



# ANNUAL REPORT

1997 – 1998

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**ONTARIO JUDICIAL COUNCIL**

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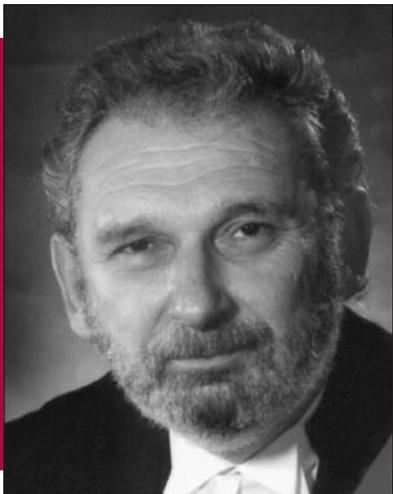


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*The Honourable R. Roy McMurtry*

CHIEF JUSTICE OF ONTARIO

Co-Chair, Ontario Judicial Council



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*The Honourable Sidney B. Linden*

CHIEF JUDGE

ONTARIO COURT OF JUSTICE

PROVINCIAL DIVISION

Co-Chair, Ontario Judicial Council



ONTARIO JUDICIAL COUNCIL

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 third 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, 1997 to March 31, 1998.

Respectfully submitted,

Handwritten signature of R. Roy McMurtry.

R. Roy McMurtry  
*Chief Justice of Ontario*

Handwritten signature of Sidney B. Linden.

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, HARVEY STROSBERG, Q.C.,  
W.D.T. CARTER, EDWARD L. GREENSPAN, Q.C., GORDON PETERS



## INTRODUCTION

The period of time covered by this Annual Report is from April 1, 1997, to March 31, 1998.

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.





# OJC ANNUAL REPORT

1997 – 1998

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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 third year of operation (April 1, 1997 to March 31, 1998) 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)  
(to June 27, 1997)

Harvey Strosberg, Q.C. ....(Windsor)  
(from June 27, 1997)

#### TREASURER'S DESIGNATE

W.D.T. Carter .....(Toronto)  
(from September 26, 1997)

#### LAWYER DESIGNATED BY THE LAW SOCIETY OF UPPER CANADA

Edward L. Greenspan, Q.C. ....(Toronto)  
(from September 26, 1997)

## Community Members:

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

**GORDON PETERS** .....(Toronto)  
Regional Chief, Assembly of First Nations  
(Ontario Region) (from October 1, 1997)

**ISHBEL SOLVASON-WIEBE** .....(Ottawa)  
Executive Director, The Social Housing Registry  
of Ottawa-Carleton

**BETTY WHETHAM** .....(Parry Sound)  
Retired, (former Court Services Manager)

## 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 of time covered by this report, the following individuals served as temporary members of the Ontario Judicial Council when dealing with complaints against these provincially-appointed judges and masters: -

MASTERS	JUDGES
• Master Basil T. Clark, Q.C.	• The Honourable Judge Reuben Bromstein
• Master R. B. Linton, Q.C.	• The Honourable Judge M. D. Godfrey
• Master R. B. Peterson	• 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 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 third 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

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#### 4. *Communications Subcommittee*

A subcommittee to assist the Judicial Council in developing the public outreach material required by the legislation continued its work during the third year of Council's operation. This subcommittee had previously developed an informational brochure which was publicly distributed and which outlines the mandate of the Council and briefly states its procedures in investigating complaints. Almost all of the 10,000 copies of the brochure which had been printed were distributed to court locations, legal clinics, etc. Council took advantage of the opportunity to review the content of the brochure and make some minor amendments concerning the terminology used to describe its jurisdiction when it was necessary to re-print the brochure in order to re-stock court house supplies. A copy of the brochure is included as Appendix "A".

The Judicial Council's second Annual Report, which included a summary of all complaints received and dealt with during the second year of operation (April 1, 1996 to March 31, 1997) was submitted to the Attorney General late in 1997 and tabled in the Legislative Assembly shortly thereafter. Nearly a thousand copies of the second Annual Report were distributed to members of the judiciary, members of the provincial and federal legislatures, news media, academics and government officials.

The Communications Subcommittee also developed informational material for people who may be required to attend future Judicial Council hearings as witnesses. The material was prepared to help witnesses understand the hearing process and to provide them with other useful information about what to expect when attending a hearing as a witness. A copy of this "Information for Witnesses" is included as Appendix "B".

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#### 5. *Procedures Subcommittee*

A subcommittee to establish guidelines, rules of procedures and criteria for the use of complaint subcommittees, review panels and hearing panels developed a "procedures document" for the use of complaint subcommittees, review and hearing panels in the second year of the Judicial Council's operation. A records retention schedule was developed in the third year of operation and the

procedures document was amended to include same. In addition, a version of the procedures document for distribution to lawyers and members of the public was prepared. A copy of this version of the Procedures Document is included as Appendix "C".

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#### 6. *Chief Judge's Programs*

##### a) *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). During the period of time covered by this Annual Report 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 was approved by the Judicial Council. A copy of the Provincial Division's continuing education plan for 1997-98 can be found at Appendix "D".

##### b) *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 and the work of the subcommittee continues.

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#### 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 more detailed outline of the Judicial Council's procedures is included as Appendix "C".

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 up to that point. 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 is required to 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 "E" to this Report.

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## 9. Summary of Complaints

The Ontario Judicial Council received 66 complaints in its third year of operation, as well as carrying forward 41 complaint files from its first and second years of operation. Of these 107 complaints, 56 were closed before March 31, 1998, leaving 51 complaints to be carried over into the fourth year.

An investigation was conducted in all cases. The complaint subcommittee reviewed the complainant's letter and, where necessary, reviewed the transcript and/or the audiotape of the proceedings that took place in court in order to make its determination about the complaint. In some instances, further investigation was conducted where it was warranted. 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.

Fifty-five of the 56 complaint files closed were dismissed by the Judicial Council. One complaint was referred to the Chief Judge, with conditions imposed on the referral.

Approximately forty-eight (48) per cent of the 56 complaint files closed by the Ontario Judicial Council during the period of time covered by this report (27 complaints) were found to be outside the jurisdiction of the Council.

Complaint files that were dismissed because they were found to be outside the jurisdiction of the Council are usually matters that are properly the subject of an 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 are matters where no actual allegation of judicial misconduct had been made but dissatisfaction with a judge's decision was expressed. This was the case with 13 of the 27 complaint files that fell into this category. Fourteen of these 27 complaint files combined an unfounded allegation of bias, improper actions, involvement in a conspiracy and/or an unfounded complaint about the judge's manner with a complaint about an appealable matter which was outside the jurisdiction of the Judicial Council.

Approximately thirty-six (36) per cent of complaints (a total of 20) disposed of by the Ontario Judicial Council during the period of time covered by this report were determined to be unfounded after investigation.

These 20 complaint files involved allegations that a judge had improperly conducted a case, allegations of improper behaviour on the bench such as a judge being rude, belligerent, etc., or allegations that a judge’s decision was made as a result of his or her alleged lack of impartiality or a conflict of interest. There was one file in which nine such allegations of improper conduct were made that were determined to be unfounded following investigation.

Approximately nine (9) per cent of complaints ( a total of 5) disposed of by the Ontario Judicial Council during the period of time covered by this report were determined to be abandoned by the complainants and closed on the recommendation of the investigating complaint subcommittee, with the concurrence of the review panels. In all such cases, several efforts to contact the complainant to obtain requested information to continue with the investigation were made, unsuccessfully. In all such cases, the files will be re-opened if, and when, the complainant contacts the OJC and supplies the information necessary to continue with the investigation.

Approximately seven (7) per cent of complaints (a total of 4) disposed of by the Ontario Judicial Council during the period of time covered by this report did not fall within any of the categories outlined above. These files concerned complaints about delay in rendering judgment, behaviour off the bench, ordering a transcript of a bail review hearing and a complaint concerning a judge’s critical comments about a social service agency in the course of a hearing concerning child abuse.

<b>FISCAL YEAR:</b>	<b>95/96</b>	<b>96/97</b>	<b>97/98</b>
<b>Opened During Year</b>	54	71	66
<b>Continued from Previous Year</b>	n/a	21	41
<b>Total Files Open During Year</b>	54	92	107
<b>Closed During Year</b>	33	51	56
<b>Remaining at Year end</b>	21	41	51

*Files are given a two-digit prefix indicating the year of operation in which they were opened, followed by a sequential three-digit file number and by two digits indicating the calendar year in which the file was opened (i.e., file no. 03-066/98 was the sixty-sixth file opened in the third year of operation and was opened in calendar year 1998).*

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## **10. Case Summaries**

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

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



## CASE SUMMARIES

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### **CASE NO. 01-046/96**

The complainants were the parents of a youth who had been killed in a motor vehicle accident. The person accused of hitting the boy was charged with “failing to remain at the scene of a motor vehicle accident”. The accused was acquitted of the charge at the end of a lengthy trial. The complainants alleged that the judge, who had been brought in from another jurisdiction to hear the charge, 1) expressed amazement that a “fail to remain” charge should be booked for a three week trial when such a charge would normally take one day at most; 2) expressed continual displeasure, through gestures and comments, at being the trial judge; 3) commented on the fact that the administrative judges in her base court location were making sure her time “was being well used” while she was in the jurisdiction; 4) continually “harped” about how things were done in the jurisdiction she was visiting as opposed to her base court location; 5) had great difficulty in reading reports and maps presented in evidence, and eventually resorted to wearing glasses; 6) appeared to be tired and yawned constantly “day in and day out”; 7) was quickly annoyed by counsel taking the court's “invaluable time”, but had no qualms about being late and taking excessively long breaks and lunches; 8) did not understand a police officer's explanation regarding “closing speed” and allegedly said so after half-a-day's court time had been spent on the issue which led the complainants to question the judge's competence to understand complex issues; and, 9) said that she couldn't get back on a certain date to give judgment as she was presiding on a “big case” elsewhere, which remark the complainants found to be unprofessional and insulting.

The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence of the trial and asked for and reviewed a response from the judge on certain aspects of the complaint where their concerns could not be otherwise satisfied.

The complaint subcommittee recommended that the complaint be dismissed as the transcript, and the response from the judge, offered no support for the complainants' allegations.

With respect to complaint one, the complaint subcommittee reported that there was absolutely no evidence from which it could be inferred that the judge was “amazed” that the trial would take three weeks and the judge made no comment on the record to that effect, nor was there any evidence in the transcript that she said a charge such as this “should take one day at the very most”.

With respect to complaint two, the complaint subcommittee reported that there was nothing in the transcript to support this part of the complaint and the judge could not recall making any gestures or remarks to the effect that she did not want to be sitting out-of-town as the trial judge.

With respect to complaint three, the complaint subcommittee reported that the transcript did not contain any remark from the judge that the administrative judges in her base court location were making sure her time was well spent while she was presiding in this other jurisdiction.

With respect to complaint four, the complaint subcommittee reported that there was nothing in the transcript to support this allegation. The complaint subcommittee reported that the transcript revealed that the judge inquired as to the protocol in the court location she was visiting, was advised by counsel as to the protocol and



## CASE SUMMARIES

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followed it. The complaint subcommittee further reported that there was nothing in the transcript to infer that she was complaining about the way things were done or that she was having to “put up with” the way things were done in the court location she was visiting. With respect to complaint five, the complaint subcommittee noted that the transcript revealed that defence counsel stated he needed an “electron microscope” to be able to see the details on the maps presented in evidence, which numerous witnesses were invited to make marks on, and the complaint subcommittee noted that these exhibits were presented in a most confusing manner by the Crown. It was the opinion of the complaint subcommittee that any judge would have disapproved of the manner in which this evidence was presented. Copies of some of the maps submitted into evidence were examined by the complaint subcommittee and, as noted in their report, were exceedingly difficult to decipher.

With respect to complaint six, the complaint subcommittee noted that the transcript was not helpful in this matter and it was necessary to rely on the judge's recollection of events, in her response. The judge noted that the trial was tiring but she did not recall yawning constantly. On the contrary, the judge recalled being very alert, due to the confusing and sometimes bizarre nature of the testimony. The complaint subcommittee reported that the conduct of the judge throughout the trial, as evidenced by the transcript, indicated that she was alert enough to constantly ask questions of witnesses and counsel for the purpose of clarification and to ensure she understood the evidence correctly and could discuss the case in detail with counsel. The complaint subcommittee reported that there was no

confusion on the part of the judge and that she insisted on clarity in argument.

With respect to complaint seven, the complaint subcommittee reported that the transcript did not support the allegation that the judge was quickly annoyed by counsel taking the court's “invaluable time”, but had no qualms about being late and taking excessively long breaks and lunches herself. The complaint subcommittee reported that, in their opinion, the judge was careful to maintain control of the trial and did comment when unnecessary delays occurred and they were of the opinion that the judge did everything in her power to move things along in an expeditious manner.

With respect to complaint eight, the complaint subcommittee reported that the transcript did not support this allegation. They reported that the judge asked questions in clarification of some of the evidence but that it was clear she not only understood what was meant by “closing speed” but that she also wanted to know how “closing speed” related to the real issue, namely, how long it would take the accused to see what he was going to hit and to realize what it was before he hit it.

With respect to complaint nine, the complaint subcommittee reported that the transcript revealed that there was a discussion with respect to a return date upon which judgment would be delivered. The transcript showed that the judge made reference to a very complicated drug conspiracy trial she was hearing that involved a great number of accused and counsel, but the transcript did not support the allegation that the judge referred to that trial as a “big case” or that the judge implied that the trial on which she was presiding was unimportant or insignificant by comparison.



## CASE SUMMARIES

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After completing their investigation, the complaint subcommittee reported that, in their opinion, there was no evidence of judicial misconduct on the part of the subject judge and recommended that the complaint be dismissed. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 01-048/96**

The complainant, involved in a civil action, alleged that the master before whom he appeared abused the power of his office in an effort to aid and abet criminal activities of the lawyers who represented the other party to the litigation. The complaint subcommittee recommended that this complaint file be discontinued as the information provided by the complainant contained no particulars of the allegations made and a request for more information from the complainant went unanswered for over a year. The review panel agreed with the complaint subcommittee's recommendation that the complaint be discontinued unless and until the complainant contacts the OJC with further information as requested.

### **CASE NO. 01-052/96**

The complainant appeared on a motion in a lawsuit brought by her for medical malpractice and fraudulent misrepresentation. The master before whom she appeared found against the complainant. The complainant alleged that the master was wrong in law and was mentally and physically unfit to preside on cases. The complaint subcommittee asked for and reviewed a response to the complaint from the master. The complaint sub-

committee also reviewed the relevant portions of the court file and attempted to discover if any other court official or lawyer could corroborate the complainant's allegations. The complaint subcommittee recommended that the complaint be dismissed as the decision made by the master involved an exercise of the master's judicial discretion, which is appealable if wrong in law. Since there was no evidence of judicial misconduct in the exercise of the master's discretion, the matter was outside the jurisdiction of the OJC. The complaint subcommittee further recommended that the complaint be dismissed as the master had denied experiencing any medical problems and no objective evidence was found to corroborate the complainant's allegations that he was unfit to preside. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 02-008/96**

The complainant, who advised he was a member of a visible minority, complained that the judge sitting on a pre-trial hearing relating to a family law matter said that he should "become a more productive member of society". The complainant stated that he found that statement to be abusive, provocative, hurtful and racially biased. The complainant further maintained that the statement exhibited irrationality and a lack of impartiality on the part of the judge. The complaint subcommittee members ordered a transcript of the proceedings and also asked the judge in question for a response to the complaint. The complaint subcommittee recommended to the review panel that the complaint be dismissed as being without foundation after determining that

## CASE SUMMARIES

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the inappropriate remarks attributed to the judge by the complainant had not been made. A review of the transcript indicated that the alleged statement in question had not been made, although as the judge acknowledged, statements were indeed made concerning the complainant's obligation to provide child support and the necessity to make all efforts to do so. The complaint subcommittee found that there was no direct or indirect language used by the judge which could be interpreted as racially stereotyped or biased. The review panel examined the letter of complaint, the response from the judge and the relevant portions of the transcript and agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 02-015/96**

The complainant, an unrepresented individual charged with a criminal offence, alleged that the judge was biased and participated in "judicial subterfuge" by setting a date for trial over his objections. The complaint subcommittee recommended that the complaint be dismissed as the decisions made by the judge involved an exercise of judicial discretion, which is appealable if wrong in law. Since there was no evidence of judicial misconduct in the exercise of the judge's discretion, the matter was outside the jurisdiction of the OJC. The complaint subcommittee further noted that the issues regarding disclosure raised by the complainant are matters for the trial judge in any event. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 02-020/96**

The complainant was a lawyer in a child protection proceeding. The complainant stated that after a lengthy trial, the judge promised to render a decision within two weeks but took three months to do so. The judge had also undertaken to provide written reasons but the complainant stated that written reasons had still not been made available at the time he made his complaint to the OJC. The complaint subcommittee recommended that the complaint be dismissed. Although it did take a very long time for written reasons to be made available, the complaint subcommittee was of the view that there was no prejudice caused other than the delay in the ability of the complainant-lawyer to argue for costs. The complainant was advised that a system to monitor reserved decisions was established by the Chief Judge as a result of his complaint. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 02-027/96**

The complainant, who was involved in a family court dispute and was not represented by counsel, alleged that the judge held a hearing *in camera*, without following due process and there was no record made of the proceedings. The complainant also alleged that the judge did not give both parties the opportunity to be heard; seemed more familiar with one party; did not safeguard the best interests of the child involved and allowed documents to be filed that were not appropriate. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee reported that a pre-trial hearing was held in the judge's



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chambers and its purpose and procedure was explained to both parties, including the information that, without resolution at the pre-trial, the matter would proceed to trial before a different judge. The complaint subcommittee recommended that the complaint be dismissed as it was satisfied that there had been no judicial misconduct on the part of the judge during the pre-trial hearing. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 02-028/96**

The complainant, who was involved in a family court matter and was unrepresented, objected to the timing and manner of the judge declaring a "conflict of interest" and being informed at the same time that the judge would be responsible to select the judge who would hear the trial. The complainant also objected to the fact that the judge had presided for several months on this court file before declaring his conflict of interest. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The judge advised that a conflict was declared as soon as it became apparent that he was familiar with a relative of one of the parties. The judge further advised that, as the administrative judge in the area, he was responsible for securing an alternate judge to hear the case. The complaint subcommittee recommended that the complaint be dismissed as there was, in its opinion, no judicial misconduct or impropriety. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 02-033/96**

The complainant was scheduled to appear before a judge who, he alleged, had demonstrated personal bias against him and who, on previous occasions when he had appeared as an accused person, had allegedly treated him rudely and had made decisions against his interests solely for personal reasons. The complainant advised the OJC that he would provide detailed information about the alleged abuses he had suffered from this judge over the years and the complaint subcommittee requested further details from the complainant on three separate occasions. As more than six months had passed without any word from the complainant, the complaint subcommittee recommended that the complaint file be discontinued at this stage. The review panel agreed with the complaint subcommittee's recommendation that the complaint be discontinued unless and until the complainant contacts the OJC with further information as requested.

### **CASE NO. 02-034/96**

The complainant was an accused person scheduled to attend for a pre-trial on a day scheduled for one of the Ontario Federation of Labour's "days of protest". The complainant alleged that the judge who was scheduled to conduct the pre-trial made harassing telephone calls to him under the pretext of cancelling the pre-trial and further alleged that the judge colluded with the prosecution to slander, threaten and deny him his legal rights. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The judge's written response set out the circumstances and background of the conversation with the complainant and explained how the telephone conversation came about. The



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complaint subcommittee recommended that the complaint be dismissed. While the complaint subcommittee was of the opinion that it may have been imprudent for the judge to call the complainant directly, rather than having a trial coordinator or assistant make the call, there was no judicial misconduct on the part of the judge and the allegations made by the complainant were unfounded. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 02-036/96**

A hearing impaired man attended court with a certified interpreter for a court proceeding involving the man's spouse. While waiting for that case to be dealt with, the interpreter interpreted the court proceedings for the man. The complainant alleged that the judge was irritated by the interpreting and asked the parties to leave on more than one occasion, even though the interpreter explained her role to the judge. The complainant alleged that the conduct of the judge denied access to the court to a hearing impaired individual. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended that the complaint be dismissed as an unedited transcript of the court proceedings did not indicate any evidence of misconduct or any denial of access to the court. The judge's initial reaction was immediately reversed and sign language interpreting was permitted to continue. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 02-042/96**

The complainant, who was in family court on a motion to reduce the amount of child maintenance he was paying, indicated that the judge before whom he appeared laughed repeatedly throughout his submission. The complaint subcommittee ordered and reviewed a copy of the transcript of evidence and a copy of the audiotape of the court proceedings. The complaint subcommittee reported that the transcript did not provide any proof of the allegations made by the complainant and that the audiotape did reveal a barely audible, almost nervous, laugh at one point during the complainant's submissions to the court. The complaint subcommittee recommended that this complaint be dismissed as it was its view that there was no judicial misconduct evident by the judge's reaction to the complainant's submissions, taken in context, and the complainant's allegations that the judge laughed repeatedly were unfounded. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 02-043/96**

The complainant sued a corporation and was not successful at trial. He alleged that the trial judge was not reasonable or fair, an adjournment request had been refused (the complainant had a cold and said he'd "missed several points"), and that he should have had a jury trial. 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 dismissing the complainant's action. If errors in law were committed by the judge in refusing an adjournment or dismissing the complainant's claim, such errors – without evidence

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of judicial misconduct – are outside the jurisdiction of the OJC and could be remedied on appeal. The complaint subcommittee reported that the pleadings in the case indicated the complainant/plaintiff's claim was without foundation in law and that the contract between the parties bound the judge to dismiss the claim. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 02-045/97**

The complainant stated that she felt indifferently represented by her lawyer in a child custody dispute that resulted in her children being returned to their father in another country. She further stated that the judge's decision to order the children returned to their father was unfair and unjust. The complaint subcommittee recommended that the complaint be dismissed as the decisions regarding custody are appealable if wrong in law and are, without evidence of judicial misconduct, outside the jurisdiction of the OJC. The complaints against the handling of the matter by her lawyer are also outside the jurisdiction of the OJC and the complainant was advised that she should make a complaint about her lawyer to the Law Society of Upper Canada. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 02-046/96**

The complainant was involved in a child support dispute. He alleged that the judge made disparaging comments about the income statement he had filed with the court and interrupted him during his submissions. He further alleged that the judge was not impartial and had a personal relationship with the social worker who appeared as a witness. The complaint subcommittee reviewed a copy of the transcript of evidence provided by the complainant, asked for and reviewed a response from the judge and reviewed copies of court documents which showed the matter had been resolved on consent. The complaint subcommittee recommended that the complaint be dismissed as there was no evidence of judicial misconduct on the part of the judge and nothing in the transcript indicated that inappropriate comments or unnecessary interruptions of the complainant had been made. Further, the complaint subcommittee reported that the comments made by the judge with respect to the complainant's income statement were justifiable in the circumstances and there was no basis for the complainant's allegation that the judge had a personal relationship with the social worker/witness. The judge's response disclosed that the statement made with respect to the judge knowing the social worker was merely an endorsement by the judge of the social worker's professionalism and competence and the judge had no personal relationship with the witness whatsoever. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

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### **CASE NO. 02-047/97**

The complainant was a fellow judge who alleged that the subject judge had been depressed for some time and that there were many unresolved problems which culminated in a rowdy physical and verbal altercation in a public place that continued a considerable time, involving the judge and court staff, lawyers, a regional senior judge, police officers and ambulance attendants. The complaint subcommittee arranged a preliminary meeting with certain witnesses to the events that had taken place and retained legal counsel to conduct an investigation. Legal counsel interviewed twenty-six individuals who were witnesses to the events, or who were otherwise involved, during the course of the investigation. The complaint subcommittee also recommended, in the early stages of its investigation, that the subject judge not be assigned to preside until such time as the complaint was disposed of or circumstances changed. The subject judge retained counsel and was represented throughout the course of the investigation. The complaint subcommittee also asked for and was given an initial medical report from the subject judge's attending physician and an independent assessment from a doctor chosen from a list of medical practitioners provided to the judge. Both medical reports concluded that the culminating incident was isolated and that, although there were outstanding issues for the judge to deal with by way of continued counselling, the prognosis was excellent. The complaint subcommittee also met with the subject judge and counsel to discuss the events that had occurred. The complaint subcommittee reported that there was a genuine expression of remorse by the subject judge and it was satisfied that the correct way to deal with this complaint, in the circumstances,

was to refer it to the Chief Judge, with conditions that had been discussed with, and agreed to, by the subject judge and counsel as required by the governing legislation. The review panel agreed with the complaint subcommittee's recommendation that the complaint be referred to the Chief Judge, on certain conditions, as had been agreed between all the parties involved.

### **CASE NO. 02-051/97**

The complainant was charged with two counts of assault (both involving his son) and one charge of public mischief. A pre-sentence report was prepared prior to sentencing. The complainant alleged that the wife of a General Division judge (both of whom were peripherally involved with the complainant's son) made disparaging remarks about him in the pre-sentence report and that the General Division judge spoke to the judge who was hearing the assault charge and asked that judge to "get this guy". The complainant also complained that the sentence imposed was far too severe (neither the conviction or the sentence imposed was appealed). The complaint subcommittee asked for and reviewed a response to the complaint from the judge before whom the complainant appeared. The judge completely refuted the complainant's allegations of anyone having attempted to influence the decision made on sentence and denied knowing or having had any contact with the wife of the General Division judge. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that no judicial misconduct had occurred and the complainant's allegations were unfounded. The complaint subcommittee also recommended that the complaint regarding the "severity" of the sentence be



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dismissed as that matter was outside the jurisdiction of the OJC, without evidence of judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 02-053/97**

The complainant was a professional agent appearing for an accused on a hybrid offence following summary election by the Crown Attorney. The accused could not be contacted by the agent because of a change of telephone number and work address and did not appear for trial. The agent alleged that he was not allowed to represent the accused and a bench warrant was issued for his client's arrest. The complainant alleged that the presiding judge made this ruling, in part, to protect the livelihood of lawyers. He also complained that the judge acted in a somewhat flippant manner. 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 was also of the view that the decision to issue a bench warrant was an exercise of judicial discretion, and without evidence of judicial misconduct, outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 02-054/97**

The complainant alleged that he was a victim of bias and judicial interference and complained against several judicial officers who had been involved in adjudication during the course of his litigation. The judicial officer over whom the OJC had jurisdiction was involved as a case management judge who ordered the matter to be pre-tried and then had no further dealings with the file. The complaint subcommittee ordered and reviewed the court file in this matter. The complaint subcommittee recommended the complaint be dismissed as there was no evidence to support the complainant's allegations of bias. The complaint subcommittee reported that the decisions made were within the judge's jurisdiction and made without evidence of judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 02-055/97**

The complainant was involved in a family court matter. The letter of complaint outlined six items of complaint, but only the first two items related to the judge's conduct (the remaining items of complaint had to do with the lawyers involved, the Children's Aid Society and the judge's decision). The two items of complaint relating to the judge, as outlined by the complainant, were that the judge did not admonish a court reporter who the complainant alleged laughed during most of the proceedings and, further, that the judge did not admonish the two Children's Aid workers who, the complainant alleged, poked each other and laughed together throughout the court proceedings. The complaint subcommittee asked for and reviewed a response to the complaint from

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the judge. In the response, the judge indicated that the court reporter had worked in the courts for twenty-eight years and had always conducted herself in a professional and appropriate manner. The judge could not recall her laughing during the court proceedings on the date in question and advised that it would be difficult to tell if she were laughing as she would be wearing a court reporter's mask. The judge also advised that the CAS workers have appeared in court on many occasions and are always appropriately behaved and there was nothing about their conduct on the date in question that would have led to an admonishment from the bench. The complaint subcommittee recommended that the complaint concerning the judge's inaction regarding the behaviour of court officials be dismissed as being without foundation. The complaint subcommittee further recommended that the complaints regarding the judge's decisions be dismissed because if any errors in law were committed by the judge, such errors are, without evidence of judicial misconduct, outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 02-056/97**

The complainant, who was represented by counsel, had been charged with a criminal offence and he had yet to appear in court. The complainant alleged that the judge who had been assigned to hear his trial was not a fair judge and he further alleged that it was common knowledge in the community that this judge consistently levied heavy fines on conviction, payable to a local community centre, allegedly run by the judge's spouse. The complaint subcommittee recommended that

the complaint be dismissed as there was no evidence to support the complainant's claims and it recommended no action be taken on the basis of unfounded rumour. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 02-057/97**

The complainant was in court to make an application to appeal a decision made by a Justice of the Peace in Provincial Offences court. The complainant alleged that the judge "went on a tirade" about illegal taxis at the airport abusing the law and delaying court cases, that the judge was "very familiar" with these cases and had "built-in strong biases" against those charged, as the complainant had been, with trespassing. The complainant also claimed that the judge did not seriously consider the case. 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 an examination of the transcript of record revealed that the inappropriate remarks attributed to the judge by the complainant had not been made. The complaint subcommittee were also of the view, after reading the transcript, that the judge had taken the case seriously and that there was no evidence of judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.



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### **CASE NOS. 02-058/97, 02-059/97 AND 02-060/97**

The complainant alleged that various masters before whom he had appeared had harassed and verbally assaulted him, baited and threatened him, interfered with his attempts to represent himself in court, ordered increased court security when he appeared in court, appeared to be biased in favour of the government and denied him his constitutional rights. The complaint subcommittee wrote to the complainant for particulars of the complaints on three separate occasions over the course of a year. The complaint subcommittee reported that it had received no response to its request for information. As a result, the complaint subcommittee recommended that the complaint be dismissed as abandoned by the complainant. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed and directed that the complaint be reopened in the event that the complainant provides the OJC with the information requested.

### **CASE NO. 02-061/97**

The complainant, involved in a family court matter, advised that he had been rudely treated by the judge and that the judge showed favouritism to the other party appearing in court. 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 made by the complainant. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 02-063/97**

The complainant was an accused person who alleged that a Crown Attorney illegally obtained his medical records and misled the court. The complainant further alleged that one of his former lawyers had advised him that one, or both, of two judges before whom he had appeared, had ordered a copy of the transcript of a 90 day bail review hearing. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was nothing wrong or improper with the judge acquiring a copy of such a transcript in the circumstances outlined by the complainant. The complaint subcommittee further noted that the complaints made about the Crown Attorney are outside the jurisdiction of the OJC and should be directed to the Ministry of the Attorney General or the Law Society of Upper Canada. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 02-065/97**

The complainant's adult son was involved in a custody dispute. The complainant alleged that the judge accepted evidence from biased witnesses and an incompetent, court-appointed assessor. He also accused the judge, and all other parties involved, of "male bashing" and he disagreed with the judge's decision (which was appealed) to remove the child from her father's custody. 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 removing the child from her father's custody. If errors in law were committed by the judge in so doing, such errors are, without evidence of judicial misconduct, outside the



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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. 02-066/97**

The complainant was an agent representing an accused person on a summary conviction matter. The complainant alleged that he was subjected to a "ferocious verbal bashing" when the judge realized he was an agent; the complainant alleged that the judge further told him he was not recognized and told him to "get out, get out" repeatedly and that the judge's tone of voice in doing so was "atrocious". The complaint subcommittee reviewed a copy of the transcript of the evidence and asked for and reviewed a response from the judge. The complaint subcommittee recommended that the complaint be dismissed as the transcript offered no support for the allegations of a "ferocious verbal bashing" of any kind. The transcript revealed that the judge told the agent he was not to appear as agent and that the judge did not recognize him. The transcript further revealed that the judge advised the accused to get a lawyer and remanded her. The transcript did not record the judge telling the agent to "get out, get out", although the judge did apparently say, "out". The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 02-067/97**

The complainant was the unsuccessful plaintiff in a civil action and alleged that the trial judge was biased against him and decided the case for

the defendant on compassionate grounds, not on the basis of the facts presented in court. The complaint subcommittee examined the court file and its contents and recommended that the complaint be dismissed as there was no evidence to support the complainant's allegations and, further, there was no judicial misconduct evident in the exercise of the judge's discretion in deciding against the plaintiff. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 02-068/97**

The complainant was an accused person appearing on a date set for trial. The judge scheduled to hear the matter transferred the case to another court over the objections of the complainant. The complaint subcommittee recommended that the complaint be dismissed because if the judge was in error in transferring the case, that error should be remedied by appeal and, without evidence of judicial misconduct, is outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 02-069/97**

The complainant was an accused person before the courts who maintained that the judge before whom he appeared "fraudulently" gained unlawful jurisdiction over himself and the court case and thereby violated the complainant's right to due process. The complaint subcommittee recommended that the complaint be dismissed because if errors in law were committed by the judge in proceeding with the matter on the date in question, such errors could be remedied on appeal



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and are, without evidence of judicial misconduct, outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 02-070/97**

The complainant alleged that the judge in a family law matter would not listen to the arguments of the parties and made the decision in the matter on personal beliefs and not on the law. The complaint subcommittee ordered and reviewed a copy of the transcript of evidence. The complaint subcommittee reported that the transcript revealed that the judge did refuse to hear from the complainant but only after the judge had already instructed counsel and parties to leave the courtroom to discuss a solution to the matter, advice which appeared, in the opinion of the complaint subcommittee, to be entirely appropriate in the circumstances. The complaint subcommittee was also of the opinion that the complainant's remarks before leaving the courtroom, which were interrupted by the judge, may well have been inappropriate. The complaint subcommittee recommended that the complaint be dismissed as the complainant's allegations were unfounded. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 03-001/97**

The complainant was involved in family court matters. He complained about decisions made by the judge and alleged that the judge failed to act in the best interests of the children, did not re-examine custody issues, did not re-examine

the question of support and did not order "lost visits" to be made-up. The complaint subcommittee recommended that the complaint be dismissed as the decisions made by the judge involved an exercise of the judge's discretion, which is appealable if wrong in law and are, without evidence of judicial misconduct, outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 03-002/97**

The complainant alleged that the judge before whom he appeared on an assault charge shouted at him and interfered with his examination of witnesses. The complaint subcommittee had earlier recommended that the complaint be dismissed because if errors in law were committed by the judge by interfering with the examination of witnesses, such errors could be remedied on appeal and were, therefore, outside the jurisdiction of the OJC. The review panel agreed that this part of the complaint should be dismissed, but were of the view that the complainant's other allegations of shouting and rudeness on the part of the judge should be further investigated. As a result, the complaint subcommittee obtained a copy of the audiotape and reviewed it. The complaint subcommittee recommended that this portion of the complaint also be dismissed because, although some of the remarks attributed to the judge by the complainant were made, the members of the complaint subcommittee were of the view that they were not inappropriate in the context of the complainant's abusive and obstreperous conduct towards the court. After consideration, the review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

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### **CASE NO. 03-003/97**

The complainant was before the court facing a harassment charge. The complainant alleged that the judge refused to allow her counsel to cross-examine witnesses, “blasted” the lawyers for wasting time, and that the judge shouted and pressured the parties to settle the matter. The complainant alleges that because of this conduct, she did not have a fair trial. The complaint subcommittee ordered a copy of the audiotape of the proceedings for the date in question. The complaint subcommittee recommended to the review panel that the complaint be dismissed as being without foundation after an examination of the audiotape revealed that the inappropriate remarks and conduct attributed to the judge by the complainant had not occurred. The complaint subcommittee reported to the review panel that the judge encouraged the parties to discuss a common law peace bond settlement in a fair and reasonable tone. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

### **CASE NO. 03-005/97**

The complainant was an accused charged with failing to remain at the scene of an accident. He was convicted of the offence. The complainant alleged that the judge “went absolutely crazy in the courtroom ranting and raving and continually interrupting me, even telling me to shut up”. The complainant further advised that his appeals to the General Division and the Court of Appeal were dismissed. The complaint subcommittee ordered and reviewed a copy of the court reporter’s tape of the evidence. The complaint subcommittee recommended that the complaint be dismissed as the recording offered no support

for the allegations of “ranting and raving” or of the judge telling the complainant to “shut up”. The complaint subcommittee did report that the judge, at one point, asked the complainant to keep quiet until he was given permission to speak and, on several occasions, the judge told the complainant not to interrupt while the judge was speaking. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

### **CASE NO. 03-006/97**

The complaint arose in the context of a preliminary inquiry into charges of manslaughter and robbery. An application to a General Division judge was brought on behalf of the accused for various forms of prerogative relief and Charter relief with respect to the conduct of the Provincial Division judge during the course of the preliminary inquiry. The matters raised on judicial review were also raised in the complaint to the OJC. The General Division judge who reviewed the application read much of the more than 70 volumes of transcript. The essence of the allegations in the application for relief and in the complaint to the OJC was that the Provincial Division judge’s conduct during the preliminary inquiry was motivated by bias towards the accused based on the nature of the crime with which the accused was charged, the accused’s race and an intense dislike for counsel who represented the accused.

In dealing with the application for relief, the reviewing General Division judge found that the Provincial Division judge conducting the preliminary inquiry had made certain errors which warranted the granting of relief. In holding that the conduct of the Provincial Division judge

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raised a reasonable apprehension of bias and that the proceedings were “far from exemplary”, the reviewing General Division judge concluded as follows, “Nevertheless I am satisfied that the conduct of the (Provincial Division) judge would not cause a reasonably minded person who had been present for the entire proceeding to have concluded that the applicants had not been treated fairly...there is no doubt that when a firm judge, forceful counsel (for both the Crown and applicant), and unruly accused interact there will be, as in the instant case, sharp exchanges, intemperate remarks and perhaps discourtesy on the part of all participants...”.

The only specific matter of complaint that was of concern to the complaint subcommittee after reading the decision of the reviewing General Division judge was that the Provincial Division judge, pending the General Division review, had telephoned one of the prosecutors in the case and had a discussion in part regarding the merits of an issue that had arisen in the course of the preliminary inquiry and involved the shackling of the accused persons before the Court. The reviewing General Division judge found that the telephone conversation with the Crown Attorney was improper and that the discussion with respect to shackling was “totally improper” but concluded that he did not find “...any male fides or any actual bias on the part of the (Provincial Division) judge or indeed, that anything was done or said by the (Provincial Division) judge to assist Crown counsel on the application ...”.

At the request of the complaint subcommittee, the OJC wrote to the Provincial Division judge involved and asked for the judge’s comments with respect to that issue. The judge responded that the Crown had been telephoned after an almost five-month delay in order to inquire as to

when the review of the application in the General Division would be heard. The judge advised that during the course of that conversation, the judge had repeated what was said in Court about the shackling issue. In the response to the OJC, the judge recognized that speaking to the Crown was inappropriate. The response further went on to advise that the judge had never done such a thing in the past and would be careful to never do something like it in future, but that contact had been made in this case against the background of repeated remands and frustration at being unable to conclude the matter.

The members of the complaint subcommittee were of the view that, while the conduct of the judge in speaking to the Crown prosecutor was clearly inappropriate, the judge specifically recognized and admitted the seriousness of the error in the letter to the OJC and indicated that the event was unique and would not be repeated. In all the circumstances, the complaint subcommittee recommended that no further action be taken with respect to this matter other than a concluding letter from the OJC advising the judge that the conduct complained of with respect to the telephone call had been found to be inappropriate. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed and that a letter be sent to the judge.

### **CASE NO. 03-007/97 AND 03-008/97**

The complainant, who made an identical complaint against two different judges, was not happy with the decisions made in a child support matter in which he was involved. He alleged that the justice system is unfair and that the

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judges were not concerned about the complainant's children. The complaint subcommittee recommended that the complaint be dismissed as the decisions made by the judges in this particular case involved an exercise of their judicial discretion, which is appealable if wrong in law. Since there was no evidence of judicial misconduct in the exercise of the judges' discretion, the matter was outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 03-010/97**

The complainant alleged that the judge before whom he appeared as agent was biased, did not follow the law, slandered the reputation of an appeal court judge and made slanderous comments about the complainant and the course of action he was following at trial. The complaint subcommittee ordered and reviewed the court file in this matter, asked for and reviewed a response to the complaint from the judge and interviewed the other party's agent. The judge denied any impropriety in his conduct and the other party's agent verified that the judge had been fair and impartial and had conducted the trial in a proper manner throughout all proceedings. The other party's agent also denied that the judge had made any disparaging comments about any other judge. The complaint subcommittee recommended that the complaint be dismissed as being without foundation after determining that the inappropriate remarks and behaviour attributed to the judge by the complainant had no foundation in fact. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 03-011/97**

The complainant alleged that a judge before whom he appeared on a motion was biased and interested only in protecting the interests of the other party and its agent. After reviewing the court file in this matter, the complaint subcommittee recommended that the complaint be dismissed as the decisions made by the judge involved an exercise of the judge's discretion, which are appealable if wrong in law and, as there is no evidence of judicial misconduct in the exercise of the judge's discretion, the matter is outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 03-012/97**

The complainant was an accused before the court who had been charged with and found guilty of the offence of "Threatening", contrary to the Criminal Code. The complainant alleged that the judge agreed to allow the Crown to proceed by way of indictment; that the judge ordered a pre-sentence report; that the judge remarked that the tape recording of the telephone conversation in which the complainant made the threat, was "chilling and even frightened [the judge]"; that the judge had prior knowledge of two other charges and that the judge's fairness and impartiality were compromised. The complaint subcommittee recommended that the complaint be dismissed as the decisions made by the judge involved an exercise of the judge's discretion, which are appealable. Since there was no evidence of judicial misconduct in the exercise of the judge's discretion, the matter is outside the jurisdiction of the OJC. The complaint subcommittee further stated that a judge has no power to direct

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the Crown to proceed by indictment or by summary conviction and the judge's comments concerning the "chilling" nature of the complainant/accused's call does not amount to judicial misconduct. The complaint subcommittee further stated that the allegation that the judge had prior knowledge of other charges against the complainant, or that the judge was compromised in any respect, appeared to be conjecture on the part of the complainant. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 03-013/97**

The complainant objected to the fact that the judge permitted certain evidence to be admitted on a family court/child welfare case. 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 admitting the evidence. If errors in law were committed by the judge in admitting the evidence, such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the OJC. The complaint subcommittee also stated that there was 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. 03-015/97**

The complainant's letter to the OJC contained no allegation of misconduct by the judge who had been involved in a family court matter, but expressed dissatisfaction with the interim order

dealing with visitation in a custody battle, dissatisfaction with the representation he had received from his lawyer and allegations of abuse to his daughter during visitation. 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 making the interim order with respect to visitation. If errors in law were committed by the judge, such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the OJC. The complaint subcommittee further noted that the complaint regarding the complainant's solicitor and the complainant's allegations of abuse are not within the OJC's jurisdiction and the complainant should be referred to the appropriate authorities. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed. The complainant was advised of the proper authorities with whom he could lodge his other complaints.

### **CASE NO. 03-017/97**

The complainants were defendants in a civil action. They alleged that a judge before whom they appeared on an interim motion "broke the ethics of the court" when a trial date was changed by the judge on the request of the plaintiff who had written a letter asking for such a change. The trial itself was conducted by a deputy judge over whom the OJC has no jurisdiction. The complaint subcommittee ordered and reviewed the court file in the matter. 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 acquiescing to the plaintiff's request for a different trial

## CASE SUMMARIES

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date. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 03-018/97**

The complainant, who had been represented by a lawyer, expressed concern over a decision made in family court six and a half years ago when a judge did not grant supervised access. The complaint subcommittee recommended that the complaint be dismissed as 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. 03-020/97**

A women and children's service agency objected to the criticisms levelled at their agency by a family court judge in the judge's "Reasons for Judgment". The agency believed the judge's statements about their lack of involvement and apparent lack of concern for a child who was being abused, while the agency was involved with the family, were "inflammatory, unreasonable and bordering on slander". The complaint subcommittee ordered and reviewed a copy of the judge's "Reasons for Judgment". The complaint subcommittee reported that this was a horrendous case of child abuse which occurred during a period of time that the family was receiving services from a number of professionals and agencies. The complaint subcommittee recommended that this complaint be dismissed as they felt there was no judicial misconduct evident in the comments made about the agency by the judge, taken in

context. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 03-021/97**

The complainant's letter did not contain an allegation of judicial misconduct on the part of the judge, but she expressed grave concern with the law and the interpretation of the law and specific rulings made by the judge in a family court case which had taken place some years ago. The complaint subcommittee recommended that the complaint be dismissed as the decision made by the judge involved an exercise of the judge's discretion, which is appealable if wrong in law. Since there was no evidence of judicial misconduct in the exercise of the judge's discretion, and no allegation of judicial misconduct in the complaint, the matter was outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 03-024/97**

The complainant objected to a decision made by the judge in a criminal case of assault and disagreed with the judge's assessment that the case had not been proven beyond a reasonable doubt. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion and that the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge, such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the OJC. The



## CASE SUMMARIES

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complaint subcommittee also noted that there were no allegations of judicial misconduct contained in the complainant's letter. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 03-028/97**

The complainant alleged that the pretrial judge before whom he appeared "harangued" and threatened him and did not "exonerate" him. He also alleged that the judge read a letter which had been written by the complainant and disclosed by the other side and that this was unfair. The complainant also alleged that the judge had psychological problems. The complaint subcommittee reviewed the court file in this matter, asked for a response to the complaint from the judge involved in the pretrial and also conducted an interview of counsel present at the pretrial. The complaint subcommittee recommended that the complaint be dismissed as there was no objective evidence to support the complainant's assertions that the judge had "harangued" or threatened the complainant. The complaint subcommittee were also of the view that the complainant had misunderstood the purpose of a pretrial and did not understand, although he had received notice, that disclosure and exchange of documents would be made. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 03-030/97**

The complainant was a party in a family court matter who had fired his lawyer and asked the judge for time to obtain new counsel. The judge reportedly refused to grant him an adjournment and insisted that the trial go ahead as scheduled. The complaint subcommittee recommended that the complaint be dismissed as there was no judicial misconduct alleged in the complainant's letter other than the issue of being "forced on" for trial and that is a matter for appeal and not a matter for the OJC. If errors in law were committed by the judge in refusing the adjournment, such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 03-031/97**

The complainant, a plaintiff in an action, alleged that the judge acted improperly by refusing the complainant's request that the judge be disqualified before the trial began and by dismissing the plaintiff's action after trial. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in hearing or dismissing the case and that the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge, such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.



## CASE SUMMARIES

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**CASE NO. 03-037/97,  
03-038/97 AND 03-039/97**

The complainant alleged that various masters before whom he appeared had executed their duty in bad faith and that there had been obstruction and miscarriage of justice leading to the unlawful seizure and fraudulent sale of the complainant's real property. The complaint subcommittee reviewed the material provided in this matter. The complaint subcommittee reported that the complainant's dissatisfaction stemmed from the terms of a divorce judgment which directed that certain property be sold and the proceeds divided between the parties. The judgment also directed the matter to the master with all the powers to set terms and to conduct the sale of the properties. The complaint arose from the complainant's dissatisfaction with the judgment and subsequent orders. The complaint subcommittee recommended that the complaint be dismissed as the material submitted by the complainant disclosed no misconduct on the part of any of the masters named in the complaint. If the complainant disagreed with the court findings or if any of the masters erred in law the remedy was through the appeal process and was outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.





# ONTARIO JUDICIAL COUNCIL

1997–1998 ANNUAL REPORT

## APPENDICES

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# APPENDIX-A

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ONTARIO JUDICIAL COUNCIL –  
DO YOU HAVE A COMPLAINT?

## 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.

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.

### *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.

### *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.

### *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

### *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

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INFORMATION  
FOR WITNESSES

# APPENDIX - B

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## INFORMATION FOR WITNESSES

### THE ONTARIO JUDICIAL COUNCIL – INFORMATION FOR WITNESSES APPEARING AT PUBLIC HEARINGS

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**B**

If you have been asked by the Ontario Judicial Council (OJC) to appear as a witness at a hearing, you will likely have some questions and concerns. The following information has been prepared to help you, as a witness, fully understand the hearing process, and to provide other useful information about what to expect when you are a witness at a hearing.

Your participation in a hearing is vital to help ensure high standards both in the delivery of justice and in the conduct of the judicial officers of Ontario. As a witness, you play an important role and your co-operation is greatly appreciated.

If, at any time you have questions, concerns or specific needs, please do not hesitate to contact the Registrar. The Registrar is your main contact throughout the hearing process.

Following are some of the most common questions asked by witnesses. Straightforward, informative answers are also included. Remember, if you have any further questions, or you do not understand something, please contact the Registrar.

# APPENDIX - B

## INFORMATION FOR WITNESSES

B

**Q: *What is a Hearing?***

**A:** A hearing is a formal process whereby a “hearing panel” receives evidence in order to make a decision about whether or not there has been misconduct on the part of a judge.

**Q: *Who is on the Hearing Panel?***

**A:** The OJC hearing panel may consist of as few as two, or as many as six, members. The hearing panel **must** have at least the Chief Justice of Ontario (who serves as the Chair of the hearing panel) and a community member serving on it. These two members may be joined by other members of the OJC who have not been involved in the investigation of the complaint up to that point. It will be up to the OJC to determine who else, besides the Chief Justice and the community member, will serve on the hearing panel.

**Q: *Will the Hearing be open to the public?***

**A:** As a general rule, hearings at the OJC are open to the public and the media. In some exceptional cases, the hearing panel may order that all or part of a hearing be closed to the public, or that there be a publication ban on the name of a person or persons involved in the hearing.

**Q: *Where do the Hearings take place?***

**A:** Hearings are held at the offices of the Ontario Judicial Council (as indicated in the map which is included with this information). In special circumstances, hearings may be held in other locations.

**Q: *When will the Hearing take place?***

**A:** Hearings are scheduled several months in advance. If scheduling conflicts arise, the hearing date may be changed in order to accommodate all necessary participants. The Registrar will keep you informed of any changes.

### ***Importance of contact between you and the Ontario Judicial Council***

*If an emergency situation arises, making it impossible for you to attend on the scheduled hearing day, please call the Registrar immediately. Messages may be left 24 hours a day.*

*In some circumstances, the Registrar may need to reach you quickly. Please be sure the Registrar has your current work and home phone numbers. Also, please let the Registrar know the dates of any holidays or other activities that may make it difficult to reach you.*

# APPENDIX - B

## INFORMATION FOR WITNESSES

### Q: *Why I am being called as a witness?*

**A:** The purpose of a hearing is to receive all necessary information about a judge's or master's conduct in order to allow the hearing panel to make a decision. Witnesses are called because they have information that will assist the hearing panel in making their decision.

### Q: *How can I prepare for the Hearing?*

**A:** Any information obtained during the investigation stage that pertains directly to you will be provided to you prior to the hearing date. You can expect to receive a copy of any statement you may have provided to the OJC or a copy of a transcript of court proceedings. Please review any such materials carefully.

If you perceive any errors in the material, please call the Registrar as soon as possible. If you made personal notes about an incident, including diary notes, and those notes have not been included in the material sent to you, it is very important to let the Registrar know as soon as possible.

Prior to the hearing, the lawyer retained by the OJC will help further prepare you for the hearing. This will be done via a phone call and/or meeting.

**It is important that you not discuss any evidence you may be giving with any other witnesses or the media.**

REMEMBER :

*If you have any questions, please contact the Registrar.*

*If you would feel more at ease by visiting the OJC offices in order to view the hearing room and meet the staff prior to the hearing date, please call the Registrar to make those arrangements.*

*Please feel free to bring a friend, relative or other support person with you to the hearing or to any advance meetings.*

*If you have any other needs, such as special transportation needs or the need for an interpreter, or if you have a health-related concern that might affect your ability to testify at a hearing, please notify the Registrar as soon as possible.*

### Q: *Where are the OJC offices?*

**A:** The OJC offices are located in a high rise office tower in downtown Toronto (near The Eaton Centre), and are easily accessible by car, subway, bus and train. It takes about an hour to reach the office from Pearson International Airport, and 20 minutes from Toronto Island Airport (downtown). Please refer to the map which is included with this information for the exact location of the office and the location of public transit facilities and public parking lots.

### Q: *What about my expenses?*

**A:** Expenses for the following items will be paid for by the OJC. In some cases the OJC will pay the expense directly, while in others, you will be asked to provide receipts. You will receive a cheque for your allowable expenses usually within 30 days of providing receipts.

# APPENDIX - B

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## INFORMATION FOR WITNESSES

### ACCOMMODATION:

If you live further than 40 kilometres from the hearing location, hotel accommodation will be arranged if you need to stay overnight. Please contact the Registrar to discuss your needs. The hotel will bill the OJC directly for your room and parking at the hotel. Any other expenses (eg., mini-bar, movies, etc.) are to be paid by you directly to the hotel when you check out.

### TRAVEL:

You will be reimbursed for travel expenses including: economy airfare, train and bus fare, car mileage (at the current Government of Ontario rate) and other related travel expenses. Receipts for these expenses must be submitted to the Registrar.

### ATTENDANCE ALLOWANCE:

You will be entitled to receive the same allowance for attending the hearing as is currently paid to a person summoned to attend court. If you have any questions about the “attendance allowance”, please contact the Registrar.

### MEAL ALLOWANCE:

The Government of Ontario has established “standard” amounts that may be claimed for meal expenses, without a receipt. The Registrar can provide you with information on the current “standard amounts”. If your attendance as a witness at the hearing requires you to wait over the lunch hour in order to testify in the afternoon, you may claim the amount allowed

for lunch. If it is necessary for you to travel and it is not possible for you to have breakfast at home, or if you have to stay overnight in a hotel, you may also make an expense claim for breakfast. If it is necessary for you to stay at the hearing location into the evening, or overnight, you may make an expense claim for dinner.

*Please note, if you miss work to attend a hearing, you will **not** be reimbursed for loss of wages, as a result of attending the hearing.*

**Q:** *What will people be wearing at the Hearing?*

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**A:** Hearings are quite formal. You can expect to see the members of the hearing panel dressed in business attire.

**Q:** *What is a summons?*

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**A:** A summons is a legal document that makes it mandatory for a person to attend a hearing. The Ontario Judicial Council has the power to summons witnesses. All people who are required to testify at a hearing will be summoned to attend.

# APPENDIX - B

## INFORMATION FOR WITNESSES

### THE DAY OF THE HEARING

#### **Q:** *What should I do when I arrive?*

**A:** Upon arrival, you will be asked to register at the reception area. Once you have registered, you can relax in the waiting area. Please plan on spending the entire day at the hearing. It is difficult to predict how long the hearing will take. As there may be some waiting periods during the day, it is a good idea to bring some reading materials, or other items like a portable “walkman” with you. Telephones are available, should you need to make local calls. Long distance calls may be made collect, or by way of calling card.

*Coffee, tea, juice and snacks will be available. A break for lunch will also be scheduled during the day.*

*Please remain in the witness reception area. If there is a lengthy delay, the Registrar will let you know, and will advise if you can leave for a period of time.*

*Personal audio-visual equipment, including video cameras, laptop computers, and tape recorders are not allowed in the hearing room.*

*A no-smoking policy is in effect within both the OJC offices and the entire high rise building in which they are located. Smoking is permitted outside the building.*

#### **Q:** *What will happen when I testify?*

**A:** There are several things to consider in answering this question. In order to provide as much helpful information as possible, the answer is presented in the following categories: **General Information, Start of Testimony,**

**Swearing In, Examination-in-chief, Cross-examination and Re-examination.**

#### GENERAL INFORMATION:

During the hearing, there will be scheduled breaks in the morning, at lunch and in the afternoon. If you need any additional breaks during your testimony, please advise the Registrar or the Chair of the hearing panel, in advance, in order that arrangements for a short break can be made.

If your testimony is interrupted by a break, or you are unable to complete your testimony by the end of the day, the Chair of the hearing panel may order you not to discuss your testimony with others outside the hearing room.

There may be times during your testimony when the lawyers may need to argue a legal point before the hearing panel. Should this happen, you may be excused from the hearing room.

#### START OF TESTIMONY:

When you are called to testify, the Registrar will show you to your seat in the hearing room. You will be seated so that the hearing panel may see and hear you clearly. The Registrar and a court reporter will also be present, as will the lawyer who is presenting evidence for the OJC and the lawyer who is representing the judge or the master. The Chair of the hearing panel will introduce the members of the hearing panel and any other participants. The judge or master, who is the subject of the hearing, will also be in the room.

# APPENDIX - B

## INFORMATION FOR WITNESSES

The Chair of the hearing panel will commence by asking you to speak loudly, clearly, and slowly when you answer questions, in order for the court reporter to accurately record your testimony.

### SWEARING IN :

You will be asked to swear or affirm that your testimony will be truthful.

Similar to a hearing in Court, you as a witness must promise to tell the truth during your testimony. This may be done in one of two ways:

1. You may swear on the Bible in the hearing room, or on another Holy Book or object\*.
2. You may simply affirm, or pledge that you will tell the truth.

*\*If you would prefer to swear to tell the truth on a book or object other than the Bible, please bring that item with you.*

### EXAMINATION - IN - CHIEF :

The lawyer for the OJC will ask you several questions. This lawyer will probably review these questions with you, before the hearing itself. The questions are designed to bring out evidence that will be helpful to the hearing panel. The first questions will simply confirm your identity and establish your connection to the case. The questions will then proceed to the specific evidence you have about the matters at issue in the hearing.

### CROSS - EXAMINATION :

Once the OJC's lawyer is finished asking you questions, the lawyer representing the judge or master may ask you questions. The questions

asked during the cross-examination may be more wide ranging than the questions posed during the examination-in-chief. This is because it is the role of the lawyer for the judge or master to clarify information, to test your memory and your credibility as a witness.

### RE - EXAMINATION :

Following the completion of the cross-examination, the OJC's lawyer may have some further questions for you, in order to help clarify information from the cross-examination. The hearing panel may also have some questions for you.

**Q:** *May I use notes or other documents at the hearing?*

**A:** If you made notes about an incident, let the lawyer for the OJC know prior to the hearing. The OJC's lawyer will discuss the use of your notes with you and whether or not you may use them when you testify.

If you need to review records or other written material that the OJC might have, let the OJC's lawyer know.

### FOLLOWING YOUR TESTIMONY :

Occasionally a witness is asked to return to answer some further questions. If this is required, you will be contacted by the Registrar as soon as possible, so that necessary arrangements can be made for a convenient return date.

**B**

# APPENDIX - B

## INFORMATION FOR WITNESSES

### AFTER THE HEARING

**Q:** *What happens after the Hearing?*

**A:** Following the hearing, the hearing panel will deliberate in private, to determine (based on the evidence heard), whether or not, there was judicial misconduct. The deliberation process can be quite lengthy as the hearing panel must carefully review all of the evidence. If the hearing panel finds that there was judicial misconduct, additional hearing dates may be scheduled to hear submissions about the appropriate penalty. You will probably not be involved in this part of the hearing, but if you are required, you will be consulted as to possible dates.

**Q:** *Is there a written decision?*

**A:** At the end of the entire hearing and the deliberation process, the hearing panel will write its formal decision and cite the reasons for the decision. If you were a complainant, you will automatically receive a copy of this document.

**Q:** *If I am not the official complainant, how can I find out the decision of the Hearing Panel?*

**A:** In the case of a hearing by the Ontario Judicial Council, a report may be made to the Attorney General (subject to any orders about confidentiality made during the hearing) and the Attorney General **may** make the report public if he/she is of the opinion this would be in the public interest. As well, the findings of any public hearings held by the Ontario Judicial Council will be published in its annual report.

**Q:** *What can happen to a judge after the Hearing Panel has found that there has been misconduct?*

**A:** At the end of a Ontario Judicial Council hearing where the complaint has not been dismissed and the hearing panel finds there has been misconduct by the judge, it may:

- warn the judge,
- reprimand the judge,
- order the judge to apologize to the complainant or to any other person,
- order the judge to take specified measures such as receiving education or treatment, as a condition of continuing to sit as a judge,
- suspend the judge with pay, for any period,
- suspend the judge without pay, but with benefits, for a period of up to thirty days,
- adopt any combination of the above sanctions, or
- recommend to the Attorney General that the judge be removed from office if he or she has become incapacitated or disabled from the due execution of his or her office by reason of inability to perform the essential duties of his or her office, conduct that is incompatible with the due execution of his or her office or failure to perform the duties of his or her office.



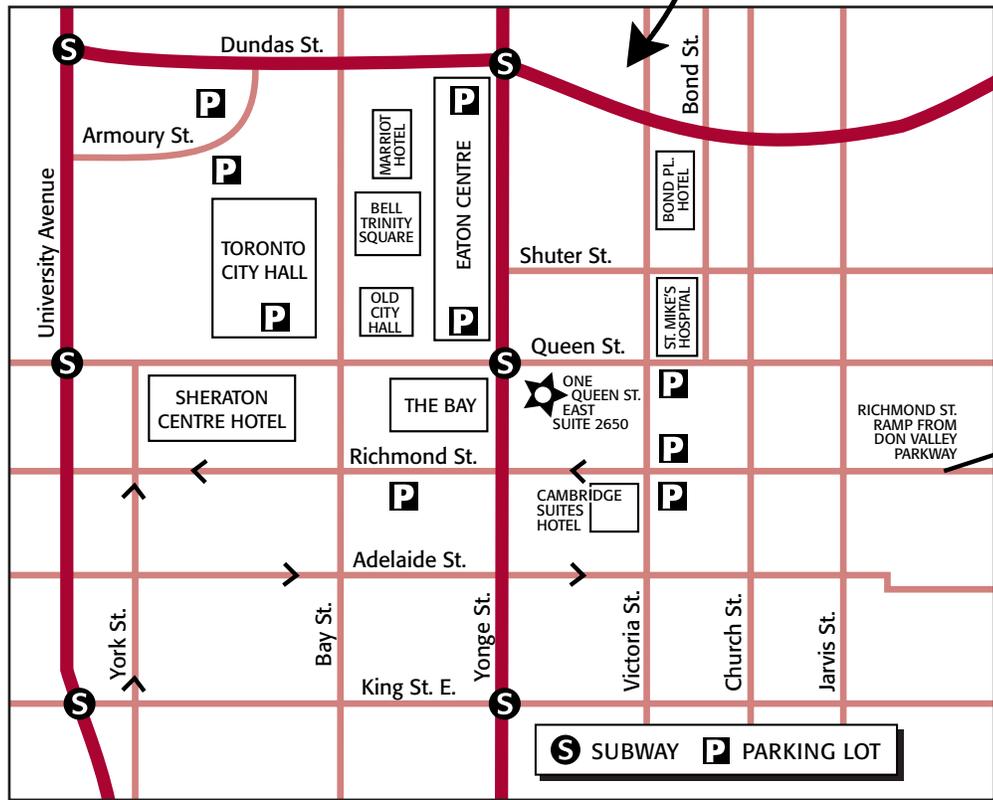
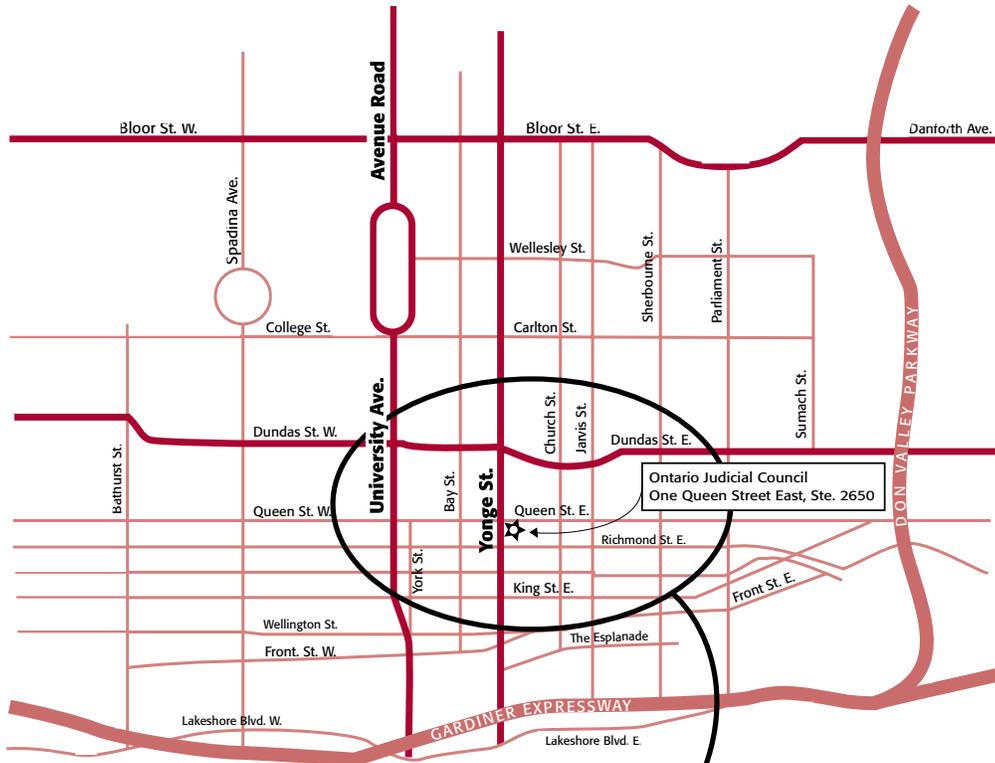
*Thank you for your participation in the work of the Ontario Judicial Council. If you need more information, please do not hesitate to contact our staff at (416) 327-5672 or, if you are outside the local area code, you may call toll-free at 1-800-806-5186.*

*We would also appreciate receiving your comments and any suggestions you may wish to make to improve this material for others who may be involved in the hearing process.*

# APPENDIX - B

## INFORMATION FOR WITNESSES

### ONTARIO JUDICIAL COUNCIL LOCATION MAP



**B**



# APPENDIX-C

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ONTARIO JUDICIAL COUNCIL –  
PROCEDURES DOCUMENT

# APPENDIX - C

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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT

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# APPENDIX - C

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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT

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*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.*

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### COMPLAINTS

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#### 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

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#### 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 - C

## 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.

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## 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

The Registrar will assign any new complaints of a **similar nature** against a judge who already has an open complaint file, or files, to the same complaint subcommittee that is/are investigating the outstanding file(s). This will ensure that the complaint subcommittee members who are investigating a complaint against a particular judge are aware of the fact that there is a similar complaint, whether from the same complainant or another individual, against the same judge.

When a judge is the subject of three complaints from three different complainants within a period of three 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

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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPLAINT SUBCOMMITTEES

- 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 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)**

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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPLAINT SUBCOMMITTEES

### 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 subcommittee 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

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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – REVIEW PANELS

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.

### 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)**

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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – REVIEW PANELS

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 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,

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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – REVIEW PANELS

- 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)**

### **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 recommenda-

tion 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

- (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 proceed-

ings 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)**

# APPENDIX - C

## 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)**

# APPENDIX - C

## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – HEARINGS

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)**

# APPENDIX - C

## 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

# APPENDIX - C

## 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.

# APPENDIX - C

## 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

# APPENDIX - C

## 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)**

# APPENDIX - C

## 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 com-

plaint 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)**

### **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:

# APPENDIX - C

## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ADMINISTRATIVE MATTERS

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.

### 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.

# APPENDIX - C

## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ADMINISTRATIVE MATTERS

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, 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

# APPENDIX - C

## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ADMINISTRATIVE MATTERS

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.

### **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.



# APPENDIX-D

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ONTARIO COURT OF JUSTICE  
(PROVINCIAL DIVISION)  
CONTINUING EDUCATION PLAN

# APPENDIX - D

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

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 four 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.

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;

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## ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) – CONTINUING EDUCATION PLAN

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 current seven 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. 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).

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## ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) – CONTINUING EDUCATION PLAN

### 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 October and November of each year at four regional locations. These semi-

nars 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.

### 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 traditionally 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. 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.

Due to financial constraints the University Education Program is not being presented in the 1997/98 fiscal year. It is expected that the program will re-commence in the 1998/99 fiscal year, most likely under the auspices of the Ontario Judges' Association.

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 on a periodic basis.

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## ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) – CONTINUING EDUCATION PLAN

3. **JUDGMENT WRITING:** This is a two-day program held for the first time in May of 1996 and again in February of 1997. It is presented initially to a small group of approximately 10 judges at a time. It is expected that four judgment writing programs will be held in the 1997/98 fiscal year.
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.

The Court, through individual judges and its Education Secretariat is presently involved in a

social context program initiative which is being led by the National Judicial Institute (NJI).

### 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
  - National Judicial Institute
  - 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

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## ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) – CONTINUING EDUCATION PLAN

- Ontario Association for Family Mediation/Mediation Canada
- Canadian Institute for the Administration of Justice

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.

### 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 current seven regions of the Court have annual regional meetings. While these meetings principally

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## ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) – CONTINUING EDUCATION PLAN

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

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COURTS OF JUSTICE ACT  
CHAPTER C.43  
ONTARIO JUDICIAL COUNCIL

# APPENDIX - E

## 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.

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## 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.

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## 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).

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## SECTION 50

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### 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).

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## SECTION 51

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### 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.

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## 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).

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## SECTION 51.1

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### 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).

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## SECTION 51.2

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### 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 - E

## 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).

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## SECTION 51.3

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### 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).

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## SECTION 51.4

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### 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.

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## 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 - E

## 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).

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### SECTION 51.5

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#### 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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## COURTS OF JUSTICE ACT – CHAPTER C.43 – ONTARIO JUDICIAL COUNCIL

### 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).

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## SECTION 51.6

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### 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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## COURTS OF JUSTICE ACT – CHAPTER C.43 – ONTARIO JUDICIAL COUNCIL

- (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).

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## SECTION 51.7

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### 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).

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## SECTION 51.8

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### 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).

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## SECTION 51.9

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### 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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## COURTS OF JUSTICE ACT – CHAPTER C.43 – ONTARIO JUDICIAL COUNCIL

### 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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## COURTS OF JUSTICE ACT – CHAPTER C.43 – ONTARIO JUDICIAL COUNCIL

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### SECTION 51.12

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#### 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).

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### SECTION 87

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#### 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.

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### SECTION 87.1

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#### 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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## COURTS OF JUSTICE ACT – CHAPTER C.43 – ONTARIO JUDICIAL COUNCIL

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.

