of the complaint subcommittee will also provide a legible, fully completed copy of the appropriate pages of the complaint intake form for each file which is ready to be reported and will advise as to what other file material, besides the complaint, should be copied from the file and provided to the members of the review panel for their consideration.

At least one member of a complaint subcommittee shall be present when the complaint subcommittee's report is made to a review panel.

NO IDENTIFYING INFORMATION

The complaint subcommittee shall report its disposition of any complaint that is dismissed or referred to the Chief Judge or to a mediator to the Judicial Council without identifying the complainant or the judge who is the subject of the complaint and no information that could identify either the complainant or the judge who is the subject of the complaint will be included in the material provided to the review panel members.

subs. 51.4(16)

DECISION TO BE UNANIMOUS

The decision by a complaint subcommittee to dismiss a complaint, refer the complaint to the Chief Judge or refer the complaint to a mediator must be a unanimous decision on the part of the complaint subcommittee members. If the complaint subcom-

APPENDIX - B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPLAINT SUBCOMMITTEES

mittee members cannot agree, the complaint must be referred to the Judicial Council.

subs. 51.4(14)

CRITERIA FOR DECISIONS BY COMPLAINT SUBCOMMITTEES

a) to dismiss the complaint

A complaint subcommittee will dismiss a complaint after reviewing the complaint if, in the complaint subcommittee's opinion, it falls outside the Judicial Council's jurisdiction or is frivolous or an abuse of process. A complaint subcommittee may also recommend that a complaint be dismissed if, after their investigation, they conclude that the complaint is unfounded.

subs. 51.4(3) and (13)

b) to refer to the Chief Judge

A complaint subcommittee will refer a complaint to the Chief Judge in circumstances where the misconduct complained of does not warrant another disposition, there is some merit to the complaint and the disposition is, in the opinion of the complaint subcommittee, a suitable means of informing the judge that his/her course of conduct was not appropriate in the circumstances that led to the complaint. A complaint subcommittee will impose conditions on their referral to the Chief Judge if, in their opinion, there is some course of action or remedial training of which the subject judge could take advantage and there is agreement by the subject judge.

subs. 51.4 (13) and (15)

c) to refer to mediation

A complaint subcommittee will refer a complaint to mediation when the Judicial Council has established a mediation process for complainants and judges who are the subject of complaints, in accordance with section 51.5 of the *Courts of Justice Act*. When such a mediation process is established by the Judicial Council, complaints may be referred to mediation in circumstances where both members are of the opinion that the conduct complained of does not fall within the criteria established to exclude complaints that are inappropriate for mediation, as

set out in the *Courts of Justice Act*. Until such time as criteria are established by the Judicial Council, complaints are excluded from the mediation process in the following circumstances:

- (1) where there is a significant power imbalance between the complainant and the judge, or there is such a significant disparity between the complainant's and the judge's accounts of the event with which the complaint is concerned that mediation would be unworkable;
- (2) where the complaint involves an allegation of sexual misconduct or an allegation of discrimination or harassment because of a prohibited ground of discrimination or harassment referred to in any provision of the *Human Rights Code*; or
- (3) where the public interest requires a hearing of the complaint.

subs. 51.4(13) and 51.5

d) to recommend a hearing

A complaint subcommittee will refer a complaint to the Judicial Council, or a review panel thereof, and recommend that a hearing into a complaint be held where there has been an allegation of judicial misconduct that the complaint subcommittee believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct. If a complaint is referred to the Judicial Council, with or without a recommendation that a hearing be held, the complainant and the subject judge may be identified to the Judicial Council, or a review panel thereof.

subs. 51.4(13) and (16)

RECOMMENDATION RE: HEARING

If a recommendation to hold a hearing is made by the complaint subcommittee it may be made with, or without, a recommendation that the hearing be held *in camera* and if such recommendation is made, the criteria established by the Judicial Council (see page B-10) will be used.

APPENDIX - B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – REVIEW PANELS

e) compensation

The complaint subcommittee's report to the review panel may also deal with the question of compensation of the judge's costs for legal services, if any, incurred during the investigative stage of the process if the complaint subcommittee is of the opinion that the complaint should be dismissed and has so recommended in its report to the Judicial Council. The Judicial Council may then recommend to the Attorney General that the judge's costs for legal services be paid, in accordance with section 51.7 of the *Act*.

subs. 51.7(1)

The decision as to whether or not to recommend compensation of a judge's costs for legal services will be made on a case by case basis.

REFERRING COMPLAINT TO COUNCIL

As noted above, a complaint subcommittee may also refer the complaint to the Judicial Council, with or without making a recommendation that it hold a hearing into the complaint. Both members of the complaint subcommittee need not agree with this recommendation and the Judicial Council, or a review panel thereof, has the power to require the complaint subcommittee to refer the complaint to it if it does not approve the complaint subcommittee's recommended disposition or if the complaint subcommittee cannot agree on the disposition. If a complaint is referred to the Judicial Council, with or without a recommendation that a hearing be held, the complainant and the subject judge may be identified to the Judicial Council, or a review panel thereof.

subs. 51.4(16) and (17)

REVIEW PANELS

PURPOSE

The Judicial Council may establish a review panel for the purpose of:

- considering the report of a complaint subcommittee,
- considering a complaint referred to it by a complaint subcommittee

- considering a mediator's report
- considering a complaint referred to it out of mediation, and
- considering the question of compensation

and the review panel has all the powers of the Judicial Council for these purposes.

subs. 49(14)

COMPOSITION

A review panel is made up of two provincial judges (other than the Chief Judge), a lawyer and a lay member of the OJC and shall not include either of the two members who served on the complaint subcommittee who investigated the complaint and made the recommendation to the review panel. One of the judges, designated by the Council, shall chair the review panel and four members constitute a quorum. The chair of the review panel is entitled to vote and may cast a second deciding vote if there is a tie.

subs. 49(15),(18) and (19)

WHEN REVIEW PANEL FORMED

A review panel is formed to review the decisions made about complaints by complaint subcommittees and dispose of open complaint files at every regularly scheduled meeting of the OJC, if the quorum requirements of the governing legislation can be satisfied.

GUIDELINES AND RULES OF PROCEDURE

The *Regulations Act* does not apply to rules, guidelines or criteria established by the Judicial Council.

subs. 51.1(2)

The *Statutory Powers Procedure Act* does not apply to the Judicial Council's activities, or a review panel thereof, in considering a complaint subcommittee's report or in reviewing a complaint referred to it by a complaint subcommittee.

subs. 51.4(19)

APPENDIX - B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – REVIEW PANELS

The Judicial Council's rules do not have to be approved by the Statutory Powers Procedure Rules Committee as required by sections 28, 29 and 33 of the *Statutory Powers Procedure Act*.

subs. 51.1(3)

The Ontario Judicial Council has established the following guidelines and rules of procedure under subsection 51.1(1) with respect to the consideration of complaint subcommittee reports made to a review panel or referred to it by a complaint subcommittee and the Judicial Council, or a review panel thereof, shall follow its guidelines and rules of procedure established for this purpose.

subs. 51.4(22)

Review of Complaint Subcommittee's Report

REVIEW IN PRIVATE

The review panel shall consider the complaint subcommittee's report, in private, and may approve its disposition or may require the complaint subcommittee to refer the complaint to the Council in which case the review panel shall consider the complaint, in private.

subs. 51.4(17)

PROCEDURE ON REVIEW

The review panel shall examine the letter of complaint, the relevant parts of the transcript (if any), the response from the judge (if any), etc., with all identifying information removed therefrom, as well as the report of the complaint subcommittee, until its members are satisfied that the issues of concern have been identified and addressed by the complaint subcommittee in its investigation of the complaint and in its recommendation(s) to the review panel about the disposition of the complaint.

A review panel may reserve its decision on a complaint subcommittee's recommendation and may adjourn from time to time to consider its decision or direct the complaint subcommittee to conduct further investigation and report back to the review panel.

If the members of the review panel are not satisfied with the report of the complaint subcommittee, they may refer the complaint back to the complaint subcommittee for further investigation or make any other direction or request of the complaint subcommittee that they deem to be appropriate.

If it is necessary to hold a vote on whether or not to accept the recommendation of a complaint subcommittee, and there is a tie, the chair will cast a second and deciding vote.

Referral of Complaint to a Review Panel

WHEN REFERRED

When a complaint subcommittee submits its report to a review panel, the review panel may approve the complaint subcommittee's disposition or require the complaint subcommittee to refer the complaint to it to consider. The members of a review panel will require a complaint subcommittee to refer the complaint to them in circumstances where the members of the complaint subcommittee cannot agree on the recommended disposition of the complaint or where the recommended disposition of the complaint is unacceptable to a majority of the members of the review panel.

subs. 51.4(13), (14) and (17)

POWER OF A REVIEW PANEL ON REFERRAL

If a complaint is referred to it by a complaint subcommittee or a review panel requires a complaint subcommittee to refer a complaint to it to consider, the complainant and the subject judge may be identified to the members of the review panel who shall consider the complaint, in private, and may: -

- decide to hold a hearing,
- dismiss the complaint,
- refer the complaint to the Chief Judge (with or without imposing conditions), or
- refer the complaint to a mediator.

subs. 51.4(16) and (18)

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – REVIEW PANELS

GUIDELINES AND RULES OF PROCEDURE

The *Regulations Act* does not apply to rules, guidelines or criteria established by the Judicial Council.

subs. 51.1(2)

The *Statutory Powers Procedure Act* does not apply to the Judicial Council's activities, or a review panel thereof, in considering a complaint subcommittee's report or in reviewing a complaint referred to it by a complaint subcommittee.

subs. 51.4(19)

The Judicial Council's rules do not have to be approved by the Statutory Powers Procedure Rules Committee as required by sections 28, 29 and 33 of the *Statutory Powers Procedure Act*.

subs. 51.1(3)

The Ontario Judicial Council has established the following guidelines and rules of procedures under subsection 51.1(1) with respect to the consideration of complaints that are referred to it by a complaint subcommittee or in consideration of complaints that it causes to be referred to it from a complaint subcommittee and the Judicial Council, or a review panel thereof, shall follow its guidelines and rules of procedure established for the purpose.

subs. 51.4(22)

GUIDELINES RE: DISPOSITIONS

a) ordering a hearing

A review panel will order a hearing be held in circumstances where the majority of members of the review panel are of the opinion that there has been an allegation of judicial misconduct which the majority of the members of the review panel believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct. The recommendation to hold a hearing made by the review panel may be made with, or without, a recommendation that the hearing be held *in camera* and if such recommendation is made, the criteria established by the Judicial Council (see page B-10) will be used.

b) dismissing a complaint

A review panel will dismiss a complaint in circumstances where the majority of members of the review panel are of the opinion that the allegation of judicial misconduct falls outside the jurisdiction of the Judicial Council, or is frivolous or an abuse of process.

c) referring a complaint to the Chief Judge

A review panel will refer a complaint to the Chief Judge in circumstances where the majority of members of the review panel are of the opinion that the conduct complained of does not warrant another disposition and there is some merit to the complaint and the disposition is, in the opinion of the majority of members of the review panel, a suitable means of informing the judge that his/her course of conduct was not appropriate in the circumstances that led to the complaint. A review panel will recommend imposing conditions on their referral of a complaint to the Chief Judge where a majority of the members of a review panel agree that there is some course of action or remedial training of which the subject judge can take advantage of and there is agreement by the judge in accordance with subs. 51.4(15). The Chief Judge will provide a written report on the disposition of the complaint to the review panel and complaint subcommittee members.

d) referring a complaint to mediation

A review panel may refer a complaint to mediation when the Judicial Council has established a mediation process for complainants and judges who are the subject of complaints, in accordance with section 51.5 of the *Courts of Justice Act*. When such a mediation process is established by the Judicial Council, complaints may be referred to mediation in circumstances where a majority of the members of the review panel are of the opinion that the conduct complained of does not fall within the criteria established to exclude complaints that are inappropriate for mediation, as set out in subsection 51.5(3) of the *Courts of Justice Act*. Until such time as criteria are established, complaints are excluded from the mediation process in the following circumstances:

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – HEARING PANELS

- B**
- (1) where there is a significant power imbalance between the complainant and the judge, or there is such a significant disparity between the complainant's and the judge's accounts of the event with which the complaint is concerned that mediation would be unworkable;
 - (2) where the complaint involves an allegation of sexual misconduct or an allegation of discrimination or harassment because of a prohibited ground of discrimination or harassment referred to in any provision of the *Human Rights Code*; or
 - (3) where the public interest requires a hearing of the complaint.

Notice of Decision

DECISION COMMUNICATED

The Judicial Council, or a review panel thereof, shall communicate its decision to both the complainant and the subject judge and if the Judicial Council decides to dismiss the complaint, it will provide the parties with brief reasons.

subs. 51.4(20)

ADMINISTRATIVE PROCEDURES

Detailed information on administrative procedures to be followed by the Judicial Council when notifying the parties of its decision can be found at page B-19 of this document.

HEARING PANELS

APPLICABLE LEGISLATION

All hearings held by the Judicial Council are to be held in accordance with section 51.6 of the *Courts of Justice Act*.

The *Regulations Act* does not apply to rules, guidelines or criteria established by the Judicial Council.

subs. 51.1(2)

The *Statutory Powers Procedure Act* applies to any hearing by the Judicial Council, except for its provisions with respect to disposition of proceedings

without a hearing (section 4, *S.P.P.A.*) or its provisions for public hearings (subs. 9(1) *S.P.P.A.*). The Judicial Council's rules do not have to be approved by the Statutory Powers Procedure Rules Committee as required by sections 28, 29 and 33 of the *Statutory Powers Procedure Act*.

subs. 51.1(3) and 51.6(2)

The Judicial Council's rules of procedure established under subsection 51.1(1) apply to a hearing held by the Judicial Council.

subs. 51.6(3)

COMPOSITION

The following rules apply to a hearing panel established for the purpose of holding a hearing under section 51.6 (adjudication by the Ontario Judicial Council) or section 51.7 (considering the question of compensation):

1. half the members of the panel, including the chair, must be judges and half of the members of the panel must be persons who are not judges
2. at least one member must be a person who is neither a judge nor a lawyer
3. the Chief Justice of Ontario, or another judge of the Ontario Court of Appeal designated by the Chief Justice, shall chair the hearing panel
4. the Judicial Council may determine the size and composition of the panel, subject to paragraphs 1, 2 & 3 above
5. all the members of the hearing panel constitute a quorum (subs. 49(17))
6. the chair of the hearing panel is entitled to vote and may cast a second deciding vote if there is a tie
7. the members of the complaint subcommittee that investigated the complaint shall not participate in a hearing of the complaint
8. the members of a review panel that received and considered the recommendation of a complaint subcommittee shall not participate in a hearing of the complaint (subs. 49(20))

subs. 49(17), (18), (19) and (20)

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – HEARINGS

POWER

A hearing panel established by the Judicial Council for the purposes of section 51.6 or 51.7 has all the powers of the Judicial Council for that purpose.

subs. 49(16)

HEARINGS

COMMUNICATION BY MEMBERS

Members of the Judicial Council participating in the hearing shall not communicate directly or indirectly in relation to the subject matter of the hearing with any party, counsel, agent or other person, unless all the parties and their counsel or agents receive notice and have an opportunity to participate. This prohibition on communication does not preclude the Judicial Council from engaging legal counsel to assist it and, in that case, the nature of the advice given by counsel shall be communicated to the parties so that they may make submissions as to the law.

subs. 51.6(4) and (5)

PARTIES TO THE HEARING

The Judicial Council shall determine who are the parties to the hearing.

subs. 51.6(6)

PUBLIC OR PRIVATE/ALL OR PART

Judicial Council hearings into complaints and meetings to consider the question of compensation shall be open to the public unless the hearing panel determines, in accordance with criteria established under section 51.1(1) by the Judicial Council, that exceptional circumstances exist and the desirability of holding open hearings is outweighed by the desirability of maintaining confidentiality in which case it may hold all or part of a hearing in private.

subs. 49(11) and 51.6(7)

The *Statutory Powers Procedure Act* applies to any hearing by the Judicial Council, except for its provisions with respect to disposition of proceedings without a hearing (section 4, *S.P.P.A.*) or its provisions for public hearings (subs. 9(1), *S.P.P.A.*).

subs. 51.6(2)

If a complaint involves allegations of sexual misconduct or sexual harassment, the Judicial Council shall, at the request of the 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 the witness, as the case may be.

subs. 51.6(9)

OPEN OR CLOSED HEARINGS - CRITERIA

The Judicial Council has established the following criteria established subsection 51.1(1) to assist it in determining whether or not the desirability of holding open hearings is outweighed by the desirability of maintaining confidentiality. If the Judicial Council determines that exceptional circumstances exist in accordance with the following criteria, it may hold all, or part, of the hearing in private.

subs. 51.6(7)

The members of the Judicial Council will consider the following criteria to determine what exceptional circumstances must exist before a decision is made to maintain confidentiality and hold all, or part, of a hearing in private:

- a) where matters involving public security may be disclosed, or
- b) where intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that the hearing be open to the public.

REVEALING JUDGE'S NAME WHEN HEARING WAS PRIVATE – CRITERIA

If a hearing was held in private, the Judicial Council shall order that the judge's name not be disclosed or made public unless it determines, in accordance with the criteria established under subsection 51.1(1), that there are exceptional circumstances.

subs. 51.6(8)

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – HEARINGS

B

The members of the Judicial Council will consider the following criteria before a decision is made about when it is appropriate to publicly reveal the name of a judge even though the hearing has been held in private:

- a) at the request of the judge, or
- b) in circumstances where it would be in the public interest to do so.

WHEN AN ORDER PROHIBITING PUBLICATION OF JUDGE'S NAME MAY BE MADE, PENDING THE DISPOSITION OF A COMPLAINT - CRITERIA

In exceptional circumstances, and in accordance with criteria established under subsection 51.1(1), the Judicial Council may make an order prohibiting the publication of information that might identify the subject judge, pending the disposition of a complaint.

subs. 51.6(10)

The members of the Judicial Council will consider the following criteria to determine when the Judicial Council may make an order prohibiting the publication of information that might identify the judge who is the subject of a complaint, pending the disposition of a complaint:

- a) where matters involving public security may be disclosed, or
- b) where intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that the hearing be open to the public.

Disposition at Hearing

After completing the hearing, the Judicial Council may dismiss the complaint, with or without a finding that it is unfounded or, if it finds that there has been misconduct by the judge, may

- a) warn the judge;
- b) reprimand the judge;
- c) order the judge to apologize to the complainant or to any other person;
- d) order the judge to take specified measures such as receiving education or treatment, as a condition of continuing to sit as a judge;
- e) suspend the judge with pay, for any period;
- f) suspend the judge without pay, but with benefits, for a period up to thirty days; or
- g) recommend to the Attorney General that the judge be removed from office (in accordance with section 51.8).

subs. 51.6(11)

COMBINATION OF SANCTIONS

The Judicial Council may adopt any combination of the foregoing sanctions except that the recommendation to the Attorney General that the judge be removed from office will not be combined with any other sanction.

subs. 51.6(12)

REPORT TO ATTORNEY GENERAL

The Judicial Council may make a report to the Attorney General about the complaint, investigation, hearing and disposition (subject to any orders made about confidentiality of documents by the Judicial Council) and the Attorney General may make the report public if he/she is of the opinion this would be in the public interest.

subs. 51.6(18)

If a complainant or witness asked that their identity be withheld during the hearing and an order was made under subsection 51.6(9), the report to the Attorney General will not identify them or, if the hearing was held in private, the report will not identify the judge, unless the Judicial Council orders the judge's name be disclosed in the report in accordance with the criteria established by the Judicial Council under subsection 51.6(8) (see page B-10).

subs. 51.6(19)

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – HEARINGS

If, during the course of a hearing into a complaint, the Judicial Council made an order prohibiting publication of information that might identify the judge complained-of pending the disposition of the complaint, pursuant to subsection 51.6(10) and the criteria established by the Judicial Council (see page B-11) and the Judicial Council subsequently dismisses the complaint with a finding that it was unfounded, the judge shall not be identified in the report to the Attorney General without his or her consent and the Judicial Council shall order that information that relates to the complaint and which might identify the judge shall never be made public without his or her consent.

subs. 51.6(20)

ORDER TO ACCOMMODATE

If the effect of a disability on the judge's performance of the essential duties of judicial office is a factor in a complaint, which is either dismissed or disposed of in any manner short of recommending to the Attorney General that the judge be removed, and the judge would be able to perform the essential duties of judicial office if his or her needs were accommodated, the Judicial Council shall order the judge's needs to be accommodated to the extent necessary to enable him or her to perform those duties.

Such an order to accommodate may not be made if the Judicial Council is satisfied that making the order would impose undue hardship on the person responsible for accommodating the judge's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

The Judicial Council shall also not make an order to accommodate against a person without ensuring that the person has had an opportunity to participate and make submissions.

An order made by the Judicial Council to accommodate a judge's needs binds the Crown.

subs. 51.6(13), (14), (15), (16) and (17)

Removal from Office

A provincial judge may be removed from office only if:

- a) a complaint about the judge has been made to the Judicial Council; and
- b) the Judicial Council, after a hearing, recommends to the Attorney General that the judge be removed on the ground that he or she has become incapacitated or disabled from the due execution of his or her office by reason of,
 - (i) inability, because of a disability, to perform the essential duties of his or her office (if an order to accommodate the judge's needs would not remedy the inability, or could not be made because it would impose undue hardship on the person responsible for meeting those needs, or was made but did not remedy the inability),
 - (ii) conduct that is incompatible with the due execution of his or her office, or
 - (iii) failure to perform the duties of his or her office.

subs. 51.8(1)

TABLING OF RECOMMENDATION

The Attorney General shall table the Judicial Council's recommendation in the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of its next session.

subs. 51.8(2)

ORDER REMOVING JUDGE

An order removing a provincial judge from office may be made by the Lieutenant Governor on the address of the Legislative Assembly.

subs. 51.8(3)

APPLICATION

This section applies to provincial judges who have not yet attained retirement age and to provincial judges whose continuation in office after attaining retirement age has been approved by the Chief Judge. This section also applies to a Chief, or Associate Chief, Judge who has been continued in office by the

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPENSATION

Judicial Council, either as a Chief, or Associate Chief, Judge, or who has been continued in office as a provincial judge by the Judicial Council.

subs. 51.8(4)

COMPENSATION

AFTER COMPLAINT DISPOSED OF

When the Judicial Council has dealt with a complaint against a provincial judge, it shall consider whether the judge should be compensated for all or part of his or her costs for legal services incurred in connection with the steps taken in relation to the complaint, including review and investigation of a complaint by a complaint subcommittee, review of a complaint subcommittee's report by the Judicial Council, or a review panel thereof, review of a mediator's report by the Judicial Council, or a review panel thereof, the hearing into a complaint by the Judicial Council, or a hearing panel thereof, and legal services incurred in connection with the question of compensation. The Judicial Council's consideration of the question of compensation shall be combined with a hearing into a complaint, if one is held.

subs. 51.7(1) and (2)

PUBLIC OR PRIVATE

If a hearing was held and was public, the consideration of the compensation question shall be public; otherwise, the consideration of the question of compensation shall take place in private.

subs. 51.7(3)

RECOMMENDATION

If the Judicial Council is of the opinion that the judge should be compensated, it shall make such a recommendation to the Attorney General, indicating the amount of compensation.

subs. 51.7(4)

WHERE COMPLAINT DISMISSED AFTER A HEARING

If the complaint is dismissed after a hearing, the Judicial Council shall recommend to the Attorney General that the judge be compensated for his or her

costs for legal services and shall indicate the amount of compensation.

subs. 51.7(5)

DISCLOSURE OF NAME

The Judicial Council's recommendation to the Attorney General shall name the judge, but the Attorney General shall not disclose the judge's name unless there was a public hearing into the complaint or the Judicial Council has otherwise made the judge's name public.

subs. 51.7(6)

AMOUNT AND PAYMENT

The amount of compensation recommended to be paid may relate to all, or part, of the judge's costs for legal services and shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services. The Attorney General shall pay compensation to the judge in accordance with the recommendation.

subs. 51.7(7) and (8)

CONFIDENTIALITY AND PROTECTION OF PRIVACY

INFORMATION TO PUBLIC

At any person's request, the Judicial Council may confirm or deny that a particular complaint has been made to it.

subs. 51.3(5)

POLICY OF JUDICIAL COUNCIL

The complaint subcommittee's investigation into a complaint shall be conducted in private, and its report about a complaint or referral of a complaint to the Judicial Council, or a review panel thereof, is considered in private, in accordance with subsections 51.4(6) and 51.4(17) and (18). It is the policy of the Judicial Council, made pursuant to subsections 51.4(21) and (22), that it will not confirm or deny that a particular complaint has been made to it, as permitted by subsection 51.3(5), unless the Judicial Council, or a hearing panel thereof, has determined that there will be a public hearing into the complaint.

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – CONFIDENTIALITY AND PROTECTION OF PRIVACY

COMPLAINT SUBCOMMITTEE INVESTIGATION PRIVATE

The investigation into a complaint by a complaint subcommittee shall be conducted in private. The *Statutory Powers Procedure Act* does not apply to the complaint subcommittee's activities in investigating a complaint.

subs. 51.4(6) and (7)

REVIEW PANEL DELIBERATION PRIVATE

The Judicial Council, or a review panel thereof, shall:

- consider the complaint subcommittee's report, in private, and may approve its disposition, or
- may require the complaint subcommittee to refer the complaint to the Council.

subs. 51.4(17)

If a complaint is referred to it by a complaint subcommittee, the Judicial Council, or a Review Panel thereof, shall consider such complaint, in private, and may:

- decide to hold a hearing,
- dismiss the complaint,
- refer the complaint to the Chief Judge (with or without imposing conditions), or
- refer the complaint to a mediator.

subs. 51.4(18)

WHEN IDENTITY OF JUDGE REVEALED TO REVIEW PANEL

If a complaint is referred to the Judicial Council, with or without a recommendation that a hearing be held, the complainant and the subject judge may be identified to the Judicial Council or a review panel thereof, and such a complaint will be considered in private.

subs. 51.4(16) and (17)

HEARINGS MAY BE PRIVATE

If the Judicial Council determines, in accordance with criteria established under subsection 51.1(1) that the desirability of holding an open hearing is outweighed by the desirability of maintaining confi-

dentiality, it may hold all or part of a hearing in private.

subs. 51.6(7)

JUDGE'S NAME NOT DISCLOSED

If a hearing is held in private, the Judicial Council shall, unless it determines in accordance with the criteria established under subsection 51.1(1) that there are exceptional circumstances, order the judge's name not be disclosed or made public.

subs. 51.6(8)

ORDER PROHIBITING PUBLICATION

In exceptional circumstances, and in accordance with criteria established under subsection 51.1(1), the Judicial Council may make an order prohibiting the publication of information that might identify the subject judge, pending the disposition of a complaint.

subs. 51.6(10)

CRITERIA ESTABLISHED

For the criteria established by the Judicial Council under subsection 51.1(1) with respect to subsections 51.6(7), (8) and (10), please see pages B-10 and B-11.

REPORT TO ATTORNEY GENERAL

If a complainant or witness asked that their identity be withheld during the hearing, and an order was made under subsection 51.6(9), the report to the Attorney General will not identify them or, if the hearing was held in private, the report will not identify the judge, unless the Judicial Council orders the judge's name be disclosed in the report in accordance with criteria established under subsection 51.6(8).

subs. 51.6(19)

If, during the course of a hearing into a complaint, the Judicial Council made an order prohibiting publication of information that might identify the judge complained-of pending the disposition of the complaint, pursuant to subsection 51.6(10) and the criteria established by the Judicial Council and the Judicial Council subsequently dismisses the complaint with a finding that it was unfounded, the judge shall not be identified in the report to the

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – SPECIAL CONSIDERATIONS

Attorney General without his or her consent and the Judicial Council shall order that information that relates to the complaint and which might identify the judge shall never be made public without his or her consent.

subs. 51.6(20)

ORDER NOT TO DISCLOSE

The Judicial Council or a complaint subcommittee may order that any information or documents relating to a mediation or a Judicial Council meeting or hearing that was not held in public, whether the information or documents are in the possession of the Judicial Council or of the Attorney General, or of any other person, are confidential and shall not be disclosed or made public.

subs. 49(24) and (25)

EXCEPTION

The foregoing does not apply to information and documents that the *Courts of Justice Act* requires the Judicial Council to disclose or that have not been treated as confidential and were not prepared exclusively for the purpose of mediation or a Judicial Council meeting or hearing.

subs. 49(26)

AMENDMENTS TO THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

Section 65 of the *Freedom of Information and Protection of Privacy Act* is amended by adding the following subsections:

- (4) This *Act* does not apply to anything contained in a judge's performance evaluation under section 51.11 of the *Courts of Justice Act* or to any information collected in connection with the evaluation.
- (5) This *Act* does not apply to a record of the Ontario Judicial Council, whether in the possession of the Judicial Council or of the Attorney General, if any of the following conditions apply:

1. The Judicial Council or its complaint subcommittee has ordered that the record or information in the record not be disclosed or made public.
2. The Judicial Council has otherwise determined that the record is confidential.
3. The record was prepared in connection with a meeting or hearing of the Judicial Council that was not open to the public.

SPECIAL CONSIDERATIONS

FRENCH-SPEAKING COMPLAINANTS/JUDGES

Complaints against provincial judges may be made in English or French.

subs. 51.2(2)

A hearing into a complaint by the Judicial Council shall be conducted in English, but a complainant or witness who speaks French or a judge who is the subject of a complaint and who speaks French is entitled, on request, to be given before the hearing, French translations of documents that are written in English and are to be considered at the hearing; to be provided with the assistance of an interpreter at the hearing; and to be provided with simultaneous interpretation into French of the English portions of the hearing.

subs. 51.2(3)

This entitlement to translation and interpretation extends to mediation and to the consideration of the question of compensation, if any.

subs. 51.2(4)

The Judicial Council may direct that a hearing or mediation of a complaint where a complainant or witness speaks French, or the complained-of judge speaks French, be conducted bilingually, if the Judicial Council is of the opinion that it can be properly conducted in that manner.

subs. 51.2(5)

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – SPECIAL CONSIDERATIONS

A directive under subsection (5) may apply to a part of the hearing or mediation and, in that case, subsections (7) and (8) below apply with necessary modifications.

subs. 51.2(6)

In a bilingual hearing or mediation,

- a) oral evidence and submissions may be given or made in English or French, and shall be recorded in the language in which they are given or made;
- b) documents may be filed in either language;
- c) in the case of a mediation, discussions may take place in either language;
- d) the reasons for a decision or the mediator's report, as the case may be, may be written in either language.

subs. 51.2(7)

In a bilingual hearing or mediation, if the complainant or the judge complained-of does not speak both languages, he or she is entitled, on request, to have simultaneous interpretation of any evidence, submissions or discussions spoken in the other language and translation of any document filed or reasons or report written in the other language.

subs. 51.2(8)

COMPLAINTS AGAINST CHIEF JUDGE ET AL

If the Chief Judge is the subject of a complaint, the Chief Justice of Ontario shall appoint another judge of the Provincial Division to be a member of the Judicial Council instead of the Chief Judge until the complaint is finally disposed of. The Associate Chief Judge appointed to the Judicial Council shall chair meetings and hearings of the Judicial Council instead of the Chief Judge and appoint temporary members of the Judicial Council until the complaint against the Chief Judge is finally disposed of.

subs. 50(1)(a) and (b)

Any reference of the complaint that would otherwise be made to the Chief Judge (by a complaint subcommittee after its investigation, by the Judicial Council or a review panel thereof after its review of a complaint subcommittee's report or referral or by the Judicial Council after mediation), shall be made to the Chief Justice of the Ontario Court instead of the Chief Judge, until the complaint against the Chief Judge is finally disposed of.

subs. 50(1)(c)

If the Chief Judge is suspended pending final disposition of the complaint against him or her, any complaints that would otherwise be referred to the Chief Judge shall be referred to the Associate Chief Judge appointed to the Judicial Council until the complaint against the Chief Judge is finally disposed of.

subs. 50(2)(a)

If the Chief Judge is suspended pending final disposition of the complaint against him or her, annual approvals that would otherwise be granted or refused by the Chief Judge shall be granted or refused by the Associate Chief Judge appointed to the Judicial Council until the complaint against the Chief Judge is finally disposed of.

subs. 50(2)(b)

If either the Associate Chief Judge or Regional Senior Judge appointed to the Judicial Council is the subject of a complaint, the Chief Judge shall appoint another judge of the Provincial Division to be a member of the Judicial Council instead of the Associate Chief Judge or Regional Senior Judge, as the case may be, until the complaint against the Associate Chief Judge, or Regional Senior Judge appointed to the Judicial Council, is finally disposed of.

subs. 50(3)

APPENDIX - B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ADMINISTRATIVE MATTERS

COMPLAINTS AGAINST SMALL CLAIMS COURT JUDGES

Subsection 87.1(1) of the *Courts of Justice Act* applies to provincial judges who were assigned to the Provincial Court (Civil Division) immediately before September 1, 1990, with special provisions.

COMPLAINTS

When the Judicial Council deals with a complaint against a provincial judge who was assigned to the Provincial Court (Civil Division) immediately before September 1, 1990, the following special provisions apply:

1. One of the members of the Judicial Council who is a provincial judge shall be replaced by a provincial judge who was assigned to the Provincial Court (Civil Division) immediately before September 1, 1990. The Chief Judge of the Provincial Division shall determine which judge is to be replaced and the Chief Justice of the Ontario Court shall designate the judge who is to replace that judge.
2. Complaints shall be referred to the Chief Justice of the Ontario Court, rather than to the Chief Judge of the Provincial Division.
3. Complaint subcommittee recommendations with respect to interim suspension shall be made to the appropriate Regional Senior Justice of the General Division, to whom subsections 51.4(10) and (11) apply, with necessary modifications.

subs. 87.1(4)

COMPLAINTS AGAINST MASTERS

Subsection 87.(3) of the *Courts of Justice Act* states that sections 44 to 51.12 applies to masters, with necessary modifications, in the same manner as to provincial judges.

COMPLAINTS

When the Judicial Council deals with a complaint against a master, the following special provisions apply:

1. One of the members of the Judicial Council who is a provincial judge shall be replaced by a master. The Chief Judge of the Provincial Division shall determine which judge is to be replaced and the Chief Justice of the Ontario Court shall designate the master who is to replace that judge.
2. Complaints shall be referred to the Chief Justice of the Ontario Court, rather than to the Chief Judge of the Provincial Division.
3. Complaint subcommittee recommendations with respect to interim suspension shall be made to the appropriate Regional Senior Justice of the General Division, to whom subsections 51.4(10) and (11) apply, with necessary modifications.

ADMINISTRATIVE MATTERS

INTAKE/OPENING COMPLAINT FILES

- a complaint is defined as an allegation of judicial misconduct, made in writing and signed by the complainant
- if the complaint is within the jurisdiction of the OJC (any provincially appointed judge or master - full-time or part-time) a complaint file is opened and assigned to a two-member complaint subcommittee for review and investigation (complaints that are outside the jurisdiction of the OJC are referred to the appropriate agency)
- the complaint is added to the complaint tracking form, a sequential file number is assigned, a letter of acknowledgment is sent to the complainant within a week of his or her letter being received, page one of the complaint intake form is completed and a letter to the complaint subcommittee members asking for instructions is prepared and placed in the office copy and the members' copy of the complaint file.

Status reports on all open complaint files - with identifying information removed – is provided to each member of the OJC at each of its regular meetings.

APPENDIX - B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ADMINISTRATIVE MATTERS

COMPLAINT SUBCOMMITTEES

Complaint subcommittee members endeavour to review the status of all opened files assigned to them on receipt of their status report each month and take whatever steps are necessary to enable them to submit the file to the OJC for review at the earliest possible opportunity.

A letter advising the complaint subcommittee members that they have had a new case assigned to them is sent to the complaint subcommittee members, for their information, within a week of the file being opened and assigned. The complaint subcommittee members are contacted to determine if they want their copy of the file delivered to them or kept in their locked filing cabinet drawer in the OJC office. If files are delivered, receipt of the file by the member is confirmed. Complaint subcommittee members may attend at the OJC office to examine their files during regular office hours.

Complaint subcommittee members will endeavour to review and discuss their assigned files and determine whether or not a transcript of evidence and/or a response to a complaint is necessary within a month of receipt of the file. All material (transcripts, audio tapes, court files, etc.) which a complaint subcommittee wishes to examine in relation to a complaint will be obtained on their behalf by the Registrar, on their instruction, and not by individual complaint subcommittee members.

Given the nature of the complaint, the complaint subcommittee may instruct the Registrar to order a transcript of evidence, or the tape recording of evidence, as part of their investigation. If necessary, the complainant is contacted to determine the stage the court proceeding is in before a transcript is ordered. The complaint subcommittee may instruct the Registrar to hold the file in abeyance until the matter before the courts is resolved. If a transcript is ordered, court reporters are instructed not to submit the transcript to the subject judge for editing.

If a complaint subcommittee requires a response from the judge, the complaint subcommittee will direct the Registrar to ask the judge to respond to a specific issue or issues raised in the complaint. A copy of the complaint, the transcript (if any) and all

of the relevant materials on file will be provided to the judge with the letter requesting the response. A judge is given thirty days from the date of the letter asking for a response, to respond to the complaint. If a response is not received within that time, the complaint subcommittee members are advised and a reminder letter is sent to the judge by registered mail. If no response is received within ten days from the date of the registered letter, and the complaint subcommittee is satisfied that the judge is aware of the complaint and has full particulars of the complaint, they will proceed in the absence of a response. Any response made to the complaint by the subject judge at this stage of the procedure is deemed to have been made without prejudice and may not be used at a hearing.

Transcripts of evidence and responses from judges to complaints are sent to complaint subcommittee members by courier, unless the members advise otherwise.

A complaint subcommittee may invite any party or witness to meet with it or communicate with it during its investigation.

The OJC secretary transcribes letters of complaint that are handwritten and provides secretarial assistance and support to members of the complaint subcommittee, as required.

A complaint subcommittee may direct the Registrar to retain or engage persons, including counsel, to assist it in its investigation of a complaint. The complaint subcommittee may also consult with members of the Procedures Subcommittee to seek their input and guidance during the investigative stages of the complaint process.

subs. 51.4(5)

One member of each complaint subcommittee will be responsible to contact the Assistant Registrar by a specified deadline prior to each scheduled OJC meeting to advise what files, if any, assigned to the complaint subcommittee are ready to be reported to a review panel. The complaint subcommittee will also provide a legible, fully completed copy of pages 2 and 3 of the complaint intake form for each file which is ready to be reported and will advise as to what other file material, besides the complaint,

APPENDIX - B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ADMINISTRATIVE MATTERS

should be copied from the file and provided to the members of the review panel for their consideration. No information that could identify either the complainant or the judge who is the subject of the complaint will be included in the material provided to the review panel members.

At least one member of a complaint subcommittee shall be present when the subcommittee's report is made to a review panel.

REVIEW PANELS

The chair of the review panel shall ensure that at least one copy of the relevant page of the complaint intake form is completed and provided to the Registrar at the conclusion of the review panel hearing.

MINUTES

When a complaint subcommittee has made a recommendation to dismiss a complaint to a review panel and the review panel has agreed with this recommendation, the Registrar prepares a case summary for the draft minutes of the review panel meeting. The case summary does not contain any information which would identify either the complainant or the subject judge. Each case summary is circulated, for approval, to the complaint subcommittee members and the members who served on the review panel. Once approved, the final form of the minutes of the review panel meeting is prepared and distributed to all members.

The minutes of the business portion of each meeting of the OJC are circulated in draft form to the members present at that portion of the meeting and they are given an opportunity to suggest amendments, make corrections, etc. Once approved in draft form by the members who were present, the final form of the minutes is prepared & distributed to all members of the OJC. The final form of the business portion of the minutes is formally approved at the next regularly scheduled meeting of the OJC.

NOTICE OF DECISION – NOTIFICATION OF PARTIES

After the minutes of the review panel meeting have been approved, the Registrar drafts the letter to the complainant advising him or her of the disposition of the complaint. This draft letter is circulated for the approval of the complaint subcommittee and review panel members who were involved in the investigation and review of the complaint. After the draft letter to the complainant has been approved, it is prepared in final form and sent to the complainant.

Complainants, in cases where their complaint is dismissed, are given notice of the decision of the OJC, with reasons, as required by subsection 51.4(2) of the *Courts of Justice Act*.

The OJC has distributed a waiver form for all judges to sign and complete, instructing the OJC of the circumstances in which an individual judge wishes to be advised of complaints made against them, which are dismissed. The OJC has also distributed an address form for all judges to sign and complete, instructing the OJC of the address to which correspondence about complaint matters should be sent.

Judges who had been asked for a response to the complaint, or who, to the knowledge of the OJC are otherwise aware of the complaint, will be contacted by telephone after the complaint has been dealt with and advised of the decision of the OJC. A letter confirming the disposition of the complaint will also be sent to the judge, in accordance with his/her instructions.

APPENDIX - B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ADMINISTRATIVE MATTERS

CLOSING FILES

Once the parties have been notified of the OJC's decision, the original copy of the complaint file is marked "closed" and stored in a locked filing cabinet. Complaint subcommittee members will return their copies of the file to the Registrar to be destroyed or advise, in writing, that they have destroyed their copy of the complaint file. If a member's copy of the complaint file, or written notice of the file's destruction, is not received within two weeks after the review panel meeting, OJC staff will contact the complaint subcommittee member, to remind him or her to destroy his or her copy of the complaint file, and provide written notice, or arrange to have the file returned to the OJC, by courier, for shredding.

RECORDS RETENTION

The Procedures Subcommittee will propose a record retention schedule for closed OJC files after completing its review and consideration of the record retention schedules of other organizations involved in complaint investigation and resolution (eg., the Canadian Judicial Council, the Law Society of Upper Canada, the Institute of Chartered Accountants, the Police Complaints Commission, etc.).



APPENDIX-C

ONTARIO JUDICIAL COUNCIL –
CRITERIA FOR CONTINUATION IN OFFICE

APPENDIX - C

ONTARIO JUDICIAL COUNCIL – CRITERIA FOR CONTINUATION IN OFFICE

Subsection 47(7) of the *Courts of Justice Act*, as amended, requires the Chief Judge to develop criteria for the approval of the continuation of judges in office as a full-time or part-time judge past retirement age (65 for those appointed after December 2, 1968/age 70 for those appointed prior to that date). The Judicial Council has approved the following criteria for continuation in office which were developed by the Chief Judge.



APPENDIX - C

ONTARIO JUDICIAL COUNCIL – CRITERIA FOR CONTINUATION IN OFFICE

CONTINUATION IN OFFICE OF PROVINCIAL JUDGE

A judge who has attained retirement age may, subject to the annual approval of the Chief Judge of the Provincial Division, continue in office as a full-time or part-time judge until he or she attains the age of seventy-five years, unless the judge has become incapacitated or disabled from the due execution of his or her office by reason of,

- (i) inability, because of a disability, to perform the essential duties of his or her office (if an order to accommodate the judge's needs would not remedy the inability, or could not be made because it would impose undue hardship on the person responsible for meeting those needs, or was made but did not remedy the inability),
- (ii) conduct that is incompatible with the due execution of his or her office, or
- (iii) failure to perform the duties of his or her office.

CONTINUATION IN OFFICE OF REGIONAL SENIOR JUDGE

A regional senior judge who is in office at the time of attaining retirement age may, subject to the annual approval of the Chief Judge, continue in that office until his or her term (including any renewal under subsection 42(9)) expires, or until he or she attains the age of seventy-five years, whichever comes first, unless the regional senior judge has become incapacitated or disabled from the due execution of his or her office by reason of the same criteria which apply to the continuation in office of a provincial judge.

CONTINUATION IN OFFICE OF CHIEF JUDGE OR OF ASSOCIATE CHIEF JUDGE

A Chief Judge or Associate Chief Judge who is in office at the time of attaining retirement age may, subject to the annual approval of the Judicial Council, continue in that office until his or her term expires, or until he or she attains the age of seventy-five years, whichever comes first, unless the Chief Judge or Associate Chief Judge has become incapacitated or disabled from the due execution of his or her office by reason of the same criteria which apply to the continuation in office of a provincial judge.

If the Judicial Council does not approve a Chief Judge's or Associate Chief Judge's continuation in that office, his or her continuation in the office of provincial judge is subject to the approval of the Judicial Council, on the same criteria which apply to the continuation in office of a provincial judge.



APPENDIX-D

ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION)
CONTINUING EDUCATION PLAN

ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) CONTINUING EDUCATION PLAN

This document represents the Continuing Education Plan of the Ontario Court of Justice (Provincial Division) as it has been developed to date and approved by the Ontario Judicial Council as required by s.51.10 of the *Courts of Justice Act*. The existing program structure is being reviewed by the Provincial Division Education Secretariat and while it is anticipated that the current level of education programming will be maintained, there may be some changes in program delivery.

The Continuing Education Plan for the Ontario Court of Justice (Provincial Division) has the following goals:

1. Maintaining and developing professional competence.
2. Maintaining and developing social awareness.
3. Encouraging personal growth.

The Plan provides each judge with an opportunity of having approximately ten days of continuing education per calendar year dealing with a wide variety of topics, including substantive law, evidence, Charter of Rights, skill training and social context. While many of the programs attended by the judges of the Provincial Division are developed and presented by the judges of the Court themselves, frequent use is made of outside resources in the planning and presentation of programs. Lawyers, government and law enforcement officials, academics, and other professionals have been used extensively in most education programs. In addition, judges are encouraged to identify and attend external programs of interest and benefit to themselves and the Court.

EDUCATION SECRETARIAT

The coordination of the planning and presentation of education programs is assured by the Education Secretariat. The composition of the Secretariat is as follows: the Chief Judge as Chair (ex officio), four judges nominated by the Chief Judge, two judges nominated by the Ontario Judges Association and two judges nominated by the Ontario Family Law Judges' Association. The Provincial Division's research counsel serve as consultants. The Secretariat meets approximately six times per year to discuss matters pertaining to education and reports to the Chief Judge, and to the Chief Judge's Executive Committee. The mandate and goals of the Education Secretariat are as follows:

- The Education Secretariat is committed to the importance of education in enhancing professional excellence.
- It is the mandate of the Education Secretariat to promote educational experiences that encourage judges to be reflective about their professional practices, to increase their substantive knowledge, and to engage in ongoing, lifelong and self-directed learning.

To meet the needs of an independent judiciary, the Education Secretariat will:

- Promote education as a way to encourage excellence; and
- Support and encourage programs which maintain and enhance social, ethical and cultural sensitivity.

APPENDIX - D

ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) - CONTINUING EDUCATION PLAN

The goals of the Education Secretariat are:

1. To stimulate continuing professional and personal development;
2. To ensure that education is relevant to the needs and interests of the provincial judiciary;
3. To support and encourage programs that maintain high levels of competence and knowledge in matters of evidence, procedure and substantive law;
4. To increase knowledge and awareness of community and social services structures and resources that may assist and complement educational programs and the work of the courts;
5. To foster the active recruitment and involvement of the judiciary at all stages of program conceptualization, development, planning, delivery and evaluation;
6. To promote an understanding of judicial development;
7. To facilitate the desire for life-long learning and reflective practices;
8. To establish and maintain structures and systems to implement the mandate and goals of the Secretariat; and
9. To evaluate the educational process and programs.

The Education Secretariat provides administrative and logistical support for the education programs presented within the Provincial Division. In addition, all education program plans are presented to and approved by the Education Secretariat as the Secretariat is responsible for the funding allocation for education programs.

The current education plan for judges of the Ontario Court of Justice (Provincial Division) is divided into two parts;

1. First Year Education,
2. Continuing Education.

1. FIRST YEAR EDUCATION

Each judge of the Ontario Court of Justice (Provincial Division) is provided with certain texts and materials upon appointment including:

- Commentaries on Judicial Conduct (Canadian Judicial Council)
- Martin's Criminal Code
- Family Law Statutes of the Ontario Court of Justice (Provincial Division)
- The Conduct of a Trial
- Judge's Manual

The Provincial Division organizes a one-day education program for newly appointed judges shortly after their appointment which deals with practical matters relating to the transition to the bench, including judicial conduct and judicial ethics, courtroom demeanour and behaviour, available resources, etc. This program is usually presented in Toronto on an as required basis as new appointments are made.

Upon appointment, each new judge is assigned by the Chief Judge to one of the eight regions of the Province. The Regional Senior Judge for that region is then responsible for assigning and scheduling the new judge within the region. Depending on the new judge's background and experience at the time of appointment, the Regional Senior Judge will assign the newly appointed judge for a period of time, usually several weeks prior to swearing-in to observe senior, more experienced judges and/or specific courtrooms. During this period, the new judge sits in the courtroom and attends in chambers with experienced judges and has an opportunity to become familiar with their new responsibilities.

During the first year following appointment, or so soon thereafter as is possible, new judges attend the New Judges' Training Program presented by the Canadian Association of Provincial Court Judges (C.A.P.C.J.) at Val Morin in the Province of Quebec. This intensive one-week program is practical in nature and is oriented principally to the area of criminal law with some reference to areas of family law.

APPENDIX - D

ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) - CONTINUING EDUCATION PLAN

Judges in the first year of appointment are also encouraged to attend all education programs relating to their field(s) of specialization presented by the Provincial Division which are outlined under the heading “Continuing Education”.

Each judge at the time of appointment is invited to participate in a mentoring program which has recently been developed within the Provincial Division by the Ontario Judges Association. New judges also have the opportunity (as do all judges) to discuss matters of concern or interest with their peers at any time.

All judges from the date of their appointment have equal access to a number of resources that impact directly or indirectly upon the work of the Provincial Division, including legal texts, case reporting services, the Provincial Division Research Centre (discussed below), computer courses and courses in QUICKLAW (a computer law database and research facility).

2. CONTINUING EDUCATION

Continuing education programs presented to judges of the Provincial Division are of two types;

- 1) Programs presented by the Ontario Judges Association (O.J.A.)(criminal law) or the Ontario Family Law Judges’ Association (O.F.L.J.A.)(family and youth law), usually of particular interest to judges in the fields of criminal or family law respectively;
- 2) Programs presented by the Education Secretariat.

I. ASSOCIATION PROGRAMS

The programs presented by the Judges’ Associations constitute the **Core Program** of Provincial Division education programming. Each of the two Judges’ Associations has an Education Committee composed of a number of judges, one of whom is the education chair. These committees meet as required and work throughout the year on the planning, development and presentation of the core education programs.

- a) **ONTARIO FAMILY LAW JUDGES’ ASSOCIATION - FAMILY LAW:** The Ontario Family Law Judges’ Association presents three education programs in the area of family law, one each in January (the Judicial Development Institute), May and September (in conjunction with the O.F.L.J.A. annual meeting). Generally speaking, the principal topics treated include: a) Young Offenders and Youth Court, b) Child Welfare, and c) Family Law (custody, access and support). Additional topics involving skills development, case management, legislative changes, social context and other areas are incorporated as the need arises. Each program is of two to three days duration and all judges presiding in family law courts are entitled and encouraged to attend.
- b) **ONTARIO JUDGES ASSOCIATION - CRIMINAL LAW:** The Ontario Judges Association presents two major criminal law programs each year. a) A three-day Regional Seminar is organized in January and February of each year at four regional locations. These seminars traditionally focus on areas of sentencing and the law of evidence, although a variety of other topics may also be included. Similar programs are presented in each of the four regional locations. b) A two-day education seminar is presented in the week of the Victoria Day holiday in conjunction with the annual meeting of the O.J.A. All judges presiding in criminal law courts are entitled and encouraged to attend these seminars.

APPENDIX - D

ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) - CONTINUING EDUCATION PLAN

II. SECRETARIAT PROGRAMS

The programs that are planned and presented by the Education Secretariat tend to deal with subject matter that is neither predominantly criminal nor family, or that can be presented on more than one occasion to different groups of judges.

1. UNIVERSITY EDUCATION PROGRAM: This program consists of a one-week seminar presented in June of each year. Principally of interest to criminal law judges, it is presented twice in the month of June and repeated over a three year cycle. The current program focuses on federal penitentiaries and conditional release, and is held at Kingston. This program is usually held on a university campus and the judges reside in residence which is conducive to learning and reflection. Over the three year period of course presentation, all judges of the Provincial Division have an opportunity and are encouraged to attend.
2. JUDGES TO JAIL PROGRAM: This is a three-day program relating to provincial corrections and has been held on two occasions to date at the Bell Cairn Institution in Hamilton. Approximately twelve to fifteen judges can be accommodated for each of these programs which are organized approximately once a year.
3. JUDGMENT WRITING: This is a two-day program held for the first time in May of 1996. It was presented initially to a small group of approximately 10 judges and will be repeated at periodic intervals in the future.
4. PRE-RETIREMENT SEMINARS: Intended for judges approaching retirement age (together with their spouses), this three-day program deals with the transition from the bench to retirement and is presented in Toronto whenever numbers warrant.

5. SOCIAL CONTEXT PROGRAMS: The Provincial Division presents significant programs dealing with social context. The first such program, entitled Gender Equity, was presented in the fall of 1992. That program used outside, professional and community resources in its planning and presentation phases. A number of Provincial Division judges were trained as facilitators for the purposes of the program during the planning process, which lasted over 12 months. Extensive use was made of videos and printed materials which form a permanent reference. The facilitator model has since been used in a number of Provincial Division Education Programs.

The Court undertook its second major social context program, presented to all of its judges, in May 1996. The program, entitled The Court in an Inclusive Society, was intended to provide information about the changing nature of our society, to determine the impact of the changes and to equip the Court to better respond to those changes. A variety of pedagogical techniques including large and small group sessions were used in the course of the program. A group of judge facilitators were specifically trained for the purposes of this program which was presented following significant community consultation.

D

APPENDIX - D

ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) - CONTINUING EDUCATION PLAN

III. EXTERNAL EDUCATION PROGRAMS

1. FRENCH-LANGUAGE COURSES: Judges of the Ontario Court of Justice (Provincial Division) who are proficient in French may attend courses presented by the Office of Federal Judicial Affairs. The frequency and duration of the courses are determined by the judge's level of proficiency. The purpose of the courses is to assure and to maintain the French language proficiency of those judges who are called upon to preside over French language matters in the Provincial Division. There are two levels of courses: (a) Terminology courses for Francophone judges; (b) Terminology courses for Anglophone (bilingual) judges.
2. OTHER EDUCATIONAL PROGRAMS: Judges of the Ontario Court of Justice (Provincial Division) are encouraged to pursue educational interests by attending education programs presented by other organizations and associations including:
 - Canadian Association of Provincial Court Judges
 - Federation of Law Societies: Criminal (Substantive Law Procedure/Evidence) & Family Law
 - International Association of Women Judges (Canadian Chapter)
 - Ontario Family Court Clinic Conference
 - International Association of Juvenile and Family Court Magistrates
 - Canadian Bar Association
 - Canadian Institute for Advanced Legal Studies
 - Criminal Lawyers' Association
 - Advocate's Society Conference
 - Ontario Association for Family Mediation/Mediation Canada
 - Canadian Institute for the Administration of Justice
 - National Judicial Institute

The Provincial Division has developed an **External Conference Policy** to permit the attendance of some of its judges at outside education programs. The principal features of the policy include a process of application by a judge to attend such programs, a peer selection committee, a process of program appraisal, annual reviews of the policy and an opportunity for individual judges to choose and to attend specific programs of their own choice. This program depends upon available funding as determined by the Education Secretariat on an annual basis.

3. COMPUTER COURSES: The Ontario Court of Justice (Provincial Division), pursuant to a tendered contract with a training vendor has organized and continues to organize a series of computer training courses for judges of the Provincial Division. These courses are organized according to skill level and geographic location and presented at different times throughout the Province. Judges typically attend at the offices of the training vendor for courses in computer operation, word-processing and data storage and retrieval. Other courses are presented in the use of QUICKLAW (the computer law database and research facility).
4. NATIONAL JUDICIAL INSTITUTE (N.J.I.): The Provincial Division through its Education Secretariat makes a financial contribution to the operation of the National Judicial Institute. The N.J.I., based in Ottawa, sponsors a number of education programs across the country for federally and provincially appointed judges. In 1994 and again in 1995, a number of Provincial Division judges attended a two-week intensive criminal-law program presented in Cornwall by the National Judicial Institute. This program is presently being revised and is expected to be expanded to include an intensive family law program in the near future. Individual Provincial Division judges have attended and will continue to attend N.J.I. programs in the future, depending on location and subject matter. The Chief Judge is a member of the Board of the N.J.I.

APPENDIX - D

ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) - CONTINUING EDUCATION PLAN

IV. OTHER EDUCATIONAL RESOURCES

1. JUDICIAL RESEARCH CENTRE: Judges of the Ontario Court of Justice (Provincial Division) have access to the Provincial Division Research Centre located at Old City Hall in Toronto. The Research Centre, a law library and computer research facility, is staffed by two research counsel together with support staff and is accessible in person, by telephone, E-mail or fax. The Research Centre responds to specific requests from judges for research and, in addition, provides updates with respect to legislation and relevant case law through its regular publication 'Items of Interest'.
2. RECENT DEVELOPMENTS: The Honourable Judge Ian MacDonnell also provides all interested judges of the Provincial Division with his summary and comments on current decisions of the Ontario Court of Appeal and of the Supreme Court of Canada in a publication entitled 'Recent Developments'.
3. SELF-FUNDED LEAVE: In order to provide access to educational opportunities that fall outside the parameters of regular judicial education programs, the Provincial Division has developed a self-funded leave policy that allows judges to defer income over a period of years in order to take a period of self-funded leave of up to twelve months. Prior approval is required for such leave and a peer review committee reviews the applications in selecting those judges who will be authorized to take such leave.
4. REGIONAL MEETINGS: Most of the eight regions of the Court have annual regional meetings. While these meetings principally provide an opportunity to deal with regional administrative/management issues, some also have an educational component. Such is the case, for example, with the northern regional meeting in which judges of the Northeast and Northwest Regions meet together and deal with educational issues of special interest to the north, such as judicial isolation, travel and aboriginal justice.
5. Notwithstanding the educational programs outlined above, the fundamental education of judges continues to be self-directed and is effected inter alia through continuing peer discussions and individual reading and research.



APPENDIX-E

ONTARIO JUDICIAL COUNCIL (PROVINCIAL DIVISION)
THE COURT IN AN INCLUSIVE SOCIETY

A P P E N D I X - E

ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) THE COURT IN AN INCLUSIVE SOCIETY – JUDGES CONFERENCE

May 21-23, 1996 • Radisson Hotel London Centre • London, Ontario

*“There are truths on this side of the Pyrenées
which are falsehoods on the other”*

BLAISE PASCAL - PENSÉES

STATEMENT OF CONFERENCE OBJECTIVES

- 1) To provide information about changes and trends in Canadian demography and culture.
- 2) To develop an analytical framework for understanding how those changes and trends affect private behaviour and public expectations of the justice system.
- 3) To consider the roles of the judge and the courts and professional, institutional, and procedural measures that will sustain the effectiveness of the courts and respect for the administration of justice in the changing environment.
- 4) To enhance essential judicial skills in research, assessment of evidence and fact-finding, dispositions, explanation of rulings, use of interpreters in the courts, and other functions of judicial office.
- 5) To increase knowledge and awareness of family systems, community and social services structures and resources which might assist and complement the work of the courts.
- 6) To develop an analytical framework for examining how personal, institutional, and systemic biases may operate on actors in the court environment and to develop a strategy designed to reduce the negative impact of any bias in the administration of justice.

APPENDIX - E

OJC (PROVINCIAL DIVISION) – THE COURT IN AN INCLUSIVE SOCIETY

Tuesday, May 21, 1996

“THE COURT IN AN INCLUSIVE SOCIETY”

6:00 p.m. - 7:15 p.m.

Buffet Dinner

(EAST AND CENTRE BALLROOM)

7:15 p.m. - 7:45 p.m.

Opening, Welcome, and Introductions

The Honourable Chief Judge Sidney B. Linden
Ontario Court of Justice (Provincial Division)

Judge Lauren Marshall
President, Ontario Judges' Association

Judge Eleanor Schnall
President, Ontario Family Law Judges' Association

7:45 p.m.

Introduction to the Program

Judge Micheline Rawlins
Conference Co-Chair
Ontario Court of Justice
(Provincial Division)

Plenary Session I

(EAST BALLROOM)

“Working Towards Inclusive Justice - British, American and Canadian Perspectives”

MODERATOR: Judge Micheline Rawlins

SPEAKERS: Mr. Justice Henry Brooke
Court of Queen's Bench
London, England

Mr. Justice Charles Z. Smith
Supreme Court
State of Washington, USA

Ms M. Nourbese Philip
Writer
Toronto, Canada

Wednesday, May 22, 1996

“THE COURT IN AN INCLUSIVE SOCIETY”

9:00 a.m. - 10:45 a.m.

Plenary Session II

(EAST BALLROOM)

“Judging in Diversity: The Impact of Changing Demographics on Canadian Society and Ontario Families”

MODERATOR: Judge Maria Linhares de Sousa
Ontario Court of Justice
(Provincial Division)

SPEAKERS: Professor Richard Devlin
Faculty of Law
Dalhousie University

Dr. Richard Loreto
Richard Loreto Consulting Limited

Mr. Ajit Mehat, Director General
Programs Directorate
Federal Department of Justice

10:45 a.m. - 11:00 a.m.

Health Break

11:00 a.m. - 12:30 p.m.

Judges' Small Group Discussions (Judges Only)

(BALLROOM WEST, CARLTON SALON, VICTORIA, ALBERT, PRINCE OF WALES, DUKE OF CONNAUGHT, DUKE OF EDINBOROUGH, DUKE OF ALBANY, CLUB ROOM, BOARDROOMS 2-7)

In small groups judges will discuss possible judicial and systemic issues relating to the Conference objectives and define new responses that may lead to equality, fairness, access and respect. Please check your schedule to see which small group you are scheduled to attend.

These sessions will be conducted by Judge Facilitators.

APPENDIX - E

OJC (PROVINCIAL DIVISION) – THE COURT IN AN INCLUSIVE SOCIETY

12:30 p.m. - 2:15 p.m.

Group Lunch

(CENTRE BALLROOM)

Introduction of Luncheon Speaker

Judge Mary L. Hogan
Ontario Court of Justice
(Provincial Division)

Speaker

The Honourable Mr. Justice Selwyn Romilly
Supreme Court of British Columbia

2:15 p.m. - 3:30 p.m.

Concurrent Workshops I

The following eight workshops will be running concurrently. Please check your schedule to find out which workshop you are scheduled to attend.

- “Identifying the Need for Interpreters – Using Interpreters Effectively”
(DUKE OF EDINBOROUGH ROOM)
- “Child Protection and State Intervention in a Diverse Society”
(ALBERT ROOM)
- “Violence Against Women and Children in the Multicultural Context”
(BALLROOM WEST)
- “Use of Discretion in Bail, Sentencing and Other Dispositions: Are Any Factors Inherently Discriminatory?”
(DUKE OF CONNAUGHT ROOM)
- “Alternative Court Proceedings”
(CLUB ROOM)
- “Cultural Considerations in Evidence and Decision-Making”
(VICTORIA ROOM)
- “Charter Arguments and Inclusion”
(CARLTON SALON)
- “Judicial Fact-Finding and Decision-Making: The Saskatchewan Credibility Project”
(PRINCE OF WALES ROOM)

3:30 p.m. - 3:45 p.m.

Health Break

3:45 p.m. - 5:00 p.m.

Concurrent Workshops II

The following seven workshops will be running concurrently. Please check your schedule to see which workshop you are scheduled to attend.

- “Violence Against Women and Children in the Multicultural Context”
(BALLROOM WEST)
- “Use of Discretion in Bail, Sentencing and Other Dispositions: Are Any Factors Inherently Discriminatory?”
(DUKE OF CONNAUGHT ROOM)
- “Alternative Court Proceedings”
(CLUB ROOM)
- “Defining Families: The Impact on Custody, Access and Support”
(VICTORIA ROOM)
- “Charter Arguments and Inclusion”
(CARLTON SALON)
- “The Intersection of Race and Gender”
(ALBERT ROOM)
- “Judicial Fact-Finding and Decision-Making: The Saskatchewan Credibility Project”
(PRINCE OF WALES)

6:30 p.m. - 8:30 p.m.

Chief Judge’s and Presidents’ Reception

(CENTRE BALLROOM)

APPENDIX - E

OJC (PROVINCIAL DIVISION) – THE COURT IN AN INCLUSIVE SOCIETY

Thursday, May 23, 1996

**“THE COURT IN AN
INCLUSIVE SOCIETY”**

9:00 a.m. - 10:30 a.m.

Plenary Session III

(EAST BALLROOM)

**“Implications for the Judiciary of the Report
of the Commission on Systemic Racism in
the Ontario Criminal Justice System”**

MODERATOR: Associate Chief Judge
Robert Walmsley
Ontario Court of Justice
(Provincial Division)

SPEAKERS: Associate Chief Judge
Murray Sinclair
Provincial Court of Manitoba

Mr. Justice Charles Z. Smith
Supreme Court
State of Washington, USA

Professor Toni Williams
Osgoode Hall Law School
Toronto

10:30 a.m. - 10:45 a.m.

Health Break

10:45 a.m. - 12:00 p.m.

Concurrent Workshops III

The following seven workshops will be running concurrently. Please check your schedule to find out which workshop you are scheduled to attend.

- “Identifying the Need for Interpreters
- Using Interpreters Effectively”

(DUKE OF EDINBOROUGH ROOM)

- “Child Protection and State Intervention
in a Diverse Society”

(DUKE OF CONNAUGHT ROOM)

- “Alternative Court Proceedings”

(CLUB ROOM)

- “Immigrant and Refugee Experiences”
(ALBERT ROOM)

- “Cultural Considerations in Evidence
and Decision-Making”

(VICTORIA ROOM)

- “Charter Arguments and Inclusion”

(CARLTON SALON)

- “Judicial Fact-Finding and Decision-Making:
The Saskatchewan Credibility Project”

(PRINCE OF WALES ROOM)

12:15 p.m. - 1:30 p.m.

Group Lunch

(CENTRE BALLROOM)

1:30 p.m. - 2:45 p.m.

**Judges’ Small Group Discussions
(Judges Only)**

(BALLROOM WEST, CARLTON SALON,
VICTORIA, ALBERT , PRINCE OF WALES,
DUKE OF CONNAUGHT, DUKE OF
EDINBOROUGH, DUKE OF ALBANY,
CLUB ROOM, BOARDROOMS 2 - 7)

In small groups judges will discuss possible judicial and systemic issues relating to the Conference objectives and define new responses that may lead to equality, fairness, access and respect. Please check your schedule to see which small group you are scheduled to attend.

These sessions will be conducted by Judge Facilitators.

2:45 p.m. - 3:00 p.m.

Health Break

E

APPENDIX - E

OJC (PROVINCIAL DIVISION) – THE COURT IN AN INCLUSIVE SOCIETY

3:00 p.m. - 4:25 p.m.

Plenary Session IV

(EAST BALLROOM)

“Tuning in to New Channels: Inclusiveness and the Right to be Heard”

MODERATOR: Professor Richard Devlin
Faculty of Law
Dalhousie University

SPEAKERS: Mr. Clare Lewis, Former Chair
Task Force on Race Relations
and Policing

The Honourable Roy McMurtry
Chief Justice of Ontario

Mr. Justice Henry Brooke
Court of Queen’s Bench
London, England

4:25 p.m. - 4:30 p.m.

Closing Remarks

Judge David Cole
Conference Co-Chair
Ontario Court of Justice
(Provincial Division)



APPENDIX-F

PRINCIPLES OF JUDICIAL OFFICE

APPENDIX - F

“Respect for the Judiciary is acquired through the pursuit of excellence in administering justice.”

PRINCIPLES OF JUDICIAL OFFICE

P R E A M B L E

A strong and independent judiciary is indispensable to the proper administration of justice in our society.

Judges must be free to perform their judicial duties without fear of reprisal or influence from any person, group, institution or level of government.

In turn, society has a right to expect those appointed as judges to be honourable and worthy of its trust and confidence.

The judges of the Ontario Court of Justice (Provincial Division) recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and

women who have agreed to accept the responsibilities of judicial office.

The following principles of judicial office are established by the judges of the Ontario Court of Justice (Provincial Division) and set out standards of excellence and integrity to which all judges subscribe.

These principles are not exhaustive. They are designed to be advisory in nature and are not directly related to any specific disciplinary process. Intended to assist judges in addressing ethical and professional dilemmas, they may also serve in assisting the public to understand the reasonable expectations which the public may have of judges in the performance of judicial duties and in the conduct of judges' personal lives.

APPENDIX - F

PRINCIPALS OF JUDICIAL OFFICE

PRINCIPLES OF JUDICIAL OFFICE

1. THE JUDGE IN COURT

- 1.1 Judges must be impartial and objective in the discharge of their judicial duties.

COMMENTARIES:

Judges should not be influenced by partisan interests, public pressure or fear of criticism.

Judges should maintain their objectivity and shall not, by words or conduct, manifest favour, bias or prejudice towards any party or interest.

- 1.2 Judges have a duty to follow the law.

COMMENTARIES:

Judges have a duty to apply the relevant law to the facts and circumstances of the cases before the court and render justice within the framework of the law.

- 1.3 Judges will endeavour to maintain order and decorum in court.

COMMENTARIES:

Judges must strive to be patient, dignified and courteous in performing the duties of judicial office and shall carry out their role with integrity, appropriate firmness and honour.

2. THE JUDGE AND THE COURT

- 2.1 Judges should approach their judicial duties in a spirit of collegiality, cooperation and mutual assistance.

- 2.2 Judges should conduct court business with due diligence and dispose of all matters before them promptly and efficiently having regard, at all times, to the interests of justice and the rights of the parties before the court.

- 2.3 Reasons for judgment should be delivered in a timely manner.

- 2.4 Judges have a duty to maintain their professional competence in the law.

COMMENTARIES:

Judges should attend and participate in continuing legal and general education programs.

- 2.5 The primary responsibility of judges is the discharge of their judicial duties.

COMMENTARIES:

Subject to applicable legislation, judges may participate in law related activities such as teaching, participating in educational conferences, writing and working on committees for the advancement of judicial interests and concerns, provided such activities do not interfere with the judges' primary duty to the court.

3. THE JUDGE IN THE COMMUNITY

- 3.1 Judges should maintain their personal conduct at a level which will ensure the public's trust and confidence.

- 3.2 Judges must avoid any conflict of interest, or the appearance of any conflict of interest, in the performance of their judicial duties.

COMMENTARIES:

Judges must not participate in any partisan political activity.

Judges must not contribute financially to any political party.

- 3.3 Judges must not abuse the power of their judicial office or use it inappropriately.

- 3.4 Judges are encouraged to be involved in community activities provided such involvement is not incompatible with their judicial office.

COMMENTARIES:

Judges should not lend the prestige of their office to fund-raising activities.



APPENDIX-G

COURTS OF JUSTICE ACT
CHAPTER C.43
ONTARIO JUDICIAL COUNCIL

APPENDIX - G

COURTS OF JUSTICE ACT CHAPTER C.43 ONTARIO JUDICIAL COUNCIL

SECTION 49

JUDICIAL COUNCIL

49. (1) The Ontario Judicial Council is continued under the name Ontario Judicial Council in English and Conseil de la magistrature de l'Ontario in French.

COMPOSITION

- (2) The Judicial Council is composed of,
- (a) the Chief Justice of Ontario, or another judge of the Court of Appeal designated by the Chief Justice;
 - (b) the Chief Judge of the Provincial Division, or another judge of that division designated by the Chief Judge, and the Associate Chief Judge of the Provincial Division;
 - (c) a regional senior judge of the Provincial Division, appointed by the Lieutenant Governor in Council on the Attorney General's recommendation;
 - (d) two judges of the Provincial Division, appointed by the Chief Judge;
 - (e) the Treasurer of The Law Society of Upper Canada, or another bencher of the Law Society who is a lawyer, designated by the Treasurer;
 - (f) a lawyer who is not a bencher of The Law Society of Upper Canada, appointed by the Law Society;
 - (g) four persons who are neither judges nor lawyers, appointed by the Lieutenant Governor in Council on the Attorney General's recommendation.

TEMPORARY MEMBERS

(3) The Chief Judge of the Provincial Division may appoint a judge of that division to be a temporary member of the Judicial Council in the place of another provincial judge, for the purposes of dealing with a complaint, if the requirements of subsections (13), (15), (17), (19) and (20) cannot otherwise be met.

CRITERIA

(4) In the appointment of members under clauses (2) (d), (f) and (g), the importance of reflecting, in the composition of the Judicial Council as a whole, Ontario's linguistic duality and the diversity of its population and ensuring overall gender balance shall be recognized.

TERM OF OFFICE

(5) The regional senior judge who is appointed under clause (2) (c) remains a member of the Judicial Council until he or she ceases to hold office as a regional senior judge.

Same

(6) The members who are appointed under clauses (2) (d), (f) and (g) hold office for four-year terms and shall not be reappointed.

STAGGERED TERMS

(7) Despite subsection (6), one of the members first appointed under clause (2) (d) and two of the members first appointed under clause (2) (g) shall be appointed to hold office for six-year terms.

CHAIR

(8) The Chief Justice of Ontario, or another judge of the Court of Appeal designated by the Chief Justice, shall chair the meetings and hearings of the Judicial Council that deal with complaints against particular judges and its meetings held for the purposes of section 45 and subsection 47 (5).

Same

(9) The Chief Judge of the Provincial Division, or another judge of that division designated by the Chief Judge, shall chair all other meetings and hearings of the Judicial Council.

Same

(10) The chair is entitled to vote, and may cast a second deciding vote if there is a tie.

OPEN AND CLOSED HEARINGS AND MEETINGS

(11) The Judicial Council's hearings and meetings under sections 51.6 and 51.7 shall be open to the public, unless subsection 51.6 (7) applies; its other hearings and meetings may be conducted in private, unless this *Act* provides otherwise.

VACANCIES

(12) Where a vacancy occurs among the members appointed under clause (2) (d), (f) or (g), a new member similarly qualified may be appointed for the remainder of the term.

APPENDIX - G

COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

QUORUM

(13) The following quorum rules apply, subject to subsections (15) and (17):

1. Eight members, including the chair, constitute a quorum.
2. At least half the members present must be judges and at least four must be persons who are not judges.

REVIEW PANELS

(14) The Judicial Council may establish a panel for the purpose of dealing with a complaint under subsection 51.4 (17) or (18) or subsection 51.5 (8) or (10) and considering the question of compensation under section 51.7, and the panel has all the powers of the Judicial Council for that purpose.

Same

(15) The following rules apply to a panel established under subsection (14):

1. The panel shall consist of two provincial judges other than the Chief Judge, a lawyer and a person who is neither a judge nor a lawyer.
2. One of the judges, as designated by the Judicial Council, shall chair the panel.
3. Four members constitute a quorum.

HEARING PANELS

(16) The Judicial Council may establish a panel for the purpose of holding a hearing under section 51.6 and considering the question of compensation under section 51.7, and the panel has all the powers of the Judicial Council for that purpose.

Same

(17) The following rules apply to a panel established under subsection (16):

1. Half the members of the panel, including the chair, must be judges, and half must be persons who are not judges.
2. At least one member must be a person who is neither a judge nor a lawyer.
3. The Chief Justice of Ontario, or another judge of the Court of Appeal designated by the Chief Justice, shall chair the panel.
4. Subject to paragraphs 1, 2 and 3, the Judicial Council may determine the size and composition of the panel.

5. All the members of the panel constitute a quorum.

CHAIR

(18) The chair of a panel established under subsection (14) or (16) is entitled to vote, and may cast a second deciding vote if there is a tie.

PARTICIPATION IN STAGES OF PROCESS

(19) The members of the subcommittee that investigated a complaint shall not,

- (a) deal with the complaint under subsection 51.4 (17) or (18) or subsection 51.5 (8) or (10); or
- (b) participate in a hearing of the complaint under section 51.6.

Same

(20) The members of the Judicial Council who dealt with a complaint under subsection 51.4 (17) or (18) or subsection 51.5 (8) or (10) shall not participate in a hearing of the complaint under section 51.6.

EXPERT ASSISTANCE

(21) The Judicial Council may engage persons, including counsel, to assist it.

SUPPORT SERVICES

(22) The Judicial Council shall provide support services, including initial orientation and continuing education, to enable its members to participate effectively, devoting particular attention to the needs of the members who are neither judges nor lawyers and administering a part of its budget for support services separately for that purpose.

Same

(23) The Judicial Council shall administer a part of its budget for support services separately for the purpose of accommodating the needs of any members who have disabilities.

CONFIDENTIAL RECORDS

(24) The Judicial Council or a subcommittee may order that any information or documents relating to a mediation or a Council meeting or hearing that was not held in public are confidential and shall not be disclosed or made public.

Same

(25) Subsection (24) applies whether the information or documents are in the possession of the Judicial Council, the Attorney General or any other person.

APPENDIX - G

COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

EXCEPTIONS

- (26) Subsection (24) does not apply to information and documents,
- (a) that this *Act* requires the Judicial Council to disclose; or
 - (b) that have not been treated as confidential and were not prepared exclusively for the purposes of the mediation or Council meeting or hearing.

PERSONAL LIABILITY

(27) No action or other proceeding for damages shall be instituted against the Judicial Council, any of its members or employees or any person acting under its authority for any act done in good faith in the execution or intended execution of the Council's or person's duty.

REMUNERATION

(28) The members who are appointed under clause (2) (g) are entitled to receive the daily remuneration that is fixed by the Lieutenant Governor in Council. 1994, c. 12, s. 16, *part*, in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 50

COMPLAINT AGAINST CHIEF JUDGE

50. (1) If the Chief Judge is the subject of a complaint,
- (a) the Chief Justice of Ontario shall appoint another judge of the Provincial Division to be a member of the Judicial Council instead of the Chief Judge, until the complaint is finally disposed of;
 - (b) the associate chief judge appointed under clause 49 (2) (b) shall chair meetings and hearings of the Council instead of the Chief Judge, and make appointments under subsection 49 (3) instead of the Chief Judge, until the complaint is finally disposed of; and
 - (c) any reference of the complaint that would otherwise be made to the Chief Judge under clause 51.4 (13) (b) or 51.4 (18) (c), subclause 51.5 (8) (b) (ii) or clause 51.5 (10) (b) shall be made to the Chief Justice of the Ontario Court instead of to the Chief Judge.

SUSPENSION OF CHIEF JUDGE

- (2) If the Chief Judge is suspended under subsection 51.4 (12),
- (a) complaints that would otherwise be referred to the Chief Judge under clauses 51.4 (13) (b) and 51.4 (18) (c), subclause 51.5 (8) (b) (ii) and clause 51.5 (10) (b) shall be referred to the associate chief judge appointed under clause 49 (2) (b), until the complaint is finally disposed of; and
 - (b) annual approvals that would otherwise be granted or refused by the Chief Judge shall be granted or refused by that associate chief judge, until the complaint is finally disposed of.

COMPLAINT AGAINST ASSOCIATE CHIEF JUDGE OR REGIONAL SENIOR JUDGE

(3) If the associate chief judge appointed under clause 49 (2) (b) or the regional senior judge appointed under clause 49 (2) (c) is the subject of a complaint, the Chief Judge shall appoint another judge of the Provincial Division to be a member of the Judicial Council instead of the associate chief judge or regional senior judge, as the case may be, until the complaint is finally disposed of. 1994, c. 12, s. 16, *part*, in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 51

PROVISION OF INFORMATION TO PUBLIC

51. (1) The Judicial Council shall provide, in court-houses and elsewhere, information about itself and about the justice system, including information about how members of the public may obtain assistance in making complaints.

Same

(2) In providing information, the Judicial Council shall emphasize the elimination of cultural and linguistic barriers and the accommodation of the needs of persons with disabilities.

ASSISTANCE TO PUBLIC

(3) Where necessary, the Judicial Council shall arrange for the provision of assistance to members of the public in the preparation of documents for making complaints.

APPENDIX - G

COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

TELEPHONE ACCESS

(4) The Judicial Council shall provide province-wide free telephone access, including telephone access for the deaf, to information about itself and its role in the justice system.

PERSONS WITH DISABILITIES

(5) To enable persons with disabilities to participate effectively in the complaints process, the Judicial Council shall ensure that their needs are accommodated, at the Council's expense, unless it would impose undue hardship on the Council to do so, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

ANNUAL REPORT

(6) After the end of each year, the Judicial Council shall make an annual report to the Attorney General on its affairs, in English and French, including, with respect to all complaints received or dealt with during the year, a summary of the complaint, the findings and a statement of the disposition, but the report shall not include information that might identify the judge or the complainant.

TABLING

(7) The Attorney General shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the Assembly. 1994, c. 12, s. 16, *part*, in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 51.1

RULES

51.1 (1) The Judicial Council shall establish and make public rules governing its own procedures, including the following:

1. Guidelines and rules of procedure for the purpose of section 45.
2. Guidelines and rules of procedure for the purpose of subsection 51.4 (21).
3. Guidelines and rules of procedure for the purpose of subsection 51.4 (22)
4. If applicable, criteria for the purpose of subsection 51.5 (2).
5. If applicable, guidelines and rules of procedure for the purpose of subsection 51.5 (13).

6. Rules of procedure for the purpose of subsection 51.6 (3).
7. Criteria for the purpose of subsection 51.6 (7).
8. Criteria for the purpose of subsection 51.6 (8).
9. Criteria for the purpose of subsection 51.6 (10).

REGULATIONS ACT

(2) The *Regulations Act* does not apply to rules, guidelines or criteria established by the Judicial Council.

SECTIONS 28, 29 AND 33 OF SPPA

(3) Sections 28, 29 and 33 of the *Statutory Powers Procedure Act* do not apply to the Judicial Council. 1994, c. 12, s. 16, *part*, in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 51.2

USE OF OFFICIAL LANGUAGES OF COURTS

51.2 (1) The information provided under subsections 51 (1), (3) and (4) and the matters made public under subsection 51.1 (1) shall be made available in English and French.

Same

(2) Complaints against provincial judges may be made in English or French.

Same

(3) A hearing under section 51.6 shall be conducted in English, but a complainant or witness who speaks French or a judge who is the subject of a complaint and who speaks French is entitled, on request,

- (a) to be given, before the hearing, French translations of documents that are written in English and are to be considered at the hearing;
- (b) to be provided with the assistance of an interpreter at the hearing; and
- (c) to be provided with simultaneous interpretation into French of the English portions of the hearing.

Same

(4) Subsection (3) also applies to mediations conducted under section 51.5 and to the Judicial Council's consideration of the question of compensation under section 51.7, if subsection 51.7 (2) applies.

APPENDIX - G

COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

BILINGUAL HEARING OR MEDIATION

(5) The Judicial Council may direct that a hearing or mediation to which subsection (3) applies be conducted bilingually, if the Council is of the opinion that it can be properly conducted in that manner.

PART OF HEARING OR MEDIATION

(6) A directive under subsection (5) may apply to a part of the hearing or mediation, and in that case subsections (7) and (8) apply with necessary modifications.

Same

- (7) In a bilingual hearing or mediation,
- (a) oral evidence and submissions may be given or made in English or French, and shall be recorded in the language in which they are given or made;
 - (b) documents may be filed in either language;
 - (c) in the case of a mediation, discussions may take place in either language;
 - (d) the reasons for a decision or the mediator's report, as the case may be, may be written in either language.

Same

(8) In a bilingual hearing or mediation, if the complainant or the judge who is the subject of the complaint does not speak both languages, he or she is entitled, on request, to have simultaneous interpretation of any evidence, submissions or discussions spoken in the other language and translation of any document filed or reasons or report written in the other language. 1994, c. 12, s. 16, *part*, in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 51.3

COMPLAINTS

51.3 (1) Any person may make a complaint to the Judicial Council alleging misconduct by a provincial judge.

Same

(2) If an allegation of misconduct against a provincial judge is made to a member of the Judicial Council, it shall be treated as a complaint made to the Judicial Council.

Same

(3) If an allegation of misconduct against a provincial

judge is made to any other judge or to the Attorney General, the other judge, or the Attorney General, as the case may be, shall provide the person making the allegation with information about the Judicial Council's role in the justice system and about how a complaint may be made, and shall refer the person to the Judicial Council.

CARRIAGE OF MATTER

(4) Once a complaint has been made to the Judicial Council, the Council has carriage of the matter.

INFORMATION RE COMPLAINT

(5) At any person's request, the Judicial Council may confirm or deny that a particular complaint has been made to it. 1994, c. 12, s. 16, *part*, in force (O. Gaz. 1995 p. 685).

SECTION 51.4

REVIEW BY SUBCOMMITTEE

51.4 (1) A complaint received by the Judicial Council shall be reviewed by a subcommittee of the Council consisting of a provincial judge other than the Chief Judge and a person who is neither a judge nor a lawyer.

Rotation of members

(2) The eligible members of the Judicial Council shall all serve on the subcommittee on a rotating basis.

DISMISSAL

(3) The subcommittee shall dismiss the complaint without further investigation if, in the subcommittee's opinion, it falls outside the Judicial Council's jurisdiction or is frivolous or an abuse of process.

INVESTIGATION

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

EXPERT ASSISTANCE

(5) The subcommittee may engage persons, including counsel, to assist it in its investigation.

INVESTIGATION PRIVATE

(6) The investigation shall be conducted in private.

NON-APPLICATION OF SPPA

(7) *The Statutory Powers Procedure Act* does not apply to the subcommittee's activities.

APPENDIX - G

COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

INTERIM RECOMMENDATIONS

(8) The subcommittee may recommend to a regional senior judge the suspension, with pay, of the judge who is the subject of the complaint, or the judge's reassignment to a different location, until the complaint is finally disposed of.

Same

(9) The recommendation shall be made to the regional senior judge appointed for the region to which the judge is assigned, unless that regional senior judge is a member of the Judicial Council, in which case the recommendation shall be made to another regional senior judge.

POWER OF REGIONAL SENIOR JUDGE

(10) The regional senior judge may suspend or reassign the judge as the subcommittee recommends.

DISCRETION

(11) The regional senior judge's discretion to accept or reject the subcommittee's recommendation is not subject to the direction and supervision of the Chief Judge.

EXCEPTION: COMPLAINTS AGAINST CERTAIN JUDGES

(12) If the complaint is against the Chief Judge, an associate chief judge or the regional senior judge who is a member of the Judicial Council, any recommendation under subsection (8) in connection with the complaint shall be made to the Chief Justice of the Ontario Court, who may suspend or reassign the judge as the subcommittee recommends.

SUBCOMMITTEE'S DECISION

(13) When its investigation is complete, the subcommittee shall,

- (a) dismiss the complaint;
- (b) refer the complaint to the Chief Judge;
- (c) refer the complaint to a mediator in accordance with section 51.5; or
- (d) refer the complaint to the Judicial Council, with or without recommending that it hold a hearing under section 51.6.

Same

(14) The subcommittee may dismiss the complaint or refer it to the Chief Judge or to a mediator only if both members agree; otherwise, the complaint shall be referred to the Judicial Council.

CONDITIONS, REFERENCE TO CHIEF JUDGE

(15) The subcommittee may, if the judge who is the subject of the complaint agrees, impose conditions on a decision to refer the complaint to the Chief Judge.

REPORT

(16) The subcommittee shall report to the Judicial Council, without identifying the complainant or the judge who is the subject of the complaint, its disposition of any complaint that is dismissed or referred to the Chief Judge or to a mediator.

POWER OF JUDICIAL COUNCIL

(17) The Judicial Council shall consider the report, in private, and may approve the subcommittee's disposition or may require the subcommittee to refer the complaint to the Council.

Same

(18) The Judicial Council shall consider, in private, every complaint referred to it by the subcommittee, and may,

- (a) hold a hearing under section 51.6;
- (b) dismiss the complaint;
- (c) refer the complaint to the Chief Judge, with or without imposing conditions as referred to in subsection (15); or
- (d) refer the complaint to a mediator in accordance with section 51.5.

NON-APPLICATION OF SPPA

(19) The *Statutory Powers Procedure Act* does not apply to the Judicial Council's activities under subsections (17) and (18).

NOTICE TO JUDGE AND COMPLAINANT

(20) After making its decision under subsection (17) or (18), the Judicial Council shall communicate it to the judge and the complainant, giving brief reasons in the case of a dismissal.

GUIDELINES AND RULES OF PROCEDURE

(21) In conducting investigations, in making recommendations under subsection (8) and in making decisions under subsections (13) and (15), the subcommittee shall follow the Judicial Council's guidelines and rules of procedure established under subsection 51.1 (1).

APPENDIX - G

COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

Same

(22) In considering reports and complaints and making decisions under subsections (17) and (18), the Judicial Council shall follow its guidelines and rules of procedure established under subsection 51.1 (1). 1994, c. 12, s. 16, *part*, in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 51.5

MEDIATION

51.5 (1) The Judicial Council may establish a mediation process for complainants and for judges who are the subject of complaints.

CRITERIA

(2) If the Judicial Council establishes a mediation process, it must also establish criteria to exclude from the process complaints that are inappropriate for mediation.

Same

(3) Without limiting the generality of subsection (2), the criteria must ensure that complaints are excluded from the mediation process in the following circumstances:

1. There is a significant power imbalance between the complainant and the judge, or there is such a significant disparity between the complainant's and the judge's accounts of the event with which the complaint is concerned that mediation would be unworkable.
2. The complaint involves an allegation of sexual misconduct or an allegation of discrimination or harassment because of a prohibited ground of discrimination or harassment referred to in any provision of the Human Rights Code.
3. The public interest requires a hearing of the complaint.

LEGAL ADVICE

(4) A complaint may be referred to a mediator only if the complainant and the judge consent to the referral, are able to obtain independent legal advice and have had an opportunity to do so.

TRAINED MEDIATOR

(5) The mediator shall be a person who has been trained in mediation and who is not a judge, and if the mediation is conducted by two or more persons acting together, at least one of them must meet those requirements.

IMPARTIALITY

(6) The mediator shall be impartial.

EXCLUSION

(7) No member of the subcommittee that investigated the complaint and no member of the Judicial Council who dealt with the complaint under subsection 51.4 (17) or (18) shall participate in the mediation.

REVIEW BY COUNCIL

(8) The mediator shall report the results of the mediation, without identifying the complainant or the judge who is the subject of the complaint, to the Judicial Council, which shall review the report, in private, and may,

- (a) approve the disposition of the complaint; or
- (b) if the mediation does not result in a disposition or if the Council is of the opinion that the disposition is not in the public interest,
 - (i) dismiss the complaint,
 - (ii) refer the complaint to the Chief Judge, with or without imposing conditions as referred to in subsection 51.4 (15), or
 - (iii) hold a hearing under section 51.6.

REPORT

(9) If the Judicial Council approves the disposition of the complaint, it may make the results of the mediation public, providing a summary of the complaint but not identifying the complainant or the judge.

REFERRAL TO COUNCIL

(10) At any time during or after the mediation, the complainant or the judge may refer the complaint to the Judicial Council, which shall consider the matter, in private, and may,

- (a) dismiss the complaint;
- (b) refer the complaint to the Chief Judge, with or without imposing conditions as referred to in subsection 51.4 (15); or
- (c) hold a hearing under section 51.6.

NON-APPLICATION OF SPPA

(11) The *Statutory Powers Procedure Act* does not apply to the Judicial Council's activities under subsections (8) and (10).

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NOTICE TO JUDGE AND COMPLAINANT

(12) After making its decision under subsection (8) or (10), the Judicial Council shall communicate it to the judge and the complainant, giving brief reasons in the case of a dismissal.

GUIDELINES AND RULES OF PROCEDURE

(13) In reviewing reports, considering matters and making decisions under subsections (8) and (10), the Judicial Council shall follow its guidelines and rules of procedure established under subsection 51.1 (1). 1994, c. 12, s. 16, *part*, in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 51.6

ADJUDICATION BY COUNCIL

51.6 (1) When the Judicial Council decides to hold a hearing, it shall do so in accordance with this section.

APPLICATION OF SPPA

(2) The *Statutory Powers Procedure Act*, except section 4 and subsection 9 (1), applies to the hearing.

RULES OF PROCEDURE

(3) The Judicial Council's rules of procedure established under subsection 51.1 (1) apply to the hearing.

COMMUNICATION RE SUBJECT-MATTER OF HEARING

(4) The members of the Judicial Council participating in the hearing shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any party, counsel, agent or other person, unless all the parties and their counsel or agents receive notice and have an opportunity to participate.

EXCEPTION

(5) Subsection (4) does not preclude the Judicial Council from engaging counsel to assist it in accordance with subsection 49 (21), and in that case the nature of the advice given by counsel shall be communicated to the parties so that they may make submissions as to the law.

PARTIES

(6) The Judicial Council shall determine who are the parties to the hearing.

EXCEPTION, CLOSED HEARING

(7) In exceptional circumstances, if the Judicial Council determines, in accordance with the criteria established under subsection 51.1 (1), that the desirability of holding open hearings is outweighed by the desirability of maintaining confidentiality, it may hold all or part of the hearing in private.

DISCLOSURE IN EXCEPTIONAL CIRCUMSTANCES

(8) If the hearing was held in private, the Judicial Council shall, unless it determines in accordance with the criteria established under subsection 51.1 (1) that there are exceptional circumstances, order that the judge's name not be disclosed or made public.

ORDERS PROHIBITING PUBLICATION

(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.

PUBLICATION BAN

(10) In exceptional circumstances and in accordance with the criteria established under subsection 51.1 (1), the Judicial Council may make an order prohibiting, pending the disposition of a complaint, the publication of information that might identify the judge who is the subject of the complaint.

DISPOSITIONS

(11) After completing the hearing, the Judicial Council may dismiss the complaint, with or without a finding that it is unfounded or, if it finds that there has been misconduct by the judge, may,

- (a) warn the judge;
- (b) reprimand the judge;
- (c) order the judge to apologize to the complainant or to any other person;
- (d) order that the judge take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a judge;
- (e) suspend the judge with pay, for any period;
- (f) suspend the judge without pay, but with benefits, for a period up to thirty days; or

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- (g) recommend to the Attorney General that the judge be removed from office in accordance with section 51.8.

Same

(12) The Judicial Council may adopt any combination of the dispositions set out in clauses (11) (a) to (f).

DISABILITY

(13) If the Judicial Council finds that the judge is unable, because of a disability, to perform the essential duties of the office, but would be able to perform them if his or her needs were accommodated, the Council shall order that the judge's needs be accommodated to the extent necessary to enable him or her to perform those duties.

APPLICATION OF SUBS. (13)

- (14) Subsection (13) applies if,
- the effect of the disability on the judge's performance of the essential duties of the office was a factor in the complaint; and
 - the Judicial Council dismisses the complaint or makes a disposition under clauses (11) (a) to (f).

UNDUE HARDSHIP

(15) Subsection (13) does not apply if the Judicial Council is satisfied that making an order would impose undue hardship on the person responsible for accommodating the judge's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

OPPORTUNITY TO PARTICIPATE

(16) The Judicial Council shall not make an order under subsection (13) against a person without ensuring that the person has had an opportunity to participate and make submissions.

CROWN BOUND

(17) An order made under subsection (13) binds the Crown.

REPORT TO ATTORNEY GENERAL

(18) The Judicial Council may make a report to the Attorney General about the complaint, investigation, hearing and disposition, subject to any order made under subsection 49 (24), and the Attorney General may make the report public if of the opinion that this would be in the public interest.

NON-IDENTIFICATION OF PERSONS

(19) The following persons shall not be identified in the report:

- A complainant or witness at whose request an order was made under subsection (9).
- The judge, if the hearing was conducted in private, unless the Judicial Council orders that the judge's name be disclosed.

CONTINUING PUBLICATION BAN

(20) If an order was made under subsection (10) and the Judicial Council dismisses the complaint with a finding that it was unfounded, the judge shall not be identified in the report without his or her consent and the Council shall order that information that relates to the complaint and might identify the judge shall never be made public without his or her consent. 1994, c. 12, s. 16, *part*, in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 51.7

COMPENSATION

51.7 (1) When the Judicial Council has dealt with a complaint against a provincial judge, it shall consider whether the judge should be compensated for his or her costs for legal services incurred in connection with all the steps taken under sections 51.4, 51.5 and 51.6 and this section in relation to the complaint.

CONSIDERATION OF QUESTION COMBINED WITH HEARING

(2) If the Judicial Council holds a hearing into the complaint, its consideration of the question of compensation shall be combined with the hearing.

PUBLIC OR PRIVATE CONSIDERATION OF QUESTION

(3) The Judicial Council's consideration of the question of compensation shall take place in public if there was a public hearing into the complaint, and otherwise shall take place in private.

RECOMMENDATION

(4) If the Judicial Council is of the opinion that the judge should be compensated, it shall make a recommendation to the Attorney General to that effect, indicating the amount of compensation.

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Same

(5) If the complaint is dismissed after a hearing, the Judicial Council shall recommend to the Attorney General that the judge be compensated for his or her costs for legal services and shall indicate the amount.

DISCLOSURE OF NAME

(6) The Judicial Council's recommendation to the Attorney General shall name the judge, but the Attorney General shall not disclose the name unless there was a public hearing into the complaint or the Council has otherwise made the judge's name public.

AMOUNT OF COMPENSATION

(7) The amount of compensation recommended under subsection (4) or (5) may relate to all or part of the judge's costs for legal services, and shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services.

PAYMENT

(8) The Attorney General shall pay compensation to the judge in accordance with the recommendation. 1994, c. 12, s. 16, *part*, in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 51.8

REMOVAL FOR CAUSE

51.8 (1) A provincial judge may be removed from office only if,

- (a) a complaint about the judge has been made to the Judicial Council; and
- (b) the Judicial Council, after a hearing under section 51.6, recommends to the Attorney General that the judge be removed on the ground that he or she has become incapacitated or disabled from the due execution of his or her office by reason of,

(i) inability, because of a disability, to perform the essential duties of his or her office (if an order to accommodate the judge's needs would not remedy the inability, or could not be made because it would impose undue hardship on the person responsible for meeting those needs, or was made but did not remedy the inability),

(ii) conduct that is incompatible with the due execution of his or her office, or

(iii) failure to perform the duties of his or her office.

TABLING OF RECOMMENDATION

(2) The Attorney General shall table the recommendation in the Assembly if it is in session or, if not, within fifteen days after the commencement of the next session.

ORDER FOR REMOVAL

(3) An order removing a provincial judge from office under this section may be made by the Lieutenant Governor on the address of the Assembly.

APPLICATION

(4) This section applies to provincial judges who have not yet attained retirement age and to provincial judges whose continuation in office after attaining retirement age has been approved under subsection 47 (3), (4) or (5).

TRANSITION

(5) A complaint against a provincial judge that is made to the Judicial Council before the day section 16 of the *Courts of Justice Statute Law Amendment Act*, 1994 comes into force, and considered at a meeting of the Judicial Council before that day, shall be dealt with by the Judicial Council as it was constituted immediately before that day and in accordance with section 49 of this Act as it read immediately before that day. 1994, c. 12, s. 16, *part*, in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 51.9

STANDARDS OF CONDUCT

51.9 (1) The Chief Judge of the Provincial Division may establish standards of conduct for provincial judges, including a plan for bringing the standards into effect, and may implement the standards and plan when they have been reviewed and approved by the Judicial Council.

DUTY OF CHIEF JUDGE

(2) The Chief Judge shall ensure that the standards of conduct are made available to the public, in English and French, when they have been approved by the Judicial Council.

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GOALS

(3) The following are among the goals that the Chief Judge may seek to achieve by implementing standards of conduct for judges:

1. Recognizing the independence of the judiciary.
2. Maintaining the high quality of the justice system and ensuring the efficient administration of justice.
3. Enhancing equality and a sense of inclusiveness in the justice system.
4. Ensuring that judges' conduct is consistent with the respect accorded to them.
5. Emphasizing the need to ensure the professional and personal development of judges and the growth of their social awareness through continuing education. 1994, c. 12, s. 16, *part*, in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 51.10

CONTINUING EDUCATION

51.10 (1) The Chief Judge of the Provincial Division shall establish a plan for the continuing education of provincial judges, and shall implement the plan when it has been reviewed and approved by the Judicial Council.

DUTY OF CHIEF JUDGE

(2) The Chief Judge shall ensure that the plan for continuing education is made available to the public, in English and French, when it has been approved by the Judicial Council.

GOALS

- (3) Continuing education of judges has the following goals:
1. Maintaining and developing professional competence.
 2. Maintaining and developing social awareness.
 3. Encouraging personal growth. 1994, c. 12, s. 16, *part*, in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 51.11

PERFORMANCE EVALUATION

51.11 (1) The Chief Judge of the Provincial Division may establish a program of performance evaluation for provincial judges, and may implement the program when it has been reviewed and approved by the Judicial Council.

DUTY OF CHIEF JUDGE

(2) The Chief Judge shall make the existence of the program of performance evaluation public when it has been approved by the Judicial Council.

GOALS

(3) The following are among the goals that the Chief Judge may seek to achieve by establishing a program of performance evaluation for judges:

1. Enhancing the performance of individual judges and of judges in general.
2. Identifying continuing education needs.
3. Assisting in the assignment of judges.
4. Identifying potential for professional development.

SCOPE OF EVALUATION

(4) In a judge's performance evaluation, a decision made in a particular case shall not be considered.

CONFIDENTIALITY

(5) A judge's performance evaluation is confidential and shall be disclosed only to the judge, his or her regional senior judge, and the person or persons conducting the evaluation.

INADMISSIBILITY, EXCEPTION

(6) A judge's performance evaluation shall not be admitted in evidence before the Judicial Council or any court or other tribunal unless the judge consents.

APPLICATION OF SUBSS. (5), (6)

(7) Subsections (5) and (6) apply to everything contained in a judge's performance evaluation and to all information collected in connection with the evaluation. 1994, c. 12, s. 16, *part*, in force February 28, 1995 (O. Gaz. 1995 p. 685).

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SECTION 51.12

CONSULTATION

51.12 In establishing standards of conduct under section 51.9, a plan for continuing education under section 51.10 and a program of performance evaluation under section 51.11, the Chief Judge of the Provincial Division shall consult with judges of that division and with such other persons as he or she considers appropriate. 1994, c. 12, s. 16, *part*, in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 87

MASTERS

87.—(1) Every person who was a master of the Supreme Court before the 1st day of September, 1990 is a master of the Ontario Court (General Division).

APPLICATION OF SS. 44 TO 51.12

(3) Sections 44 to 51.12 apply to masters, with necessary modifications, in the same manner as to provincial judges.

Same

(5) The right of a master to continue in office under subsection 47 (3) is subject to the approval of the Chief Justice of the Ontario Court, who shall make the decision according to criteria developed by himself or herself and approved by the Judicial Council.

Same

(6) When the Judicial Council deals with a complaint against a master, the following special provisions apply:

1. One of the members of the Judicial Council who is a provincial judge shall be replaced by a master. The Chief Judge of the Provincial Division shall determine which judge is to be replaced and the Chief Justice of the Ontario Court shall designate the master who is to replace the judge.
2. Complaints shall be referred to the Chief Justice of the Ontario Court rather than to the Chief Judge of the Provincial Division.
3. Subcommittee recommendations with respect to interim suspension shall be made to the appropriate regional senior judge of the General Division, to whom subsections 51.4 (10) and (11) apply with necessary modifications.

Same

(7) Section 51.9, which deals with standards of conduct for provincial judges, section 51.10, which deals with their continuing education, and section 51.11, which deals with evaluation of their performance, apply to masters only if the Chief Justice of the Ontario Court consents.

SECTION 87.1

SMALL CLAIMS COURT JUDGES

87.1 (1) This section applies to provincial judges who were assigned to the Provincial Court (Civil Division) immediately before September 1, 1990.

CONTINUATION IN OFFICE

(3) The right of a provincial judge to whom this section applies to continue in office under subsection 47 (3) is subject to the approval of the Chief Justice of the Ontario Court, who shall make the decision according to criteria developed by himself or herself and approved by the Judicial Council.

COMPLAINTS

(4) When the Judicial Council deals with a complaint against a provincial judge to whom this section applies, the following special provisions apply:

1. One of the members of the Judicial Council who is a provincial judge shall be replaced by a provincial judge who was assigned to the Provincial Court (Civil Division) immediately before September 1, 1990. The Chief Judge of the Provincial Division shall determine which judge is to be replaced and the Chief Justice of the Ontario Court shall designate the judge who is to replace that judge.
2. Complaints shall be referred to the Chief Justice of the Ontario Court rather than to the Chief Judge of the Provincial Division.
3. Subcommittee recommendations with respect to interim suspension shall be made to the appropriate regional senior judge of the General Division, to whom subsections 51.4 (10) and (11) apply with necessary modifications.

APPLICATION OF SS. 51.9, 51.10, 51.11

(5) Section 51.9, which deals with standards of conduct for provincial judges, section 51.10, which deals with their continuing education, and section 51.11, which deals with evaluation of their performance, apply to

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provincial judges to whom this section applies only if the Chief Justice of the Ontario Court consents. 1994, c. 12, s. 35, in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 45

APPLICATION FOR ORDER THAT NEEDS BE ACCOMMODATED

45. (1) A provincial judge who believes that he or she is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated may apply to the Judicial Council for an order under subsection (2).

DUTY OF JUDICIAL COUNCIL

(2) If the Judicial Council finds that the judge is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated, it shall order that the judge's needs be accommodated to the extent necessary to enable him or her to perform those duties.

UNDUE HARDSHIP

(3) Subsection (2) does not apply if the Judicial Council is satisfied that making an order would impose undue hardship on the person responsible for accommodating the judge's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

GUIDELINES AND RULES OF PROCEDURE

(4) In dealing with applications under this section, the Judicial Council shall follow its guidelines and rules of procedure established under subsection 51.1 (1).

OPPORTUNITY TO PARTICIPATE

(5) The Judicial Council shall not make an order under subsection (2) against a person without ensuring that the person has had an opportunity to participate and make submissions.

CROWN BOUND

(6) The order binds the Crown. 1994, c. 12, s. 16, *part*, in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 47

RETIREMENT

(1) Every provincial judge shall retire upon attaining the age of sixty-five years.

Same

(2) Despite subsection (1), a judge appointed as a full-time magistrate, judge of a juvenile and family court or master before December 2, 1968 shall retire upon attaining the age of seventy years.

CONTINUATION OF JUDGES IN OFFICE

(3) A judge who has attained retirement age may, subject to the annual approval of the Chief Judge of the Provincial Division, continue in office as a full-time or part-time judge until he or she attains the age of seventy-five years.

SAME, REGIONAL SENIOR JUDGES

(4) A regional senior judge of the Provincial Division who is in office at the time of attaining retirement age may, subject to the annual approval of the Chief Judge, continue in that office until his or her term (including any renewal under subsection 42 (9)) expires, or until he or she attains the age of seventy-five years, whichever comes first.

SAME, CHIEF JUDGE AND ASSOCIATE CHIEF JUDGES

(5) A Chief Judge or associate chief judge of the Provincial Division who is in office at the time of attaining retirement age may, subject to the annual approval of the Judicial Council, continue in that office until his or her term expires, or until he or she attains the age of seventy-five years, whichever comes first.

Same

(6) If the Judicial Council does not approve a Chief Judge's or associate chief judge's continuation in that office under subsection (5), his or her continuation in the office of provincial judge is subject to the approval of the Judicial Council and not as set out in subsection (3).

CRITERIA

(7) Decisions under subsections (3), (4), (5) and (6) shall be made in accordance with criteria developed by the Chief Judge and approved by the Judicial Council.



