

OJC



ANNUAL REPORT

1999 – 2000

ONTARIO JUDICIAL COUNCIL



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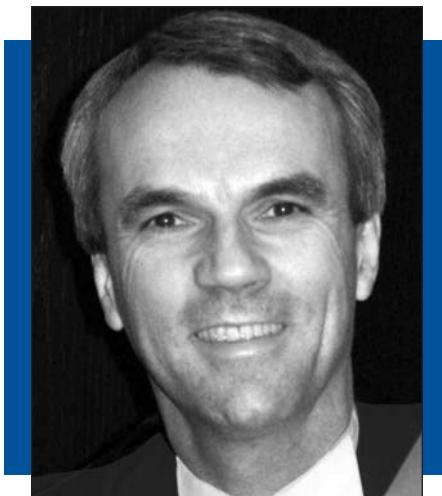
ONTARIO JUDICIAL COUNCIL



The Honourable R. Roy McMurtry

CHIEF JUSTICE OF ONTARIO

Co-Chair, Ontario Judicial Council



The Honourable Brian W. Lennox

CHIEF JUSTICE
ONTARIO COURT OF JUSTICE

Co-Chair, Ontario Judicial Council



ONTARIO JUDICIAL COUNCIL

March 31, 2000

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 fifth 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, 1999 to March 31, 2000.

Respectfully submitted,

R. Roy McMurtry
Chief Justice of Ontario

Brian W. Lennox
*Chief Justice
Ontario Court of Justice*

INTRODUCTION

The period of time covered by this Annual Report is from April 1, 1999, to March 31, 2000.

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 Justice of the Ontario Court of Justice. 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 Justice of the Ontario Court of Justice
(or designate from the Ontario Court of Justice)
- ◆ the Associate Chief Justice of the Ontario Court of Justice
- ◆ a Regional Senior Judge of the Ontario Court of Justice appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General
- ◆ two judges of the Ontario Court of Justice appointed by the Chief Justice of the Ontario Court of Justice
- ◆ the Treasurer of The Law Society of Upper Canada or another bencher of the Law Society who is a lawyer, designated by the Treasurer
- ◆ a lawyer who is not a bencher of The Law Society of Upper Canada, 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 of Ontario 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 Justice or an Associate Chief Justice. The Chief Justice of the Ontario Court of Justice chairs all other meetings of the Judicial Council.

2. Members

Regular

The membership of the Ontario Judicial Council in its fifth year of operation (April 1, 1999 to March 31, 2000) was as follows:

Judicial Members:

CHIEF JUSTICE OF ONTARIO

Roy McMurtry (Toronto)

CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

Brian W. Lennox (Ottawa/Toronto)

ASSOCIATE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

J. David Wake (Toronto)

REGIONAL SENIOR JUSTICE

Donald A. Ebbs (London)

TWO JUDGES APPOINTED BY THE CHIEF JUSTICE OF THE ONTARIO COURT O JUSTICE

The Honourable Justice Lynn King (Toronto)

The Honourable Justice Roderick Clarke ..(Thunder Bay)
(to January 19, 2000)

The Honourable Justice Alexander M. Graham (Woodstock)
(from January 19, 2000)

Lawyer Members:

TREASURER OF THE LAW SOCIETY OF UPPER CANADA

Harvey Strosberg, Q.C. (Windsor)
(to June 25. 1999)

Robert P. Armstrong, Q.C.....(Toronto)
(from June 25. 1999)

TREASURER'S DESIGNATE

W.D.T. Carter (Toronto)
(to June 25, 1999)

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 Superior Court of Justice – 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 Justice Reuben Bromstein (to February 28, 2000)
• Master R. B. Linton, Q.C.	• The Honourable Justice M. D. Godfrey
• Master R. B. Peterson	• The Honourable Justice Pamela Thomson

Subsection 49(3) of the *Courts of Justice Act* permits the Chief Justice of the Ontario Court of Justice 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 judge of the Ontario Court of Justice has been appointed by the Chief Justice to serve as a temporary member of the Ontario Judicial Council when required:

The Honourable Justice 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)
(to December 2, 1999)
ROBERT DUNGEY – A/Assistant Registrar (part-time)
(from December 2, 1999)
JANICE CHEONG – Secretary

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 fifth 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 fourth Annual Report, which included a summary of all complaints received and dealt with during the fourth year of operation (April 1, 1998 to March 31, 1999) was submitted to the Attorney General to be tabled in the Legislative Assembly. Nearly a thousand copies of the fourth Annual Report will be distributed to members of the judiciary, members of the provincial and federal legislatures, news media, academics and government officials when it is tabled in the Legislature.

5. Procedures Subcommittee

A complete review of the Judicial Council's "Procedures Document" to ensure its compliance with the generally accepted principles and standards of administrative law jurisprudence took place during the fifth year of operation. A few minor amendments to the Procedures Document were made as a result and the document was also amended to include a "Procedural Code for Hearings". The Procedures Subcommittee also completed its work on the draft procedures and criteria concerning the accommodation of a judge's disability, as required by subs. 45(4) of the *Courts of Justice Act* and that procedure was approved and added to the Procedures Document. A copy of the revised Procedures Document is included as Appendix "B".

6. Programs of the Chief Justice of the Ontario Court of Justice

a) Education Plan

The Chief Justice of the Ontario Court of Justice 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 Justice 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 1999-2000 can be found at Appendix "C".

b) Performance Evaluation

Pursuant to section 51.11 of the *Courts of Justice Act*, the Chief Justice of the Ontario Court of Justice 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).

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 Justice 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 Justice of the Ontario Court of Justice, 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 Justice of the Ontario Court of Justice 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 Justice of the Ontario Court of Justice 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 Justice of the Ontario Court of Justice), 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 of Ontario, 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 59 complaints in its fifth year of operation, as well as carrying forward 64 complaint files from previous years. Of these 123 complaints, 66 were closed before March 31, 2000, leaving 57 complaints to be carried over into the sixth 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 but one (file no. 04-077/99), 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.

Sixty of the 66 complaint files closed were dismissed by the Judicial Council. One complaint was referred to the Chief Justice of the Ontario Court of Justice. Five complaints were dismissed as abandoned by the complainants.

Approximately two-thirds of the 66 complaint files dismissed by the Ontario Judicial Council during the period of time covered by this report (42 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 18 of the 42 complaint files that fell into this category. Twenty-four of the 42 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 one-third of complaints (a total of 18) disposed of by the Ontario Judicial Council during the period of time covered by this report were determined to be unfounded after investigation.

These 18 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	99/00
Opened During Year	54	71	66	77	59
Continued from Previous Year	n/a	21	41	51	64
Total Files Open During Year	54	92	107	128	123
Closed During Year	33	51	56	64	66
Remaining at Year end	21	41	51	64	57

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.).

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 pages B-25 and B-26 of the O.J.C. Procedures Document, Appendix "B").

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



CASE SUMMARIES

CASE NO. 03-032/97 AND CASE NO. 03-035/97

The complainant was charged with assault and appeared in court to set a date for trial. The complainant refused to set a date, claiming she did not have disclosure of the Crown's case against her and did not have counsel, although she was represented by an agent on this occasion. She complained that the judge forced her to set a date for trial, with or without counsel. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence on the date in question. 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 setting a trial date and that the decisions made were within the judge's jurisdiction. The complaint subcommittee noted that 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 complaint subcommittee also noted that the Crown stated that all of its evidence had been given to the complainant and, if disclosure was still an issue, it could be addressed by the trial judge. The complaint subcommittee further noted that the complainant had been given ample time to retain counsel as the charge had been laid eighteen months previous to the date when the complainant was "forced" to set a trial date. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed. The complainant further alleged that when the matter came up for trial two months later, the trial judge forced her to proceed with the trial without counsel and without full disclosure of the Crown's case against her. The complaint

subcommittee ordered and reviewed a copy of the transcript of the evidence. It noted that the trial judge had a transcript of the proceedings on the earlier court date when the trial date was set and knew that the trial was marked to proceed with or without counsel. The complaint subcommittee noted that the complainant refused to proceed with the trial and, because she refused to enter a plea, a plea of "not guilty" was entered on her behalf. The complaint subcommittee further noted that the complainant continually interrupted the proceedings to the point where the trial judge had to warn her to keep quiet or she would be removed from the courtroom, which eventually became necessary, although she was allowed to return to cross-examine witnesses (which she refused to do). The transcript also revealed that she refused to testify in her defence, refused to make any submission and was convicted. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no foundation to the complainant's allegations and the transcript revealed that the trial judge exhibited great patience and courtesy towards the complainant throughout the proceedings. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 03-053/98

The complainant alleged that the judge acted in a manner "that destroyed public confidence in the integrity and impartiality of the judiciary" and that the judge committed an "act of deceit". The complaint subcommittee asked the complainant for particulars concerning these allegations. The complainant responded that the judge refused him disclosure and would not order a return on

CASE SUMMARIES

a warrant that had apparently been issued to search his residence. The complaint subcommittee reviewed a copy of the transcript of the evidence provided by the complainant. The complaint subcommittee advised that the transcript revealed that the judge did afford the complainant opportunity to review the Crown brief prior to commencing with the trial and further noted that if the complainant was not satisfied with the disclosure provided he could have requested an adjournment. The complaint subcommittee further noted that the judge pointed out to the complainant that the statute under which he was charged did not provide for a return on a warrant and so this could not be done. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident and that the decisions made were within the judge's jurisdiction. The complaint subcommittee noted that 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. 03-054/98

The complainant was annoyed because he was kept waiting for three hours before his appeal was called. He advised that the Crown indicated to the judge that the appeal would be lengthy and should not be heard that day and the judge agreed. However, the complainant protested vigorously with the result that the judge did commence to conduct the appeal by listening to a tape recording of the complainant's trial before a Justice of the Peace. However, the complainant advised that

the judge could not understand what the Justice of the Peace was saying on the tape and ordered that a transcript be prepared and his appeal hearing was further delayed as a result. The complaint subcommittee recommended that the complaint be dismissed as there was no evidence of judicial misconduct. The complaint subcommittee was of the view that the judge could not have made a proper decision on the complainant's appeal without being able to know what was said at trial and as the audiotape of the proceedings was not adequate for this purpose, a transcript had to be ordered. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 03-056/98

The complainant alleged serious judicial misconduct on the part of a judge who had issued a "judge's order" that the complainant be present for a trial and had then started the trial without the complainant being present. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in proceeding without the complainant and that the decisions made were within the judge's jurisdiction. The complaint subcommittee reported that the complainant is the ex-common law spouse of a woman who attended at a trial regarding the woman's children and the court was told by the complainant's counsel that the complainant was in transit and that they should proceed. The complaint subcommittee further reported that there was nothing in the transcript that revealed whether or not the complainant was summonsed

CASE SUMMARIES

or why he should or should not be present but that he might have “parent status” under legislation and that is why he was allowed to attend. The complaint subcommittee noted that if errors in law were committed by the judge in proceeding with the trial before the complainant could be present, 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. 04-003/98

The complainant was acquitted of the offence of impaired driving but convicted of the offence of driving “over .80”. He alleged that the facts presented at trial by the Crown were incorrect and that the police officers lied throughout the trial. He also alleged that the trial judge was biased in favour of the police officers and disregarded any evidence that did not support them. The complaint subcommittee reviewed a copy of the transcript of the evidence at trial and the complainant’s appeal documents both of which were provided by the complainant. The complaint subcommittee recommended that the complaint be dismissed as the transcript revealed that the judge had acted properly throughout the trial and there was no evidence whatsoever of judicial misconduct. The complaint subcommittee reported that the complainant appeared to be waging a vendetta against the police and anyone else who he thought was responsible for his conviction. The complaint subcommittee also reported that the complainant had been represented by counsel at trial and on appeal and that his appeal had been

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

CASE NO. 04-008/98

The complainant alleged that a family court judge had taken too long to render a decision and complained to the judge’s Regional Senior Judge who did not respond to the complainant. The complainant then wrote to the OJC to complain about the delay in rendering judgment and about the lack of response from the Regional Senior Judge. The complaint subcommittee asked for and reviewed a response to the complaint from the Regional Senior Judge. The complaint subcommittee reported that the Regional Senior Judge acknowledged having received the letter from the complainant and advised that he had spoken to the trial judge about the delay in rendering judgment. The Regional Senior Judge also advised that, because the complaint was mainly about the decision made by the trial judge, he knew that he had no jurisdiction to do anything about it and, because there was no allegation of judicial misconduct to be addressed, simply filed the letter. The Regional Senior Judge further advised that he knew the complainant was represented by counsel and that his lawyer could advise him about his right to appeal the decision. The Regional Senior Judge recognized that he should have acknowledged the complainant’s letter, as was his usual practice, and he apologized to the complainant for that oversight. The complaint subcommittee recommended that the complaint be dismissed and that no further action was necessary. The complaint subcommittee members also recommended that the Regional Senior Judge be

CASE SUMMARIES

reminded of his obligation to bring matters of complaint to the attention of the Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed as it does not amount to misconduct in the circumstances.

CASE NO. 04-010/98

The complainant brought a civil action against the provincial Ministry of Transport because he had failed his driving test and could not obtain a driver's licence. He complained, three years after the event, that the judge before whom he appeared dismissed his action. He also alleged that the judge was rude to him and spoke in such a manner as to threaten him. The complaint subcommittee asked for and reviewed a response to the complaint from the judge and reviewed the court file in this matter. In the response, the judge advised that the complainant had no cause of action in civil court and that this had been explained to him, repeatedly, through an interpreter. The judge denied being rude or threatening to the complainant at any time, although she acknowledged that it was likely she'd had to be firm in order to end the complainant's groundless arguments and move on with the other cases on the court list. The complaint subcommittee attempted to locate the name of the clerk in court on the date in question but were advised that this information had been destroyed as it is only kept for two years. The complaint subcommittee recommended that the complaint be dismissed as no objective evidence was found to corroborate the allegations. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-013/98

The complainant had been found guilty of assault causing bodily harm. The complainant alleged that the trial judge altered the transcript of the trial proceedings, thereby ruining the complainant's appeal. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence in this matter and also ordered and reviewed a copy of the audiotape used by the court reporter to prepare the transcript of evidence. The complaint subcommittee recommended that the complaint be dismissed as their review of the transcript and the audiotape offered no support for the allegations of the complainant. The complaint subcommittee advised that the transcript is as accurate as it could be, given that a long and angry outburst by the complainant made some parts of the audiotape impossible to hear. However, it advised that all of the judge's comments are accurately transcribed from the audiotape and, in its view, there is no foundation to the complainant's allegations. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-015/98

The complainant was being sued by his real estate agent for commission owing to him and the listing agent. At a pre-trial, the complainant alleged that the judge was "abusive" and "harassed and insulted" the complainant who was "deprived of proper time to explain my side of the story". The complainant also advised that he had been told not to bring witnesses to the pre-trial hearing, but that the plaintiff attended with two witnesses and the pre-trial judge allowed them to be heard. The complaint subcommittee asked for and reviewed a response to the complaint

CASE SUMMARIES

from the judge. The complaint subcommittee reported that the judge denied showing any favouritism to the plaintiff and denied the complainant's other allegations, stating that the complainant probably did not like the judge's assessment of his chance of success at trial. The complaint subcommittee also interviewed an individual who assisted the plaintiff at the pre-trial hearing. The complaint subcommittee reported that this individual advised that he neither saw nor heard any poor behaviour on the part of the judge and generally corroborated the substance of the judge's response. The complaint subcommittee recommended that the complaint be dismissed as no objective evidence could be found to corroborate the complainant's allegations of misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-018/98

The complainant expressed displeasure with a support order which had been made and alleged that the judge ignored crucial facts about his financial situation and was allegedly biased against him by the constant presence in court of representatives from a women's hostel. The complainant also alleged that the judge caused a portion of the hearing to be unrecorded while he was questioned about his home life and financial history. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee recommended that the complaint be dismissed because if the judge was wrong in the assessment of the financial situation or was indeed biased as a result of certain people attending in court, the appropriate remedy would be for the complainant to appeal the decision.

The review panel agreed that this portion of the complaint be dismissed but the review panel was of the view that the judge should be asked for a specific response to the allegation that a portion of the hearing had been conducted "off the record". The judge was asked for a response to that portion of the complaint and the complaint subcommittee reported back on this matter. The complaint subcommittee reported that the judge advised that at no time had any of the reporters who attended in court on any of the appearances made by the complainant been instructed to turn off their machines and that the complainant may have confused the proceedings before the trial judge with earlier proceedings before the pre-trial judge, which would have been "off the record". The complaint subcommittee recommended that this portion of the complaint be dismissed as unfounded and the review panel agreed.

CASE NO. 04-021/98

The complaint subcommittee reported that the complainant had many complaints with various aspects of the justice system arising out of what they described as a long and sad history of family conflicts which were dealt with in the courts. The main complaint which fell into the OJC's jurisdiction for investigation was that the judge had received a letter from the complainant's husband during the course of a hearing. 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, and that the husband's actions in doing so were improper. The complainant also advised that the judge reprimanded the husband for sending the letter. As a result, the complaint subcommittee found no evidence of judicial

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misconduct on the part of the judge and recommended that the complaint be dismissed. It 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 this portion of the complaint be dismissed but noted that the complainant had also alleged that the judge met with the other party in chambers alone and that the judge had, allegedly, denied the complainant the opportunity to present certain evidence. The review panel requested the complaint subcommittee to ask for a response to these issues and to report back on these matters after it had received the judge's response. The complaint subcommittee reported back that they had found no evidence to support the complainant's allegations and recommended that this part of the complaint be dismissed as well. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-024/98

The complainant was a plaintiff in a civil action which was dismissed. The complainant alleges that the judge who heard his motion was biased against him because he is not a member of the "Canadian Legal Establishment". The complainant further alleges that the judge protected the bank he was suing by not allowing its illegal activities to be exposed and that the dismissal of the complainant's action was wrong in law. The complaint subcommittee reviewed the court file in this matter. The complaint subcommittee recommended that the complaint be dismissed as no objective evidence was found to corroborate the allegations. The complaint subcommittee advised

that there was no evidence to support the complainant's bald accusations of bias and protection of the defendant bank by the judge. The complaint subcommittee further 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 decision made in the case. The complaint subcommittee stated that 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. 04-030/98

The complainant is a criminal defence counsel who complained that the judge in question exhibited a lack of courtesy and respect for counsel appearing in his court by calling the list of cases himself, rather than allowing the Crown to do it, and by calling the list of cases in the order they appeared on the list, rather than calling those cases where the accused was represented by counsel first. The complaint subcommittee recommended that the complaint be dismissed as they were of the view that the conduct complained of did not constitute judicial misconduct, although it was not conduct in keeping with accepted behavior toward counsel appearing in court. However, the review panel members felt it necessary to ask the judge for a response to the complaint and instructed the complaint subcommittee to do so. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee advised that the judge's response indicated that the complainant was not present

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when court began. The judge advised that it is his policy to call counsel who are present first, then to call cases where interpreters are involved so that they can attend in other courts where they are required and then to call cases where the accused are unrepresented. The judge further advised that, on the date in question, the complainant arrived late and was required to wait until the unrepresented accused had been dealt with. The complaint subcommittee recommended that this complaint be dismissed as they felt there was no judicial misconduct by the judge complained against. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-031/98

The complainant is a lawyer in a small town who alleged that the judge who presides in his location is biased against him and provided the Judicial Council with some examples of the judge's allegedly biased behaviour. The complaint subcommittee asked for and reviewed a response to the complaint from the judge and the judge responded with a detailed response to the complainant's allegations. Although both the members of the complaint subcommittee and review panel were of the opinion that the complaint was not without some merit, they were also of the view that the judge's position on several of the matters raised in the complainant's letter of complaint had merit as well. Neither the complaint subcommittee members or the review panel members were of the opinion that there was a case of judicial misconduct made out by the complainant and they agreed that the complaint should be dismissed. The members were also of the opinion that the fact that the lawyer's difficulties with the judge had been brought to the judge's

attention may help to ameliorate the situation somewhat. As well, the complainant was advised that he could speak to both the judge's Regional Senior Judge and/or the lawyer representative on the OJC review panel if he felt he required further assistance or guidance.

CASE NO. 04-032/98

The complainant was the respondent in an application for a peace bond by his former common law spouse. The complainant accused the judge before whom he appeared of misconduct, prejudice and a brand of "rough justice". The complainant alleged that the judge showed a lack of respect to him when setting a date for trial as the complainant lives in another city and has to travel quite a distance to attend court and it was only through the Crown's support that the complainant was able to have a date set that was convenient to his travel schedule. The complainant also advised that he missed a trial date because he was searching for a witness and the judge proceeded in his absence, even though he had faxed the judge to advise that he would not be able to attend as scheduled. The complainant's third complaint was that he was not given an opportunity to "defend himself" in the matter of the peace bond application when he did attend in court after the hearing had been held and he was ordered to enter into the peace bond. 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 complainant. The complaint subcommittee reported that the judge seemed aware of the complainant's lack of understanding of the court procedures and asked duty counsel to assist the complainant on the

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final attendance in court. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-035/98

The complainant was the defendant in a criminal trial who alleged that the trial judge wrongfully accepted affidavit evidence over the objection of the defendant and suppressed evidence that proved that an officer of the court committed crimes. The complainant further alleged that the judge obstructed justice, was "rude and determined to convict an innocent person", refused to view a tape that would prove the innocence of the defendant, had a "hateful attitude" towards the defendant and opposed and rejected proof of innocence of the defendant. The complaint subcommittee ordered and reviewed a copy of the audiotape and transcript of the evidence and asked for and reviewed a response from the judge. After reviewing the material the complaint subcommittee reported that, in their view, the trial proceedings clearly presented difficulties both for the defendant and for the trial judge. The complaint subcommittee reported that the judge was called upon to make a large number of rulings, and in a number of cases, attempted to control the manner in which the defendant was conducting his defence. They further stated that the judge appeared to deal with the defendant in a patient and even-handed manner and did not interfere unduly in the conduct of the trial. The complaint subcommittee noted that while the complainant is entitled to disagree with the judge's view of the evidence and his conclusions, the complaint subcommittee was unable to find that the judge misconducted himself. Although the subsequent conviction was overturned on appeal,

that decision was based on the fact that the judge had made an error in law in admitting *voir dire* evidence without the consent of the defendant. Although the appeal court ruled that there had been a "substantial wrong or miscarriage of justice", that finding related to the error of law and not to conduct on the part of the judge. The complaint subcommittee recommended that the complaint be dismissed as there was no evidence of judicial misconduct on the part of the judge. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-036/98

The complainant alleged misconduct in that the judge referred her to the Family Court Clinic and she had numerous complaints about the Clinic. The complaint subcommittee recommended that the complaint be dismissed as the judge had the right and responsibility to suggest a Family Court Clinic assessment and there is no other allegation of any judicial impropriety or misconduct in the complaint. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-037/98

The complainant alleged that the judge breached the complainant's right to a "mutually acceptable assessor" (for a family assessment) by ordering a family assessment (to assist with issues of custody and access) from the Clarke Institute of Psychiatry and the complainant further alleged the judge was involved in a plot to document the complainant as mentally ill in order to cover the judge's error of giving the complainant's former husband increased access to her children resulting in

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harm to them. The complaint subcommittee recommended that the complaint be dismissed as it was within the judge's jurisdiction to order an independent assessment from the Clarke Institute to assist in the determination of custody/access issues and there is no misconduct evident in the judge making such an order. The complaint subcommittee also noted that there is no misconduct in the judge granting the father increased access to the children, although this decision may be subject to appeal if the judge erred in law, but without misconduct, is outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-038/98

The complainants alleged that a young person was prevented "from bringing full answer and defence" to charges under the *Young Offenders Act* thereby denying his "constitutional right" to a fair trial. The young person apparently "...fired his 'state appointed' defence lawyer because he refused to bring full answer and defence". The complainants further alleged that the judge insisted on appointing defence counsel to represent the young person despite the fact that the young person wanted to be assisted by his mother. The complainants also alleged that the judge found the youth guilty based on his demeanour in court and not based on any evidence. A month after receiving the complaint, the investigating complaint subcommittee wrote to the complainants asking for details of the court dates and locations of the young person's court appearances so that further investigation could be conducted. There was no response to the Judicial Council's letter and the

complaint subcommittee recommended that the complaint be dismissed as abandoned, subject to being re-opened should the complainants see fit to provide further details. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-039/98

The complainants alleged that a young person was prevented "from bringing full answer and defence" to charges under the *Young Offenders Act* thereby denying his "constitutional right" to a fair trial. The young person apparently "...fired his 'state appointed' defence lawyer because he refused to bring full answer and defence". The complainants alleged that the judge refused to allow the young person to represent himself with the assistance of an adult. The complainants further alleged that a Notice of Motion was filed and served by the young person but the judge refused to have it heard. The complainants also alleged that the judge ordered the lawyer who was fired by the young person to represent the youth as a "friend of the court". A month after receiving the complaint the investigating complaint subcommittee wrote to the complainants asking for details of the court dates and locations of the young person's court appearances so that further investigation could be conducted. There was no response to the Judicial Council's letter and the complaint subcommittee recommended that the complaint be dismissed as abandoned, subject to being re-opened should the complainants see fit to provide further details. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

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CASE NO. 04-040/98

The complainant was charged with assault with a weapon. He was found not guilty of that offence but guilty of being in possession of a weapon dangerous to the public peace. His complaints were mainly directed at the Crown Attorney and the police and he was represented by counsel at his trial. He alleged that prior to the trial the judge made some comment about wanting to get home thus showing disregard for the complainant's detention. He also alleged that the judge made contradictory comments and comments which were unsupported by the evidence. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complainant subcommittee recommended that the complaint be dismissed as there was no evidence of judicial misconduct. The complaint subcommittee noted that the trial did proceed to an adjudication and if the judge did make contradictory comments or comments unsupported by evidence that would be a matter of appeal and outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-042/98

The complainants are the birth parents of twin babies involved in a dispute with the adoptive parents. The complainants allege that the judge "threw tantrums" and issued "verbal threats" in relation to their attempts to tape the court proceedings with a hand-held recorder and demanded that they seek leave of the court to record the proceedings. The complaint subcommittee reported that the transcript of the proceedings cannot be ordered as all records relating to adoption

matters are sealed. However, the complaint subcommittee recommended that the complaint be dismissed as the judge had the right to ask that the parties seek permission to record proceedings because adoption proceedings are entirely closed and confidential and it would be understandable that a judge would be upset to notice proceedings were being recorded by a party without permission. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-043/98

The complainant, who was charged with arson, was in court for a preliminary hearing. The complainant alleged that the judge refused to order a publication ban at the preliminary hearing. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee reported that if the judge refused to make such an order then clearly he erred in law as the *Criminal Code* makes it mandatory that a judge make such an order if the order is requested by the accused prior to any evidence being led. However, the complaint subcommittee also reported that there was no indication in the transcript that the complainant or his counsel requested the order at the appropriate time. The complaint subcommittee recommended that the complaint be dismissed as there was no allegation of any judicial impropriety in the complaint and no judicial misconduct discovered in the course of the complaint subcommittee's investigation. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

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CASE NO. 04-044/98

The complainant advised that he had attended in court as agent for two accused women who had been charged with shoplifting. The complainant alleged that the presiding judge evidenced bias in favour of the Crown by covering up evidence that the Crown had forged documents, failed to hear a motion to allow the complainant to get off the record as agent for the accused, unduly influenced the complainant's clients to accept the Crown's offer to enter a diversion program and ordered the complainant out of the courtroom "for no reason whatsoever". The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended that the complaint be dismissed as it was their view that there was no evidence of judicial misconduct. The complaint subcommittee advised that the judge received the case from another court and enquired into whether or not the diversion program would be available for the accused. The complaint subcommittee further advised that the judge then assisted in explaining the diversion program to the accused, through an interpreter, and how they would go about finalizing the arrangements. The judge then adjourned the case to allow the Crown to divert it out of the court system. The complaint subcommittee did advise that the judge refused to hear the agent's motion to be removed from the record, but added that it was obvious the agent wasn't on the record in the first place. The complaint subcommittee also advised that the judge did order the complainant/agent out of the courtroom when he constantly interrupted the proceedings. The complaint subcommittee did not find that such action amounted to judicial misconduct as the judge was attempting to maintain decorum in the courtroom. The review panel agreed with the

complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-045/98

The complainant appeared before a Master on an interim motion for custody of his two sons and subsequently appeared before the same Master concerning the assessment of the complainant's solicitor's account for legal services. The complainant alleged that the Master's misconduct included "unethical behaviour, conflict of interest, defamation of character and professional misconduct". The complainant alleged that, as the Master entered the courtroom, he stated to the two lawyers involved in the hearing that the complainant "was an unfit human being" and that he should never be allowed to see his sons again. The complainant also alleged that the Master was in a conflict of interest situation because he knew of the death threats made by the complainant's former spouse and her efforts to "destroy" him. The complainant further alleged that the Master made every effort to cover up the help the Master had allegedly given the complainant's former spouse. Further, the complainant alleged that the Master argued in favour of the complainant's solicitor and threatened the complainant. The complaint subcommittee asked for and reviewed a response to the complaint from the Master. The complaint subcommittee also interviewed the solicitor for the complainant. In his response, the Master denied the allegations made by the complainant. The complaint subcommittee reported that the witness also specifically denied each of the allegations made against the Master. The witness stated that, had the Master behaved in the manner alleged by the complainant, he would have pursued a complaint, but he denied that any such behaviour took place. The witness

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further stated that he appeared before the Master on a fairly regular basis and found him to be careful in his preparation and attentive to the matters before him. The complaint subcommittee recommended that the complaint be dismissed as it was their view that there was no evidence to support the complainant's allegations. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-046/98

The complainant had been convicted of possession of a "radar warning device" and alleges that the judge scheduled to hear his *Provincial Offences Act* appeal refused to allow his agent to appear for him and further complains that the judge is "dictatorial". The complaint subcommittee reviewed a copy of the transcript of the evidence and asked for and reviewed a response from the judge. The complaint subcommittee advised that, in his response, the judge advised that the appeal, and the grounds for appeal, came to his attention in advance of the scheduled appeal date. The judge further advised that the agent representing the complainant was known to him and, in his opinion, was not competent to represent the complainant on the appeal. The judge advised that he instructed his court clerk to so advise the agent prior to the date set for the hearing, in an attempt to save the complainant unnecessary travel as the appeal would not be proceeding and the agent would have to appear to ask for an adjournment. The complaint subcommittee advised that the question of competency of an agent is one that must be decided by each judge on a case-by-case basis and, technically, should be done in court. However, given the judge's reasons for this less orthodox approach, 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 not permitting the agent to represent the complainant in this particular matter and that the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge in coming to this decision prior to the date set for the appeal, 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 as it does not amount to misconduct in the circumstances.

CASE NO. 04-048/98

The complainant is a mother involved in a child custody dispute. The complainant alleges that the judge complained against lacks knowledge of Canadian law and the filing requirements of various legislation. The complaint subcommittee reviewed the supporting material provided by the complainant in this matter. The complaint subcommittee recommended that the complaint be dismissed as there was no evidence to support the complainant's allegations and no evidence of judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-050/98

The complainant is the mother of an alleged young offender who was charged with certain offences. The complainant alleged that the judge wilfully denied the youth his constitutional right

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to defend himself. The complainant further alleged that the judge was in a conflict of interest regarding the matter before him and tried to cover up “what is happening with regards to false charges”. The complaint subcommittee ordered and reviewed a copy of the transcript of evidence and asked for and reviewed a response from the judge. The complaint subcommittee recommended that the complaint be dismissed as the transcript offered no support for the allegations made by the complainant but did reveal that the matter was dealt with having full regard to the needs of the youth. The judge’s response specifically denied any conflict of interest with the accused. Further, the complaint subcommittee was satisfied that there was no objective evidence to suggest conflict of interest or support the broad allegation of improper conduct. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 04-051/98

The complainant appeared in court charged with criminal harassment and possession of dangerous weapons. She alleged that the judge harassed her and used obscene language when speaking to her. The complainant further alleged that the judge found her guilty “without having been allowed to testify” in her own defence. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended to the review panel that the complaint be dismissed as being without foundation after an examination of the transcript of record revealed that the inappropriate remarks attributed to the judge by the complainant had not been made. Further the complaint subcommittee advised that the transcript revealed that the

complainant was not prevented from speaking and she was represented by counsel. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 04-053/98

The complainant alleged that the judge was guilty of judicial misconduct by signing an *ex parte* order without investigating any of the allegations made by his wife and her lawyer when they appeared before the judge. The complaint subcommittee recommended that the complaint be dismissed because there is no misconduct in a judge signing such an order. An *ex parte* order is an interim order sought by one party to a dispute with direction for service of documents for a hearing, with both parties present, at a later date. The complaint subcommittee noted that the complainant would have ample opportunity to refute the allegations at that subsequent court hearing. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 04-054/98 AND CASE NO. 04-055/98

The complainant is involved in a custody dispute and alleged that the judge knows one of the parties to the custody dispute (the maternal grandmother who acts as a prisoner escort in the courthouse) and, as a result, is biased against the father’s side of the family. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee recommended that the complaint be dismissed as the judge’s response noted that the judge might recognize the woman (the

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maternal grandmother) as someone the judge had seen in the courts but had never spoken to her or seen her outside of court. The complaint subcommittee further noted that the judge had only been involved in one adjournment of the matter in which the complainant was involved. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

The complainant also alleged that another judge involved in hearing the custody dispute is biased against the father's side of the family as a result of knowing the same maternal grandmother. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee recommended that the complaint be dismissed as the judge's response noted that the judge had only been aware of the fact the woman was related to the applicant by the complainant's affidavit which was filed in court. The judge further noted that all matters concerning any possible conflict or bias had been raised in open court and brought to the attention of the complainant. The judge reported he had refused to step aside and advised the complainant that there was no basis for any allegation of bias on his part. As a result, the complainant's remedy is to appeal that decision and, without evidence of misconduct, the matter is outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-056/98

The complainant is seeking custody of his daughter and was criminally charged with abduction. He alleges that the judge who presided on some of his court appearances was

in a conflict of interest situation since interim custody of the child had been given to an aunt who is a court reporter and a Justice of the Peace at the same court location where the judge presides. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee advised that the response from the judge clearly sets out the chronology of events in the case, including the process which has been followed to have the matter heard by a judge from another location in order to address any concerns the complainant might have about the potential for a conflict of interest. The complaint subcommittee recommended that the complaint be dismissed as there is no evidence of any judicial misconduct in the matter. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-057/98

The complainant was the plaintiff in a trial in which he was suing for damages for "malicious prosecution". The complainant alleged that the judge "stormed out of the court room" on several occasions for what the complainant believed were "trivial reasons". The complainant claimed that the judge apologized for leaving the court-room but did not improve his behaviour the next day. The complainant also stated that his lawyer advised him that the judge had "personal problems" but even if this was so, the complainant stated that this should not have interfered with the hearing of his case. The complainant also claimed that the judge started court late on the third day of trial, that the judge believed perjured evidence brought by the defendant and the defendant's witness and that the judge did not

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consider all of the complainant's costs in making his award of damages at the end of the trial. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The trial judge noted that the complainant had been warned on several occasions to properly answer cross-examination questions and he (the judge) left the court room several times to allow the complainant time to reflect on the advice of his lawyer and the court clerk concerning this. The judge denied that he had any personal problems during the course of the trial and has no information about what the complainant's lawyer may have said to the complainant. The judge further stated that he always starts his court on time at 10 a.m. and, although he has no record of what caused the delay on the date in question, he is sure it would have to have been because of other pressing business. The complaint subcommittee recommended that the complaint be dismissed based on the judge's response and based on its' view that there was no judicial misconduct evident in the exercise of the judge's discretion in accepting the evidence of the defendant or her witness or in awarding the costs he did at the end of the trial. The complaint subcommittee stated that if errors in law were committed by the judge in making these decisions, 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. 04-058/98

The complainant is in conflict with the Children's Aid Society and alleged that his lawyer indicated to him that he had a letter with "bad news" from the

judge. The complaint subcommittee recommended that the complaint be dismissed as the letter of complaint is vague, provides no allegation of judicial misconduct and it would appear that the complainant's real concern is with a Children's Aid Society case worker. The review panel reviewed the letter of complaint and agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-059/98

The complainant had been convicted of a simple assault, after a trial at which he had been represented by counsel. He alleged that the trial judge was biased and had made up his mind before the trial started. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended that the complaint be dismissed as the complainant is clearly unhappy with the judge's decision and the fact that the judge found the victim of the assault to be a credible witness. The complaint subcommittee further advised that the "Reasons for Judgment" show that the judge carefully considered the facts of the case and there is nothing in the Reasons which would support an allegation of bias on the part of the judge or support an allegation of judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-060/98

The complainant appeared in court on behalf of herself and as agent for the defendant Association on a motion to set aside a default judgment. The complainant alleged that the behaviour, attitude and demeanour of the judge before whom she

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appeared was shocking, that he lectured rather than listened and had a dictatorial attitude. She further alleged that it appeared the judge had not read the documents prior to the court appearance, although he claimed otherwise, and that he was insulting, demeaning and belittling. She also noted that the judge was unhelpful to the complainant in understanding court procedure. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. As the judge noted in his response, the default judgment was ultimately set aside on consent and the matter settled. During the course of the consent proceedings, the complainant apparently wished to further explain the defendants' default and was interrupted by the judge who told her that no further explanation was necessary because of the plaintiff's consent to the judgment being set aside. The judge expressed regret at not complimenting the complainant on the way she represented the defendant Association as he felt she acted in a very responsible manner and he didn't mean to be abrupt. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct and it was obvious that the complainant did not fully understand the process for a consent judgment while representing herself. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-061/98

The complaint subcommittee reported that, following a marital breakdown in 1997, the complainant experienced a number of legal problems, including matters before the criminal court related to drug possession charges, alcohol-

related driving offences, breaches of peace bonds and incarceration. The complainant's letter outlined her frustrations with her experiences of the criminal justice system generally and only made two allegations against any provincially-appointed judge, indicating that the judge had no interest in the facts of the case before him. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended that the complaint be dismissed as the complainant's allegations were not upheld after reading the transcripts of her court appearances before the judge she complained about. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-062/98

The complainant is a mother involved in a child welfare matter. The judge appointed the Public Guardian and Trustee to represent the mother in a court proceeding at the request of the Catholic Children's Aid Society and the complainant is challenging this appointment, claiming that the judge was biased and prejudiced against her. The complainant provided a copy of the Reasons for Judgment and they were reviewed by the complaint subcommittee and the members of the review panel. 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 ordering representation. The complaint subcommittee stated that if errors in law were committed by the judge in so ordering, such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The

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

CASE NO. 04-064/99

The complainant alleged that the family court judge who was involved in his custody matter "failed to uphold the law, failed to act in the best interests of a child, ignored evidence the trial was rigged and accepted false evidence", among other charges. The complaint subcommittee wrote to the complainant on two occasions to request further information regarding court dates so that further investigation could be done but received no response to their requests. As a result, the complaint subcommittee recommended that the complaint be dismissed as abandoned, subject to being re-opened should the complainant see fit to provide further details. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-065/99

The complainant alleged that the family court judge who was involved in his custody matter "failed to act in the best interests of a child, did not follow due process, did not allow a party to be heard, harassed a party, and made deprecating remarks". The complainant also alleged that the judge sent a court official to threaten a party to give up seeking justice and "drop the action". The complaint subcommittee wrote to the complainant on two occasions to request further information regarding court dates so that further investigation could be done but received no response to their requests. As a result, the complaint subcommittee recommended that the complaint be dismissed

as abandoned, subject to being re-opened should the complainant see fit to provide further details. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-066/99

The complaint subcommittee reported that the complainant is involved in a family law dispute and had a long litany of complaints. The complainant expressed the view that the judge hearing the family dispute is biased against him due to the influence of the complainant's father-in-law who is a partner in a large law firm in the same city in which the judge sits. The complainant advises that he asked the judge to remove himself from hearing his case because of bias and the judge refused. 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 deciding to continue sitting on this case even though the complainant objected. The complaint subcommittee advised that if errors in law were committed by the judge in refusing to remove himself from 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. 04-067/99

The complainant is the father in a custody dispute in which the mother was granted custody. The complainant makes several allegations about the judge's errors in granting custody to the mother,

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for example, by not accepting certain reports filed by the complainant/father. The complaint subcommittee recommended that the complaint be dismissed as the complainant goes through the judge's reasons in detail but there is no actual allegation of judicial misconduct, just disagreement with the judge's decisions. The complaint subcommittee 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 complaint subcommittee stated that 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. 04-068/99

The complainant had brought a motion seeking disclosure from the Crown and refused to set a date for her preliminary hearing until she received disclosure. She alleged that the judge forced her to set a date for the preliminary and that this was evidence of a "corrupt mind and improper motive". The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the judge forcing the setting of a preliminary hearing date and noted that the judge did not have jurisdiction to deal with the complainant's motion for disclosure, in any event. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-069/99

The complainant was a victim of an assault causing bodily harm. She alleged that the accused lied subsequent to a plea of "not guilty" and that the judge seemed to be amused by the lies. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no evidence of any judicial misconduct and if any errors in law were committed by the judge in the course of the trial, the matter would be appealable and is, 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. 04-070/99

The complainant is involved in a family court matter involving a dispute regarding arrears in child support. The complainant is unhappy that the judge rescinded a portion of the arrears. 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 order that was made and 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. 04-071/99

The complainant was in court with his ten-year-old son who was the victim of an assault. The complainant alleged that the judge "wasn't listening

CASE SUMMARIES

to the case” and dismissed charges in spite of strong evidence. The complaint subcommittee attempted to order a copy of the transcript of the evidence. The complaint subcommittee was informed by the Court Reporter’s Office that they were unable to find any information regarding the complainant’s appearance in court on the date specified by the complainant. The complaint subcommittee contacted the complainant to request the correct particulars in order to obtain the transcript. The complainant gave the subcommittee alternative dates on which his son appeared in court, as well as the court file number. The complaint subcommittee attempted to order a copy of the transcript of the evidence and was again informed the dates given were wrong and that there was no court file with the number obtained from the complainant. Once again, the complaint subcommittee attempted to contact the complainant but the phone number for the complainant was no longer in service. The complaint subcommittee recommended that this complaint be dismissed although it could be reactivated if the complainant re-contacts the Council and provides the correct information needed to conduct the investigation. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed as abandoned.

CASE NO. 04-072/99

The complainant was a party in a civil action and alleged that the judge did not allow him to present his case, told him to “shut up”, made remarks about “foreigners like you” and treated the complainant harshly. The complaint subcommittee asked for and reviewed a response to the complaint from the judge and interviewed a representative of the other party on the motion on which the

complainant appeared. The complaint subcommittee recommended that the complaint be dismissed as no objective evidence was found to corroborate the allegations. The representative who was interviewed reported that the judge had been very courteous to all parties in the court and had not made any remarks as alleged by the complainant. The complaint subcommittee also advised that the response from the judge outlines what course of action the judge would have taken procedurally and gives no cause to believe that there is misconduct. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 04-074/99

The complainant was the father of a spousal abuse victim who was unhappy with the sentence imposed by the judge. The accused, the complainant’s son-in-law, was charged with Common Assault, Assault Causing Bodily Harm and Threatening with a Firearm. The complainant was concerned that “this ruling sends the message to abused women, that they should keep quiet, put up with the abuse and continue to live in terror because we (The System) [sic] will do nothing to protect them from the abusers”. The complaint subcommittee recommended that the complaint be dismissed as there was no allegation of any judicial impropriety in the complaint and if errors in law were committed by the judge in sentencing the accused, 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. 04-075/99

The complainant believes that a judge was wrong in allowing an accused who had pleaded guilty to numerous sexual offences (with more charges coming) to remain out of custody pending sentence. The complaint subcommittee recommended that the complaint be dismissed as there was no actual allegation of misconduct in the complainant's letter and because there was no evidence of judicial misconduct in the course of the trial. The complaint subcommittee also noted that the Crown had not requested that the accused be held in custody, pending sentence. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-076/99

The complainant's child was taken into care by Jewish Child and Family Services. The complainant alleges that this event arose because of a conspiracy in Israel that includes her husband's family, social workers and the court system as a whole. The complaint subcommittee recommended that the complaint be dismissed as there was no specific allegation of any complaint of judicial misconduct by the judge whom the complainant mentions only in passing. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 04-077/99

The complainant alleged that the judge sought assistance from his secretary regarding a traffic ticket issued to his son for failing to surrender an insurance card while driving and that his secretary then arranged to have the charge withdrawn

through the provincial prosecutor's office after proof of the existence of the insurance was provided. The complainant also alleged that the judge sought the assistance of a court bookkeeper regarding a speeding ticket issued to his son and that the provincial prosecutor was approached with a view to arranging to have the son plead guilty to a lesser charge in order to avoid receiving demerit points which might jeopardize his job for which a clean driving record was vital. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The judge explained the circumstances under which he had spoken to the court staff and advised that he had not intended to impede the course of justice or exert any pressure or influence on the provincial prosecutor's office and he would never enlist the aid of any court administration personnel in future. The members of the complaint subcommittee were of the view that the judge sincerely regretted the lapse of judgment which led him to seek assistance which was entirely inappropriate in the circumstances and were also of the view that no similar incident would ever recur. The complaint subcommittee recommended that the complaint be referred to the Chief Justice to speak to the judge in question. The majority of members of the review panel agreed with the complaint subcommittee's recommendation that the complaint be referred to the Chief Justice and felt that was an appropriate disposition for an apparent lapse of judgment on the part of the judge. One member of the review panel expressed his opinion that the judge had made a sincere apology and had acknowledged his lapse of judgment and it was, therefore, not necessary to refer the complaint to the Chief Justice.

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CASE NO. 05-002/99

The complainant lost an appeal under the *Highway Traffic Act* and is seeking a new hearing. He alleges that the judge who heard his complaint is known as a “stiff and, at times, unfair” judge. The complaint subcommittee recommended that the complaint be dismissed as there was no specific complaint made against the judge and no evidence provided to support any claim of misconduct. The complaint subcommittee further noted that if the judge erred in law in dismissing the complainant’s appeal, 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. 05-006/99

The complainant alleged that the judge “continues fraudulent conduct in another effort to scuttle all my legal cases”. He complained that the judge allowed a motion to set aside a default judgment on the basis of an affidavit by the defendant where the defendant had lied and the judge ignored all the complainant’s evidence and accepted all the “evasions and lies” of the defendant. The complaint subcommittee reported that this complainant had made a similar complaint about this judge which had been dismissed. The complaint subcommittee recommended that the complaint be dismissed as there was no allegation of judicial misconduct and it was of the view that there was no judicial misconduct evident in the exercise of the judge’s discretion in making the rulings he did in this case. The complaint subcommittee stated that 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. 05-008/99

The complainant, who was the respondent in a family court matter, alleged that he had been “taken advantage of” when a hearing to determine custody of his children was held and he had not been served with the papers, resulting in the hearing being held without him being present. The complaint subcommittee recommended that the complaint be dismissed because if the complainant is dissatisfied with the judgment of the court or any irregularities in procedure, he has the remedy of appealing the decisions that were made and, without evidence of judicial misconduct, the matter is outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 05-010/99

The complainant expressed concern that an original “Notice of Restriction” imposed on her ex-husband had not been signed by the Crown’s office and it was, therefore, not enforceable and the judge could not proceed to trial with the breaches involved in the case. The complaint subcommittee recommended that the complaint be dismissed as the real complaint lies with the Notice of Restriction not being signed by the Crown or by the Crown’s office and is not really a complaint about the conduct of the judge. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

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CASE NO. 05-014/99

The complainants alleged that the judge's decision on appeal was biased and that he "failed to exercise the care" required by their *Provincial Offences Act* appeal. The complainants further alleged that the Crown Attorney's Office and the Ontario Provincial Police failed to enforce court orders. The complainants also alleged that "equally important to the outcome of this case was the close relationship" of the defendants' friends to the judge, as shown by selective extracts from transcripts relied upon by the judge, which the complainants stated were contrary to the weight of evidence. The complaint subcommittee reviewed a copy of the transcript of the evidence provided by the complainants. The complaint subcommittee recommended that this complaint be dismissed as it was satisfied that there was no objective evidence to support the allegation that the judge was biased or had a relationship to the parties involved and if errors in law were committed by the judge in making his decisions, 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. 05-015/99

The complainant is involved in a child custody matter. The complainant stated that the judge was biased in favour of the other party based on the decisions that had been made by the judge on the file. 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 that had been made in the case and

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. 05-016/99

The complainant was involved in a court case for child custody and child support. She stated that the judge called her a "non-believer" when he was explaining to the court clerk that she was not required to take an oath on the Bible as she is a Moslem. The complaint subcommittee advised that the judge had become aware of the complaint through other channels and felt compelled to write to the Judicial Council to explain what had gone on without being asked to do so by the complaint subcommittee. The complaint subcommittee recommended that the complaint be dismissed because, from a review of the judge's letter and the relevant parts of the transcript, it was evident that, in trying to explain the difference between swearing on a Bible and affirming, the judge had made an unfortunate choice of words although it appeared he had the best of intentions and was extremely fair and courteous to the complainant throughout the proceeding. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 05-018/99

The complainant alleged that the judge made inflammatory comments based on hearsay allegations from crown and defence counsel as to a police officer manufacturing evidence when the

CASE SUMMARIES

officer testified at the trial. The complainant maintained that the judge should have indicated the allegations about the police officer's testimony were unproven and further alleged that the judge's intemperate comments damaged the career and reputation of the officer. The complainant also alleged that the judge's conduct was unprofessional. The complainant asked for a retraction of the comments and apology from the judge. The complaint subcommittee recommended that this complaint be dismissed as they felt there was no judicial misconduct evident in the comments made by the judge. The complaint subcommittee noted that the judge's comments about the police officer's testimony were based on submissions made by crown and defence counsel and cited, for the record, his reasons for so doing. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 05-019/99

The complainant alleged that the judge convicted him "based not on fact or law, but on his prejudicial personal opinion and gender bias" and that the judge disallowed evidence that would exonerate the complainant. The complainant was found guilty and stated that the judge was not objective. The complainant further alleged that his "fate was sealed" before he entered the courtroom, when the complainant's lawyer indicated that the judge "never found a man 'not guilty' yet". The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the judge's exercise of his discretion, that the decisions made were within the judge's jurisdiction and there was nothing, even in the complaint, to indicate a lack of objectivity. The complaint subcommittee

was of the view that if errors in law were committed by the judge in his decision, 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 agreed that there was no evidence to support gender bias or lack of objectivity.

CASE NO. 05-022/99

The complainant indicated that he was unhappy with the judge's decisions and that the judge "barricaded" evidence from being heard. The complainant sent a copy of the transcript of the proceedings with his complaint and the complaint subcommittee reviewed same. The complaint subcommittee recommended that the complaint be dismissed as there was nothing to substantiate the complaint in the transcript and the decisions made by the judge 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. 05-023/99

The complainants are the parents of twin daughters who have had a long involvement with the Children's Aid Society and with the criminal and family courts. The complainants were unhappy with the decisions made by a particular judge who they feel has "destroyed" their family. 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

CASE SUMMARIES

decisions made were within the judge's jurisdiction. The complaint subcommittee noted that 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. 05-024/99

The complainants wrote to the Judicial Council to seek redress for what they described as a "miscarriage of justice". The complainants advised that they took exception to the judge believing the witness for the prosecution and not for the defence and asked that polygraph tests be conducted on the Crown's witnesses to prove that they were lying and that their son was wrongly convicted. 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 that he did and that the decisions made were within the judge's jurisdiction. The complaint subcommittee also noted that there wasn't really a complaint about conduct made by the complainants and 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. 05-027/99

The complainant is the father in a child custody dispute who found the judge's ruling, giving his ex-wife custody of their children, "illogical". 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 that he did and that the decisions made were within the judge's jurisdiction. The complaint subcommittee noted that 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.

ONTARIO JUDICIAL COUNCIL

1999–2000 ANNUAL REPORT

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APPENDIX-A

**ONTARIO JUDICIAL COUNCIL –
DO YOU HAVE A COMPLAINT?**

A P P E N D I X - A

A

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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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 provincially-appointed 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 provincially-appointed 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 Justice of the Ontario Court of Justice 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 PROCEDURES

Detailed information on administrative procedures to be followed by members of complaint subcommittees and members of review panels can be found at pages 24 - 26 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 Justice of the Ontario Court of Justice. 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)

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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, audiotapes, 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

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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.

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 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 Judicial Council or the Associate Chief Justice or Regional Senior Justice member of the Judicial Council.

INTERIM RECOMMENDATION TO SUSPEND OR REASSIGN

The complaint subcommittee may recommend to the appropriate Regional Senior Justice 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 Justice who is a member of the Judicial Council, the complaint subcommittee shall recommend the suspension, with pay, or temporary reassignment to another Regional Senior Justice. The Regional Senior Justice in question may suspend or reassign the judge as the complaint subcommittee recommends. The exercise of the Regional Senior Justice's discretion to accept or reject the complaint subcommittee's recommendation is not subject to the direction and supervision of the Chief Justice of the Ontario Court of Justice.

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

COMPLAINT AGAINST CHIEF JUSTICE ET AL - INTERIM RECOMMENDATIONS

If the complaint is against the Chief Justice of the Ontario Court of Justice, an Associate Chief Justice or the Regional Senior Justice 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 Superior Court of Justice, 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 Justice the tempo-

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rary suspension or re-assignment of a judge pending the resolution of a complaint:

subs. 51.4(21)

- where the complaint arises out of a working relationship between the complainant and the judge and the complainant and the judge both work at the same court location
- where allowing the judge to continue to preside would likely bring the administration of justice into disrepute
- where the complaint is of sufficient seriousness that there are reasonable grounds for investigation by law enforcement agencies
- where it is evident to the complaint subcommittee that a judge is suffering from a mental or 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 Justice and the subject judge to assist the Regional Senior Justice in making his or her decision and to provide the subject judge with notice of the complaint and the complaint subcommittee's recommendation.

Where a complaint subcommittee or a review panel proposes to recommend temporarily suspending or re-assigning a judge, it may give the judge an opportunity to be heard on that issue in writing by notifying the judge by personal service, if possible, or if not registered mail of the proposed suspension or reassignment, of the reasons therefor, and of the judge's right to tender a response. If no response from the judge is received after 10 days from the date of mailing, the recommendation of an interim suspension or reassignment may proceed.

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 Justice of the Ontario Court of Justice,
- 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)

If the complaint is against the Chief Justice of the Ontario Court of Justice, an Associate Chief Justice of the Ontario Court of Justice or the Regional Senior Justice 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 Superior Court of Justice, who may suspend or reassign the judge as the complaint subcommittee recommends.

subs. 51.4(12)

PROCEDURE TO BE FOLLOWED

One member of each complaint subcommittee will be responsible to contact the Assistant Registrar by a

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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 Justice of the Ontario Court of Justice or to a mediator to the Judicial Council without identifying the complainant or the judge who is the subject of the complaint and no information that could identify either the complainant or the judge who is the subject of the complaint will be included in the material provided to the review panel members.

subs. 51.4(16)

DECISION TO BE UNANIMOUS

The decision by a complaint subcommittee to dismiss a complaint, refer the complaint to the Chief Justice of the Ontario Court of Justice 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 JUSTICE

A complaint subcommittee will refer a complaint to the Chief Justice of the Ontario Court of Justice 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 Justice of the Ontario Court of Justice 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

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- 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

subs.51.4(13) and (16)

RECOMMENDATION RE: HEARING

If a recommendation to hold a hearing is made by the complaint subcommittee it may be made with, or without, a recommendation that the hearing be held *in camera* and if such recommendation is made, the criteria established by the Judicial Council (see page 11 below) 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)

INFORMATION TO BE INCLUDED

Where a complaint is referred to a Review Panel of the Judicial Council by a complaint subcommittee, the complaint subcommittee shall forward to the Review Panel all documents, transcripts, statements, and other evidence considered by it in reviewing the complaint, including the response of the judge about whom the complaint is made, if any. The Review Panel shall consider such information in coming to its conclusion regarding the appropriate disposition of the complaint.

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)

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COMPOSITION

A review panel is made up of two provincially-appointed judges (other than the Chief Justice of the Ontario Court of Justice), 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)

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.

B

WHEN REVIEW PANEL FORMED

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

GUIDELINES AND RULES OF PROCEDURE

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

subs. 51.1(2)

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

subs. 51.4(19)

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,

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Referral of Complaint to a Review Panel

WHEN REFERRED

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

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

POWER OF A REVIEW PANEL ON REFERRAL

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

- decide to hold a hearing,
- dismiss the complaint,
- refer the complaint to the Chief Justice of the Ontario Court of Justice (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 recommendation is made, the criteria established by the Judicial Council (see page 18 below) 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, is frivolous or an abuse of process, or where the review panel is of the view that, the complaint is unfounded. A review panel will not generally dismiss as unfounded a complaint unless it is satisfied that there is no basis in fact for the allegations against the provincially-appointed judge.

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C) REFERRING A COMPLAINT TO THE CHIEF JUSTICE

A review panel will refer a complaint to the Chief Justice of the Ontario Court of Justice 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 Justice of the Ontario Court of Justice 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 Justice of the Ontario Court of Justice 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:

- (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 pages 25 and 26 of this document.

HEARING PANELS

APPLICABLE LEGISLATION

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

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

subs. 51.1(2)

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

subs. 51.1(3) and 51.6(2)

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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)

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)

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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 under 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)

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.

NEW COMPLAINT

If, during the course of the hearing, additional facts are disclosed which, if communicated to a member of the Judicial Council, would constitute an allegation of misconduct against a provincially-appointed judge outside of the ambit of the complaint which is the subject of the hearing, the Registrar shall prepare a summary of the particulars of the complaint and forward

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – PROCEDURAL CODE FOR HEARINGS

same to a complaint subcommittee of the Judicial Council to be processed as an original complaint. The Complaint subcommittee shall be composed of members of the Judicial Council other than those who compose the panel hearing the complaint.

PROCEDURAL CODE FOR HEARINGS

PREAMBLE

These Rules of Procedure apply to all hearings of the Judicial Council convened pursuant to section 51.6 of the *Courts of Justice Act* and are established and made public pursuant to paragraph 51.1(1)6 of the *Courts of Justice Act*.

These Rules of Procedure shall be liberally construed so as to ensure the just determination of every hearing on its merits. Where matters are not provided for in these Rules, the practice shall be determined by analogy to them.

INTERPRETATION

1. The words in this code shall, unless the context otherwise indicates, bear the meanings ascribed to them by the *Courts of Justice Act*.
 - (1) In this code,
 - (a) "Act" shall mean the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended.
 - (b) "Panel" means the Panel conducting a hearing and established pursuant to subsection 49(14) of the Act.
 - (c) "Respondent" shall mean a judge in respect of whom an order for a hearing is made pursuant to subsection 51.4(18)(a) of the Act.
 - (d) "Presenting Counsel" means counsel engaged on behalf of the Council to prepare and present the case against a Respondent.

PRESENTATION OF COMPLAINTS

2. The Council shall, on the making of an order for a hearing in respect of a complaint against a

judge, engage Legal Counsel for the purposes of preparing and presenting the case against the Respondent.

3. Legal Counsel engaged by the Council shall operate independently of the Council.
4. The duty of Legal Counsel engaged under this Part shall not be to seek a particular order against a Respondent, but to see that the complaint against the judge is evaluated fairly and dispassionately to the end of achieving a just result.
5. For greater certainty, Presenting Counsel are not to advise the Council on any matters coming before it. All communications between Presenting Counsel and the Council shall, where communications are personal, be made in the presence of counsel for the Respondent, and in the case of written communications, such communications shall be copied to the Respondents.
6. A hearing shall be commenced by a Notice of Hearing in accordance with this Part.
7. Presenting Counsel shall prepare the Notice of Hearing.
 - (1) The Notice of Hearing shall contain,
 - (a) particulars of the allegations against the Respondent;
 - (b) a reference to the statutory authority under which the hearing will be held;
 - (c) a statement of the time and place of the commencement of the hearing;
 - (d) a statement of the purpose of the hearing;
 - (e) a statement that if the Respondent does not attend at the hearing, the Panel may proceed in the Respondent's absence and the Respondent will not be entitled to any further notice of the proceeding; and,
8. Presenting Counsel shall cause the Notice of Hearing to be served upon the Respondent by personal service or, upon motion to the Panel hearing the complaint, an alternative to personal service and shall file proof of service with the Council.

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RESPONSE

9. The Respondent may serve on Presenting Counsel and file with the Council a Response to the allegations in the Notice Hearing.
 - (1) The Response may contain full particulars of the facts on which the Respondent relies.
 - (2) A Respondent may at any time before or during the hearing serve on Presenting Counsel and file with the Council an amended Response.
 - (3) Failure to file a response shall not be deemed to be an admission of any allegations against the Respondent.

DISCLOSURE

10. Presenting Counsel shall, before the hearing, forward to the Respondent or to counsel for the Respondent names and addresses of all witnesses known to have knowledge of the relevant facts and any statements taken from the witness and summaries of any interviews with the witness before the hearing.
11. Presenting Counsel shall also provide, prior to the hearing, all non-privileged documents in its possession relevant to the allegations in the Notice of Hearing.
12. The Hearing Panel may preclude Presenting Counsel from calling a witness at the hearing if Presenting Counsel has not provided the Respondent with the witness's name and address, if available, and any statements taken from the witness and summaries of any interviews with the witness before the hearing.
13. Part V applies, *mutatis mutandis*, to any information which comes to Presenting Counsel's attention after disclosure has been made pursuant to that Part.

PRE-HEARING CONFERENCE

14. The Panel may order that a pre-hearing conference take place before a judge who is a member of the Council but who is not a member of the Panel to hear the allegations against the Respondent, for the purposes of narrowing the issues and promoting settlement.

THE HEARING

15. For greater certainty, the Respondent has the right to be represented by counsel, or to act on his own behalf in any hearing under this Code.
16. The Panel, on application at any time by Presenting Counsel or by the Respondent, may require any person, including a party, by summons, to give evidence on oath or affirmation at the hearing and to produce in evidence at the hearing any documents or things specified by the Panel which are relevant to the subject matter of the hearing and admissible at the hearing.
 - (1) A summons issued under this section shall be in the form prescribed by subsection 12(2) of the *Statutory Powers Procedure Act*.
17. The hearing shall be conducted by a Panel of members of the Council composed of members who have not participated in a complaint sub-committee investigation of the complaint or in a Panel reviewing a report from such complaint sub-committee.
 - (1) The following guidelines apply to the conduct of the hearing, unless the Panel, on motion by another party, or on consent requires otherwise.
 - (a) All testimony shall be under oath or affirmation or promise.
 - (b) Presenting Counsel shall commence the hearing by an opening statement, and shall proceed to present evidence in support of the allegations in the Notice of Hearing by direct examination of witnesses.
 - (c) Counsel for the Respondent may make an opening statement, either immediately following Presenting Counsel's opening statement, or immediately following the conclusion of the evidence presented on behalf of Presenting Counsel. After Presenting Counsel has called its evidence, and after the Respondent has made an opening statement, the Respondent may present evidence.
 - (d) All witnesses may be cross-examined by counsel for the opposite party and

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – POST-HEARINGS

- re-examined as required.
- (e) The hearing shall be recorded verbatim and transcribed where requested. Where counsel for the Respondent requests, he or she may be provided with a transcript of the hearing within a reasonable time and at no cost.
- (f) Both Presenting Counsel and the Respondent may submit to the Panel proposed findings, conclusions, recommendations or draft orders for the consideration of the Hearing Panel.
- (g) Presenting Counsel and counsel for the Respondent may, at the close of the evidence, make statements summarizing the evidence and any points of law arising out of the evidence, in the order to be determined by the Hearing Panel.
- (f) any matters relating to scheduling.
- (2) A motion seeking any of the relief enumerated in this section may not be brought during the hearing, without leave of the Hearing Panel, unless it is based upon the manner in which the hearing has been conducted.
- (3) The Hearing Panel, may, on such grounds as it deems appropriate, abridge the time for bringing any motion provided for by the pre-hearing rules.
19. The Council shall, as soon as is reasonably possible, appoint a time and a place for the hearing of submissions by both sides on any motion brought pursuant to subsection 19(1), and shall, as soon as is reasonably possible, render a decision thereon.

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POST-HEARINGS

Disposition at Hearing

DISPOSITION

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

18. Either party to the hearing may, by motion, not later than 10 days before the date set for commencement of the hearing, bring any procedural or other matters to the Hearing Panel as are required to be determined prior to the hearing of the complaint.
- (1) Without limiting the generality of the foregoing, a motion may be made for any of the following purposes:
- (a) objecting to the jurisdiction of the Council to hear the complaint;
- (b) resolving any issues with respect to any reasonable apprehension of bias or institutional bias on the part of the Panel;
- (c) objecting to the sufficiency of disclosure by Presenting Counsel;
- (d) determining any point of law for the purposes of expediting the hearing; or
- (e) determining any claim of privilege in respect of the evidence to be presented at the hearing; or

- 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)

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – POST-HEARINGS

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

REPORT

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)

IDENTITY WITHHELD

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) (please see page B-11 above).

subs. 51.6(19)

JUDGE NOT TO BE IDENTIFIED

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 (please see page B-11 above) 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

REMOVAL

A provincially-appointed 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

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPENSATION

- 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 provincially-appointed 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 provincially-appointed judges who have not yet attained retirement age and to provincially-appointed judges whose continuation in office after attaining retirement age has been approved by the Chief Justice of the Ontario Court of Justice. This section also applies to a Chief, or Associate Chief Justice who has been continued in office by the Judicial Council, either as a Chief, or Associate Chief Justice of the Ontario Court of Justice, or who has been continued in office as a 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 provincially-appointed 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)

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

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.

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 confidentiality, 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)

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

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 page B-11 above.

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)

JUDGE NOT TO BE IDENTIFIED

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 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.

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APPENDIX - B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ACCOMMODATION OF DISABILITIES

ACCOMMODATION OF DISABILITIES

APPLICATION FOR ORDER

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 that such needs be accommodated.

subs. 45.(1)

DUTY OF JUDICIAL COUNCIL

If the Judicial Council finds that a judge is unable, because of a disability, to perform the essential duties of 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.

subs. 45.(2)

UNDUE HARDSHIP

Subsection 45.(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.

subs. 45.(3)

GUIDELINES AND RULES OF PROCEDURE

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

subs. 45.4(4)

OPPORTUNITY TO PARTICIPATE

The Judicial Council will not make an order to accommodate against a person under subsection 45.(2) without ensuring that the person has had an opportunity to participate and make submissions.

subs. 45.(5)

ORDER BINDS THE CROWN

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

subs. 45.(6)

CHAIR FOR MEETING

The Chief Justice of Ontario, or designate from the Court of Appeal, shall chair meetings held for the purposes of ordering accommodation.

subs. 49.(8)

CHAIR ENTITLED TO VOTE

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

subs. 49.(10)

QUORUM FOR MEETING

Eight members of the Judicial Council, including the chair, constitute a quorum for the purposes of dealing with an application for accommodation of disabilities. At least half the members present must be judges and at least four members present must be persons who are not judges.

subs. 49.(13)

EXPERT ASSISTANCE

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

subs. 49.(21)

CONFIDENTIAL RECORDS

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. An order of non-disclosure may be made whether the information or documents are in the possession of the Judicial Council, the Attorney General or any other person. An order of non-disclosure cannot be made with respect to information and/or documents that the *Courts of Justice Act*

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ACCOMMODATION OF DISABILITIES

requires the Judicial Council to disclose or that have not been treated as confidential and were not prepared exclusively for the purposes of the mediation or Council meeting or hearing.

subs. 49(24)(25) & (26)

The Judicial Council shall establish and make public rules governing its own procedures, including guidelines and rules of procedure for the purpose of the accommodation of disabilities.

subs. 51.1(1)

ACCOMMODATION ORDER AFTER A HEARING

If, after a hearing into a complaint has been held, the Judicial Council finds that the judge who was the subject of the complaint 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.

subs. 51.6(13)

RULES OF PROCEDURE AND GUIDELINES

The following are the rules of procedure and guidelines established by the Ontario Judicial Council for the purpose of the accommodation of disabilities.

APPLICATION IN WRITING

An application for accommodation of disability by a judge shall be in writing and shall include the following information: -

- a description of the disability to be accommodated;
- a description of the essential duties of the judge's office for which accommodation is required;
- a description of the item and/or service required to accommodate the judge's disability;
- a signed letter from a qualified doctor or other medical specialist (e.g., chiropractor, physiotherapist, etc.) supporting the judge's application for accommodation;
- the application and supporting materials are inadmissible, without the consent of the applicant,

cant, in any investigation or hearing, other than the hearing to consider the question of accommodation;

- disclosure of the application and supporting materials by the Ontario Judicial Council to the public is prohibited without the consent of the applicant.

ACCOMMODATION SUBCOMMITTEE

On receipt of an application, the Council will convene a subcommittee of the Council composed of one judge and one lay member of the Council (an "accommodation subcommittee"). At its earliest convenience the accommodation subcommittee shall meet with the applicant and with any person against whom the accommodation subcommittee believes an order to accommodate may be required, and retain such experts and advice as may be required, to formulate and report an opinion to the Council in relation to the following matters:

- the period of time that the item and/or service would be required to accommodate the judge's disability;
- the approximate cost of the item and/or service required to accommodate the judge's disability for the length of time the item and/or service is estimated to be required (i.e., daily, weekly, monthly, yearly).

REPORT OF ACCOMMODATION SUBCOMMITTEE

The report to the Council shall consist of all of the evidence considered by the accommodation subcommittee in formulating its view as to the costs of accommodating the applicant.

If, after meeting with the applicant, the accommodation subcommittee is of the view that the applicant does not suffer from a disability, it shall communicate this fact to the Council in its report.

INITIAL CONSIDERATION OF APPLICATION AND REPORT

The Judicial Council shall meet, at its earliest convenience, to consider the application and the report of the accommodation subcommittee in order to determine whether or not the application for accommodation gives

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ACCOMMODATION OF DISABILITIES

rise to an obligation under the statute to accommodate the applicant short of undue hardship.

THRESHOLD TEST FOR QUALIFICATION AS DISABILITY

The Judicial Council will be guided generally by Human Rights jurisprudence relating to the definition of “disability” for the purposes of determining whether an order to accommodate is warranted.

The Judicial Council will consider a condition to amount to a disability where it may interfere with the Judge’s ability to perform the essential functions of a judge’s office.

NOTIFICATION OF MINISTER

If the Judicial Council is satisfied that the condition meets the threshold test for qualification as a disability and if the Judicial Council is considering making an order to accommodate same, then the Judicial Council shall provide a copy of the application for accommodation of disability together with the report of the accommodation subcommittee to the Attorney General, at its earliest convenience. The report of the accommodation subcommittee shall include all of the evidence considered by the accommodation subcommittee in formulating its view as to the costs of accommodating the applicant.

SUBMISSIONS ON UNDUE HARDSHIP

The Judicial Council will invite the Minister to make submissions, in writing, as to whether or not any order that the Council is considering making to accommodate a judge’s disability will cause “undue hardship” to the Ministry of the Attorney General or any other person affected by the said order to accommodate. The Judicial Council will view the Minister, or any other person against whom an order to accommodate may be made, as having the onus of showing that accommodating the applicant will cause undue hardship.

In considering whether accommodation of the applicant will cause undue hardship, the Council will generally be guided by Human Rights jurisprudence relating to

the question whether undue hardship will be caused, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

TIME FRAME FOR RESPONSE

The Judicial Council shall request that the Minister respond to its notice of the judge’s application for accommodation within thirty (30) calendar days of the date of receipt of notification from the Judicial Council. The Minister will, within that time frame, advise the Judicial Council whether or not the Minister intends to make any response to the application for accommodation. If the Minister does intend to respond, such response shall be made within sixty (60) days of the Minister’s acknowledgement of the notice and advice that the Minister intends to respond. The Judicial Council will stipulate in its notice to the Minister that an order to accommodate will be made in accordance with the judge’s application and the Judicial Council’s initial determination in the absence of any submission or acknowledgement from the Minister.

MEETING TO DETERMINE ORDER TO ACCOMMODATE

After receipt of the Minister’s submissions with respect to “undue hardship” or the expiration of the time period specified in its notice to the Minister, whichever comes first, the Ontario Judicial Council shall meet, at its earliest convenience, to determine the order it shall make to accommodate the judge’s disability. The Judicial Council will consider the judge’s application and supporting material and submissions made, if any, regarding the question of “undue hardship”, before making its determination.

COPY OF ORDER

A copy of the order made by the Judicial Council to accommodate a judge’s disability shall be provided to the judge and to any other person affected by the said order within ten (10) calendar days of the date of the decision being made.

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – SPECIAL CONSIDERATIONS

SPECIAL CONSIDERATIONS

FRENCH-SPEAKING COMPLAINANTS/JUDGES

Complaints against provincially-appointed 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)

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 JUSTICE ET AL

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

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

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

subs. 50(1)(c)

If the Chief Justice of the Ontario Court of Justice is suspended pending final disposition of the complaint against him or her, any complaints that would other-

B

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – SPECIAL CONSIDERATIONS

wise be referred to the Chief Justice of the Ontario Court of Justice shall be referred to the Associate Chief Justice appointed to the Judicial Council until the complaint against the Chief Justice of the Ontario Court of Justice is finally disposed of.

subs. 50(2)(a)

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

subs. 50(2)(b)

If either the Associate Chief Justice or Regional Senior Justice appointed to the Judicial Council is the subject of a complaint, the Chief Justice of the Ontario Court of Justice shall appoint another judge of the Ontario Court of Justice to be a member of the Judicial Council instead of the Associate Chief Justice or Regional Senior Justice, as the case may be, until the complaint against the Associate Chief Justice, or Regional Senior Justice 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 provincially-appointed 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 provincially-appointed judge who was assigned to the Provincial Court (Civil Division) immediately before September 1, 1990, the following special provisions apply:

1. One of the members of the Judicial Council who is a provincially-appointed judge shall be

replaced by a provincially-appointed judge who was assigned to the Provincial Court (Civil Division) immediately before September 1, 1990. The Chief Justice of the Ontario Court of Justice shall determine which judge is to be replaced and the Chief Justice of the Superior Court of Justice shall designate the judge who is to replace that judge.

2. Complaints shall be referred to the Chief Justice of the Superior Court of Justice, rather than to the Chief Justice of the Ontario Court of Justice.
3. Complaint subcommittee recommendations with respect to interim suspension shall be made to the appropriate Regional Senior Justice of the Superior Court of Justice, 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 provincially-appointed 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 provincially-appointed judge shall be replaced by a master. The Chief Justice of the Ontario Court of Justice shall determine which judge is to be replaced and the Chief Justice of the Superior Court of Justice shall designate the judge who is to replace that judge.
2. Complaints shall be referred to the Chief Justice of the Superior Court of Justice, rather than to the Chief Justice of the Ontario Court of Justice.
3. Complaint subcommittee recommendations with respect to interim suspension shall be made to the appropriate Regional Senior Justice of the Superior Court of Justice, to whom subsections 51.4(10) and (11) apply, with necessary modifications.

APPENDIX - B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ADMINISTRATIVE MATTERS

ADMINISTRATIVE MATTERS

INTAKE/OPENING COMPLAINT FILES:

- Where a complaint is made orally by a person intending to make a complaint to the Judicial Council or a member acting in their capacity as a member of the Judicial Council thereof, the person making the allegation shall be encouraged to make the complaint in writing. If such person does not within 10 days of making the allegation tender a written complaint to the Council, the Registrar shall, on consultation with legal counsel and the Judicial Council member to whom the allegation was made, set out the particulars of the complaint in writing. Such written summary of the allegation shall be forwarded by registered mail to the person making the allegation, if he or she can be located, along with a statement that the allegation as summarized will become the complaint on the basis of which the conduct of the provincially-appointed judge in question will be evaluated. On the tenth day after the mailing of such summary, and in the absence of any response from the person making the allegation, the written summary shall be deemed to be a complaint alleging misconduct against the provincially-appointed judge in question.
- 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 tracking form, a sequential file number is assigned, a letter of acknowledgement 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.

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, audiotapes, 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

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ADMINISTRATIVE MATTERS

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 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 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

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ADMINISTRATIVE MATTERS

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.

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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 CONTINUING EDUCATION PLAN

A P P E N D I X - C

ONTARIO COURT OF JUSTICE CONTINUING EDUCATION PLAN

The Continuing Education Plan for the Ontario Court of Justice 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*, skills training and social context. While many of the programs attended by the judges of the Ontario Court of Justice 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 Justice as Chair (ex officio), four judges nominated by the Chief Justice and four judges nominated by the Ontario Conference of Judges. The Ontario Court of Justice'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 Justice. 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;
7. To facilitate the desire for life-long learning and reflective practices;

APPENDIX - C

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

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 Ontario Court of Justice. 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 is divided into two parts;

1. First Year Education,
2. Continuing Education.

1. FIRST YEAR EDUCATION

Each judge of the Ontario Court of Justice 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*
- *Family Law Manual*
- *Rules of the Ontario Court of Justice in Criminal Proceedings*
- *Writing Reasons*
- *Ethical Principles for Judges*
(Canadian Judicial Council)

The Ontario Court of Justice 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 presented in Toronto as required.

Upon appointment, each new judge is assigned by the Chief Justice to one of the seven regions of the Province. The Regional Senior Justice 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 Justice 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 Carling Lake 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 Ontario Court of Justice (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 been developed within the Ontario Court of Justice by the Ontario Conference of Judges. 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 Ontario Court of Justice, including legal texts, case reporting services, the Ontario Court of Justice Research Centre (discussed below), computer courses and courses in Quicklaw (a computer law database and research facility).

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

2. CONTINUING EDUCATION

Continuing education programs presented to judges of the Ontario Court of Justice are of two types;

- 1) Programs presented by the Ontario Conference of Judges usually of particular interest to judges in the fields of criminal or family law respectively;
- 2) Programs presented by the Education Secretariat.

I. PROGRAMS PRESENTED BY THE ONTARIO CONFERENCE OF JUDGES

The programs presented by the Ontario Conference of Judges constitute the **Core Program** of the Ontario Court of Justice education programming. The Ontario Conference of Judges has two Education Committees (criminal and family) 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.

The Ontario Conference of Judges presents three education programs in the area of family law, one each in January (the Judicial Development Institute), May (in conjunction with the Annual meeting of the Court) and September. Generally speaking, the principal topics are a) Child Welfare, and b) 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.

There are also two major criminal law programs presented 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 Court. All judges presiding in criminal law courts are entitled and encouraged to attend these seminars.

In 1998, the Ontario Conference of Judges assumed responsibility for the University Education Program which was traditionally a program either of the Chief Justice'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 criminal law education topics in a more academic context.

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 a text in judgment writing for all judges of the Court. That text has now been prepared and distributed to all judges of the Court.
2. **PRE-RETIREMENT SEMINARS:** Intended to assist judges in their retirement planning (together 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), usually on an annual basis.
3. **JUDICIAL COMMUNICATION PROGRAM.** In March, 1998, the Ontario Court of Justice 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

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

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 Ontario Court of Justice judges, was intended to serve as a pilot project for future seminars on judicial communication, which will be presented as funding and scheduling permits. The Secretariat is now working on its own judicial communication program for presentation to all judges of the Court.

4. SOCIAL CONTEXT PROGRAMS: The Ontario Court of Justice 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 Ontario Court of Justice 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 Ontario Court of Justice 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.

As part of the Court's commitment to social context education, the Ontario Conference of Judges has 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 who are proficient in French may attend courses presented by the Office of the Commissioner for 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 Ontario Court of Justice. 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 are encouraged to pursue educational interests by attending education programs presented by other organizations and associations including:
 - Canadian Association of Provincial Court Judges
 - National Judicial Institute
 - Federation of Law Societies: Criminal (Substantive Law/Procedure/Evidence) & Family Law
 - International Association of Juvenile and Family Court Magistrates
 - Canadian Bar Association
 - Criminal Lawyers' Association
 - Advocate's Society Conference
 - Ontario Association for Family Mediation/Mediation Canada
 - Canadian Institute for the Administration of Justice
 - International Association of Women Judges (Canadian Chapter)
 - Ontario Family Court Clinic Conference
 - Canadian Institute for Advanced Legal Studies

The Education Secretariat has established a Conference Attendance Committee to consider applications by individual judges for funding to attend conferences/seminars/programs other than those presented by the Ontario Court of Justice. Funding, when provided, is usually less than 100% since it is

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

designed to provide supplementary assistance to judges who are prepared to commit some of their own resources to attend. The process involves an application by a judge to attend such programs, a peer selection committee, and a program appraisal. This program depends upon available funding as determined by the Education Secretariat on an annual basis.

3. COMPUTER COURSES: The Ontario Court of Justice, through a tendered contract with a training vendor previously organized a series of computer training courses for judges of the Ontario Court of Justice. These courses were organized according to skill level and geographic location and presented at different times throughout the Province. Judges typically attended at the offices of the training vendor for courses in computer operation, word-processing and data storage and retrieval. Other courses were and are presented in the use of *Quicklaw* (the computer law database and research facility).

As the Desktop Computer Implementation (D.C.I.) Project and the Integrated Justice Project were implemented across the justice system in Ontario, starting in the summer of 1998, computer training for judges was significantly increased by the Project in order to ensure appropriate levels of computer literacy for all members of the Court.

4. NATIONAL JUDICIAL INSTITUTE (N.J.I.): The Ontario Court of Justice 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 judges have attended and will continue to attend N.J.I. programs in the future, depending on location and subject matter. The Chief Justice is a member of the Board of the N.J.I.

IV. OTHER EDUCATIONAL RESOURCES

1. JUDICIAL RESEARCH CENTRE: Judges of the Ontario Court of Justice have access to the Ontario Court of Justice 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 Mr. Justice Ian MacDonnell also provides all interested judges of the Ontario Court of Justice with his summary and comments on current criminal law 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 Ontario Court of Justice has developed a self-funded leave policy that allows judges to defer income over a period of years in order to take a period of self-funded leave of up to twelve months. Prior approval is required for such leave and a peer review committee reviews the applications in selecting those judges who will be authorized to take such leave.
4. REGIONAL MEETINGS: Most of the current seven regions of the Court have annual regional meetings. While these meetings principally 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.



APPENDIX-D

COURTS OF JUSTICE ACT
CHAPTER C.43
ONTARIO JUDICIAL COUNCIL

APPENDIX - D

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. 1994, c. 12, s. 16.

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 Justice of the Ontario Court of Justice, or another judge of that division designated by the Chief Justice, and the Associate Chief Justice of the Ontario Court of Justice;
 - (c) a regional senior judge of the Ontario Court of Justice, appointed by the Lieutenant Governor in Council on the Attorney General's recommendation;
 - (d) two judges of the Ontario Court of Justice, appointed by the Chief Justice;
 - (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. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (15, 18, 20).

TEMPORARY MEMBERS

(3) The Chief Justice of the Ontario Court of Justice 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. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (15, 18, 20).

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). 1994, c. 12, s. 16.

Same

(9) The Chief Justice of the Ontario Court of Justice, or another judge of that division designated by the Chief Justice, shall chair all other meetings and hearings of the Judicial Council. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (15, 18, 20).

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. 1994, c. 12, s. 16.

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 Justice, 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. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

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.

SECTION 50

COMPLAINT AGAINST CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

50. (1) If the Chief Justice of the Ontario Court of Justice is the subject of a complaint,
- (a) the Chief Justice of Ontario shall appoint another judge of the Ontario Court of Justice to be a member of the Judicial Council instead of the Chief Justice of the Ontario Court of Justice, until the complaint is finally disposed of;
 - (b) the Associate Chief Justice of the Ontario Court of Justice shall chair meetings and hearings of the Council instead of the Chief Justice of the Ontario Court of Justice, and make appointments under subsection 49 (3) instead of the Chief Justice, until the complaint is finally disposed of; and
 - (c) any reference of the complaint that would otherwise be made to the Chief Justice of the Ontario Court of Justice 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 Superior Court of Justice instead of to the Chief Justice of the Ontario Court of Justice.

SUSPENSION OF CHIEF JUSTICE

- (2) If the Chief Justice of the Ontario Court of Justice is suspended under subsection 51.4 (12),
- (a) complaints that would otherwise be referred to the Chief Justice of the Ontario Court of Justice 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 Justice of the Ontario Court of Justice, until the complaint is finally disposed of; and
 - (b) annual approvals that would otherwise be granted or refused by the Chief Justice of the Ontario Court of Justice shall be granted or refused by the Associate Chief Justice of the Ontario Court of Justice, until the complaint is finally disposed of.

COMPLAINT AGAINST ASSOCIATE CHIEF JUSTICE OR REGIONAL SENIOR JUDGE

(3) If the Associate Chief Justice of the Ontario Court of Justice or the regional senior judge appointed under clause 49 (2) (c) is the subject of a complaint, the Chief Justice of the Ontario Court of Justice shall appoint another judge of the Ontario Court of Justice to be a member of the Judicial Council instead of the Associate Chief Justice or regional senior judge, as the case may be, until the complaint is finally disposed of. 1994, c. 25, s. 9 (6).

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.

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.

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.

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.

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 Justice and a person who is neither a judge nor a lawyer. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

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 Justice. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

EXCEPTION: COMPLAINTS AGAINST CERTAIN JUDGES

(12) If the complaint is against the Chief Justice of the Ontario Court of Justice, an associate chief justice of the Ontario Court of Justice 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 Superior Court of Justice, who may suspend or reassign the judge as the subcommittee recommends. 1996, c. 25, s. 9 (7).

SUBCOMMITTEE'S DECISION

- (13) When its investigation is complete, the subcommittee shall,
- dismiss the complaint;
 - refer the complaint to the Chief Justice;
 - refer the complaint to a mediator in accordance with section 51.5; or
 - refer the complaint to the Judicial Council, with or without recommending that it hold a hearing under section 51.6. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

Same

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

to the Judicial Council. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

CONDITIONS, REFERENCE TO CHIEF JUSTICE

(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 Justice. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

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 Justice or to a mediator. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

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. 1994, c. 12, s. 16.

Same

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

- hold a hearing under section 51.6;
- dismiss the complaint;
- refer the complaint to the Chief Justice, with or without imposing conditions as referred to in subsection (15); or
- refer the complaint to a mediator in accordance with section 51.5. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

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

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under subsections (13) and (15), the subcommittee shall follow the Judicial Council's guidelines and rules of procedure established under subsection 51.1 (1).

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.

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. 1994, c. 12, s. 16.

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 Justice, with or without imposing conditions as referred to in subsection 51.4 (15), or
 - (iii) hold a hearing under section 51.6. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

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. 1994, c. 12, s. 16.

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 Justice, with or without imposing conditions as referred to in subsection 51.4 (15); or

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- (c) hold a hearing under section 51.6. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

NON-APPLICATION OF SPPA

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

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.

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

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- 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.

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,
- (a) the effect of the disability on the judge's performance of the essential duties of the office was a factor in the complaint; and
 - (b) 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:

- 1. A complainant or witness at whose request an order was made under subsection (9).
- 2. 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.

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

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to the Attorney General to that effect, indicating the amount of compensation.

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.

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.

(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.

SECTION 51.9

STANDARDS OF CONDUCT

51.9 (1) The Chief Justice of the Ontario Court of Justice 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. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

DUTY OF CHIEF JUSTICE

(2) The Chief Justice 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. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

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GOALS

(3) The following are among the goals that the Chief Justice 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; 1996, c. 25, s. 9 (20).

SECTION 51.10

CONTINUING EDUCATION

51.10 (1) The Chief Justice of the Ontario Court of Justice 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. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (18, 20).

DUTY OF CHIEF JUSTICE

(2) The Chief Justice 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. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

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.

SECTION 51.11

PERFORMANCE EVALUATION

51.11 (1) The Chief Justice of the Ontario Court of Justice 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. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (18, 20).

DUTY OF CHIEF JUSTICE

(2) The Chief Justice shall make the existence of the program of performance evaluation public when it has been approved by the Judicial Council. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

GOALS

(3) The following are among the goals that the Chief Justice 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. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

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 SUBS. (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.

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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 Justice of the Ontario Court of Justice shall consult with judges of that court and with such other persons as he or she considers appropriate. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (15, 18, 20).

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 Superior Court of Justice. R. S. O. 1990, c. C.43, s. 87 (1); 1996, c. 25, s. 9 (17).

JURISDICTION

(2) Every master has the jurisdiction conferred by the rules of court in proceedings in the Superior Court of Justice. R.S.O. 1990, c. C.43, s. 87(2); 1996, c. 25, s. 9 (17).

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. 1994, c. 12, s. 34.

EXCEPTION

(4) The power of the Chief Justice of the Ontario Court of Justice referred to in subsections 44(1) and (2) shall be exercised by the Chief Justice of the Superior Court of Justice with respect to masters. 1994, c. 12, s. 34; 1996, c. 25, s. 9 (14, 18, 20).

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 Superior Court of Justice, who shall make the decision according to criteria developed by himself or herself and approved by the Judicial Council. 1994, c. 12, s. 34; 1996, c. 25, s. 9 (14).

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 Justice of the Ontario Court of Justice shall determine which judge is to be replaced and the Chief Justice of the Superior Court of Justice shall designate the master who is to replace the judge.
2. Complaints shall be referred to the Chief Justice of the Superior Court of Justice rather than to the Chief Justice of the Ontario Court of Justice.
3. Subcommittee recommendations with respect to interim suspension shall be made to the appropriate regional senior judge of the Superior Court of Justice, to whom subsections 51.4 (10) and (11) apply with necessary modifications. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (14, 17, 18, 20).

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 Superior Court of Justice consents. 1994, c. 12, s. 34; 1996, c. 25, s. 9 (14).

COMPENSATION

(8) Masters shall receive the same salaries, pension benefits, other benefits and allowances as provincial judges receive under the framework agreement set out in the Schedule to this Act. 1994, c. 12, s. 35.

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. 1994, c. 12, s. 35.

FULL AND PART-TIME SERVICE

(2) The power of the Chief Justice of the Ontario Court of Justice referred to in subsections 44(1) and (2) shall be exercised by the Chief Justice of the Superior Court of Justice with respect to provincial judges to whom this section applies. 1994, c. 12, s. 35; 1996, c. 25, s. 9 (14, 18, 20).

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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 Superior Court of Justice, who shall make the decision according to criteria developed by himself or herself and approved by the Judicial Council. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (14).

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 Justice of the Ontario Court of Justice shall determine which judge is to be replaced and the Chief Justice of the Superior Court of Justice shall designate the judge who is to replace that judge.
2. Complaints shall be referred to the Chief Justice of the Superior Court of Justice rather than to the Chief Justice of the Ontario Court of Justice.
3. Subcommittee recommendations with respect to interim suspension shall be made to the appropriate regional senior judge of the Superior Court of Justice, to whom subsections 51.4 (10) and (11) apply with necessary modifications. 1994, c. 12, s. 35; 1996, c. 25, s. 9 (14, 17, 18, 20).

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 provincial judges to whom this section applies only if the Chief Justice of the Superior Court of Justice consents. 1994, c. 12, s. 35; 1996, c. 25, s. 9 (14).

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.

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. 1994, c. 12, s. 16.

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CONTINUATION OF JUDGES IN OFFICE

(3) A judge who has attained retirement age may, subject to the annual approval of the Chief Justice of the Ontario Court of Justice, continue in office as a full-time or part-time judge until he or she attains the age of seventy-five years. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (18, 20).

SAME, REGIONAL SENIOR JUDGES

(4) A regional senior judge of the Ontario Court of Justice who is in office at the time of attaining retirement age may, subject to the annual approval of the Chief Justice, 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. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (18, 20).

SAME, CHIEF JUSTICE AND ASSOCIATE CHIEF JUSTICES

(5) A Chief Justice or associate chief justice of the Ontario Court of Justice 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. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (18, 20).

Same

(6) If the Judicial Council does not approve a Chief Justice or associate chief justice 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). 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

CRITERIA

(7) Decisions under subsections (3), (4), (5) and (6) shall be made in accordance with criteria developed by the Chief Justice and approved by the Judicial Council. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

TRANSITION

(8) If the date of retirement under subsections (1) to (5) falls earlier in the calendar year than the day section 16 of the *Courts of Justice Statute Law Amendment Act*, 1994 comes into force and the annual approval is outstanding on that day, the judge's continuation in office shall be dealt with in accordance with section 44 of this Act as it read immediately before that day. 1994, c. 12, s. 16.

