

OJC



# ANNUAL REPORT

2000 – 2001

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**ONTARIO JUDICIAL COUNCIL**

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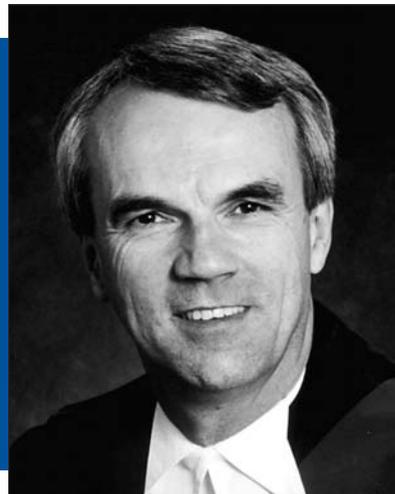


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*The Honourable R. Roy McMurtry*

CHIEF JUSTICE OF ONTARIO

Co-Chair, Ontario Judicial Council



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*The Honourable Brian W. Lennox*

CHIEF JUSTICE  
ONTARIO COURT OF JUSTICE

Co-Chair, Ontario Judicial Council



ONTARIO JUDICIAL COUNCIL

March 31, 2001

The Honourable David Young  
Attorney General for the Province of Ontario  
720 Bay Street, 11th Floor  
Toronto, Ontario  
M5G 2K1

Dear Mr. Attorney:

It is our pleasure to submit to you the Annual Report of the Ontario Judicial Council concerning its sixth 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, 2000 to March 31, 2001.

Respectfully submitted,

Handwritten signature of R. Roy McMurtry in blue ink.

R. Roy McMurtry  
*Chief Justice of Ontario*

Handwritten signature of Brian W. Lennox in blue ink.

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





## INTRODUCTION

The period of time covered by this Annual Report is from April 1, 2000, to March 31, 2001.

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, 2000 to March 31, 2001) 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 OF JUSTICE

The Honourable Madam Justice Lynn King.....(Toronto)

The Honourable Mr. Justice Alexander M. Graham (Woodstock)

### Lawyer Members:

#### TREASURER OF THE LAW SOCIETY OF UPPER CANADA

Robert P. Armstrong, Q.C.....(Toronto)

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

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

## Community Members:

**DOLORES J. BLONDE** .....(Windsor)  
Director of Research, Faculty of Law University of Windsor  
(to February 28, 2001)

**PAUL HAMMOND** .....(Bracebridge)  
President and CEO, Muskoka Transport Ltd.  
(from June 30, 2000)

**WILLIAM JAMES** .....(Toronto)  
Chairman, Inmet Mining Corporation  
(from March 21, 2001)

**GORDON PETERS** .....(Toronto)  
Regional Chief, Assembly of First Nations (Ontario Region)  
(resigned July 11, 2000)

**ISHBEL SOLVASON-WIEBE** .....(Ottawa)  
Executive Director, The Social Housing Registry  
of Ottawa-Carleton (to February 28, 2001)

**HENRY GRANT WETELAINEN** .....(Ottawa)  
1st Vice President, Ontario Metis Aboriginal Association  
(from March 1, 2001)

**BETTY WHETHAM** .....(Parry Sound)  
Retired, (former Court Services Manager)  
(to July 3, 2000)

## Members – Temporary

Sections 87 and 87.1 of the *Courts of Justice Act* give 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

- Master Basil T. Clark, Q.C.
- Master R.B. Linton, Q.C.
- Master R.B. Peterson

## JUDGES

- The Honourable Mr. Justice M.D. Godfrey
- The Honourable Madam 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 Mr. Justice Bernard M. Kelly

## 3. Administrative Information

Separate office space adjacent to the Office of the Chief Justice 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 Office of the Chief Justice 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 sixth 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  
**ROBERT DUNGEY** – A/Assistant Registrar  
**JANICE CHEONG** – Secretary



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#### **4. 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 2000-2001 can be found at Appendix “C”.

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#### **5. 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.

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#### **6. 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.

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## 7. Summary of Complaints

The Ontario Judicial Council received 55 complaints in its sixth year of operation, as well as carrying forward 57 complaint files from previous years. Of these 112 complaints, 63 were closed before March 31, 2001, leaving 49 complaints to be carried over into the seventh year of operation.

An investigation was conducted in all cases. The complaint subcommittee reviewed the complainant's letter and, where necessary, reviewed the transcript and/or the audiotape of the proceedings that took place in court in order to make its determination about the complaint. In some instances, further investigation was conducted where it was warranted. In all cases, the four members of each review panel agreed with the recommended disposition of the complaint by the complaint subcommittee after the review panel examined the complaint and the investigation which had been conducted.

Fifty-seven of the 63 complaint files closed were dismissed by the Judicial Council. One complaint was referred to the Chief Justice of the Ontario Court of Justice. Two complaint files were referred to a hearing. Three complaints were dismissed as abandoned by the complainants.

Approximately two-thirds of the 57 complaint files dismissed by the Ontario Judicial Council during the period of time covered by this report (38 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 15 of the 38 complaint files that fell into this category. Twenty-two of the 38 complaint files combined an unfounded allegation (such as 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. One complaint file was found to be outside the jurisdiction of the Judicial Council because the conduct complained of preceded the judge’s appointment to the bench.

The remaining 19 complaints disposed of by the Ontario Judicial Council during the period of time covered by this report were determined to be unfounded after investigation.

These 19 complaint files involved allegations that a judge had improperly conducted a case or had engaged in improper or illegal activity (e.g., 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.

## 8. Case Summaries

In all cases that were closed during the year, notice of the Judicial Council’s decision, with the reason(s) therefore, was given to the complainant and to the subject judge, in accordance with the judge’s instructions on notice (please see page B-26 of the *O.J.C. Procedures Document*, Appendix “B”).

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



<b>FISCAL YEAR:</b>	<b>95/96</b>	<b>96/97</b>	<b>97/98</b>	<b>98/99</b>	<b>99/00</b>	<b>00/01</b>
<b>Opened During Year</b>	54	71	66	77	59	55
<b>Continued from Previous Year</b>	n/a	21	41	51	64	57
<b>Total Files Open During Year</b>	54	92	107	128	123	112
<b>Closed During Year</b>	33	51	56	64	66	63
<b>Remaining at Year end</b>	21	41	51	64	57	49

*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. 06-055/01 was the fifty-fifth file opened in the sixth year of operation and was opened in calendar year 2001).*



## CASE SUMMARIES

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### **CASE NO. 03-058/98 & 06-007/00**

The complainant alleged that the judge used his judicial letterhead and his judicial position in an attempt to influence another judge in a decision to be made in a lawsuit arising out of a bankruptcy in which the judge complained against had a personal interest. A further complaint was received from the same complainant against the same judge. In the second complaint, the complainant alleged that the judge continued to use his judicial letterhead and to refer to himself in his judicial capacity on matters of personal business. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence in the hearing to which the complainant had referred and asked for and reviewed a response from the judge complained against. The complaint subcommittee also retained a private investigator to interview witnesses. The complaint subcommittee referred the complaint to the members of the review panel who, after reviewing the material gathered by the complaint subcommittee, decided that the matter should go to a hearing and that a Notice of Hearing should be prepared. Pursuant to s. 51.4(18) and 51.6 of the Courts of Justice Act, a hearing panel proceeded with a hearing into the complaints made against the judge.

After hearing submissions by counsel for both the OJC and the subject judge and considering all of the material filed with it, the Hearing Panel was of the view that “the evidence could not support a finding of misconduct, however broadly misconduct may be defined for purposes of this hearing.” The hearing panel noted that “there was nothing sinister or untoward about this [bankruptcy file enquiry] and in the end the

enquiry was inconsequential”. The hearing panel further noted that the use of letterhead for non-judicial purposes, particularly with regards to the two post warning letters, did constitute an error in judgment, however “not an error in judgment which rises to the level of misconduct”. The hearing panel recommended that the complaint be dismissed with an accompanying recommendation that the judge’s legal costs, if any, incurred as a result of the hearing be paid, in full, to the extent allowed by the Courts of Justice Act.

### **CASE NO. 03-063/98**

The complainant was in court on an application by the Crown for an order prohibiting the complainant from having the possession, custody or control of any firearms, explosives, restricted and prohibited weapons which had previously been seized from his residence. Accompanying this application was an application for an order that the weapons seized be forfeit to the Crown. The complainant was not represented by counsel. The complainant alleged that the judge who presided on the application discriminated against him, ignored evidence which tended to show that he handled his guns safely and alleged that the judge allowed the police to drag out the case. The complainant further alleged that the judge should have declared a conflict of interest as the complainant had appeared before the judge on one previous occasion. The complainant also alleged that the judge did not consider the fact there were no charges laid against him and the application should have been dismissed. The complaint subcommittee ordered a copy of the transcript of the evidence. After carefully reviewing the transcript, the complaint subcommittee reported that it was their view that the judge was



## CASE SUMMARIES

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polite, patient and courteous towards the complainant throughout the hearing. The complaint subcommittee noted that the judge carefully explained to the complainant that the issue to be determined was whether or not he posed a threat to himself or others. The complaint subcommittee further noted that nowhere was there the slightest suggestion that the judge discriminated against the complainant in any way. The complaint subcommittee reported that there was not a conflict of interest because the complainant had appeared before the judge on a previous occasion and that there was no evidence that the judge permitted the case to be dragged out. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct on the part of the judge. As to the allegations that the judge ignored evidence or disregarded evidence, the complaint subcommittee noted that if errors in law were committed by the judge, and the Judicial Council makes no such finding, such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the OJC. The complaint subcommittee noted that the case had been appealed and the complainant's appeal had been dismissed. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 04-014/98**

The complainant appeared in court charged with common assault, breach of undertaking and uttering a threat. The complainant alleged that the judge's "analysis of the testimony given by the witnesses was often ignored or completely changed", that the judge's analysis of testimony

was contrary to the evidence and that the judge used testimony to place the complainant at the victim's apartment. The complainant further alleged that the judge "quoted evidence that was not given in testimony" and that, during court proceedings, the judge asked the complainant's lawyer for a ride to a community 90 kilometres from the court location. The complainant stated that the conversation between the judge and his lawyer could not be found in the transcript thereby suggesting that the trial transcript had been altered. The complainant further noted that "the judge allowed himself to become prejudiced [sic] and violated" the complainant's right to due process in "handling of this trial". The complaint subcommittee ordered and reviewed a copy of the audiotape, transcript of the proceedings and Reasons for Judgment. The complaint subcommittee recommended that the complaint be dismissed because if the complainant is dissatisfied with the judge's "analysis of the testimony" 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 complaint subcommittee noted that the omission from the transcript of the judge's request for a ride from the complainant's lawyer amounted to "courtroom conversation" while the judge and lawyer were looking for a date for continuation and was not part of the trial per se and, therefore, had not been transcribed by the court reporter. The complaint subcommittee was of the view that the omission of the courtroom conversation from the transcript could hardly be said to be an alteration of the transcript amounting to judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.



## CASE SUMMARIES

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### **CASE NO. 04-016/98**

The complaint subcommittee advised the review panel of the following historical background to the complaint:

The complainant was formerly a civil servant employed in various court-related functions. In 1987, the complainant resigned as a civil servant and accepted an appointment as a fee-for-service Justice of the Peace. The judge complained against was responsible for the supervision and direction of the Justices of the Peace across the Province and, as Co-ordinator of the Justices of the Peace, was responsible for implementing the “conversion” of the Justice of the Peace system from “fee-for-service” to a fully salaried bench. The complaint subcommittee advised that this conversion process commenced in July/August 1994 and was completed province-wide in December, 1994. As part of an overall “conversion policy”, the Justice of the Peace bench, excluding the Native Justices of the Peace, was reduced from 535, more or less, to 330. Those Justices of the Peace who were salaried before “conversion” (102) were converted automatically in accordance with the provisions of the legislation. Of the remainder, only those Justices of the Peace who were “active” were considered for re-appointment to a salaried position by way of conversion.

The complaint subcommittee further advised that in 1993, the complainant had asked to be taken off the “duty roster” in order to accept a two-year term appointment with the Federal Government. The complainant had made this request, by letter, to his Regional Senior Justice of the Peace (a judicial officer who is responsible for administrative matters affecting the justices of the peace in each of the judicial regions across the

Province). The complainant was duly removed from the duty roster and was, as a result, not eligible to be considered for conversion to a salaried Justice of the Peace position under the terms of the legislation when the conversion process took place in 1994. At the end of his term of employment with the Federal Government in 1995, the complainant was not re-appointed or “converted” from a fee-for-service Justice of the Peace to a salaried Justice of the Peace and was not assigned to any duties.

The complainant alleged that he was not “converted” to a salaried justice of the peace because the judge who was Co-ordinator of the Justices of the Peace denied the complainant’s “rights to perform the functions of my [the complainant’s] office” and engaged in “discriminatory practices” against the complainant on grounds of race, national ethnic origin and colour. The complainant alleged that he was intimidated and threatened by the judge and “locked in a storage room for almost a month or more”. The complainant claimed that the judge placed him “in an unsafe environment without security to perform judicial duties” and failed to provide the complainant with a cellular telephone.

The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee also interviewed a witness, the assistant to the judge complained against when he was Co-ordinator of the Justices of the Peace. The complaint subcommittee requested further particulars about his complaint from the complainant on two occasions and twice the letters were returned unclaimed. Each of the letters to the complainant had been sent by ordinary and registered mail as well as by courier.



## CASE SUMMARIES

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The complaint subcommittee was of the view that the complaint be dismissed as being without any factual basis in light of the unclaimed letters requesting further particulars from the complainant, the lack of any further particulars and the judge's denial of the allegations contained in his response. The complaint subcommittee also recommended that the judge's legal costs, if any, incurred as a result of preparing a response be paid, in full, to the extent allowed by the Courts of Justice Act. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed, with a recommendation to the Attorney General that the judge's costs be paid in accordance with the Act.

### **CASE NO. 04-020/98**

The complainant, who was not represented by counsel, appeared in court charged with assault and two counts of breach of undertaking. The complainant alleged that the judge altered and falsified court transcripts "prior to their submission to the Appeal Court process." The complainant stated that he had been informed by a Court Reporter that the transcripts were to be submitted to the judge for "correction" before being forwarded to the complainant's legal counsel for the appeal. The complainant further stated that upon receiving a copy of the transcript from his lawyer he "immediately realized" that testimony of one of the witnesses "had been falsified." The complainant enclosed a page of the transcript with his letter of complaint to the OJC and marked the section of testimony which he alleged had been falsified. The complainant noted that "the transcripts seem to have been edited or altered in vague or subtle ways accord-

ing to my subjective recollections". The complaint subcommittee ordered and reviewed a copy of the audiotapes together with a transcript of the evidence. The complaint subcommittee recommended that the complaint be dismissed as the complaint subcommittee's comparison of the audiotapes with the transcript showed accuracy and integrity throughout. The complaint subcommittee noted that what differences did exist (a single word mistranscribed, stammering omitted) were due to the practices of the two different court reporters that were in court on the two days the complainant was before the judge. The complaint subcommittee further noted that the example of the transcript submitted by the complainant with his complaint was not falsified but was exact when audiotapes and transcript were compared. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 04-052/98**

The complainant, who was not represented by counsel, appeared in court charged with fraud and false pretences. The complainant alleged that the judge stated that he was a "pathological liar" [sic] and that the judge had "no evidence whatsoever" for making this comment. The complainant further alleged the judge stated that the complainant had "altered the evidence" and the judge dismissed all of the defence evidence "to defeat the course of justice". 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



## CASE SUMMARIES

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judge's discretion in this case and that the decisions made were within the judge's jurisdiction. The review panel did not agree with the complaint subcommittee's recommendation and, after discussion, recommended that the complaint subcommittee ask for a response to the complaint from the judge. In his response, the judge stated that before he replied to the complaint, he would like clarification of the complaint. The complainant failed to respond to a written request to clarify the complaint. Subsequently, the matter went before the Council for discussion and the members were of the view that, in light of the complainant's failure to respond to Council's request, the complaint be dismissed, 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. 04-073/99**

The complainant was in court charged with speeding and failing to have his Motor Vehicle Insurance Card. The complainant was convicted of both offences by a Justice of the Peace under the Provincial Offences Act. The complainant then appealed to a judge of the Ontario Court of Justice. The judge rejected the evidence of the complainant and did not allow the appeal. The complainant alleged that the judge listened to the tape recording of his trial and "ignored the whole thing". 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 rejecting the complainant's appeal. The

complaint subcommittee noted that, pursuant to the Provincial Offences Act, the judge is entitled to listen to the tape recording and accept or reject the evidence. If errors in law were committed by the judge in rejecting evidence, and the Ontario Judicial Council makes no such finding, 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. 05-001/99**

The complainant was displeased with how a court case involving his daughter was managed and alleged that the judge "deliberately and maliciously submerged the facts of the case and viciously attacked" the complainant's family calling them "a bunch of animals". The complainant advised that the alleged incident had occurred in December, 1991 but he had only recently learned that a complaint could be filed with the Ontario Judicial Council, some eight years later. The complaint subcommittee made several attempts to order a copy of the transcript of evidence but the Record Retention Centre in the Ministry of the Attorney General was unable to retrieve the court file in order to get a copy of the judge's decision. The complaint subcommittee wrote to the complainant on two occasions to request further information 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

## CASE SUMMARIES

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

### **CASE NO. 05-005/99**

The complainant was in court charged with assaulting a bus driver. The complainant was not represented by counsel. The complainant alleged that the judge was "very biased...from the moment the trial began" and the judge "went out of his way to assist" the crown attorney. The complainant further alleged that he asked for and was denied access to duty counsel. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee noted that the transcript of proceedings did not disclose any bias on the part of the judge and that, contrary to the complainant's allegations, the judge went out of his way to assist him. The complaint subcommittee further noted that there was no evidence in the transcript to substantiate the allegation that the judge refused the complainant's request for duty counsel. The complaint subcommittee reported that on numerous occasions throughout the transcript the complainant stated "I don't think I need one for this" in response to inquiries or suggestions from the judge regarding representation by counsel. The complaint subcommittee recommended that the complaint be dismissed as the transcript offered no support for the allegations made by the complainant. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 05-007/99**

The complainant was the alleged victim in a case where the accused, a young offender, was charged with possession of dangerous weapons and assault with a weapon. The complainant alleged that the judge believed the evidence of the defence over that of the Crown and acquitted the accused. The complaint subcommittee ordered and reviewed a copy of the Reasons for Judgment. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no evidence of judicial misconduct on the part of the judge and nothing in the transcript revealed any misconduct on the part of the judge. If errors in law were committed by the judge in acquitting the accused young offender, and the OJC makes no such finding, such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 05-009/99**

The complainant advised that he was the defendant involved in a criminal pre-trial hearing and that the presiding judge asked to speak to him and the Assistant Crown Attorney in his chambers. The complainant was not represented by counsel and attended the judge's chambers with the Assistant Crown Attorney. The complainant advised that the judge asked for and received a summary of the facts from the Assistant Crown Attorney. The complainant states he advised the judge that he had not yet received full disclosure, and could not make full answer and defence. The complainant also stated that he advised the judge



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that the seizure of his property may have been wrongful as he had not seen any warrants prior to the seizure. The complainant alleged the judge made disparaging remarks about the complainant representing himself when the judge inquired about his retaining counsel. The complainant further alleged that the judge “indicated specific periods of incarceration” for the complainant, “if there was a guilty plea and if there was not a guilty plea”. The complainant advises that he and the Assistant Crown Attorney re-attended court after the pre-trial hearing where the judge scheduled another pre-trial hearing on the grounds that full disclosure was still required. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no evidence of judicial misconduct on the part of the judge and noted that comments concerning the advisability of self-representation and potential sentence dispositions are common issues discussed at a pre-trial hearing. The complaint subcommittee further noted that the issue of the alleged wrongful seizure of property is an issue for the trial judge to determine. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

### **CASE NO. 05-011/99**

The complainants are members of court staff, who alleged that the judge behaved towards certain members of staff in a manner which they alleged was “completely unacceptable and unwarranted” and “led the staff to file this complaint”. The complainants provided details about an incident in which they alleged that the judge became “excessively loud and belligerent” in a public area of the courthouse when demanding that a court staff person unlock the handicapped access door

to the courthouse. The complainants stated that the judge blamed court staff for not having the handicapped door unlocked and told a staff member that she was “incompetent along with the rest of the staff”. The complainants noted that the incident happened in the presence of members of the public who they alleged “were visibly uncomfortable with this entire situation”. The court staff “felt threatened at that moment” and were “quite shaken by the entire situation”. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee also retained a private investigator to interview witnesses. After conducting their investigation, the complaint subcommittee reported that, although the incident specifically complained of is singular in nature, it is set in a more general atmosphere of acrimony between the judge and the court staff at this court location and that this situation appears to have existed for a substantial period of time. The complaint subcommittee reported that the matter the judge took exception to – the locked handicapped access door – was within the jurisdiction of Court Services to deal with and should have been brought to the attention of the court services manager at the location rather than an individual member of staff. The complaint subcommittee was also of the view that all such approaches to staff should be advisory in nature, respecting always the separate responsibilities of the various stakeholders within the criminal justice system.

The complaint subcommittee was of the view that, although the judge may have had reason to complain, the judge’s manner of approach, described by those interviewed as “arrogant”, “rude” and “abrupt” and the public nature of the interaction with court staff was perceived to be



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demeaning and inappropriate, especially having regard to the imbalance of power between judiciary and court staff. The complaint subcommittee reported that subsequent events at the court location in question and a further complaint from the same jurisdiction has resulted in the impossibility of the judge ever presiding in this court location again and hence relieves the court staff from further interaction(s). The complaint subcommittee referred the complaint to the members of the review panel, with the recommendation that the complaint be dismissed because, in its view, there was no judicial misconduct based on their investigation into this single incident.

The review panel noted that the incident, standing alone, does not form sufficient basis for a finding of judicial misconduct and for that reason agreed with the complaint subcommittee's recommendation that the complaint be dismissed. However, the members of the review panel were troubled by the allegations and very concerned that the need for cooperation and mutual respect between court staff and members of the judiciary be conveyed to the judge and this was done by letter from the Judicial Council.

### **CASE NO. 05-020/99**

The complainant appeared in court on a charge of assault. The complainant alleged that the judge discriminated against him, "ridiculed" him in court and ruled against him because of his speech and hearing impairments. 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 evidence of judicial misconduct on the part of the judge and nothing in the transcript indicated that the judge discriminated against the complainant. The complaint subcommittee noted that the judge's comment that he did not understand the complainant was not referable to the complainant's speech impairment but to the complainant's position taken at trial. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 05-026/99**

The complainant appeared in court charged with assault. The complainant alleged that the trial judge had "no honor", misjudged his case and "allowed the system to be bastardized and turned into a side show circus". 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 evidence of judicial misconduct on the part of the judge and nothing in the transcript supported the complainant's allegations. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 05-029/99**

The complainant's daughter was involved in a family court matter and the complainant, who had "sat in [the judge's] court room for the past three years" as an observer, alleged that the judge did not pay attention "to the facts as presented". The complainant was "absolutely appalled" that the judge's decision was handwritten and further alleged that the judge's decision "was simply a



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standard format” and did not reflect much thought on the part of the judge. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The judge included a copy of the Reasons for Judgment with his response. 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 judicial discretion. The complaint subcommittee noted that the judge’s response and subsequent written decision did indicate thoughtful reason. The complaint subcommittee further noted that the judge did submit his hand-written decision to be typed but the written copy was released first. If errors in law were committed by the judge, and the OJC makes no such finding, 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. 05-031/99**

The complainant is the mother of a young offender. The complainant had made a previous complaint to the OJC that the judge had attempted suicide and was, therefore, unfit and incapable of presiding and that complaint had been dismissed by the Council (see Case No. 03-061/98, OJC Annual Report 1998-1999). The complainant raised “a new concern” regarding the same judge she had previously complained about. The complainant advised that she was recently in court “listening to his [the judge’s] procedures”. The complaint subcommittee recommended that the complaint be dismissed as

there were no new facts regarding allegations of any judicial impropriety in the subsequent complaint. The complaint subcommittee noted that the judge is subject to an annual review (because he is above age 65) and that this annual review requires a medical certificate and the approval of the Chief Justice to permit him to continue presiding. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

### **CASE NO. 05-033/99**

The complainant is the mother involved in a child custody dispute. The complainant alleged that the trial judge demonstrated a “lack of listening” and that questions were not raised about the health and well being of the child during the interim or trial period. The complainant further alleged that the judge did not take into consideration the effect the custody order had on the work schedule of one of the parents. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge’s discretion in making the custody order. If errors in law were committed by the judge in making the custody order, and the OJC makes no such finding, 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. 05-034/99**

The complainant was the plaintiff in a Small Claims Court action and complained that, at a pre-trial hearing the judge “rejected the case on the basis that the action would be family court jurisdiction”. The complainant further alleged that the judge was influenced by the “multiple allegations” contained in the defendant’s counter-claim. 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 rejecting the case. If errors in law were committed by the judge in rejecting the case, and the OJC makes no such finding, 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. 05-035/99**

The complainant appeared in court for a pre-trial hearing into a criminal charge. The complainant was not represented by counsel. The complainant had “several concerns” regarding the pre-trial. The complainant made a request to the Council to review the “unfair/inappropriate actions/omissions” made by the judge at the pre-trial hearing. The complainant alleged that the judge did not give him an opportunity to address concerns or raise issues during the pre-trial hearing. The complaint subcommittee was of the view that the complainant did not understand the purpose of a pre-trial hearing and that the legal issues raised by the complainant were

matters better left to a trial judge. The complaint subcommittee further noted that the complainant misunderstood the judge’s inability to structure proceedings at the preliminary hearing during a pre-trial hearing. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

### **CASE NO. 05-036/99**

The complainant appeared in court on the last of several criminal pre-trial hearings. The complainant made a request to the Council to review the alleged “unfair/inappropriate actions/omissions” made by the pre-trial judge. The complainant also alleged that the judge did not follow through with the rulings from the previous pre-trial judge in preparation for the preliminary hearing. The complaint subcommittee recommended that the complaint be dismissed as there was no allegation of any judicial impropriety in the complaint. The complaint subcommittee noted that the complainant was not represented by counsel. The complaint subcommittee was of the view that the complainant did not understand the purpose of a pre-trial hearing and that issues of non-disclosure or unfairness by the Crown are matters for the trial judge. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

### **CASE NO. 05-037/99**

The complainant appeared in Small Claims Court. The complainant had originally written to the Attorney General requesting information with respect to appeal procedure and the min-

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istry re-routed the letter to the Judicial Council which acknowledged it. The complainant then wrote to the Council stating that he had not intended to file a complaint against the trial judge and did not wish to do so. The complaint subcommittee recommended that the complaint be dismissed as the complaint had been filed in error. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 05-038/99**

The complainant, in court on criminal charges, alleged that he felt threatened by a 'warning' from the judge following the Crown's evidence at a preliminary hearing. The complainant was represented by counsel. The complaint subcommittee recommended that the complaint be dismissed as there was no judicial impropriety by the judge who was simply giving the accused the mandatory "warning" regarding his testimony that is required by the Criminal Code. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 05-039/99**

The complainant, who was the complainant in an aggravated assault trial, alleged the judge was guilty of being in contempt of court and "ignored rules for full disclosure and procedure". The complainant further alleged that the judge reached "conclusions based on perception rather than law". The complainant stated that it was not his "intention to question the reputation" of the judge. The complainant further stated that he

only wanted to know why "the victim is always the last one to find out the details?". The complainant subcommittee recommended that the complaint be dismissed because if there were errors in law made in the judgment of the court or any irregularities in procedure, and the OJC makes no such finding, such errors could be appealed 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. 05-040/99**

The complainant was the respondent in a court matter where he was "accused of fathering a child" and failing to pay child support. The complainant alleged that the judge had pre-determined his case and "signed and sealed his reasons for judgement six days before the trial started." The complainant further alleged that the judge suppressed documents "whose existence came to light after the trial". The complaint subcommittee reviewed a copy of the Reasons for Judgment provided by the complainant. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that it was obvious that the judge had simply written the wrong month on the Reasons for Judgment inadvertently. The complaint subcommittee noted that the Reasons for Judgment are full and complete and are referable to all evidence called. The complaint subcommittee further noted that the complaint regarding new evidence does not amount to judicial misconduct and that the judge did not suppress evidence. The review panel agreed with the complaint subcommittee's



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recommendation that the complaint be dismissed.

### **CASE NO. 05-041/99**

The complainant, who was the complainant in an assault case, was unhappy with the judge's decision to dismiss four charges (one for assault and three for mischief) against the accused. The complainant stated "the accused and his lawyer created an unbelievable story that my beloved husband may be the one to blame". The complainant was of the view that the judge believed the accused's version of events. The complainant alleged that several court employees told her "the same Judge has dismissed many assault cases involving women". The complainant further alleged that a court employee assured her that the judge would dismiss the case "without knowing anything about it". The complainant wrote to the Council to request that her case be reopened before a different judge. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in dismissing the charges. The complaint subcommittee noted that the allegations of bias against women were based on unsubstantiated comments purportedly made by anonymous court staff and the complaint subcommittee was of the view that there was nothing in the material before them to indicate that the trial judge was biased. If errors in law were committed by the judge in dismissing the charges of assault and mischief, and the OJC makes no such finding, 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. 05-042/99**

The complainant was involved in a child custody matter and alleged that the judge improperly denied the complainant's request for sole custody of her son. The complainant further alleged that the judge did not support her request "to ensure that [her] son would receive proper medical attention in terms of rehabilitation". 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 denying the complainant's applications. If errors in law were committed by the judge, and the OJC makes no such finding, such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 05-043/99**

The complainant was duty counsel who appeared in court to set a trial date on behalf of an accused person. The complainant alleged that the judge ordered him "not to appear in her court as duty counsel again". The complainant noted that this was an "attack" on his "professional independence" and further noted that he was "not accustomed to having [his] livelihood threatened by any judge". The complaint subcommittee reviewed a copy of the transcript of the evidence provided by the complainant and asked for and reviewed a response to the com-

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plaint from the judge. The complaint subcommittee noted that the transcript did indicate that the judge was somewhat abrupt in her manner in dealing with the complainant. The complainant subcommittee further noted that the judge's response explained her reasoning for her actions on the day in question to the satisfaction of the complaint subcommittee and therefore, recommended that this complaint be dismissed. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed. The review panel noted that although the complainant/duty counsel was not wise in using some of the terms that he did before the court, intemperate language by counsel should not invoke intemperate language by a judge. However, the review panel agreed that the comments made by the judge did not amount to judicial misconduct in the circumstances of this case and agreed that the complaint should be dismissed.

### **CASE NO. 05-044/99**

The complainants, who are lawyers, wrote to the Regional Senior Justice for the judicial region of the Province in which they practised law regarding what they perceived to be "a potentially serious matter which could reflect badly on the judicial system as a whole and on [the] bench in particular". The complainants stated that they felt strongly that the Regional Senior Justice "should be appraised" [sic] as to what had allegedly transpired at a courthouse and suggested that it would be appropriate to meet with the Regional Senior Justice to discuss the same. The Regional Senior Justice obliged the complainants' request to "a direct, face to face meeting" to discuss a "sensitive issue" regarding a judge. After meeting

with the lawyers, the Regional Senior Justice forwarded their complaint to the Ontario Judicial Council. The complainants stated that a judge at their local courthouse reportedly locked herself out of her chamber's washroom and requested the assistance of a locksmith to correct the problem. The locksmith apparently found it necessary to drill the lock in order to open the door. Once the locksmith opened the door, he allegedly could smell a lingering odour of what he thought had been marijuana burning and he reported his suspicions to various members of court staff and others present in the court office on his way out of the court building.

The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The judge stated that "the allegation is false in its entirety" and further stated that she "did not possess or consume marijuana" as alleged. The judge stated that she occasionally smoked cigarillo-type cigars in her chamber's washroom which might account for a lingering odour of smoke. The complaint subcommittee also retained a private investigator to interview witnesses including the locksmith who had made the initial allegation. The complaint subcommittee was of the view that there was insufficient evidence to recommend that the matter proceed beyond this stage of the Judicial Council process and referred the complaint to the members of the review panel. The complaint subcommittee noted that the locksmith was by no means certain that he was correct in his assessment of what had created the lingering odour of smoke that he had detected upon opening the washroom door. After reviewing the material gathered by the complaint subcommittee, the review panel concluded that there was no evidence to support the

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

### **CASE NO. 05-045/99**

The complainant, although not initially involved in the trial proceedings, became a party to a child custody case involving the Children's Aid Society (CAS) and another party. The complainant stated that there was a conspiracy among the judge, the Children's Aid Society, and the lawyer for the other party. The complainant alleged that the judge, who had carriage of the case including deciding a number of interim matters, was biased in his decisions because the judge and the other party to the child custody case attended the same church. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee also interviewed two witnesses and reviewed a statement from a third witness. The complaint subcommittee was of the view that there was no evidence that the judge was involved in a conspiracy with the CAS and the lawyer for the other party. The complaint subcommittee noted that as soon as the judge was made aware of the potential conflict of interest, through Council's request for a response, he withdrew from the case. They further noted that if the complainant was not content with the interim rulings throughout the matter, the rulings could have been appealed. 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. If errors in law were committed by the judge, and the OJC

makes no such finding, 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. 05-046/99**

The complainant was involved in a child custody dispute and had previously made a complaint to the OJC about a different judge involved in the matter. In this complaint, it was alleged that the judge was "misconducting herself and treating the Hospital for Sick Children's Sex Child Abuse and Neglect Clinic (SCAN) and the Children's Aid Society who are in contempt of court as if they are not". The complainant stated that she "fails to understand the [judge's] reasoning for not opening the evidence" that the complainant "brought to court over an 11 month period to date". The complaint subcommittee recommended that the complaint be dismissed because if the complainant was dissatisfied with any irregularities in procedure or any decisions made by the judge, she had the remedy of appeal 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. 05-047/99**

The complainant was the respondent in a case involving the Family Responsibility Office (FRO). The complainant alleged that the judge he appeared before in court was not the same judge that signed the court order that had been



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sent to the FRO to be enforced. The complainant further alleged that the date of the signed court order was not the date that he appeared in court. The complaint subcommittee recommended that the complaint be dismissed as there was no allegation of any judicial impropriety in the complaint. The complaint subcommittee was of the view that there had been a series of apparent clerical errors, which could be remedied on appeal if necessary. The complaint subcommittee also noted that a different judge signing an order was not an “irregular proceeding” as the complainant alleged. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

### **CASE NO. 05-048/99**

The complainant wrote to the Judicial Council inquiring if his complaint had any merit. The complainant stated that the judge who tried his case discussed the matter with the complainant’s lawyer whom she’d “bumped into while shopping” and admitted her “mistake in handling” the case. The complainant further stated that the judge “told my wife’s lawyer not to ask for retroactive support, giving him advice while in court”. The complainant also alleged that the judge was rude and “would scream at people in her court”. The complaint subcommittee wrote to the complainant on two occasions to request additional particulars so that further investigation could be done but received no response to their requests. The complaint subcommittee noted that their second letter was returned post-marked “Refused by Addressee”. As a result, the complaint subcommittee recommended that the complaint be dismissed, subject to the complaint being re-opened if the complainant provides the

further information that had been requested. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

### **CASE NO. 05-049/99**

The complainant was the plaintiff in three Small Claims Court actions. Two actions stemmed from the same alleged incident, with the defendants being the College of Physicians and Surgeons and one of its employees. The third action involved the owner and operations manager for a shopping mall. The College had investigated a complaint made by the complainant against one of its members. The complainant was not content with the findings of the College’s investigation and appealed the decision to the Health Professions Appeal and Review Board (HPARB). The complainant stated that the Small Claims Court judge stayed the Small Claims Court proceedings pending the decision of the HPARB, consolidated the two claims and held down the third action involving another College employee until after the consolidated files were dealt with. The complainant alleged that the judge and staff members used their power and position to “obstruct justice”. The complainant further alleged that the judge “manipulated, lumped together and stayed [the cases] in spite of statutory regulations and even before pre-trial”. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge’s discretion and that the decisions made were within the judge’s jurisdiction. If errors in law were committed by the judge in making a decision, and the OJC makes no such finding, such errors could be remedied



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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. 05-050/99**

The complainant alleged that a judge, while acting in his capacity as a lawyer prior to his appointment as a judge, was guilty of a conflict of interest in a sale of property. The complaint subcommittee noted that this complaint is not within the jurisdiction of the Council as it deals with a point-in-time when the judge in question was a lawyer and recommended that the complaint be dismissed. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 05-051/99**

The complainant was in court charged with refusing to provide a Breathalyser test. The complainant alleged that the judge refused medical records as evidence in the trial. The complainant further alleged the judge had said something like, "It was a pleasure to meet you" as she was being escorted out of the courtroom and the complainant had found it to be a "condescending remark". The complainant felt the comment was "very inappropriate when made to a handcuffed person who has been sentenced to jail." The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence and asked for and reviewed a response from the judge. The complaint subcommittee recommended that the complaint be dismissed because if the com-

plainant is dissatisfied with the judgment of the court with respect to the rules of evidence or any irregularities in procedure, she 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 complaint subcommittee noted that the alleged "condescending remark" was not disclosed in the transcript although it was acknowledged in the judge's response that the remark could have been made, although he had no specific recollection of the events. The complaint subcommittee reported to the review panel that, in their view, the judge did not intend to be condescending in his remarks to the complainant. However, the complaint subcommittee expressed disappointment that the judge failed to convey regret that comments, of the type he is alleged to have made, could be misinterpreted by a person being led off into custody. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 05-052/99**

The complainant was involved in a child custody dispute and was in court on an ex parte motion "due to the seriousness of the child's health condition". The complainant alleged that the judge "refused to hear the case or acknowledge [her] concerns" and "made light of the child's medical condition". The complainant further alleged that the judge refused "to act upon the motion filed" and "showed total lack of judgement for the welfare of the child". The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. After reviewing the transcript, it was the opinion of the complaint subcommittee that the judge did not make light of the child's



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medical condition and that the judge was very concerned about the child's welfare. 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. If errors in law were committed by the judge, and the OJC makes no such finding, 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. 05-053/99**

The complainant appeared in a Courthouse to pay a parking ticket on behalf of his son. The complainant alleged the judge was rude and "started making a high pitched (non-verbal) noise" in the direction of the complainant while he was in the public area of the Courthouse. The complainant further alleged that the judge made inappropriate phone calls to him and may have spoken of him inappropriately to others. 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 no objective evidence was found to corroborate the complainant's allegations, which were specifically denied by the judge. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 05-054/99**

The complainant wrote to the Council, in response to a local newspaper article that reported that a judge walked out of his courtroom refusing to continue a preliminary hearing into a sexual assault case due to the absence of a court security officer. The complainant alleged that the behaviour of the judge was inappropriate. The complainant further alleged "the administration of justice may have been brought into disrepute". The complaint subcommittee recommended that the complaint be dismissed as it was of the view that the decision by a judge as to whether there is sufficient security for him/her to enter a courtroom is entirely within the judge's discretion. The complaint subcommittee noted that in their view the judge's conduct in this case did not amount to judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed. The review panel was of the view that there was no evidence to support the allegation of misconduct and that the judge acted in good faith.

### **CASE NO. 05-055/99**

The complainant, who is the sister of an accused person, was in court as a "spectator". The accused was not represented by counsel. The complainant alleged that the judge made a derogatory reference to her and her sister's ethnic origin when describing the accused's family as a "clan". The complainant further alleged that the judge "had the unadulterated audacity to order me to stand up and then inform me that he had concluded that I was guilty of an offence under the Criminal Code of Canada for which he had no right to do." The complaint subcommittee



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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 conduct of the trial. The complaint subcommittee further reported that when referring to the complainant's family as a "clan", the judge was referring to the complainant's conduct as it was related by the chief Crown witness, whom the judge found credible in the absence of any defence evidence. Although the complaint subcommittee was satisfied that the complainant's allegations were not substantiated in the transcript, they were concerned with the judge's numerous interjections during the trial and his refusal to allow evidence to be played back for the self-represented accused during cross-examination. The complaint subcommittee was also concerned with an underlying level of impatience which it regarded as unfortunate but which did not, in their view, amount to judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed but agreed that Council's concerns about the judge's demonstrated lack of patience be conveyed to the judge and this was done by letter from the Judicial Council.

### **CASE NO. 05-056/99**

The complainant was in court on a custody matter involving her daughter and granddaughter. The complainant alleged that the judge had generally "shown disregard for standard court documents and rules". The complainant's letter included a litany of allegations including "violation of the Evidence Act" and "disregard for democracy". The complaint subcommittee rec-

ommended that the complaint be dismissed as there was no specific allegation of any judicial impropriety in the complaint and if the complainant is dissatisfied with the judgment of the court or any irregularities in procedure, she 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. 05-057/99**

The complainant wrote to the Council in response to a local newspaper article that reported that two prisoners escaped at a courthouse just weeks after a "temporary truce" had been declared in an "ongoing tussle" between judges and police over courtroom security. The complainant advised that a month prior to this incident, the newspaper reported that the judge dismissed a drunk-driving charge because there was no uniformed officer in his court and he would return only when adequate security was present. The complainant alleged that the judge displayed "inappropriate behaviour" by dismissing the case because there was no uniformed officer in the courtroom. The complainant was of the view that "feuding between police and judges in the public courtroom is 100% inappropriate." The complaint subcommittee recommended that the complaint be dismissed as it was of the view that a judge has the discretion not to conduct a trial in a courtroom if the judge has fears for his/her safety and the safety of others. The complaint subcommittee noted that the judge's conduct in this case did not amount to judicial misconduct and further noted that if the judge's



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action in staying the charge was an incorrect attempt to control the process of his own court then the Crown had a remedy of appeal which it chose not to exercise. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed and noted that the judge is responsible for the courtroom and is not required to preside in premises which he considers to be unsafe.

### **CASE NO. 05-058/99**

The complainant appeared in court charged with fraud, forgery, public mischief and uttering a forged document. The complainant alleged that her signature was forged by her lawyer on a document containing her consent to plead guilty. The complainant stated that the judge denied her request to strike the plea and forced the guilty plea to go ahead. 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, she 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. 05-059/99**

The complainant was in court on charges of assault, resisting arrest and dangerous driving. The complainant wrote to the Council to "seek redress in the wrongful conviction" by the trial judge. The complainant alleged the trial "was wrongly judged in favour of the prosecution and police despite clear evidence of discrepancies,

racism, incompetence and fraudulencies [sic]". The complainant had further concerns with police and stated that his defence lawyer "did a lousy job". The complainant stated "that an appeal has been filed at the Ontario Court of Appeal". 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 at trial. If errors in law were committed by the judge, and the OJC makes no such finding, 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. 06-001/00**

The complainant, who made an application for custody of her daughter's children, was in court in a case involving the Children's Aid Society. The complainant alleged that the judge made comments about her parenting skills that were "cruel and unfair". The complainant wanted an apology from the judge for the comments that he was "a bit suspicious about a household that produced this particular mother [the complainant's daughter], and that so far [the complainant] had not achieved much of a grade in parenting [her] own children". The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the comments made by the judge and that the remarks made by the judge were in relation to his assessment of credibility at the time of the trial. If the complainant is dissatisfied with the judgment of the court, she has the



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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. 06-003/00**

The complainant is a lawyer for a private sector trade union. The complainant took exception to remarks made by a judge about the number of members of the union he represents who appeared before her in criminal court. Apparently, an accused, who was represented by an agent from a Community Legal Aid Clinic, pleaded guilty to the charge of communicating for the purposes of attaining the sexual services of a prostitute, contrary to section 213(1)(c) of the Criminal Code of Canada. On sentence, the accused's agent submitted that a conditional discharge would be an appropriate sentence having regard to the circumstances of the accused and the offence. The agent apparently advised the judge that his client had a chance for employment with a large auto maker and a criminal conviction might spoil his chances of gaining said employment. The complainant advised that the judge then made remarks in court to the effect that having a criminal record should be no bar to employment with the company as so many of its workers appeared in court on criminal charges that a legal services plan for the trade union's members had been established in order to deal with all the charges. The complainant objected to this classification of the union's members as "entirely inappropriate and indeed insulting to the membership of our Union...". The complainant stated that "the Court's statement that

the Prepaid Legal Services Plan was bargained as a result of, or in the context of criminal charges involving our membership is simply and plainly not true." The complainant further alleged that the remarks of the judge "call into question the impartiality of the presiding judge".

The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The judge agreed that her "remarks were intemperate and unacceptable" and explained the circumstances under which she had spoken. She further advised that in the future she would not allow the pressures of the moment to cause her to make comments which, "reflect neither [her] true opinion nor the purposive intent of the comments". The members of the complaint subcommittee were of the view that the complaint could be dismissed as the judge had made an abject apology and the complainant wanted no further action taken other than alerting the judge that the remarks were unacceptable, which had been accomplished. However, the complaint subcommittee recommended that the complaint be referred to the Chief Justice to speak to the judge in question to ensure that Council's concerns about her inappropriate remarks would be conveyed to her and the review panel agreed with that recommendation.

### **CASE NO. 06-004/00**

The complainant, who was not represented by counsel, appeared in court to appeal a decision of a Justice of the Peace. The complainant alleged that the judge's attitude towards the complainant was "unreasonable" considering he was not "given the opportunity to testify". The complainant further alleged that the judge intimi-

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dated him by “publicly chiding [the complainant] twice for not having the benefit of counsel”. The complaint subcommittee reviewed a copy of the transcript of evidence provided by the complainant. The complaint subcommittee recommended that the complaint be dismissed as the transcript offered no support for the complainant’s allegations. The complaint subcommittee noted that the judge went out of his way to give the complainant an opportunity to be heard and dismissed the appeal on its merits. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

### **CASE NO. 06-005/00**

The complainant appeared in court charged with two counts of assault. The complainant was dissatisfied with the decision made by the judge to convict her as charged. The complainant stated that she was “unjustly accused of a crime” she did not commit. The complainant alleged that the judge’s decision prohibited her from an “adequate source of income” resulting in the complainant and her family not “having the things that are pertinent to life”. The complainant further alleged that the judge “made a mistake in the probation order”. 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. If errors in law were committed by the judge, and the OJC makes no such finding, 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. 06-006/00**

The complainant, who was the respondent in a family court matter, alleged that the judge did not base his Reasons for Judgment “in sound legal areas”. The complainant further alleged that “the trial and judgment were not fair, unbiased or impartial” and, that the judge appeared “to be pre-judgmental [sic] and did not keep an open mind to much of the evidence that was presented”. The complainant enumerated specific points with which he disagreed from a copy of the transcript he included with his complaint. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no evidence of judicial misconduct on the part of the judge and nothing in the transcript or Reasons for Judgment supported the complainant’s allegations. The complaint subcommittee noted that 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. 06-008/00**

The complainant, who was not represented by counsel, was in court charged with common assault. The complainant alleged that the judge made a decision as to his guilt which should have



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been more properly made by a psychiatrist and which caused the complainant embarrassment. The complainant further alleged that the judge made his decision based upon the victim's testimony which was unsubstantiated. The complaint subcommittee reviewed a copy of the transcript of the evidence provided by the complainant. 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. If errors in law were committed by the judge, and the OJC makes no such finding, 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. 06-010/00**

The complainants, who were not represented by counsel, were in court on a charge of assault. The complainants stated that the judge denied them their "rights under proper Court procedure which violated [their] rights under common law and [their] rights to a fair trial". The complainants alleged that the judge did not allow their case to go to trial and that the judge "conspired with [the] Crown" and a police officer "by maintaining and supporting patterns of conspiracies". The complainants further alleged that the judge placed a third party in "confinement" and put their dog in peril. Subsequent correspondence sent to the Council by the complainants alleged that the judge is in default in a civil mat-

ter and failed to report child abuse. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence on the occasion in question. The complaint subcommittee recommended that the complaint be dismissed because if the complainants are dissatisfied with the judgment of the court or any irregularities in procedure, they have 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 complaint subcommittee noted that the judge carefully explained the effect of the Criminal Code s. 810 Order (a peace bond) which the complainants voluntarily signed. The complaint subcommittee further noted that the complainants' allegations of default in a civil suit are in regard to a civil action commenced by the complainants with seventy defendants including the judge, the Prime Minister of Canada, the Mayor, etc. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 06-012/00**

The complainant, who was not represented by counsel, was in court on an application for child support on two different occasions before two different judges. The complainant stated that the respondent's lawyer applied for an extension of time with which the complainant did not agree. The complainant stated she was unhappy with the continual delays in the court system and she now understood "how our court system is so expensive and backlogged". The complainant alleged that "neither judges [sic] exercised professional judgement in their conduct as to a fair hearing for all concerned." The complaint sub-



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committee recommended that the complaint be dismissed because if the complainant is dissatisfied with the judgment of the court or any irregularities in procedure, she 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. 06-014/00**

The complainant, who was not represented by counsel, was in court on a motion for child support. The complainant was unhappy with the judge's decision and alleged that there was a misapprehension of the facts by the trial judge and further alleged that the judge failed to consider transcripts ordered by the pre-trial judge. 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. 06-015/00**

The complainant initiated a complaint to the Judicial Council based on a newspaper article which she'd read, reporting on the sentencing of two accused who had formerly been caregivers at a group home facility. The newspaper article quoted the sentencing judge as saying it is "an

acceptable practice" to put a mentally handicapped man outside in freezing temperatures as a form of discipline. The complainant alleged, "based on the newspaper article", that the judge had "committed misconduct" and his "judgment, logic and compassion have been marred". The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence and reasons at sentencing. The complaint subcommittee recommended that the complaint be dismissed because after reviewing the transcript and reasons, the complaint subcommittee was of the view that the newspaper did not report correctly on the entirety of the contents of the case and that there was no judicial misconduct evident. The complaint subcommittee noted that the judge criticized the group home facility for not having better practices in place. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### **CASE NO. 06-016/00**

The complainant was the applicant in an interim custody case. The complainant was dissatisfied with the judge's decision which he claimed favoured the respondent and alleged that the judge was "very opinionated instead of impartial". The complainant further alleged that due to a prior relationship with the respondent's counsel the judge ruled against the complainant and stated that the judge should "be reprimanded for unprofessional biased conduct and prejudice". The complaint subcommittee reviewed a copy of the transcript of the evidence provided by the complainant and asked for and reviewed a response from the judge. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no



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judicial misconduct evident in the exercise of the judge's discretion in making the decisions that had been made in the case. The complaint subcommittee was of the view that there was no evidence to substantiate the allegations of bias and prejudice on the part of the judge who had also denied the allegations in her response to the Judicial Council. If errors in law were committed by the judge, and the OJC makes no such findings, 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. 06-018/00**

The complainant, who was not represented by counsel, appeared in court charged with threatening his neighbour. The complainant stated that he had evidence that the Crown witnesses had committed perjury. The complainant alleged that the judge wrongfully convicted him and did not conduct a fair hearing. The complainant further alleged that the judge violated the complainant's civil and constitutional rights and did not allow him to present his defence "fully and in its entirety." The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident. The complaint subcommittee noted that the complainant was not convicted but signed a s. 810 Order (a peace bond) indicating his agreement with the judge's decision. If errors in law were committed by the judge, and the OJC makes no such finding, 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. 06-019/00**

The complainant was in court as the respondent on a child custody case involving the Children's Aid Society. The complainant was generally unhappy with the judge's decision regarding custody and alleged that the judge "sided with the C.A.S.". The complaint subcommittee recommended that the complaint be dismissed because if the complainant is dissatisfied with the judgment of the court, 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. 06-023/00**

The complainant, who was not represented by counsel, was charged with mischief and was in court to set a trial date. On a previous appearance in court the complainant stated that she was told "that if [she] was retaining council [sic], the crown wished to have a pre-trial in the matter". The complainant further stated that she "had read on the charge screening form which the crown had provided [her] with that if [she] was unrepresented a pre-trial would not be required". The complainant alleged that the judge insisted that the matter be adjourned to set a pre-trial date with the Crown and that the judge insisted that the complainant and the Crown meet with

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the judge outside of the Courtroom to set a pre-trial date. The complainant further alleged that the judge failed “to maintain order” in a crowded assignment court which featured a Crown Attorney who the complainant alleged was “attired in a costume appropriate to that of a bar hostess” and a judge that was “out to lunch – having a great old time – making a complete joke of the proceedings”. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge’s discretion and that the decisions made were within the judge’s jurisdiction. If errors in law were committed by the judge and the OJC makes no such finding, 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. 06-025/00**

The complainant was in court because of a dispute regarding the custody of her four children. The complainant’s letter to the Judicial Council outlined complaints against the police, the Children’s Aid Society, several lawyers and the judge. The complainant alleged that the “poor tired old judge... made judgements based on statements presented to her with no evidence” and “allowed her judgement to be clouded by hearsay”. The complainant further alleged that the judge acted unfairly in not granting her a custody order. The complaint subcommittee recommended that the complaint be dismissed because if the complainant is dissatisfied with the judg-

ment of the court, she has the remedy of appealing the decision that was made, and without evidence of judicial misconduct, the matter is outside the jurisdiction of the OJC. The complaint subcommittee noted that the judge’s decision was upheld on appeal. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

### **CASE NO. 06-026/00**

The complainant was the victim of an assault. The accused was charged with assault, assault with a weapon and uttering death threats. The complainant stated that the accused had a “long criminal record (over 50 convictions) including armed robbery, robbery, theft, drugs, drug-dealing, arson and assault”. The complainant alleged that the judge’s sentence was too lenient in view of the accused’s prior record. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident. If errors in law were committed by the judge, and the OJC makes no such finding, 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. 06-027/00**

The complainant wrote to the Judicial Council stating that he has “five years worth of complaints against judges”. The complainant had been involved in two trials and was found guilty, on both occasions, based on the evidence of a

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police officer. The complainant stated that he had been on “illegal treatment orders almost continually” since 1995. The complainant further stated that he was “legally insane for the first 95% of the trial”. The complaint subcommittee recommended that the complaint be dismissed as there was no allegation of any judicial impropriety in the complaint. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

### **CASE NO. 06-030/00**

The complainant, who was involved in a Small Claims Court matter, was unhappy with the judge’s decision. The complainant alleged that the judge discriminated against him because the complainant is a “foreigner – an American – and not Canadian like the defendant.” The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident. The complaint subcommittee noted that there was no basis to establish discrimination other than the complainant’s dissatisfaction with the judge’s decision. If errors in law were committed by the judge, and the OJC makes no such finding, 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. 06-034/00**

The complainant was in court on several motions. The complaint subcommittee reported that the complainant’s main complaint was

against the Crown, the Police and the Ministry of Correctional Services for refusing the complainant access to documents while in custody. The complainant’s letter alleged four points of complaint against the judge: 1) the judge had allegedly had pictures of the Queen removed from the court house; 2) the judge interfered with the complainant’s rights by suggesting he retain counsel; 3) the judge’s decisions were influenced by outside forces; and 4) the judge denied the accused’s request for a 2-day remand and lost jurisdiction because he remanded the case for more than 3 days. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the first three allegations made and if the fourth allegation is correct, and the OJC makes no such finding, the complainant has the remedy of appealing the judge’s decision. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.



# ONTARIO JUDICIAL COUNCIL

2000–2001 ANNUAL REPORT

## APPENDICES

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# APPENDIX-A

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ONTARIO JUDICIAL COUNCIL –  
DO YOU HAVE A COMPLAINT?

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

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

### *Provincial Judges in Ontario – Who are they?*

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

### *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 Street East  
Toronto, Ontario M5C 2K3  
416-327-2339 (FAX)

### *Just a reminder...*

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

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





# APPENDIX-B

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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

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

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### COMPLAINTS

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#### GENERALLY

Any person may make a complaint to the Judicial Council alleging misconduct by a 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

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#### COMPOSITION

Complaints received by the Judicial Council shall be reviewed by a complaint subcommittee of the Judicial Council which consists of a judge, other than the Chief 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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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPLAINT SUBCOMMITTEES

### AGREEMENT ON HOW TO PROCEED

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

### DISMISSAL OF COMPLAINT

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

**subs. 51.4(3)**

### CONDUCTING INVESTIGATION

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

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

### PREVIOUS COMPLAINTS

A complaint subcommittee confines its investigation to the complaint before it. The issue of what weight, if any, should be given to previous complaints made against a judge who is the subject of another complaint before the OJC, may be considered by the members of the complaint subcommittee where the Registrar, with the assistance of legal counsel (if deemed necessary by the Registrar), first determines that the prior complaint or complaints are strikingly similar in the sense of similar fact evidence and

would assist them in determining whether or not the current incident could be substantiated.

### INFORMATION TO BE OBTAINED BY REGISTRAR

Complaint subcommittee members will endeavour to review and discuss their assigned files and determine whether or not a transcript of evidence and/or a response to a complaint is necessary within a month of receipt of the file. All material (transcripts, 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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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPLAINT SUBCOMMITTEES

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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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPLAINT SUBCOMMITTEES

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 re-assignment, 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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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPLAINT SUBCOMMITTEES

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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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – REVIEW PANELS

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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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – REVIEW PANELS

### 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)**

### 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,

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.

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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – REVIEW PANELS

### **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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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – REVIEW PANELS

### 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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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – HEARINGS

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)**

# APPENDIX - B

## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – HEARINGS

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

# APPENDIX - B

## 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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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – PROCEDURAL CODE FOR HEARINGS

### 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.

### PRE-HEARING RULINGS

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

(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.

## 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

- 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

# APPENDIX - B

## 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)**

# APPENDIX - B

## 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.

# 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*

# APPENDIX - B

## 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 appli-

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-

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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.

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## 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, audio-tapes, court files, etc.) which a complaint subcommittee wishes to examine in relation to a complaint will be obtained on their behalf by the Registrar, on their instruction, and not by individual complaint subcommittee members.

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

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

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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.

### **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

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ONTARIO COURT OF JUSTICE  
CONTINUING EDUCATION PLAN

# APPENDIX - C

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## ONTARIO COURT OF JUSTICE CONTINUING EDUCATION PLAN

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

During the first year following appointment, or so soon thereafter as is possible, new judges attend the New Judges’ Training Program presented by the Canadian Association of Provincial Court judges (C.A.P.C.J.) at 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 verbal and non-verbal communications, listening

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

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 put on the first of these seminars in March 2000. It was attended by 16 judges of the Ontario Court of Justice and 2 from the Canadian Association of Provincial Court Judges who were invited to observe and participate in order to assess the program for use in other provinces. This program was organized, developed and presented by Professor Neil Gold and his associate Frank Borowicz who adapted the pilot project to the specific role of a trial judge in a Canadian 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.

In September 2000 the Ontario Conference of Judges and the Canadian Association of Provincial Court Judges will meet in Ottawa for a combined conference which will cover, *inter alia*, poverty issues and, in addition, issues related to aboriginal justice.

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

# APPENDIX - C

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

- 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 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.

The Ontario Court of Justice has entered into a joint venture with the N.J.I. which will result in the hiring of an Education Director for the Ontario Court of Justice who will also be responsible for the coordination and development of programs for Provincial judges in other provinces.

### 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.

# APPENDIX - C

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

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

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*COURTS OF JUSTICE ACT*

CHAPTER C.43

ONTARIO JUDICIAL COUNCIL

The following excerpt from the *Courts of Justice Act*, c.43 should not be relied on as the authoritative text. The authoritative text is set out in the official volumes and in office consolidations printed by Publications Ontario.

# 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.

#### 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.

#### 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.

#### CRITERIA

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

#### TERM OF OFFICE

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

Same

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

#### STAGGERED TERMS

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

#### CHAIR

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

Same

(9) The Chief 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.

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.

# A P P E N D I X - D

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

### QUORUM

- (13) The following quorum rules apply, subject to subsections (15) and (17):
1. Eight members, including the chair, constitute a quorum.
  2. At least half the members present must be judges and at least four must be persons who are not judges.

### REVIEW PANELS

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

Same

- (15) The following rules apply to a panel established under subsection (14):
1. The panel shall consist of two provincial judges other than the Chief 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.

### HEARING PANELS

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

Same

- (17) The following rules apply to a panel established under subsection (16):
1. Half the members of the panel, including the chair, must be judges, and half must be persons who are not judges.
  2. At least one member must be a person who is neither a judge nor a lawyer.
  3. The Chief Justice of Ontario, or another judge of the Court of Appeal designated by the Chief Justice, shall chair the panel.
  4. Subject to paragraphs 1, 2 and 3, the Judicial Council may determine the size and composition of the panel.

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

### CHAIR

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

### PARTICIPATION IN STAGES OF PROCESS

- (19) The members of the subcommittee that investigated a complaint shall not,
- (a) deal with the complaint under subsection 51.4 (17) or (18) or subsection 51.5 (8) or (10); or
  - (b) participate in a hearing of the complaint under section 51.6.

Same

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

### EXPERT ASSISTANCE

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

### SUPPORT SERVICES

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

Same

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

### CONFIDENTIAL RECORDS

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

Same

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

# APPENDIX - D

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

### EXCEPTIONS

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

### PERSONAL LIABILITY

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

### REMUNERATION

(28) The members who are appointed under clause (2) (g) are entitled to receive the daily remuneration that is fixed by the Lieutenant Governor in Council.

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## SECTION 50

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### 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.

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## SECTION 51

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### PROVISION OF INFORMATION TO PUBLIC

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

Same

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

### ASSISTANCE TO PUBLIC

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

# APPENDIX - D

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

### TELEPHONE ACCESS

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

### PERSONS WITH DISABILITIES

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

### ANNUAL REPORT

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

### TABLING

(7) The Attorney General shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the Assembly.

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## SECTION 51.1

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### RULES

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

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

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

### REGULATIONS ACT

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

### SECTIONS 28, 29 AND 33 OF SPPA

(3) Sections 28, 29 and 33 of the *Statutory Powers Procedure Act* do not apply to the Judicial Council.

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## SECTION 51.2

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### USE OF OFFICIAL LANGUAGES OF COURTS

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

Same

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

Same

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

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

Same

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

# APPENDIX - D

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

### BILINGUAL HEARING OR MEDIATION

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

### PART OF HEARING OR MEDIATION

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

Same

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

Same

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

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## SECTION 51.3

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### COMPLAINTS

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

Same

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

Same

(3) If an allegation of misconduct against a provincial judge is made to any other judge or to the Attorney General, the other judge, or the Attorney General, as the case may be, shall provide the person making the allegation

with information about the Judicial Council's role in the justice system and about how a complaint may be made, and shall refer the person to the Judicial Council.

### CARRIAGE OF MATTER

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

### INFORMATION RE COMPLAINT

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

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## SECTION 51.4

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### REVIEW BY SUBCOMMITTEE

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

### ROTATION OF MEMBERS

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

### DISMISSAL

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

### INVESTIGATION

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

### EXPERT ASSISTANCE

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

### INVESTIGATION PRIVATE

(6) The investigation shall be conducted in private.

### NON-APPLICATION OF SPPA

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

# APPENDIX - D

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

### INTERIM RECOMMENDATIONS

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

Same

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

### POWER OF REGIONAL SENIOR JUDGE

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

### DISCRETION

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

### 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.

### SUBCOMMITTEE'S DECISION

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

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

Same

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

### 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.

### 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.

### POWER OF JUDICIAL COUNCIL

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

Same

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

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

### NON-APPLICATION OF SPPA

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

### NOTICE TO JUDGE AND COMPLAINANT

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

### GUIDELINES AND RULES OF PROCEDURE

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

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

Same

(22) In considering reports and complaints and making decisions under subsections (17) and (18), the Judicial Council shall follow its guidelines and rules of procedure established under subsection 51.1 (1).

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### SECTION 51.5

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#### MEDIATION

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

#### CRITERIA

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

Same

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

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

#### LEGAL ADVICE

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

#### TRAINED MEDIATOR

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

#### IMPARTIALITY

(6) The mediator shall be impartial.

#### EXCLUSION

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

#### REVIEW BY COUNCIL

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

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

#### REPORT

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

#### REFERRAL TO COUNCIL

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

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

#### NON-APPLICATION OF SPPA

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

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

### NOTICE TO JUDGE AND COMPLAINANT

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

### GUIDELINES AND RULES OF PROCEDURE

(13) In reviewing reports, considering matters and making decisions under subsections (8) and (10), the Judicial Council shall follow its guidelines and rules of procedure established under subsection 51.1 (1).

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## SECTION 51.6

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### ADJUDICATION BY COUNCIL

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

### APPLICATION OF SPPA

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

### RULES OF PROCEDURE

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

### COMMUNICATION RE SUBJECT-MATTER OF HEARING

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

### EXCEPTION

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

### PARTIES

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

### EXCEPTION, CLOSED HEARING

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

### DISCLOSURE IN EXCEPTIONAL CIRCUMSTANCES

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

### ORDERS PROHIBITING PUBLICATION

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

### PUBLICATION BAN

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

### DISPOSITIONS

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

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

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

Same

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

### DISABILITY

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

### APPLICATION OF SUBS. (13)

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

### UNDUE HARDSHIP

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

### OPPORTUNITY TO PARTICIPATE

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

### CROWN BOUND

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

### REPORT TO ATTORNEY GENERAL

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

### NON-IDENTIFICATION OF PERSONS

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

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

### CONTINUING PUBLICATION BAN

(20) If an order was made under subsection (10) and the Judicial Council dismisses the complaint with a finding that it was unfounded, the judge shall not be identified in the report without his or her consent and the Council shall order that information that relates to the complaint and might identify the judge shall never be made public without his or her consent.

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## SECTION 51.7

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### COMPENSATION

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

### CONSIDERATION OF QUESTION COMBINED WITH HEARING

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

### PUBLIC OR PRIVATE CONSIDERATION OF QUESTION

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

### RECOMMENDATION

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

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Same

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

### DISCLOSURE OF NAME

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

### AMOUNT OF COMPENSATION

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

### PAYMENT

(8) The Attorney General shall pay compensation to the judge in accordance with the recommendation.

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## SECTION 51.8

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### REMOVAL FOR CAUSE

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

- (a) a complaint about the judge has been made to the Judicial Council; and
- (b) the Judicial Council, after a hearing under section 51.6, recommends to the Attorney General that the judge be removed on the ground that he or she has become incapacitated or disabled from the due execution of his or her office by reason of,
  - (i) inability, because of a disability, to perform the essential duties of his or her office (if an order to accommodate the judge's needs would not remedy the inability, or could not be made because it would impose undue hardship on the person responsible for meeting those needs, or was made but did not remedy the inability),
  - (ii) conduct that is incompatible with the due execution of his or her office, or

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

### TABLING OF RECOMMENDATION

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

### ORDER FOR REMOVAL

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

### APPLICATION

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

### TRANSITION

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

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## SECTION 51.9

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### 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.

### 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.

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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.

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### SECTION 51.10

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#### 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.

#### 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.

#### 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.

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### SECTION 51.11

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#### 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.

#### 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.

#### 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.

#### SCOPE OF EVALUATION

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

#### CONFIDENTIALITY

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

#### INADMISSIBILITY, EXCEPTION

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

#### APPLICATION OF SUBSS. (5), (6)

(7) Subsections (5) and (6) apply to everything contained in a judge's performance evaluation and to all information collected in connection with the evaluation.

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

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### SECTION 51.12

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#### CONSULTATION

51.12 In establishing standards of conduct under section 51.9, a plan for continuing education under section 51.10 and a program of performance evaluation under section 51.11, the Chief 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.

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### SECTION 87

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#### MASTERS

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

#### JURISDICTION

(2) Every master has the jurisdiction conferred by the rules of court in proceedings in the Superior Court of Justice.

#### 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.

#### 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.

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.

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.

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.

#### 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.

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### SECTION 87.1

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#### SMALL CLAIMS COURT JUDGES

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

#### 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.

#### 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.

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### 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.

### 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.

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## SECTION 45

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### 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.

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## SECTION 47

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### RETIREMENT

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

Same

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

### CONTINUATION OF JUDGES IN OFFICE

(3) A judge who has attained retirement age may, subject to the annual approval of the Chief 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.

### 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.

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### 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.

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).

### 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.

### 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.

