

OJC



ANNUAL REPORT

1998 – 1999

ONTARIO JUDICIAL COUNCIL



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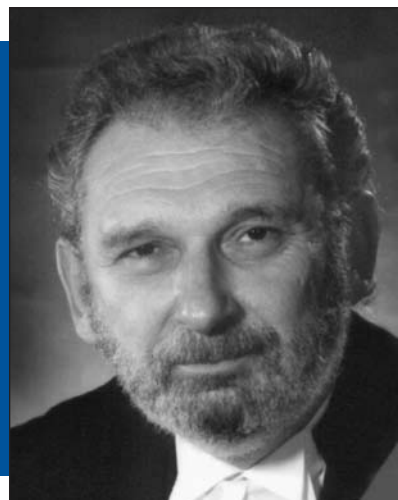
ONTARIO JUDICIAL COUNCIL



The Honourable R. Roy McMurtry

CHIEF JUSTICE OF ONTARIO

Co-Chair, Ontario Judicial Council



The Honourable Sidney B. Linden

CHIEF JUDGE

ONTARIO COURT OF JUSTICE

PROVINCIAL DIVISION

Co-Chair, Ontario Judicial Council



ONTARIO JUDICIAL COUNCIL

The Honourable James Flaherty
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 fourth 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, 1998 to March 31, 1999.

Respectfully submitted,

Handwritten signature of R. Roy McMurtry in blue ink.

R. Roy McMurtry
Chief Justice of Ontario

Handwritten signature of Sidney B. Linden in blue ink.

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



INTRODUCTION

The period of time covered by this Annual Report is from April 1, 1998, to March 31, 1999.

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. The Judicial Council may make an order to accommodate the needs of a judge who, because of a disability, is unable to perform the duties of judicial office. Such an accommodation order may be made as a result of a complaint (if the disability was a factor in a complaint) or on the application of the judge in question. Although the Judicial Council itself is not directly involved in the appointment of provincial judges to the bench, a member of the Judicial Council serves on the provincial Judicial Appointments Advisory Committee as its representative.

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



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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 of Ontario 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 fourth year of operation (April 1, 1998 to March 31, 1999) 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

Harvey Strosberg, Q.C.....(Windsor)

TREASURER'S DESIGNATE

W.D.T. Carter.....(Toronto)

LAWYER DESIGNATED BY THE LAW SOCIETY OF UPPER CANADA

Edward L. Greenspan, Q.C.(Toronto)

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)

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 Ontario Court (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.	
• Master R. B. Peterson	• The Honourable Judge M. D. Godfrey
	• The Honourable Judge Pamela Thomson

Subsection 49(3) of the *Courts of Justice Act* permits the Chief Judge 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 Ontario Court (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 their 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 fourth 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)

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 fourth 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. A copy of the brochure is included as Appendix "A".

The Judicial Council's third Annual Report, which included a summary of all complaints received and dealt with during the third year of operation (April 1, 1997 to March 31, 1998) was submitted to the Attorney General. Nearly a thousand copies of the third Annual Report will be distributed to members of the judiciary, members of the provincial and federal legislatures, news media, academics and government officials.

5. Procedures Subcommittee

A subcommittee to establish guidelines, rules of procedures and criteria for the use of complaint subcommittees, review panels and hearing panels made minor amendments to the Judicial Council's "procedures document". A copy of the Procedures Document is included as Appendix "B".

The Procedures Subcommittee also commenced work on a draft procedure and criteria concerning the accommodation of a judge's disability, as required by subs.45(4) of the *Courts of Justice Act*.

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 and the continuing education plan was approved by the Judicial Council. A copy of the continuing education plan for 1998-99 can be found at Appendix "C".

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.

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 "B".

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

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

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

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

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

Provisions for temporary members have been made in order to ensure that a quorum of the Council is able to conduct a hearing into a complaint if a hearing has been ordered. Hearing panels are to be made up of at least two of the remaining six members of Council who have not been involved in the process 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 "D" to this Report.

9. Summary of Complaints

The Ontario Judicial Council received 77 complaints in its fourth year of operation, as well as carrying forward 51 complaint files from previous years. Of these 128 complaints, 64 were closed before March 31, 1999, leaving 64 complaints to be carried over into the fifth year of operation.

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-four of the 64 complaint files closed were dismissed by the Judicial Council. One complaint was referred to the Chief Judge and one complaint was dismissed as abandoned by the complainant. The Ontario Judicial Council lost jurisdiction in eight complaint files when the judge complained against retired and no further action could be taken.

Approximately fifty (50) per cent of the 54 complaint files dismissed 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) and/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 11 of the 27 complaint files that fell into this category. Sixteen of these 27 complaint files combined an unfounded allegation of bias, racism, sexism, or "improper actions" with a complaint about an appealable matter which, without evidence of judicial misconduct, was outside the jurisdiction of the Judicial Council.

Approximately fifty (50) per cent of complaints (a total of 27) disposed of by the Ontario Judicial Council during the period of time covered by this report were determined to be unfounded after investigation.

These 27 complaint files involved allegations that a judge had improperly conducted a case or had engaged in improper or illegal activity (eg., tampering with court records), 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, a conflict of interest or some form of bias.



FISCAL YEAR:	95/96	96/97	97/98	98/99
Opened During Year	54	71	66	77
Continued from Previous Year	n/a	21	41	51
Total Files Open During Year	54	92	107	128
Closed During Year	33	51	56	64
Remaining at Year end	21	41	51	64

Files are given a two-digit prefix indicating the year of Council’s 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 B-19 of the O.J.C. Procedures Document, Appendix “B”).

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





CASE SUMMARIES

CASE NO. 02-037/96

The complainant and her husband were witnesses subpoenaed to attend on a peace bond application. The complainant and her husband travelled about 400 kilometers, round trip, to attend at court. After waiting for a few hours for the case to be reached, their case was moved from the assigned court location to another court. The complainant alleged that as they entered the courtroom, the judge before whom their case was called was berating the Asst. Crown Attorney for putting the case on the list and demanding that the Crown “find something more important” to deal with. The complaint subcommittee asked for and reviewed a response to the complaint from the judge, together with a transcript of the events on the date in question. The complaint subcommittee recommended that the complaint be dismissed because, although some of the judge’s comments were perceived by the complainants to be insensitive and arrogant, they did not amount to judicial misconduct. The complaint subcommittee advised that, in an attempt to manage the court list, the judge requested that the Crown determine whether or not there were other serious matters which should be dealt with in priority. The complaint subcommittee advised that the judge did not request the Crown to “find something more important”. The complaint subcommittee also advised that the judge noted that defence counsel had greatly underestimated the amount of time the matter was to take and that in this court, the administrative practice was to deal with the most serious cases first in order to reduce the danger that they might not be reached. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 02-038/96

The complainant was appearing in court on a *Provincial Offences Act* appeal. He alleged that the judge did not read any of the appeal material before him, did not permit the complainant to present his case, discriminated against him in the matter of costs and was abusive towards those appearing before him. The complainant alleged that the judge did not conduct his court in a competent, knowledgeable, fair and impartial manner. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence on the date in question, an audiotape of the court proceedings and a response to the complaint by the subject judge. After listening to the audiotape of the court proceedings the complaint subcommittee reported that, in dealing with the vast majority of people coming before him, the judge raised his voice in an angry tone and his overall behaviour was abusive, nasty, argumentative, insulting, abrupt and sarcastic. The complaint subcommittee further reported that he did not give reasons for decisions nor for awarding costs against applicants and appellants. Although the complaint subcommittee recommended that a hearing be held in regard to this complaint and the review panel agreed with this recommendation, the judge complained against retired before a hearing could be arranged. As a result, the judge is no longer subject to the jurisdiction of the OJC. The file was closed and the complainant was advised of the judge’s retirement.

CASE NO. 02-041/96

The complainant was a Justice of the Peace who had been criticized on the record by a judge sitting in the Provincial Offences Appeal court. According to the complainant, the judge had made deroga-



CASE SUMMARIES

tory and disparaging remarks and unfounded accusations about the Justice of the Peace. Further, the judge had allegedly referred to the Justice of the Peace as “stupid”, “showing bias” and had allegedly remarked that the Justice of the Peace had “created havoc with the administration of justice, did not understand the law and had not read any decisions dealing with the subject matter and the *Provincial Offences Act*”. The complainant provided a copy of the transcript of the evidence to the complaint subcommittee and the complaint subcommittee reviewed an audiotape of the day’s proceedings in court. It also asked for and reviewed a response from the judge. After receiving the judge’s response, the complaint subcommittee sought the advice of the review panel. However, since the judge against whom the complaint was made has retired, the OJC no longer has jurisdiction and the investigation cannot proceed any further. The file was closed and the complainant was advised of the judge’s retirement.

CASE NO. 02-044/97

The complainant appeared in court on a *Provincial Offences Act* appeal. He alleged that all of the people appearing in court when he attended for his POA appeal were treated unfairly, unjustly and rudely. The complainant further alleged that the judge did not listen to the evidence or arguments presented to him by appellants and was verbally abusive to individuals who were sitting in the body of the court. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence, an audiotape of the court proceedings and a response to the complaint from the subject judge. The complaint subcommittee reported that in dealing with the vast majority of people coming before

him, the judge raised his voice in an angry tone and his overall behaviour was abusive, nasty, argumentative, insulting, abrupt and sarcastic. The complaint subcommittee further reported that the judge did not give reasons for decisions nor for awarding costs against applicants and appellants. Although the complaint subcommittee recommended that a hearing be held in regard to this complaint and the review panel agreed with this recommendation, the judge complained against retired before a hearing could be arranged. As a result, the judge is no longer under the jurisdiction of the OJC. The file was closed and the complainant was advised of the judge’s retirement.

CASE NO. 02-049/97

The complainant, the father of the victim of an alleged sexual assault, complained that the trial judge spent no time weighing the evidence submitted at trial or in closing argument, gave a very brief summation and reasons for the decision and was insensitive to the impact of the decision on the victim of the alleged assault. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence and asked for and reviewed a response from the judge. The complaint subcommittee reported that, although the reasons for judgment are terse, there is no judicial misconduct attributable to the judge as a result. However, the complaint subcommittee also reported that the transcript reveals that in response to the complainant’s brief outburst of emotion in court, the judge’s response went beyond being firm to the point of being rude and displaying considerable insensitivity. The complaint subcommittee recommended that a hearing be held into this matter. The review panel did not



CASE SUMMARIES

agree with the complaint subcommittee's recommendation and, after discussion, decided to refer this case to the Chief Judge. Although the complaint was referred to the Chief Judge, the judge complained against retired before this could be arranged. As a result, the judge is no longer under the jurisdiction of the OJC. The file was closed and the complainant was advised of the judge's retirement.

CASE NO. 02-062/97

The complainant was an accused who missed a court date due to the death of a family member. She alleged that when she presented this explanation at her next court appearance, the judge was rude and arrogant and did not believe her or provide her with an opportunity to prove that she was telling the truth. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence and asked for and reviewed a response from the judge. The complaint subcommittee recommended that a hearing be held in this case as it was their view that the judge did act in a rude and arrogant manner, without reason. The review panel did not agree with this recommendation and instructed the complaint subcommittee to conduct further investigation and re-submit the complaint to the review panel when further investigation had been completed. However, since the judge against whom the complaint was made retired, the OJC lost jurisdiction and the investigation cannot proceed any further. The file was closed and the complainant was advised of the judge's retirement.

CASE NO. 02-064/97

The complainant appeared as counsel for a defendant charged with a summary conviction offence. When counsel and the defendant appeared for trial, the Crown re-elected to proceed by way of indictment and counsel requested an adjournment since she would now be appearing on a preliminary inquiry rather than a trial. Counsel was sent to make the application formally before the judge presiding over the scheduling court, speaking to the judge both in Court and in chambers. Counsel complained about the judge's conduct both in Court and in chambers and alleged that the judge was rude and abusive in dealing with counsel and setting the new date for the preliminary inquiry. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence and the audiotape of proceedings in court. The complaint subcommittee also asked for and reviewed a response from the judge.

The complaint subcommittee reported that it appeared from both the transcript and audio tape that the judge was not pleased with the fact that counsel (who had been prepared to proceed with the trial), requested an adjournment when the Crown re-election gave her the opportunity to elect by way of preliminary inquiry rather than trial in the Provincial Division. The complaint subcommittee further reported that while the judge may have appeared to be over-bearing and rude, the judge's response to the subcommittee's inquiry indicated that the judge had not intended to intimidate or humiliate the complainant. The complaint subcommittee recommended that the complaint be dismissed because, although the judge might have dealt with the complainant in a different manner, they were of the view that there was no judicial

CASE SUMMARIES

misconduct in the circumstances. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed and that the judge be advised by the Judicial Council that it was inadvisable to have only one party present in Chambers and that, while not judicial misconduct, the treatment counsel complained of was not appropriate.

CASE NO. 02-071/98

The complainant alleged that a judge engaged in discriminatory practices against him on the grounds of race, "national ethnic origin and colour"; that the judge misled him, was rude to him and angry with him in the presence of others and that the judge refused to allow him to speak to the Chief Judge. The complaint subcommittee reported that it wrote to the complainant on four separate occasions, asking for further particulars of the complaint and received no response to its requests for information. The complaint subcommittee advised that its correspondence with the complainant took the form of letters which were, variously, delivered by courier and/or registered mail and all of which had been returned to Council as unclaimed. On January 15, 1998, the complainant wrote to Council inquiring about the status of the complaint and was advised by letter dated January 29, 1998 that Council required a response to its earlier inquiries before proceeding. Council's letter of response was sent by registered mail and by courier as well as ordinary mail. The complaint subcommittee reported that both the registered mail and the mail sent by courier were returned as unclaimed. The complaint subcommittee was instructed to make one more attempt to contact the complainant for particulars. On August 31, 1998, the complainant once again

wrote to Council requesting an "update and status" on this matter. Council's response, dated September 1, 1998, was sent by regular mail, registered mail and by courier service. The complaint subcommittee reported that, again, the registered mail and letter sent by courier were returned, marked "unclaimed". The complaint subcommittee recommended that the complaint be dismissed as abandoned, subject to being reopened if the complainant should respond to Council and provide the details requested. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed as abandoned.

CASE NO. 03-004/97

The complainant had been convicted of three traffic offences, *in absentia*, as he did not attend court on the date scheduled for trial. The complainant advised that when he attended on the appeal from his conviction and attempted to explain the reasons for his previous absence, the judge refused to listen to him and refused to give him a trial date. The complaint subcommittee reported that it had not been able to conduct an investigation into this complaint before being advised that the judge complained against had retired. As a result, the judge is no longer under the jurisdiction of the OJC. The file was closed and the complainant was advised of the judge's retirement.

CASE NO. 03-009/97

The complainant was involved in a civil action and advised that she and her husband attended a pre-trial meeting with a master to discuss the case. The complainant alleged that during the course of this meeting, the master inquired as to



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their ethnic background and made an anti-Semitic remark. The complaint subcommittee asked for and reviewed a response to the complaint from the master. The complaint subcommittee advised that the master categorically denied the allegations made by the complainant and withdrew from any further involvement in the case after learning of the allegations which had been made. The complaint subcommittee interviewed a witness who attended at a hearing held shortly after the meeting at which the offending remarks were allegedly made and the witness denied hearing any such remarks or hearing the complainant make any complaint of improper behaviour by the master. The witness further stated that he felt that the master went out of his way to help the complainant. The complaint subcommittee recommended that the complaint be dismissed. The members of the review panel were of the view that the interpreter who was present at the subsequent hearing should be interviewed before coming to a conclusion. At a subsequent review panel meeting, the complaint subcommittee reported that it had conducted further interviews and investigation and had been unable to find any independent corroborating evidence to support the complainant's allegations and had been unable to contact the interpreter who had reportedly been at the meeting. As a result, the complaint subcommittee recommended that the complaint be dismissed as no objective evidence to substantiate the complaint could be found. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 03-014/97

The complainant was appearing in court on a *Provincial Offences Act* appeal. She alleged that the judge told everyone appearing for their appeal that whatever they might say would be irrelevant and that they had already had a court hearing and were found guilty. She also alleged that the judge increased the amount of fines payable if anyone dared to question the judge's findings. The complainant stated that she found the judge to be very unfair and very intimidating. The complaint subcommittee had not been able to conduct an investigation into this complaint before being advised that the judge complained against had retired. As a result, the judge is no longer under the jurisdiction of the OJC. The file was closed and the complainant was advised of the judge's retirement.

CASE NO. 03-016/97

The complainant's ten-year-old child was a victim of a robbery and the child was called to testify in court. The complaint subcommittee reported that, before the child could testify, it was necessary for the judge to conduct an inquiry pursuant to the *Canada Evidence Act* to determine whether or not the child witness understood the nature of an oath or solemn affirmation and whether the witness was able to communicate the evidence. The complaint subcommittee reported that, at the end of the inquiry, the judge did not think the child understood the nature of an oath and did not permit him to testify. The complainant alleged that, during the inquiry to see whether the child should be sworn as a witness, the judge was angry, sarcastic and looked contemptuously at the child, who was reportedly embarrassed, frightened and humiliated by the judge. The



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complainant indicated that the child might require counselling as a result of the court hearing. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence and listened to an audio tape of the proceedings. The complaint subcommittee recommended that the complaint be dismissed as they were of the view that the judge had dealt patiently and appropriately with the young witness. The complaint subcommittee reported that it was apparent that the judge had tried to put the child at ease and there was no indication of sarcasm, as was alleged in the complaint. The complaint subcommittee further stated that there was no evidence of misconduct either in the transcript or on the audio tape. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 03-019/97

The complainant is a landlord who appeared in court for civil trial with respect to a landlord and tenant matter. He alleged that there was a "conspiracy" against him among the lawyers and judges before whom he appeared and, further, that they are biased against him because of his political affiliation. The complaint subcommittee recommended that the complaint be dismissed as it could not be substantiated, given the information provided by the complainant. The complaint subcommittee further reported that the complainant had been asked to provide further information in September of 1997 and that no further information had been received. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 03-022/97

The complainant, who was an accused before the court, complained that the trial judge was unfair, abrupt and angry and entered into the fray between Crown and defence counsel. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence and a copy of the audio tape of the court proceedings. The complaint subcommittee recommended that the complaint be dismissed as no misconduct on the part of the judge was evident either from the transcript or from the audio tape of the proceedings. The complaint subcommittee noted that the judge had a very authoritative voice, but there was no evidence of anger from either the audio tape or the transcript and if the judge was aggressive in questioning the witnesses, it was because the judge was seeking clarification. The complaint subcommittee reported that if the judge had gone too far in questioning the witnesses, that could be grounds for appeal. The complaint subcommittee also reported that the matter had been appealed by the complainant and a new trial was ordered principally on the basis that the judge allowed a breathalyser demonstration in the courtroom without clearly laying down the ground rules first. The complainant also complained about the number of police who had been called to testify, but the complaint subcommittee noted that if the defence had wished to have evidence from both police officers involved, they should have subpoenaed them and this is not the responsibility of the judge. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

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CASE NO. 03-023/97

The complainant was charged with assault and appeared before the judge for a preliminary inquiry. In the course of that inquiry, the judge had the accused removed from court on account of his behaviour and ultimately committed the accused to stand trial. At the completion of the preliminary inquiry and in the absence of the accused, the Crown applied under section 523(2)(b) of the *Criminal Code* to have the court deal with the question of bail. At the complainant's next court appearance, he was surprised to be brought before the same judge who had presided over the preliminary inquiry, this time for the bail hearing under section 523(2)(b) of the *Code*. The accused had expected the matter of his bail to be determined on that date by a Justice of the Peace (as was the practice at that court location) and strongly objected to the judge presiding over the bail hearing, alleging that the judge was biased. In his letter, the complainant also complained about the absence of duty counsel in the course of the proceedings against him, criticized the judge for threatening to send him to a mental health centre without any evidence being presented in that regard and alleged that the judge was biased against him throughout the conduct of the proceedings.

The complaint subcommittee ordered and 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 there was no evidence of judicial misconduct during the course of the preliminary inquiry. The complaint subcommittee reported that, although the complainant was upset at his removal from the hearing, this decision by the trial judge, at best, goes to jurisdiction and is a matter of appeal, but does not constitute evidence of judicial misconduct.

The complaint subcommittee further reports that the central issue of bias appears to arise because the judge who presided over the preliminary inquiry insisted on dealing with the complainant's bail hearing despite the complainant's strong objections. The complaint subcommittee reports that neither proceeding was a pleasant one from the viewpoint either of the judge or of the complainant and the complainant, on occasion, used intemperate language. However, the complaint subcommittee stated that once the Crown had made an application with respect to bail under section 523, the judge had at least the discretion, if not the obligation, to preside over the hearing, despite the accused's objection and, while this fact could have been better explained to the complainant, it may have been difficult to do so in the atmosphere which prevailed.

With respect to the issue of counsel, the complaint subcommittee reported that a presiding judge does have the discretion to compel an unrepresented accused to continue without counsel and, in the bail hearing, the judge did at one point offer to appoint counsel chosen by the accused to appear for the accused on the bail hearing, but the matter of counsel was largely unresolved at that hearing, which was adjourned. The complaint subcommittee reports that, apparently, Crown counsel advised the judge in court that duty counsel did not feel that he could speak to the accused and had not done so.

With respect to the issue of the "mental health centre", the complaint subcommittee reported that the judge, in the context of the bail hearing, did raise the possibility of remanding the accused for a "mental examination" under the *Mental Health Act* but did not pursue the matter.

The complaint subcommittee reported that while some of the matters complained of might provide the basis for an appeal, they found no

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judicial misconduct by the judge in the conduct of the preliminary inquiry or the bail hearing and recommended that the complaint be dismissed. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 03-025/97

The complainant was appearing in court on a *Provincial Offences Act* appeal. He alleged that every defendant, regardless of whether or not he or she was represented by counsel, was "treated like dirt" by the presiding judge who refused to even allow adjournments and treated everyone as guilty. The complaint subcommittee had begun to conduct its investigation into this complaint but was advised that the judge complained against had retired. As a result, the judge is no longer under the jurisdiction of the OJC. The file was closed and the complainant was advised of the judge's retirement.

CASE NO. 03-026/97

The complainant was an accused charged with various criminal offences. He wrote several letters to the Judicial Council throughout the course of his trial, complaining of various abuses by the trial judge.

His letter dated July 18, 1997 contained the following complaints:

1. On July 15, 1996, the complainant stated that the judge changed a prior ruling for "court-appointed" counsel after speaking with the Assistant Crown Attorney during a recess.
2. On July 15, 1996, the complainant requested the judge to rule that the Crown provide him with a "statement of particulars". The complainant alleged that the judge ignored his request and allowed the Asst. Crown to answer for him as agent.
3. On July 15th, July 19th and November 4th, 1996, the complainant alleged that the judge indicated that pretrial motions would be addressed before trial and later prevented the complainant from having same.
4. The complainant stated that during the trial process the judge failed to control the courtroom thereby allowing the Asst. Crown to prosecute the complainant on a racial and socio-economic basis.
5. The complainant stated that the judge had secret meetings with the Asst. Crown throughout the trial.
6. On November 21, 1996, the complainant stated that the judge allowed the Crown to re-open its case and enter new evidence and that this happened again on May 2, 1997.
7. On December 3, 1996, the complainant stated that the judge allowed defence counsel to get off the record and the complainant was denied notice and an adjournment for a hearing of said motion.
8. On January 2, 1997, the complainant stated that the judge ruled that the complainant was to have trial transcripts by the end of January, 1997.
9. On January 28, 1997, the complainant stated that the judge allowed defence counsel to get off the record without notice or an adjournment for a hearing of said motion.

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10. The complainant stated that the judge indicated to him, through his personal assistant, that complaints against Crown or defence counsel should be in writing and directed to the judge.
11. On March 11, 1997, the complainant complained to the judge re: alleged Crown misconduct, including interfering with execution and delivery of transcripts.
12. On May 2, 1997, the complainant complained to the judge re: misconduct by his defence counsel and the judge was instructed by the Senior Judge to seal the correspondence and characterize the complainant as engaging in “undue influence” over the judge.
13. On June 2, 1997, the complainant stated that the judge angrily delivered the trial judgment, in which the complainant was berated and the judge made material misrepresentations of fact and manipulated the evidence. The complainant further stated that the judge slandered the complainant’s name with allegations of judicial interference. The complainant further stated that the judge had secret meetings with various Senior Judges in an effort to frame the complainant and that the judge would not permit him to present evidence of the judge’s request, on February 10, 1997, that he communicate his concerns about the conduct of the trial in writing.
14. On July 14, 1997, the complainant stated that his new defence counsel advised him that he and the judge are “best friends”.
15. On July 18, 1997, the complainant stated that the judge capriciously and arbitrarily refused an adjournment request, due to a lack of representation, on a date set for a sentencing hearing.
16. On July 18, 1997, the complainant stated that the judge and Asst. Crown interfered with the defence by barring the complainant’s friend (a non-lawyer) from assisting the complainant and refused to allow her to sit at the counsel table.
17. On July 18, 1997, the complainant stated that the judge refused an adjournment of the sentencing hearing to allow the complainant to retain counsel and berated the complainant as being the sole cause of the lengthy trial process. The complainant also stated that the judge had prior knowledge of the complainant’s circumstances because, as the complainant suspected, the judge and his now ex-counsel were “best friends”.
18. On July 18, 1997, the complainant stated that the judge and the Crown intimidated the complainant to waive his rights to counsel at the sentencing hearing.
19. On July 18, 1997, the complainant stated that the judge and Crown called the media to libel the complainant and “sought to isolate the defendant on legal, social and political levels during the hearing”.
20. On July 18, 1997, the complainant stated that the judge encouraged the Crown to libel the complainant’s name, over the complainant’s protests, by bringing a “Hate Crime Application” against him which the Crown stated could not be brought.

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The complainant's letter dated August 10, 1997 contained the following complaints:

1. The complainant stated that the judge allowed into evidence information that was improperly or unlawfully obtained.
 2. The complainant stated that, in conjunction with the Crown, the judge "restructured" the trial transcripts to the prejudice of the complainant.
 3. The complainant stated that, on July 18, 1997, the judge deliberately and wrongfully claimed that the complainant had all of his previous counsel of record quit.
 4. The complainant stated that, on July 18, 1997, the judge wrongfully indicated the complainant was abusing the justice system by firing counsel for the purposes of delay.
 5. The complainant stated that, on July 18, 1997, the judge assisted the Assistant Crown to pursue media libel against the complainant.
4. The complainant stated that the judge limited the complainant's testimony in November, 1996 on certain issues of hearsay, thereby deliberately preventing evidence from being submitted.
 5. The complainant also stated that the judge treated the complainant as guilty until proven innocent and this was evidenced by the judge's continuous and deliberate suppression of defence evidence.

The complainant's letter of September 20, 1997 contained the following complaints:

1. The complainant stated that, on September 4, 1997, the judge allowed the Crown to re-open its case which violates procedure, law and the complainant's constitutional rights.
2. The complainant also stated that the judge led evidence for a witness, "to fabricate evidence that amounts to criminal perjury and materially changing the trial record".
3. The complainant stated that the judge intentionally misstated the case law, thereby actively undermining the complainant's rights.

The complaint subcommittee reported that the criminal trial appeared to have been concluded on April 8, 1998. The complaint subcommittee recommended that the complaint be dismissed as most of the matters complained of are, without evidence of judicial misconduct, outside the jurisdiction of the OJC and are matters for appeal. The members of the complaint subcommittee were of the view that the complainant was attempting to use the OJC to secure a mistrial and that his complaints were clearly vexatious and an abuse of process.

The members of the review panel felt that it was necessary to do some further investigation to ensure that the complainant's allegations were groundless and the complaint subcommittee was instructed to get the audio tape (or transcript) of the judgment which was delivered on June 2, 1997 in which the complainant claims the judge made slanderous remarks and misrepresentation of facts, etc. After reviewing the audio tape, the complaint subcommittee advised there was no basis to the complainant's allegations and the review panel agreed with their recommendation that the complaint be dismissed.



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CASE NO. 03-027/97

The complainant was an unsuccessful litigant at court. He complained that the trial judge lacked the patience to properly understand his case and was rude because the judge was confused and frustrated by the documents he had prepared. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended that the complaint be dismissed as they were of the opinion that there was no evidence to support the complainant's allegations. The complaint subcommittee reported that the judge may have seemed to be brusque to the complainant but that this was due to the judge's attempt to move on with the evidence. The complaint subcommittee further noted that if the judge had misunderstood any of the evidence or arguments in the case, that might be a matter for appeal but was not supportive of a complaint of judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 03-029/97

The complainant was an unsuccessful litigant at court. The complainant alleged that the judge had not given him sufficient time to cross-examine the plaintiff's witnesses during the trial and that the trial judge interfered improperly in the trial. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended that the complaint be dismissed as there was no evidence to substantiate either of the complaints made by the complainant. The complaint subcommittee further noted that any errors made by the trial judge regarding the admissibility or

interpretation of evidence is the subject matter of an appeal and, absent any evidence of judicial misconduct, not within the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 03-033/97 AND CASE NO. 03-034/97 AND CASE NO. 03-036/97

The complainant was an accused before the court who alleged that certain judges before whom she appeared engaged in fraud by tampering with court records. She also alleged that the judges allowed counsel to be removed from the record when counsel had never been on the record as acting for the complainant. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no evidence to substantiate the complainant's allegation that any judges had tampered with the court records and no judicial misconduct evident in the exercise of discretion on the part of any of the judges in dealing with the motion of counsel to be removed from the record when the motion was before the court. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 03-040/98

The complainant was the plaintiff in an action for unpaid wages he alleged were owed to him by a former employer. The complainant was given judgment for the unpaid wages, but was not awarded costs or punitive damages as he had requested and, when he asked the judge how he was to have picked up his cheque for unpaid

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wages from his former employer, without benefit of a car, the judge replied, “That’s your problem”. The complainant alleged that this remark showed the judge to be incompetent and arrogant. The complaint subcommittee reviewed the court file and the transcript of the trial in this matter. 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 choosing not to award costs and/or punitive damages. If errors in law were committed by the judge in not making such an award, such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The complaint subcommittee was also of the view that the judge’s response to the complainant’s question about how he was supposed to have picked up the cheque was not inappropriate or indicative of arrogance and the actual words said by the judge were, “Sir, that’s your problem. That’s your problem. All right. Next case?” The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 03-041/98

The complainant was the accused in a criminal proceeding and complained that all of the Crown witnesses in the case lied and that the trial judge allowed these lies to be heard. The complainant also alleged that the judge forced him to agree to the terms of a peace bond. The complainant stated that he believed he did not receive a fair trial, although he was acquitted of the charges of criminal harassment. The complaint subcommittee recommended that the complaint be dismissed as the allegations made by the complainant,

if true, are matters for appeal and, without evidence of judicial misconduct, are outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 03-042/98

The complainant was the accused in an assault trial where his brother was the alleged victim. The complainant stated that the judge made unusual speculations during his summary and took a one-sided “damage control” approach to the case. The complainant was found to be not guilty of the offence as charged. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended that the complaint be dismissed as the transcript offered no support for the allegations of the judge making “unusual speculations” or taking a “damage control” approach to the trial and, on the contrary, felt that the judge’s summary of the evidence and reasons for judgment were very professional. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 03-043/98

The complainant alleged that the judge terminated the trial when the complainant/victim was testifying as soon as she indicated that she was a lesbian. The complainant/victim also alleged that the judge forced the accused and herself to enter into common law peace bonds under threat of being in contempt of court. The complainant alleged that the judge is biased against lesbians and, therefore, wouldn’t hear her evidence. The complaint subcommittee reviewed a copy of the



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transcript of the evidence and asked for and reviewed a response from the judge. The complaint subcommittee reported that there was no indication in the transcript of a threat of contempt of court or imprisonment to secure an agreement to enter into a peace bond but that there was an unwarranted interruption of the trial and ordering of common law peace bonds without affording either the witness or the accused the opportunity to make submissions and this error could be appealed. The review panel was of the view that the judge exceeded his jurisdiction and interfered in court proceedings, giving rise to a real apprehension of bias. The review panel was of the view that having apprehended the bias the judge should have stopped and declared a mistrial. It was the decision of the review panel that the complaint be referred to the Chief Judge as the judge had imposed an order against an individual without due process.

CASE NO. 03-044/98

The complainant alleged that he was the victim of malicious prosecution and the victim of a malicious verdict, based solely on the fact that he is black and the trial judge was prejudiced against him because of it. The complainant also alleged that the judge was nasty to him throughout the trial and “carefully drafted his reasons so as to eliminate the possibility of an appeal”. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence for the trial which lasted nine days. The complaint subcommittee advised that it could find no basis whatsoever to support the complainant’s allegations of racial discrimination, bias, partisanship or nastiness. On the contrary, the complaint subcommittee reported that the judge was courteous

throughout the trial, attentive, helpful in French translation, current in the law and respectful of counsel and the witnesses. The complaint subcommittee recommended that the complaint be dismissed as the transcript offered no support for the complainant’s allegations. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 03-045/98

The complainant was involved in an ongoing dispute over visitation and access rights with the mother of his child. The complainant contended that the judge before whom he last appeared changed an access order which was previously made, seemingly for no reason, and the complainant felt unfairly treated as well as being unhappy with this decision. 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 changing the access order 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 Ontario Judicial Council. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 03-046/98

The judge on a child custody case had promised written Reasons for Judgment within 25 days following the court hearing and the complainant wrote to advise that six months’ later, he was still waiting for the written Reasons. He also alleged



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that the judge was biased against him because he is a single father and in the military. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee reported that the judge advised being unable to meet the target date for written Reasons due to a heavy schedule. Delivery of the reasons for judgment was further delayed when the judge was involved in a serious motor vehicle accident. The judge wrote to both parties involved in the dispute and apologized for not meeting the target date and provided written Reasons for Judgment. The complaint subcommittee recommended that no further action was necessary and that the complaint be dismissed. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 03-047/98

The complainant had been convicted in the criminal courts and wrote to Council because he was of the belief that there was bias and prejudice in the court system in the area of the province where he lives. The complaint subcommittee recommended that the complaint be dismissed as there was no allegation of judicial misconduct made against any judge and no evidence of judicial misconduct offered in the complainant's letter. The complaint subcommittee were further of the view that the other matters complained of in the complainant's letter would be appealable and, absent any allegation or evidence of judicial misconduct, not within the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO.03-048/98

The complainant was before the courts, accused of assault with a weapon and threatening. He alleged that the same judge presided over his court appearances and pre-trial hearings and that he did not have the opportunity for another judge to review his case. In particular, he alleged that the judge threatened to send him to jail for 14 years and was scheduled to hear the trial despite having conducted a series of pre-trial conferences. The charges against the accused/complainant were eventually withdrawn by the Crown. The complaint subcommittee ordered and 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 there was no evidence of judicial misconduct and the subcommittee was of the view that the complainant, who was largely unrepresented by counsel throughout the proceedings, simply did not understand the process or the role of the pre-trial conference judge. The complaint subcommittee reported that it was clear from the transcripts and the judge's response that the judge presided over a series of pre-trial hearings and specifically told the accused on more than one occasion that he would not be presiding at the trial. With respect to the complainant's allegations that he never had a chance for another judge to review his case, the complaint subcommittee reported that it is not unusual practice for a judge to manage a case for all pre-trial matters prior to trial, on the understanding that the judge will not hear the trial. The complaint subcommittee noted that the complainant did appear before the judge complained against on the date set for trial, but also noted that it was



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clear by that date that the matter was to be adjourned at the request of the accused/complainant. The complaint subcommittee noted that there was no evidence on the transcripts of any form of judicial misconduct with respect to the conduct of the pre-trial hearings.

The complaint subcommittee also noted that, while the judge did advise the complainant that the charge was a serious one that had to be dealt with and that the maximum punishment was 14 years in prison upon conviction, he did so in circumstances where the accused/complainant had advised that he'd discharged his counsel and would be unrepresented at trial. The complaint subcommittee were of the view that there was no intention to threaten the complainant in any way, but rather the judge's intention was to make him realize the seriousness of his position. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 03-049/98

The complainant alleged that the judge violated his constitutional rights because the judge did not ask the complainant whether he wanted his trial conducted in English or in French. The complaint subcommittee recommended that the complaint be dismissed as there was no allegation of any judicial impropriety in the complaint and if the judge erred in law, such errors could be remedied on appeal. The complaint subcommittee noted that, without evidence of judicial misconduct, the complaint is outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 03-050/98

The complaint arose from a series of motions in a family court matter. The complainant indicated that he was not in agreement with the rulings made on the motions. 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 master's discretion and that the decisions made were within the master's jurisdiction. If errors in law were committed by the master, such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 03-051/98

The complainant, a senior police officer, advised that the judge hearing charges of trafficking in narcotics and possession of narcotics for the purpose of trafficking required an affidavit of service of the certificates of drug analysis to be entered into evidence via the serving police officer and then did not allow the Asst. Crown Attorney sufficient time to produce that officer. As a result, the complainant advised that the judge discharged the accused. The complainant alleged that, as an experienced jurist, the judge should have known that the police officer would be unavailable and the likelihood of his demand that the evidence be entered by the serving officer would result in the accused being discharged. The complainant also advised that the Asst. Crown Attorney on the case was of the view that the judge had misinterpreted the law and that she would be recommending an appeal of the judge's decision. The



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complaint subcommittee recommended that the complaint be dismissed as there is nothing to indicate judicial misconduct in the complaint. The members of the complaint subcommittee were of the view that if errors in law were committed by the judge at trial, 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. 03-052/98

The complainant was a party in a civil action. The complainant alleged that the judge was biased against him from a former action he was involved in where the judge's order was overturned on appeal. The complainant alleged that the judge improperly distributed copies of a judgment regarding costs resulting in the lawyer for the other party increasing his demands for costs and the complainant also alleged that the judge distributed photocopies of a transcript of a judgment without authorization of the court reporter in contravention of the *Courts of Justice Act*. The complaint subcommittee recommended that the complaint be dismissed because it is permissible to give copies of cases to counsel or unrepresented parties where an opportunity to argue the matter is provided to both parties and it was in this case. The complaint subcommittee also noted that there is nothing to prevent a judge from giving photocopies of a judgment from a transcript to litigants. The complaint subcommittee advised that photocopies are simply not deemed to be certified if they do not contain the original signature of the court reporter. Finally, the complaint subcommittee

reported that there was no evidence to support an allegation of bias and that if errors in law were committed by the judge in the course of the hearing, such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 03-055/98

The complainant, who attended a pre-trial conference on a family law matter, alleged that the judge had an undeclared conflict of interest by virtue of the fact that the judge was related to the other party. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. In the response, the judge acknowledged that a nephew had married a relative of the other party in October, 1997. However, the judge also pointed out that the order in this matter was made in March of 1997 and the judge did not know any of the parties prior to the wedding celebration and would not sit on any matters dealing with any of the parties in future. The complaint subcommittee recommended that the complaint be dismissed as there was no evidence of misconduct or wrongdoing on the part of the judge. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 03-057/98

The complainant was convicted following his trial on a charge of criminal harassment, the Crown having elected to proceed summarily. In addition to the three months the accused had



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spent in pre-trial custody, the judge imposed a six month jail term. The complainant alleged that the evidence against him was not credible and that his lawyer did not properly represent him. Because of the injustice that he felt had been done to him, the complainant asked the Council to inquire into the competency and psychological credibility of the trial judge. The complaint subcommittee recommended that the complaint be dismissed as the only complaint against the trial judge was that, in the complainant's opinion, the evidence did not warrant a conviction and that the sentence imposed was unduly harsh. It was the view of the complaint subcommittee that there was no allegation of judicial misconduct and the appropriate remedy, if there is one, is to appeal the conviction and the sentence and the complainant indicated that he was so doing. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 03-059/98

The complainant was involved in a custody and access dispute with his son over the complainant's grandchild. The complainant alleged that the "case management" judge had made the wrong decisions thus far because of the judge's bias, intolerance of the complainant's cultural and religious background and because the judge hadn't paid sufficient attention to the facts of the case. As well, the complainant alleged that the judge had been "offensive" towards him, evidently believed that the judge "hates" him and has "threatened" the complainant by telling him that he will lose the custody claim and have costs ordered against him. The complaint subcommittee asked for and reviewed a response to the complaint

from the judge. The judge's letter outlined the history of the matter before the courts. Apparently, the judge was involved in another decision whereby a different grandchild of the complainant was placed with a stepfather who subsequently killed the child. The judge also advised that there appeared to be a great deal of hostility between the complainant and his grandson's father and that there have been numerous motions and settlement conferences after which decisions, based on the evidence, were made and reasons given. The judge also advised that the matter is scheduled for trial, before a different judge. 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 while acting as the case management judge and the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge in any of the decisions made in the course of the proceedings, such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 03-060/98

The complainant was a plaintiff in a civil action. The complaint arose out of an unsuccessful motion filed by the complainant to get discovery of certain documents. The complainant alleged that the judge was abusive towards him, prejudiced towards him on account of race and gender and also that the judge defamed his character. The complaint subcommittee asked for and reviewed



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a response to the complaint from the judge and the complaint subcommittee reviewed the court file in this matter. The complaint subcommittee recommended that the complaint be dismissed as an examination of all the relevant materials revealed no evidence of judicial misconduct in the exercise of the judge's discretion in denying the complainant's motion. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 03-061/98

The complainant was the mother of an accused man who, she alleged, had not received proper disclosure of the Crown's case and who was, according to the complainant, given an extremely excessive sentence. The complainant also alleged that evidence had been destroyed and the judgment of the court was incomplete. The complainant advised that her son had appealed the conviction and sentence, but had committed suicide before the appeal could be heard and the complainant alleged that the judge was mentally unbalanced, suicidal and unfit to preside. The complainant also alleged that she had overheard the judge's "chauffeur" boasting to police officers who were conducting security checks of those attending in court, that he had to sit in the court room because he "inspired" the judge when he was presiding in court. The complainant asked the Judicial Council to conduct a review of all of the judge's recent cases to ensure that they had been handled fairly.

The complaint subcommittee recommended that the complaint be dismissed as the complaints about the conduct of the court case and the excessive sentence are, without evidence of judicial misconduct, all matters for appeal

and, as noted above, the complainant's son had filed an appeal after the conclusion of the trial. The complaint subcommittee members were of the view that the judge cannot be held responsible for remarks made by or attributed to a third party, if indeed the remarks were made at all or recounted correctly by the complainant. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 03-062/98

The complainant was a plaintiff in an action who claimed that the pre-trial judge before whom he appeared had predetermined the outcome of a motion, made the complainant wait three hours to be heard, "hurled a scathing remark" at the complainant, left the courtroom when the complainant requested permission to speak and permitted the lawyer for the defendant to speak at will. The complaint subcommittee reviewed the court file and interviewed the lawyer for the defendant. The complaint subcommittee recommended that the complaint be dismissed as there was no evidence to support the allegations that the judge had predetermined the outcome of the motion, no evidence to support the allegation of a "scathing remark" being "hurled" at the complainant and no evidence that the judge left the courtroom when the complainant requested an opportunity to speak. The complaint subcommittee further advised that it is the usual process to wait for long periods of time in motions court after a preliminary appearance and that it was not peculiar to the complainant. The complaint subcommittee further reported that, according to the witness who was present at the time, the judge may have made a joking remark at one

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point when the proceedings were concluding and all the parties were getting ready to leave the motions room but that it was clearly not spoken in an insulting tone. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 03-064/98

The complainant alleged that the judge's distaste for the longstanding family law dispute in which the complainant is involved is impairing the judge's impartiality and that "word around the courthouse" is that the judge is fed up with the complainant "dragging his heels". The complainant also alleged that the judge punished him by placing his case at the end of the day's list and making him wait all day to be heard. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. In the response, the judge denied any bias with respect to either of the parties involved and noted that if any frustration has been expressed it is only with the seeming inability of either party to resolve the matter to the benefit of the children involved. Further, the judge denied holding the complainant's case down to the bottom of the list in an effort to penalize him. The complaint subcommittee recommended that the complaint be dismissed as the members were satisfied with the judge's response and also noted that if errors in law were committed by the judge throughout the case, such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 03-065/98

The complainant alleged that the judge sitting on a family law matter completely lost all composure, frowned and glared at him and "attacked" the complainant for not forcing his son to visit his mother. The complainant also alleged that the judge ignored previous rulings of another judge who had been involved in the case and conferred with his wife's lawyer in the absence of the complainant or his representative. The complaint subcommittee ordered and 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 complainant's allegations and in the response, the judge denied losing composure or being prejudiced for or against either party. In the view of the complaint subcommittee, if errors in law were committed by the judge in making the decisions made on the occasion in question, such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 03-066/98

The complainant was in court on a family law matter and asked for a "judicial review" of a support order which he thought was "unfair and unjust". The complaint subcommittee recommended that the complaint be dismissed as there was no allegation of any judicial impropriety in the complaint and if the complainant is unhappy with the terms of the order, he has the remedy of appeal available to him. The review panel agreed



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with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-001/98

The complainant's civil action was dismissed and he claimed that the trial judge made the decision on insufficient evidence, was biased against him because of race and denied him the opportunity to swear an oath on the Bible before giving testimony. 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 dismissing the complainant's action and if the complainant is dissatisfied with that decision, or if errors in law were committed by the judge in dismissing the action, such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the OJC. The complaint subcommittee also noted that non-denominational "oaths" are used in Small Claims Court and witnesses don't generally swear an oath on the Bible unless they specifically make a request to do so. The review panel instructed the Registrar to so advise the complainant in the letter advising him that his complaint had been dismissed. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-002/98

The complaint subcommittee reported that this complainant did not really have a specific complaint about judicial misconduct and that his letter consisted of a rambling, disjointed criticism

of the "Jungle Justice System" which led to his allegedly wrongful conviction. The complaint subcommittee recommended that the complaint be dismissed and the review panel agreed with the complaint subcommittee's recommendation.

CASE NO. 04-004/98

The complainant was the mother of children who were made Crown Wards by the court. The mother complained that the judge's decision to make her children Crown Wards was wrong and that the judge had been biased against her and her children because of a hereditary skin condition that the judge referred to as "Elephant Man's Disease". The complaint subcommittee read the judge's reasons and reported that they thought the reasons were fair, thoughtful and extensive. The complaint subcommittee also noted that in their view there was no evidence of bias. In the reasons for judgment, the judge had outlined the mother's many problems including that she was "overwhelmed by the exigencies of an unfortunate hereditary disease known commonly as Elephant Man's Disease". 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 making the children wards of the Crown. If errors in law were committed by the judge in so deciding, such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.



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CASE NO. 04-005/98

The complainant was accused of a domestic assault and complained that he was convicted on the basis of perjured evidence, had been falsely arrested, had been beaten and tortured by the police and that his constitutional rights had been violated by being forced on to trial when the judge denied his request for an adjournment on the scheduled trial date. 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 requiring the trial to proceed and that the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge in denying the complainant's request for an adjournment, such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed and that the complainant be referred to the appropriate police complaint agency to register his complaints about the treatment he'd allegedly received at the hands of the police.

CASE NO. 04-006/98

The complainant was the plaintiff in an action for damages arising out of a commercial transaction. The complainant alleged that the judge did not follow the rules of court in making decisions regarding the case and was prejudiced against him as the judge did not find in his favour. The complainant also advised that the judge did not award him costs in the matter. Further, the complainant advised that, in another matter, the same judge made a finding about evidence with

which the complainant did not agree. The complaint subcommittee reviewed the court file in this matter. 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 making the decisions made in this matter. If errors in law were committed by the judge in not awarding costs or in making a decision about evidence with which the complainant did not agree, 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. 04-007/98

The complainant was involved in a child custody dispute and alleged that the judge made a custody and access order contrary to the evidence presented at trial; that the judge's decision was based on "discrimination against the male sex"; that the judge is simply a feminist and has no valid reasons for her decision. The complainant also alleged that the judge took too long to give her decision. The complaint subcommittee asked for and reviewed a response to the complaint from the judge directed toward the allegation that she had taken an excessively long period of time to render her decision. 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 making the custody and access order that she did and that the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge, such errors could

CASE SUMMARIES

be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The complaint subcommittee also reported that the judge gave her oral decision following trial in mid-March, 1998 and gave her written reasons for decision in mid-June, 1998 (the complainant had written to the OJC about the delay at the end of May, 1998). The complaint subcommittee were of the view that there was no excessive delay in rendering judgment and that portion of the complaint should also be dismissed. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-009/98

The complainant was a lawyer who was the subject of criminal charges in 1984 which were prosecuted by a Crown Attorney who was subsequently appointed a Provincial Division judge. The complainant sued a police officer and another person for malicious prosecution arising out of those 1984 charges. The complainant apparently withdrew from the active practice of law following the 1984 charges and later applied for reinstatement. In 1987, the Law Society of Upper Canada dealt with the application for reinstatement. Counsel for the Law Society at that time wrote to a physician about the complainant's emotional stability and mentioned in the letter, with respect to the earlier charges, that "...the police were investigating with wiretaps". In 1998, counsel for the complainant wrote to the judge on the basis of the Law Society letter of 1987 asking for details with respect to the wiretaps. The misconduct alleged by the complainant was that the former Crown Attorney who is now a judge had not responded to the complainant's

counsel's letter for details about the wiretap. Since making the original complaint to the Judicial Council, the complainant also complained to the Law Society about the judge's failure to respond to the letter(s) and has been advised that the Law Society no longer has jurisdiction since the person complained about is now a Provincial Division judge. The complaint subcommittee recommended that the complaint be dismissed as the judge is under no obligation to respond to the complainant's counsel's letter and the failure to do so in the circumstances does not constitute misconduct. The complaint subcommittee further noted that if the complainant had been the object of a wiretap authorization, he would have been required to be given notice pursuant to the provisions of the *Criminal Code* and the complainant can obtain confirmation or otherwise of wiretapping from sources other than the judge. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-011/98

The complainant appeared at a pre-trial hearing and alleged that the judge conducting the pre-trial presumed him guilty before trial and tried to persuade him to consent to the prohibition order the Crown was seeking. The complaint subcommittee recommended that the complaint be dismissed as they were of the view that there had been no judicial misconduct and the complainant did not understand the purpose of a pre-trial hearing, which is to probe the veracity of the facts and to try to resolve the matter outside court. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

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CASE NO. 04-012/98

The complainant expressed dissatisfaction with the terms of an order for support made by the judge before whom he appeared. The complaint subcommittee recommended that the complaint be dismissed as there was no allegation of any judicial impropriety in the complaint and if the complainant was unhappy with the terms of the order, he had the remedy of appeal available to him. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-019/98

The complainant was involved in a family court matter and attended at a pre-trial hearing. The complainant alleged that the judge was an hour late for court on one occasion; the judge did not read the complainant's written submissions but rather wanted to hear his position verbally and, further, that the judge made what the complainant considered a "non-child centered" access order. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. In his response, the judge noted that he had been late for court on two occasions during the applicable period of time - once because of road construction and once because of a family matter. The judge noted that neither delay was lengthy and both were unavoidable. With respect to the complainant's allegations that he hadn't read the material filed, the judge noted that at a pre-trial he prefers to hear from people in their own words and that he had read what he needed to prior to the hearing. He further noted that pre-trials are not an adjudication but an attempt at consensus between parties. Since the complaint subcommittee were of the view that

there was no judicial misconduct evident in the matter before them, they recommended that the complaint be dismissed. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-022/98

The complaint subcommittee reported that the complainant had many complaints with various aspects of the justice system arising out of what it described as a long and sad history of family conflicts which were dealt with in the courts. The main complaints which fell into the OJC's jurisdiction were that the judge had received a letter from the complainant's husband during the course of a hearing and that there had been a very long delay in the signing of a judgment. However, the complaint subcommittee also reported that the complainant advised that the judge had told all parties at trial that the husband had sent the judge a letter, that the husband's actions in doing so were improper and the judge reprimanded the husband for sending the letter. The complaint subcommittee also advised that the other matters complained about were administrative errors or matters over which the judge had no control. As a result, the complaint subcommittee found no evidence of judicial misconduct on the part of the judge and recommended that the complaint be dismissed. They also advised that the complainant's other complaints regarding the court system and other social service agencies, etc., were outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.



CASE SUMMARIES

CASE NO. 04-023/98

The complainant was involved in a custody dispute concerning an infant child. The complainant is the biological father of the infant and has, since the child's birth, undergone a sex change operation and is now a female. The complainant was in court to dispute the biological mother's custody of the child. The complainant alleged that the judge "ignored the facts and the evidence" in granting interim custody to the biological mother and further alleged that the judge in question is biased against transsexuals. 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 granting interim custody and that the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge in granting interim custody, 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. 04-025/98

The complainant was in court on a family law matter and alleged that the judge before whom he appeared was very biased, sexist and unprofessional towards him and gave him a "dirty, wretchedly (sic) look". The complainant also alleges that the judge did not allow him as much time to speak as was allowed the other party's lawyer. The complaint subcommittee recommended that the complaint be dismissed as they were of the view that the particulars of the complaint did not rise to the level of judicial

misconduct. A review of the transcript of evidence did not support the allegation that the judge was biased, sexist or unprofessional towards the complainant. The complaint subcommittee advised that the judge allowed the complainant considerable time to express himself and finally had to call security as the complainant would not calm down while in court. The complaint subcommittee again recommended that the complaint be dismissed and the review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-026/98

The complainant was involved in an access dispute and alleged that the judge based his ruling on his ex-wife's statements and affidavits which were all lies. The complainant also alleged that he had been threatened and physically abused by the police and almost thrown into bankruptcy several times because of his matrimonial/family problems. The complainant alleged that the judge was now "threatening to throw him in jail" for not paying child support, although the complainant was of the view that if he is not being granted access he should not have to pay child support. The complaint subcommittee recommended that the complaint be dismissed as there was no allegation of judicial misconduct. If errors in law were committed by the judge in his rulings on access or enforcement of child support, 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

CASE NO. 04-028/98

The complainant alleged that the trial judge before whom he appeared was not qualified to hear his case because he had discovered the judge's law background before appointment to the bench indicated a specialty in family law, not criminal law and the complainant wanted verification of courses taken by the judge to ensure that she was qualified to hear criminal cases. The complainant also requested an outline of the judge's experience in criminal law before appointment to the bench. The complaint subcommittee recommended that the complaint be dismissed because the judge in question was a fully qualified legal practitioner prior to appointment and a full-time member of the bench since appointment, presiding over "family" and "criminal" matters (including Y.O.A.) on a regular basis. 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. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-029/98

The complainant had numerous complaints against various assistant crown attorneys and court reporters. The complainant also advised that the judge who conducted three pre-trials did not cause them to be recorded, nor did the judge make any pre-trial notes or memoranda. The complainant stated that he needed evidence from the first two pre-trials when he was at trial and was, therefore, prejudiced in his trial (which took place before a different judge). The com-

plaint subcommittee recommended that the complaint be dismissed as there is no obligation on a judge at a pre-trial hearing to record it or to cause such proceedings to be recorded and, since there is no obligation to record proceedings at a pre-trial, there is no judicial misconduct in not recording same. The complaint subcommittee advised that the purpose of a pre-trial is to identify and narrow issues and explore the possibility of resolution without trial. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-033/98

The complainant is the parent of a young offender found guilty of robbery. The complainant alleged "too many discrepancies in this case which was overlooked by the family court judge who heard this case instead of a criminal judge". As well, the complainant alleged that the judge dismissed a review of sentence application and the complainant feels this too was based "on lack of criminal understanding". The complainant also alleged that the judge favoured the Crown Attorney and was "helping the Crown to earn his promotion". The complaint subcommittee recommended that the complaint be dismissed as there was nothing in the course of the proceedings to suggest that the judge was not familiar with young offender matters. The complaint subcommittee noted that if errors in law were committed by the judge in the conduct of the trial, such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.



CASE SUMMARIES

CASE NO. 04-034/98

The complainant alleged that a judge, acting on the basis of “hearsay” affidavits, gave interim custody of his child to his sister-in-law and her husband after the complainant’s estranged wife died. 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 awarding interim custody and no actual allegation of misconduct in the letter of complaint. 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 Ontario Judicial Council. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 04-041/98

The complainant alleged that the judge making an interim order did so without reviewing the original order or any of the supporting documentation on file. The complaint subcommittee recommended that the complaint be dismissed because it was clear from an excerpt of the transcript provided by the complainant that the judge making the interim order saw a copy of the original order and the rest of the material provided by the complainant disclosed no evidence of judicial misconduct. If errors in law were committed by the judge in making the interim order, 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. 04-047/98

The complainant had read a newspaper report of a criminal case in which a native Canadian appearing in court (either as a witness or as an accused) refused to take an oath while the Canadian flag was in the courtroom. The complainant objected to the fact that the presiding trial judge had ordered the flag to be removed from the courtroom in compliance with the native person’s request. The complaint subcommittee recommended that the complaint be dismissed as the judge in question had every right to control the conduct of a case in his courtroom and the removal of the national flag in this instance, facilitated the completion of the case before him. The complaint subcommittee further noted that flags are not normally placed in courtrooms in Ontario, although federal or provincial coats of arms are generally displayed to convey the jurisdiction of the court. The complaint subcommittee members were of the view that no misconduct could be attributed to the judge and the review panel agreed that the complaint be dismissed.

ONTARIO JUDICIAL COUNCIL

1998–1999 ANNUAL REPORT

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APPENDIX-A

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.

Ontario's Justice System:

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

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

Is a Judge's Decision Final?

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

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

Professional Conduct of Judges

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

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

The Role of the Ontario Judicial Council

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

APPENDIX - A

ONTARIO JUDICIAL COUNCIL – DO YOU HAVE A COMPLAINT?

A

Making a Complaint

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

How are Complaints Processed?

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

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

Decisions of the Council

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

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

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

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

For Further Information

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

Written complaints should be mailed or faxed to:

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

Just a reminder...

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

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



APPENDIX-B

ONTARIO JUDICIAL COUNCIL –
PROCEDURES DOCUMENT

APPENDIX - B

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT

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APPENDIX - B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT

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

COMPLAINTS

GENERALLY

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

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

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

subs. 51.3(4)

COMPLAINT SUBCOMMITTEES

COMPOSITION

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

subs. 51.4(1) and (2)

ADMINISTRATIVE MATTERS

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

STATUS REPORTS

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

Investigation

GUIDELINES AND RULES OF PROCEDURE

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

subs. 51.1(2)

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

subs. 51.1(3)

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

subs. 51.4(21)

APPENDIX - B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPLAINT SUBCOMMITTEES

AGREEMENT ON HOW TO PROCEED

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

DISMISSAL OF COMPLAINT

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

subs. 51.4(3)

CONDUCTING INVESTIGATION

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

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

PREVIOUS COMPLAINTS

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

INFORMATION TO BE OBTAINED BY REGISTRAR

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

TRANSCRIPTS, ETC.

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

RESPONSE TO COMPLAINT

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

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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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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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- 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 recommen-

ation 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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- (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)

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – HEARINGS

POWER

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

subs. 49(16)

HEARINGS

COMMUNICATION BY MEMBERS

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

subs. 51.6(4) and (5)

PARTIES TO THE HEARING

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

subs. 51.6(6)

PUBLIC OR PRIVATE/ALL OR PART

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

subs. 49(11) and 51.6(7)

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

subs. 51.6(2)

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

subs. 51.6(9)

OPEN OR CLOSED HEARINGS – CRITERIA

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

subs. 51.6(7)

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

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

REVEALING JUDGE'S NAME WHEN HEARING WAS PRIVATE – CRITERIA

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

subs. 51.6(8)

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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 - B

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 - B

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 - B

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 - B

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 - B

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:

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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.

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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 - B

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-C

ONTARIO COURT OF JUSTICE
(PROVINCIAL DIVISION)
CONTINUING EDUCATION PLAN

APPENDIX - C

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;
6. To promote an understanding of judicial development;

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

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 as required when 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, 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 (These programs 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).

APPENDIX - C

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 normally designated as 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. In recent years the May seminar has been scheduled to coincide with the annual meeting of the Ontario Judges' Association.
- b) **ONTARIO JUDGES' ASSOCIATION - CRIMINAL LAW:** The Ontario Judges' Association has traditionally presented 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 seminars customarily 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 and a half day education seminar is presented in the month of May 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.

In 1998, the Ontario Judges' Association assumed responsibility for the University Education Program which was traditionally a program of either the Chief Judge's Office or of the Education Secretariat. This program takes place over a five-day period in the spring in a university or similar setting. It provides an opportunity for approximately 30 - 35 judges to deal in depth with education topics in a more academic context. While this program is currently in a transitional phase, it is likely to continue on an annual basis as a program of the Ontario Judges' Association.

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. **JUDGMENT WRITING:** This two-day seminar is presented to a group of approximately 10 judges at a time as funding permits.

In the 1997/98 fiscal year the Education Secretariat contracted with Professor Edward Berry of the University of Victoria to prepare an advanced program in judgment writing for those judges of the Court who had attended the initial two-day seminars. As part of the Court's agreement with Professor Berry, Professor Berry is preparing a judgment writing text to accompany the advanced program.

2. **PRE-RETIREMENT SEMINARS:** Intended for judges approaching retirement age (together

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with their spouses), this two and one-half day program deals with the transition from the bench to retirement and is presented in Toronto whenever numbers warrant.

3. **JUDICIAL COMMUNICATION PROGRAM.** In March, 1998, the Provincial Division retained the services of Professor Gordon Zimmerman together with Professor Alayne Casteel of the University of Nevada to present a training program on Judicial Communication. The program involved directed activities and discussion on verbal and non-verbal communications, listening and related problems. Individual judges were videotaped and their communication techniques were critiqued in the course of the program. The program, which was presented to 25 Provincial Division judges, was intended to serve as a pilot project for future seminars on judicial communication which will be presented as funding and scheduling permits.
4. **SOCIAL CONTEXT PROGRAMS:** The Provincial Division has presented significant programs dealing with social context. The first such program, entitled Gender Equity, was presented in the fall of 1992. That program used 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).

As part of the Court's commitment to social context education, both the Ontario Judges' Association and the Ontario Family Law Judges' Association have created an ad hoc equality committee to ensure that social context issues are included and addressed on an on-going basis in the education programs of the associations.

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

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- International Association of Women Judges (Canadian Chapter)
- Ontario Family Court Clinic Conference
- International Association of Juvenile and Family Court Magistrates
- Canadian Bar Association
- Canadian Institute for Advanced Legal Studies
- Criminal Lawyers' Association
- Advocate's Society Conference
- Ontario Association for Family Mediation/Mediation Canada
- Canadian Institute for the Administration of Justice

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), through a tendered contract with a training vendor has organized 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).

As the Desktop Computer Implementation Project and the Integrated Justice Project is implemented across the justice system in Ontario, starting in the summer of 1998, computer training for judges will be significantly

increased in order to ensure appropriate levels of computer literacy for all members of the Court.

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. 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.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

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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 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. In addition to 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.



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COURTS OF JUSTICE ACT
CHAPTER C.43
ONTARIO JUDICIAL COUNCIL

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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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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EXCEPTIONS

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

PERSONAL LIABILITY

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

REMUNERATION

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

SECTION 50

COMPLAINT AGAINST CHIEF JUDGE

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

SUSPENSION OF CHIEF JUDGE

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

COMPLAINT AGAINST ASSOCIATE CHIEF JUDGE OR REGIONAL SENIOR JUDGE

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

SECTION 51

PROVISION OF INFORMATION TO PUBLIC

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

Same

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

ASSISTANCE TO PUBLIC

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

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TELEPHONE ACCESS

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

PERSONS WITH DISABILITIES

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

ANNUAL REPORT

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

TABLING

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

SECTION 51.1

RULES

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

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

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

REGULATIONS ACT

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

SECTIONS 28, 29 AND 33 OF SPPA

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

SECTION 51.2

USE OF OFFICIAL LANGUAGES OF COURTS

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

Same

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

Same

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

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

Same

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

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BILINGUAL HEARING OR MEDIATION

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

PART OF HEARING OR MEDIATION

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

Same

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

Same

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

SECTION 51.3

COMPLAINTS

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

Same

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

Same

(3) If an allegation of misconduct against a provincial

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

CARRIAGE OF MATTER

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

INFORMATION RE COMPLAINT

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

SECTION 51.4

REVIEW BY SUBCOMMITTEE

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

Rotation of members

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

DISMISSAL

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

INVESTIGATION

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

EXPERT ASSISTANCE

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

INVESTIGATION PRIVATE

(6) The investigation shall be conducted in private.

NON-APPLICATION OF SPPA

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

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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).

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Same

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

SECTION 51.5

MEDIATION

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

CRITERIA

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

Same

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

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

LEGAL ADVICE

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

TRAINED MEDIATOR

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

IMPARTIALITY

(6) The mediator shall be impartial.

EXCLUSION

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

REVIEW BY COUNCIL

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

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

REPORT

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

REFERRAL TO COUNCIL

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

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

NON-APPLICATION OF SPPA

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

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NOTICE TO JUDGE AND COMPLAINANT

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

GUIDELINES AND RULES OF PROCEDURE

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

SECTION 51.6

ADJUDICATION BY COUNCIL

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

APPLICATION OF SPPA

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

RULES OF PROCEDURE

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

COMMUNICATION RE SUBJECT-MATTER OF HEARING

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

EXCEPTION

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

PARTIES

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

EXCEPTION, CLOSED HEARING

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

DISCLOSURE IN EXCEPTIONAL CIRCUMSTANCES

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

ORDERS PROHIBITING PUBLICATION

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

PUBLICATION BAN

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

DISPOSITIONS

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

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

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

Same

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

DISABILITY

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

APPLICATION OF SUBS. (13)

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

UNDUE HARDSHIP

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

OPPORTUNITY TO PARTICIPATE

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

CROWN BOUND

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

REPORT TO ATTORNEY GENERAL

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

NON-IDENTIFICATION OF PERSONS

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

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

CONTINUING PUBLICATION BAN

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

SECTION 51.7

COMPENSATION

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

CONSIDERATION OF QUESTION COMBINED WITH HEARING

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

PUBLIC OR PRIVATE CONSIDERATION OF QUESTION

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

RECOMMENDATION

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

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Same

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

DISCLOSURE OF NAME

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

AMOUNT OF COMPENSATION

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

PAYMENT

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

SECTION 51.8

REMOVAL FOR CAUSE

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

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

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

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

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

TABLING OF RECOMMENDATION

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

ORDER FOR REMOVAL

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

APPLICATION

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

TRANSITION

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

SECTION 51.9

STANDARDS OF CONDUCT

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

DUTY OF CHIEF JUDGE

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

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GOALS

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

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

SECTION 51.10

CONTINUING EDUCATION

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

DUTY OF CHIEF JUDGE

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

GOALS

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

SECTION 51.11

PERFORMANCE EVALUATION

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

DUTY OF CHIEF JUDGE

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

GOALS

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

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

SCOPE OF EVALUATION

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

CONFIDENTIALITY

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

INADMISSIBILITY, EXCEPTION

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

APPLICATION OF SUBSS. (5), (6)

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

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SECTION 51.12

CONSULTATION

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

SECTION 87

MASTERS

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

APPLICATION OF SS. 44 TO 51.12

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

Same

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

Same

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

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

Same

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

SECTION 87.1

SMALL CLAIMS COURT JUDGES

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

CONTINUATION IN OFFICE

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

COMPLAINTS

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

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

APPLICATION OF SS. 51.9, 51.10, 51.11

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

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

SECTION 45

APPLICATION FOR ORDER THAT NEEDS BE ACCOMMODATED

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

DUTY OF JUDICIAL COUNCIL

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

UNDUE HARDSHIP

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

GUIDELINES AND RULES OF PROCEDURE

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

OPPORTUNITY TO PARTICIPATE

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

CROWN BOUND

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

SECTION 47

RETIREMENT

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

Same

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

CONTINUATION OF JUDGES IN OFFICE

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

SAME, REGIONAL SENIOR JUDGES

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

SAME, CHIEF JUDGE AND ASSOCIATE CHIEF JUDGES

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

Same

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

CRITERIA

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

