

OJC



SEVENTH ANNUAL REPORT

2001 – 2002

ONTARIO JUDICIAL COUNCIL



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The Honourable R. Roy McMurtry

CHIEF JUSTICE OF ONTARIO

Co-Chair, Ontario Judicial Council



The Honourable Brian W. Lennox

CHIEF JUSTICE
ONTARIO COURT OF JUSTICE

Co-Chair, Ontario Judicial Council



ONTARIO JUDICIAL COUNCIL

March 31, 2002

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 the Annual Report of the Ontario Judicial Council concerning its seventh 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, 2001 to March 31, 2002.

Respectfully submitted,

R. Roy McMurtry
Chief Justice of Ontario

Brian W. Lennox
Chief Justice
Ontario Court of Justice



INTRODUCTION

The period of time covered by this Annual Report is from April 1, 2001 to March 31, 2002.

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 seventh year of operation (April 1, 2001 to March 31, 2002) 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)
(to August 31, 2001)

Raymond P. Taillon(Lindsay)
(from November 11, 2001)

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

The Honourable Madam Justice Lynn King.....(Toronto)
(to September 28, 2001)

The Honourable Mr. Justice Alexander M. Graham
.....(Woodstock)
(to September 1, 2001)

The Honourable Madam Justice Marjoh Agro
.....(Milton)
(from September 29, 2001)

The Honourable Madam Justice Deborah Livingstone
.....(London)
(from September 2, 2001)

Lawyer Members:

TREASURER OF THE LAW SOCIETY OF UPPER CANADA

Robert P. Armstrong, Q.C.....(Toronto)
(to June 21, 2001)

Vern P. Krishna, Q.C.(Toronto)
(from June 22, 2001)

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

Julian Porter, O.C.(Toronto)
(from September 28, 2001)

LAWYER DESIGNATED BY THE LAW SOCIETY OF UPPER CANADA

Edward L. Greenspan, Q.C.(Toronto)
(to September 25, 2001)

Patricia D.S. Jackson.(Toronto)
(from September 28, 2001)

Community Members:

PAUL HAMMOND(Bracebridge)
President and CEO, Muskoka Transport Ltd.

WILLIAM JAMES(Toronto)
Chair, Inmet Mining

HENRY WETELAINEN(Wabigoon)
Ontario Metis – Aboriginal Association

One Lay Member Position – vacant – (from February 28, 2001)

Members – Temporary

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

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

MASTERS

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

JUDGES

- The Honourable Mr. Justice M.D. Godfrey

- Master R.B. Peterson

- 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 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 seventh 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
(to October 2, 2001)
- JANICE CHEONG** – Secretary

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 2001-2002 can be found at Appendix “C”.

5. Communications

During the seventh year of operation, the website of the Ontario Judicial Council was developed to include information about upcoming hearings. As well, copies of “Reasons for Decision” are posted on the website as soon as they are released and will continue to be posted until they are incorporated into an Annual Report. The website will continue to be developed and will eventually include an “on-line” version of the most recent publicly released Annual Report, together with copies of all of the case summaries and Reasons for Decision that have been released by the OJC throughout its previous years of operation.

The address of the OJC website is: www.ontariocourts.on.ca/.

6. Procedures

Some minor changes were made to the OJC Procedures document to allow for the speedier processing of complaint files. The Registrar of the OJC now makes an initial assessment of each complaint file as it is opened and determines whether or not a transcript and/or an audio-tape of the court proceedings will be necessary for the complaint subcommittee’s investigation. If the Registrar determines that is the case, the material is ordered at the time the file is opened. This results in a significant savings of time. The Registrar may also recommend that a complaint be dismissed by the complaint subcommittee without further investigation if the Registrar is of the opinion that a complaint is outside the jurisdiction of the

OJC or is frivolous, vexatious or an abuse of process set out in the governing legislation. The Registrar’s assessment of a complaint is subject always to the assessment of the members of the investigating complaint subcommittee and its unanimous decision about a complaint is subject to the review of the members of the review panel. A detailed outline of the OJC’s procedures is included in Appendix “B”.

7. Judicial Appointments Advisory Committee

Since proclamation of amendments to the *Courts of Justice Act* in February, 1995, the Judicial Council no longer has any direct involvement in the appointment of provincial judges to the bench. However, a member of the Ontario Judicial Council serves on the provincial Judicial Appointments Advisory Committee (J.A.A.C.) as its representative. The Honourable Justice Lynn King served as the Judicial Council’s representative on the Judicial Appointments Advisory Committee until the expiration of her term as a member of the OJC on September 28, 2001. The Honourable Madam Justice Marjoh Agro was appointed by the OJC to act as its representative on J.A.A.C. from September 29, 2001.

8. The Complaints Procedure

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

Once the investigation is completed, the complaint subcommittee may recommend the complaint be dismissed, refer it to the Chief Justice of the Ontario Court of Justice for an informal resolution, refer the complaint to mediation or refer the complaint to the Judicial Council, with

or without recommending that it hold a hearing. The decision of the complaint subcommittee must be unanimous. If the complaint subcommittee members cannot agree, the complaint subcommittee shall refer the complaint to the Council to determine what action should be taken.

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

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

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

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

member of a hearing panel is to be a lay member and the Chief Justice of Ontario, or his designate from the Court of Appeal, is to chair the hearing panel.

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

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

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

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

- ◆ a warning
- ◆ a reprimand
- ◆ an order to the judge to apologize to the complainant or to any other person
- ◆ an order that the judge take specific measures, such as receiving education or treatment, as a condition of continuing to sit as a judge
- ◆ suspension, with pay, for any period
- ◆ suspension, without pay, but with benefits, for up to thirty days

NB: any combination of the above sanctions may be imposed

- ◆ a recommendation to the Attorney General that the judge be removed from office

NB: this last sanction is not to be combined with any other sanction

The question of compensation of the judge's costs incurred for legal services in the investigation of a complaint and/or hearing into a complaint may be considered by the review panel or by a hearing panel when a hearing into the complaint is held. The Council is empowered to order compensation of costs for legal services (based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services) and the Attorney General is required to pay compensation to the judge in accordance with the recommendation.

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

9. Summary of Complaints

The Ontario Judicial Council received 52 complaints in its seventh year of operation, as well as carrying forward 49 complaint files from previous years. Of these 101 complaints, 63 were closed before March 31, 2002, leaving 38 complaints to be carried over into the eighth 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.

The Judicial Council dismissed 57 of the 63 complaint files that were closed during the period of time covered by this report.

Thirty-five (35) of the 57 complaint files dismissed 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 9 of the 35 complaint files that fell into this category. Twenty-six (26) of the 35 complaint files that were dismissed because they were found to be outside the jurisdiction of the OJC combined what was determined to be an unfounded allegation of bias, racism, sexism, or "improper actions" with the complaint about an appealable matter.

Twenty-two (22) of the 57 complaint files dismissed by the Ontario Judicial Council were determined to be unfounded after investigation. These 22 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.

Of the remaining 6 complaint files that were closed during the period of time covered by this report, it was determined that the OJC had no jurisdiction over the judges complained against in two files (file nos. 05-021/99 and 06-032/00), two complaints were dismissed as abandoned by the complainants (file nos. 06-028/00 and 07-002/01) and two complaint files were referred to a hearing (file nos. 04-017/98 and 05-030/99),



FISCAL YEAR:	95/96	96/97	97/98	98/99	99/00	00/01	01/02
Opened During Year	54	71	66	77	59	55	52
Continued from Previous Year	N/A	21	41	51	64	57	49
Total Files Open During Year	54	92	107	128	123	112	101
Closed During Year	33	51	56	64	66	63	63
Remaining at Year end	21	41	51	64	57	49	38

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. 06-55/01 was the fifty-fifth file opened in the sixth year of operation and was opened in calendar year 2001.).

10. Case Summaries

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

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





CASE SUMMARIES

CASE NO. 05-004/99

The complainant was in court charged with uttering a threat. The complainant was involved in on-going civil litigation with the recipient of the alleged threat and stated that there was much “contention” in the civil suit and it was “well known in the community that [the victim of the threat] and [the complainant] do not like one another”. The complainant alleged that the judge who was assigned to hear the criminal charge “had to know of the conflict and had to know [the victim]” and the complainant was of the view that “to not disclose this, even when pressed, does not give the appearance of justice”. The complainant further alleged that an Ontario Provincial Police officer attended his residence to advise him that the judge “had communicated” with the police officer that the judge “was not thrilled about [the complainant] filing the complaint” with the Judicial Council. The complainant stated that “for a judge to advise a police officer of this, in [his] view, is unjustifiable and must create an apprehension of bias”. 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 and the judge had recused himself and set a new date for trial before a different judge. Before agreeing to dismiss the complaint, the review panel instructed the complaint subcommittee to ascertain whether or not the police officer had been apprised by the judge of the complaint and whether or not the police officer spoke to the complainant on his own initiative or at the request of the judge. The complaint subcommittee retained a private investigator to interview the police officer. The

complaint subcommittee reported back to the review panel that the private investigator had found no basis for the complainant’s allegations and again recommended that the complaint be dismissed as unfounded and based on its’ view that there was no judicial misconduct evident and the judge was not in conflict or biased against the complainant. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 05-012/99

The complainant, who was not represented by counsel, appeared in court on three charges including public mischief and uttering a threat. The complainant alleged that the judge ordered the trial to continue without ruling on a motion to resolve outstanding issues. The complainant further alleged that the judge limited the time the defence could cross examine and advised a witness not to answer a question re: the complainant’s alibi defence. The complaint subcommittee reviewed the transcript of the hearing and 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 he did in this case. The complaint subcommittee noted that if the judge committed errors in law (and the OJC made 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. 05-013/99

The complainant was charged with several counts of threatening and public mischief. The charges against him were laid on separate occasions and he appeared before two different judges who were each hearing some of the charges he was facing. The complainant alleged that the Crown Attorneys, police officers and witnesses overlapped on the various charges and the evidence was thereby, “contaminated”. The complainant asked for an adjournment from one of the judges he had complained about and his adjournment request was denied. The complainant alleged that he was denied justice because the judge was biased and refused to withdraw from his case. The complaint subcommittee ordered and reviewed a copy of the audiotape of the court proceedings. The complaint subcommittee also requested further information from the complainant with regard to the status of the charges before the courts and received no response from the complainant. The complaint subcommittee recommended that the complaint be dismissed because, in their view, there was no evidence to support the complainant’s allegation of bias. The complaint subcommittee further concluded that, in its view, 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 Judicial Council made 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. 05-017/99

The complainant was an observer in Small Claims Court. The complainant alleged that the presiding judge’s “manner and conduct” was “rude” and “argumentative”. The complainant further alleged that the judge “treated everyone with complete disrespect”. The complaint subcommittee ordered and reviewed a copy of the transcript and audiotape of the proceedings in court on the day in question. The complaint subcommittee recommended that the complaint be dismissed. The complaint subcommittee reported that it was satisfied that, although there was sporadic irritation expressed by the judge, which was unfortunate, in its view the judge’s conduct fell short of judicial misconduct. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 05-021/99

The complainant alleged that approximately two years prior to appearing in court on a child welfare matter, she’d had an encounter with the presiding judge wherein she had refused his inappropriate sexual advances. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee reported that the judge strenuously denied any contact or acquaintance with the complainant prior to the family court proceedings and stated that the allegations of the complainant were completely false. The complaint subcommittee wrote to the complainant inquiring as to whether the alleged incident of sexual assault was reported to the police. The complainant informed the complaint subcommittee that she “didn’t pursue sexual harassment charges” because she “knew of his [the judge’s] status



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(sic) being a judge and prominent figure” and “feared him” because she “didn’t accept his sexual advances”. The complaint subcommittee once again wrote to the complainant to inform her that the allegations were such that, if true, would amount to criminal conduct by a judicial officer and to proceed further on this aspect of the complaint, the matter could be referred to the Ministry of the Attorney General to fully investigate but only if the complainant agreed to the OJC disclosing her name. The complaint subcommittee reported that it did not receive a response to this letter and wrote the complainant twice more without any reply from her. The complaint subcommittee further reported that the judge complained against had since retired, and that as a result, the OJC no longer had any jurisdiction to deal with the complaint. The complaint subcommittee recommended that the file be closed and the complainant was advised by letter that law enforcement agencies could pursue an investigation if she reported the alleged assault to them.

CASE NO. 05-025/99

The complainant wrote to the Judicial Council regarding a judge who was involved in a pre-trial conference in a child custody hearing. The complainant alleged that the judge “did not appear to be truly open to hear both sides of the case, but instead appeared biased against me [the complainant] because I am a father and not a mother.” The complainant further alleged that the judge made “biased statements” and said, “a sick child should only be with her mother and not at her father’s home.” Because there was no transcript of evidence available (the pre-trial hearing was not “on the record”), 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 it was satisfied with the judge’s response to all questions regarding the complaint. The complaint subcommittee noted that the judge categorically denied stating that a sick child should only be at his or her mother’s home and noted in her response that standard practice is that any access agreements between parties are usually temporarily cancelled if a child is sick. The judge further noted that she could not recall the context of any remarks about the complainant’s child being sick or why it was raised at the pre-trial but that obviously there must have been a disagreement. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 05-028/99

The complainant stated that his wife was the successful party to a lawsuit arising out of a traffic accident and that he had accompanied her to Small Claims Court, together with a family friend, a former lawyer, who agreed to act as her agent. The complainant stated that he “sat in the body of the Court and listened in utter amazement”. The complainant alleged that the presiding judge was “intimidating, bellicose and downright rude not only to [the complainant’s] wife but also to [her agent]”. The complaint subcommittee ordered and reviewed a copy of the transcript and audiotape of the evidence. The complaint subcommittee recommended that the complaint be dismissed because, although the audiotape did show a degree of abruptness and impatience that probably contributed to the complaint, it



CASE SUMMARIES

did not demonstrate behaviour which, in its view, would constitute judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 06-002/00

The complainant was in court for a child custody matter concerning her granddaughter. The complainant alleged that the judge had “no regard either to Constitution or to [her] right to defend [herself]”. The complainant further alleged that the judge did not allow her, the complainant's daughter or their lawyer “to say a single word in [their] defense [sic]”. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence and asked for and reviewed a response to the complaint from the judge. The complaint subcommittee recommended that the complaint be dismissed because the complainant could appeal the judgment of the court or any irregularities in procedure and, without evidence of judicial misconduct, the matter is outside the jurisdiction of the OJC. The complaint subcommittee noted that the transcript revealed that, in some instances, the judge made inappropriate comments which it regarded as unfortunate but did not, in its view, amount to judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 06-009/00

The complainant, who was not represented by counsel, was the plaintiff in a Small Claims Court hearing. The complainant advised that the matter between himself and the defendant was resolved “to both parties' satisfaction.” The complainant expressed disappointment in the judge's alleged “aggressive and demeaning behaviour” and alleged this “impaired [the judge's] ability to hear and judge all the relevant facts of the issue”. The complainant further alleged that the judge “would not explain the basis of [the] decision and [the judge's] angry and hostile manner prevented us, out of fear, from asking for an explanation”. The complainant stated that the judge's conduct convinced him that if he “were to continue in this matter, [he] would have had to hire legal council [sic]”. The complaint subcommittee ordered a copy of the transcript and audiotape of the evidence and was advised by the Court Reporter's Office that motions in Small Claims Court are rarely recorded and a transcript would not be available. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee reported that the judge indicated that the complainant had “very aggressively” challenged the judge's authority and it had been necessary to be forceful. In the response, the judge asked the complaint subcommittee to consult the opposing counsel, who was “present in the courtroom and who may be of assistance”. The judge noted, “regardless of their [opposing counsel's] observations, [the judge] would like to apologize to [the complainant] since his perceptions are so strongly articulated”. The complaint subcommittee contacted the opposing counsel, who advised he had sent his articling student on the day in

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question. The complaint subcommittee interviewed the articling student, who advised that the judge was terse and to the point but she did not consider the judge's behaviour as being "out of the ordinary". The complaint subcommittee recommended that the complaint be dismissed, as they were satisfied with the judge's response and apology, as well as the observations of the witness interviewed. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed. The judge's apology was conveyed to the complainant by letter from the OJC.

CASE NO. 06-011/00

The complainant wrote to the Judicial Council as the President of a civil rights/educational organization to protest the "injudicious and inappropriate behaviour" attributed to a judge by a columnist in an article published in a large circulation daily newspaper. The newspaper columnist had described the acquittal of six "Nazi skinheads" who had been charged with wilfully promoting hatred. The complainant, who admittedly had not read the trial transcript, lodged a complaint against the trial judge based on the "inappropriate remarks" attributed to him by the newspaper columnist. The complaint subcommittee reviewed the newspaper article and the transcript of the trial and requested a response from the judge on the following criticisms levelled by the columnist: 1) the judge's failure to reprimand the accused when they laughed at a remark he had made; 2) the judge's interpretation of the initials "CJC" as "Canadian Judicial Council"; 3) the judge's "badgering" of the Crown to prove the relevance of hate material to the issues at hand; and 4) the judge's equation of the "Hitlerian salute" with someone waving "Hi".

The judge responded to the complaint, through counsel, and the complaint subcommittee advised the review panel that his response provided a complete and plausible explanation for his conduct in what was undoubtedly an emotionally charged trial. The complaint subcommittee reported that the judge provided the following comments on the points he was asked to address: -

- 1) In this instance, the Crown had a transcript of the lyrics of a CD, "Declaration of War" and the police detective on the stand was required to read them out loud and was obviously uncomfortable doing so. The judge advised that, in an effort to reduce the tension in the courtroom, he had said, "I was kind of hoping you would sing them". He further advised that he did not initially see or hear the accused laughing at his remark but that, as soon as he did notice, he immediately terminated the inappropriate conduct with a stern look – a response that would not appear on the record, as he did not say anything.
- 2) With respect to the second criticism, the judge advised that the point being made by his observation was that the letters "CJC" could stand for many things, including the "Canadian Judicial Council" although he agreed with the Crown that the acronym CJC had to be taken in context and, quite obviously in the context of this trial, referred to the "Canadian Jewish Congress" and this was made clear on the record.
- 3) With respect to the third criticism that he had been "badgering" the Crown to prove the relevance of hate material, the judge stated that he was simply calling the Crown's attention to



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difficulties he was having with the evidence being led. The judge noted that there were four adults and two young offenders charged and that a total of 61 items were seized from the six defendants. He advised that, at trial, an issue arose about what use could be made of items seized from one defendant against the other defendants and, secondly, what use could be made of the items against the person from whom they were seized. As noted in his response, both issues could only be resolved by evidence that connected possession of the items to a person or group of persons whose purpose was to advocate hatred of an identifiable minority or by evidence which tended to show that mere possession of the items was capable of an inference that the possessor harboured a hatred for an identifiable minority and the judge had simply observed the weakness of the evidence in this regard. The judge stated that he did not believe that bringing what he perceived to be a deficiency in the Crown's case to the Crown's attention could amount to "badgering".

- 4) With respect to the criticism that the judge equated someone making the "Hitlerian salute" with someone waving "hi", the judge stated that he was attempting to make the point to the Crown that more than one inference could be made from the raising of someone's right arm, unaccompanied by words or other conduct and that again, context would be important.

The complaint subcommittee recommended that the complaint be dismissed as it was of the view that the judge had not engaged in injudicious or inappropriate behaviour in the conduct of this

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

CASE NO. 06-013/00

The complainant's married daughter was in court on a motion to set aside a separation agreement. The complainant stated that her daughter was "going for full custody of her 2 children from her ex-husband". The complainant alleged that her daughter was in court for ten minutes when the judge told her daughter and ex-husband "that they should settle this between themselves and they don't even need lawyers". The complainant further alleged that the judge said that "the file was to [sic] big and he didn't have time to read it". The complaint subcommittee ordered and reviewed a copy of the audiotape and transcript of the evidence and asked for and reviewed a response to the complaint from the judge. The complaint subcommittee recommended that the complaint be dismissed because it was its view that it was not the fault of the judge that the file had not been provided to him earlier and, in any event, the judge was not able to set aside a separation agreement on a motion, as the complainant's daughter had requested. The complaint subcommittee noted that in the judge's response he stated that he had "strongly urged the parties to talk to each other, with the aid of counsel, in an attempt to reach an agreement, instead of a trial". The complaint subcommittee further noted that the judge stated that the complainant's daughter had since withdrawn her request to have the separation agreement set aside. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.



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CASE NO. 06-020/00

The complainant, who was not represented by counsel, appeared in court on a temporary care/custody motion and a contempt motion against the Children's Aid Society. The complainant was unhappy with the social worker from the Children's Aid Society and the judge. The complainant alleged that the judge dismissed his motion after the social worker whispered something to the judge. The complainant further alleged that "this whisper" caused the judge to "chuckle and dismiss the motion". The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The judge stated that he did not chuckle in dismissing the motion for contempt or in directing that the child before the court remain in the temporary care and custody of the Children's Aid Society. The judge further stated that if the social worker whispered anything in the complainant's presence, the judge did not hear it. The complaint subcommittee reviewed a copy of the transcript of the evidence provided by the judge and ordered and reviewed a copy of the audiotape. The complaint subcommittee recommended that the complaint be dismissed because the judge's letter of response was verified by the audiotape, which disclosed no evidence of judicial misconduct, as alleged. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 06-021/00

The complainant and his common law wife, who were not represented by counsel, were the respondents in a custody matter involving the Children's Aid Society. The complainant alleged that the judge laughed three times during the proceedings and stated that the welfare of the

child was irrelevant. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The judge stated that he never said the welfare of the child was irrelevant and denied laughing at any time during the proceedings. The complaint subcommittee reviewed a copy of the transcript of the evidence provided by the judge and ordered and reviewed a copy of the audiotape. The complaint subcommittee recommended that the complaint be dismissed because the audiotape did not support any of the allegations of the complainant. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 06-022/00

The complainant, who is a doctor of family medicine, was in court charged with threatening and assaulting his wife. The complainant alleged that, at the sentencing hearing, the judge stated that the complainant had committed adultery. The complainant stated the allegation of adultery was "false and was not borne out in any of the evidence that was presented" at trial. The complainant further stated that "such an allegation was directed at [the complainant] being a person of color [sic] and the supposition that [the complainant is] not able to control [his] sexual urges." The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence and asked for and reviewed a response to the complaint from the judge. After reviewing all of the material 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 findings of the complainant's unfaithfulness to his wife on the basis of what the judge perceived to be the facts and that the decisions



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made were within the judge's jurisdiction. The complaint subcommittee reported that the judge's response constituted a full answer and that his findings of fact on this issue had nothing to do with the complainant being a person of colour. The complaint subcommittee noted that if the judge committed errors in law (and the OJC made 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. 06-028/00

The complainant was involved in an on-going family court matter. The complainant alleged that the judge had a "racist attitude and behaviour in court". The complainant further alleged that the judge "made unnecessary and disrespectful comments". The complaint subcommittee wrote to the complainant, asking for details of the court dates so that further investigation could be conducted. There was no response to the Judicial Council's letter and the complaint subcommittee recommended that the complaint be dismissed as abandoned, subject to being re-opened should the complainant see fit to provide further details. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 06-029/00

The complainant, who was an observer in court, is the grandmother of children involved in a child welfare matter involving the Children's Aid Society. The complainant alleged that the judge treated her daughter, the mother of the children,

unfairly. The complainant further alleged that the daughter's lawyer was not given a chance to speak. The complainant noted that the Children's Aid Society and the father had "a lot of time to speak". The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee noted that the judge heard from all parties, including the mother's lawyer, and decided to keep the children in care for a further period of time. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion and that the decisions made were within the judge's jurisdiction. The complaint subcommittee further noted that if the judge committed errors in law (and the OJC made 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. 06-031/00

The complainant was involved in a lengthy Small Claims Court trial. The complainant alleged that the judge ordered court reporters to make deletions to portions of the transcript of the trial. The complainant alleged that the judge had a "tantrum" in court and that the "tantrum" was subsequently omitted from the transcript. The complainant further alleged that during cross-examination he told the judge that he "could not answer a question as it was phrased", and the judge "turned quite livid", screamed, "You can answer that question!", then "stomped his feet, jumped out of his chair, and ran into his Chambers". The



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complaint subcommittee asked for and reviewed a response to the complaint from the judge in which he denied the complainant's allegations. The complainant subcommittee also interviewed one of the court reporters (the other court reporter involved having left the employment of the Ministry of the Attorney General). The complaint subcommittee recommended that the complaint be dismissed as the court reporter confirmed the judge's position that he did not request any deletion to the transcript. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 06-032/00

The complainant was acting as the agent for the defendant in Small Claims Court and alleged that the judge before whom they appeared was condescending, insensitive and rude during the hearing of a motion. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee recommended that the complaint be dismissed as the judge indicated that he was not sitting on motions on the day that the complainant was in court and that the judge before whom the complainant had appeared was a deputy judge. The review panel instructed the complaint subcommittee to inform the complainant that he had complained about a jurist over whom the OJC has no jurisdiction. The complaint subcommittee subsequently advised that the complainant acknowledged that it was possible that he had the wrong judge and that since he and the defendant were satisfied with the judgment of the court, his reason for filing this complaint was "merely to assist others who may encounter or experience" a similar situation.

CASE NO. 06-033/00

The complainant was the plaintiff involved in a Small Claims Court motion hearing. The complainant stated that the judge had asked him why the Notice of Motion filed should not proceed. The complainant further stated that the first reason he gave the judge was that the defendant had filed the motion and affidavit of service on the wrong forms. The complainant alleged that the judge then said, "I don't care if they were written on toilet paper". The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee noted that in the judge's response, the judge could not recall the particular complainant or the comment but did recall someone insisting that the use of an improper form was decisive. The judge further noted that this individual was told that it was not fatal to use an incorrect form but that he had continued to debate the point and resisted moving on to other grounds of objection. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that the statement, if uttered, did not constitute judicial misconduct in the circumstances. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 06-035/00

The complainant, who was not represented by counsel, was the plaintiff involved in a landlord/tenant matter in Small Claims Court. The complainant alleged that the judge "refused to listen to [his] responses and berated [the complainant] for not giving one word answers." The complaint subcommittee ordered and reviewed a copy of the transcript and asked for an audiotape of the evidence. The complaint subcommittee

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was advised by the Court Reporter's Office that an audiotape would be unavailable as there had been no tape copying facilities available at the hearing. The complaint subcommittee recommended that the complaint be dismissed because the transcript showed that the judge had not "berated" the complainant but had shown patience and fairness in the matter before him. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 06-036/00

The complainant was the defendant in a Small Claims Court matter and attended for a pre-trial hearing in the judge's chambers. The complainant alleged that the judge "was prejudice (sic) from the beginning to the end" of the pre-trial conference and "never looked at [the complainant's] defense [sic]." The complainant further alleged that the judge used the word "frigging" during the conference which left the complainant "dumb-founded". The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee noted that one of the purposes of a pre-trial is to obtain the pre-trial judge's assessment of the merits of the case to be tried. The complaint subcommittee reported that it appeared from the complaint and the reply from the judge that the complainant might have been dissatisfied with the assessment of the case by the judge. The complaint subcommittee further reported that the response from the judge indicated that he did not remember using the word "frigging". The complaint subcommittee recommended that the complaint be dismissed because the complaint subcommittee found no evidence of prejudice 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. 06-037/00

The complainant, an elderly lady who was not represented by counsel, was in court charged with assault with a broom. The complainant alleged that the judge refused to ask the witnesses to speak up during the trial, despite several requests from the complainant who was hard of hearing, and alleged that the judge favoured the victims of the alleged assault. The complainant further alleged that the judge shouted in a loud voice, "This is Canada" while waving *The Criminal Code* over his head, thereby discriminating against the complainant who is Irish. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that the complainant misperceived the nature of the trial process – in spite of the judge's best efforts to explain it to her and that the judge may have been speaking in a loud voice to overcome the complainant's admitted hearing problem. The complaint subcommittee further noted that the judge's remark; "This is Canada" was not intended to undermine the complainant's Irish heritage. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed because without evidence of judicial misconduct, the matter is outside the jurisdiction of the OJC.



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CASE NO. 06-038/00

The complainant, the victim in a domestic assault case, alleged that the “outcome [of the trial] was highly irregular and unfair”. The complainant alleged that the judge found the accused “guilty of assault, then within minutes struck his own conviction” and dropped the charge against the accused based on the accused’s plea that he had to attend an exhibition of his artwork in Paris, France. The complainant further alleged that friends informed her that the judge collected art from the accused and the disposition of the charge against the accused by peace bond was “pre-arranged”. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence and asked for and reviewed a response to the complaint from the judge. The complaint subcommittee recommended that the complaint be dismissed as it was satisfied that the judge only became aware of the accused’s occupation as an artist during the course of the trial and had no connection to the accused. The complaint subcommittee noted that if the complainant is dissatisfied with the judgment of the court or any irregularities in procedure, she can request the Crown to seek an appeal of the decisions that were made and, without evidence of judicial misconduct, the matter is outside the jurisdiction of the OJC. The complaint subcommittee reported that the judge denied collecting art from or by the accused and that the peace bond was not pre-arranged as a result of the judge collecting art from or by the accused. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 06-039/00

The complainant was involved in a Small Claims Court motion trial and wrote to the Judicial Council with respect “to the lack of justice” he

received from the judge. The complainant alleged that the judge was “loud, rude and racist”. The complaint subcommittee ordered and reviewed a copy of the audiotape 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 audiotape indicated that the judge was “loud, rude or racist”, as the complainant had alleged. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 06-040/00

The complainant was involved in a family court matter. The complainant wrote a long letter to the Judicial Council detailing various orders of the judge that she was unhappy with ranging from the ordering of costs, to support, to access. 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 if the complainant was dissatisfied with the judgment of the court, she had 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. 06-041/00

The complainant was in court regarding his ex-wife’s application “to move [their] children to Ontario” from British Columbia and alleged that the judge he was complaining about was involved, as a family friend, in counselling and assisting the complainant’s former spouse “with

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respect to legal matters concerning [their] divorce”. The complainant further alleged that the judge “may have advised [the complainant’s former wife] to use her maiden name in an attempt to disguise [her] identity” and “may have assisted in preparing affidavits, may have given my former wife legal advice, and actively intervened to prevent me from communicating, through a solicitor, with my ex-wife and my children.” The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee recommended that the complaint be dismissed as the judge’s response fully addressed all issues complained of and the complaint subcommittee was satisfied, based on the judge’s response, that there was no judicial misconduct. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 06-042/00

The complainant was involved in a Small Claims Court matter. The complainant alleged that the judge treated her “unfairly”. The complainant further alleged that the judge did not listen to her and that the judge made her feel that her “presence [in court] wasn’t important”. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. In response, the judge admitted having no recollection of this motion or the parties to the motion and outlined what would normally be the procedure in a default hearing. The response further stated that the judge could not imagine that the opportunity to provide input would be denied to any party. The complaint subcommittee further reported that the judge regretted that the complainant felt “unimportant” and felt this would not have happened. The complaint subcommittee recommended

that the complaint be dismissed as the judge’s response fully addressed all issues complained of and the complaint subcommittee was satisfied, based on the judge’s response, that there was no judicial misconduct. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 06-043/00

The complainant was involved in a marital dispute and was charged with common assault and mischief. The complainant alleged that the trial judge was biased and made inappropriate rulings throughout the trial. The complainant further alleged that on the sentencing date the judge stated, “This is a wealthy lawyer trying to force his wife on welfare”. The complaint subcommittee ordered and reviewed a copy of the transcript and audiotape of the evidence and asked for and reviewed a response to the complaint from the judge. The complaint subcommittee recommended that the complaint be dismissed because the audiotape did not disclose any inappropriate comment by the judge and the judge’s response indicated that he had no recollection of making any such remark. The judge noted that he was not anxious to ruin the complainant’s professional life and/or to cripple his ability to support his wife and children and, as a result, he granted a conditional discharge. The complaint subcommittee was of the view that if the complainant was dissatisfied with any inappropriate rulings or perception of bias, he had 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.



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CASE NO. 06-044/00 & 06-045/00

The complainants were partners in a law firm that was contracted to provide legal services to a Children's Aid Society (CAS). The complainants alleged that two judges (Judges "A" and "B") who regularly sat on family law cases when members of their law firm represented the CAS called a meeting with the Executive Director of the Children's Aid Society and made inappropriate comments to him concerning the quality of legal representation being provided by the complainants' law firm. The complainants maintained that shortly after the meeting with the judges, the Executive Director of the CAS terminated the contract it had signed with their law firm for the provision of legal services. The complainants allege that the conduct of the judges led directly or indirectly to the termination of their retainer with the CAS. Specifically, the complainants alleged that the judges called their (former) client and asked its Executive Director to attend a meeting in chambers without notice to any of the complainants or anyone at their law firm. The complainants alleged that the purpose of the meeting was to discuss cases before the court and for the purpose of discussing, directly or indirectly, the professional services provided by their law firm to the CAS. The complainants further alleged that, during the meeting, the judges' conduct in proffering statements about the legal services provided by the law firm, which they intended to be acted upon by the CAS, was not only inappropriate but constituted a clear departure from accepted standards of judicial conduct. The complainants further stated that the comments allegedly made by these judges reflected a pattern of "gratuitous insults" levelled towards lawyers of their law firm since 1993.

The complainants advised that, after they found out about the meeting in chambers, their law firm brought a motion before Justice "A" requesting that he recuse himself from hearing any child protection matters where the complainants' law firm acted as counsel and that Justice "A" refused to do so. The complainants also allege that Justice "A" "inordinately delayed approval" of a transcript of this last court appearance, knowing that the complainants intended to use it to make a complaint about him to the Judicial Council.

The complaint subcommittee asked for a response to the allegations of the complainants from both judges involved. The complaint subcommittee also retained the services of a private investigator to interview the employees of the CAS who were present at the meeting.

In his response, Judge "A" advised that he and the other judges in his court location had a long-standing concern over the apparent lack of preparation and lack of familiarity with issues required to be addressed by the court in the proceedings in which the CAS was involved. It was the view of Justice "A" that the interests of the parties involved in those proceedings and, more importantly, the interests of justice, were not being served. Justice "A" advised that he had mentioned his concerns to the former lead counsel from the law firm in question on more than one occasion and had been assured by him that he would take appropriate steps to ensure that counsel from his law firm were prepared to represent the interests of the CAS in a responsible and professional manner. Justice "A" also advised that he had been invited to attend the meeting, which had been arranged by a third party. He advised that he did not call the meeting, initiate



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the meeting nor participate in any manner in arranging for it to be scheduled. Justice “A” further advised that he was aware that the Executive Director of the CAS would be present at the meeting, but he did not know that no one from the complainants’ law firm had been invited to be present. Justice “A” also stated that he did not know who else would be at the meeting besides other members of the judiciary.

Justice “A” stated that, at the meeting, the Executive Director of the CAS asked the members of the judiciary present their opinion with respect to the quality of representation the CAS had received in the matters over which they presided. Justice “A” stated that he expressed his opinion in a frank and forthright manner, identifying lawyers who he felt properly represented the interests of the CAS in matters over which he had presided. Justice “A” further stated that his comments to the Executive Director of the CAS were of the same quality and character that had been made directly, in open court and in private meetings, to members of the law firm when he felt their level of performance warranted comment and he denied ever uttering insulting comments about any member of the law firm to anyone, gratuitously or otherwise. Justice “A” also advised that he did not intend his remarks to be considered within the context of whether or not the CAS would continue or terminate its relationship with the law firm. He advised that he did not know, for that matter, that the CAS was even considering replacing the law firm that had been retained.

With respect to the matter of the motion brought by the law firm to have Justice “A” recuse himself from presiding over future matters where members of the law firm might appear on behalf of the

CAS, Justice “A” denied any attempt on his part to delay the approval of transcripts of his oral decision on the motion nor did he interfere in any way in an attempt to prevent the law firm from seeking appellate review of his dismissal.

In her response to this complaint, Justice “B” advised that she suggested to her local administrative judge (LAJ) the idea of inviting the Executive Director of the CAS to an informal meeting to discuss scheduling issues relating to the CAS as an institutional user of the court and such a meeting was arranged with the LAJ’s approval. Justice “B” advised that the meeting was not called to discuss cases before the court or to discuss, directly or indirectly, the professional services provided by the complainants’ law firm to the CAS. Justice “B” advised that she asked a trial co-ordinator to set up the meeting with the Executive Director and the judges who preside over child protection matters and she further advised that she did not intend or attempt to exclude participation by either in-house counsel for the CAS or the complainants’ law firm and did not give any thought as to whom, if anyone, the Executive Director might bring with him to the meeting. Justice “B” advised that she did not make any comments relating to the legal services provided by the law firm and advised that Justice “A’s” comments about some members of the complainants’ law firm were both critical and complimentary.

The Judicial Council retained a private investigator who interviewed the Executive Director of the CAS as well as the other employees of the CAS who were in attendance at the meeting. The Executive Director advised that the meeting was held on August 3rd and was not held in



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Chambers, as alleged by the complainant, but in a conference room in the courthouse. According to the investigator's report, the other two CAS staff members who had been present corroborated the Executive Director's recollections of what was discussed at the meeting. The Executive Director advised the investigator that the problems with counsel that were raised at the August 3rd meeting had been building for several months and that comments made at that meeting were not new and only reinforced what the CAS already knew. The Executive Director advised the investigator that the comments made did not result in the dismissal of the law firm and that the Society was already preparing for new representation due to consistently poor performance by the law firm at the time of his meeting with the judges and trial co-ordinator. The Executive Director advised that the authority to hire or dismiss counsel is made by the Board of Directors of the Society, which has thirteen members. The Executive Director of the CAS further stated that it was his opinion that comments made were motivated by the concern of the judges for the welfare of the children under care.

The investigator also interviewed the other members of the CAS who attended the meeting. The Director of Family Services advised that he felt the purpose of the meeting of August 3rd was to make improvements to the system and he corroborated the events as reported by the Executive Director. The Director of Intake and After Hours told the investigator that she felt that the meeting dealt with on-going problems of court case preparedness, adjournments and general concerns for the children at risk and that it was positive feedback to assist the agency in future hearings before the court. The complaint sub-

committee recommended that the complaint be dismissed because although there is acknowledgement that Justice "A" expressed his opinion, when asked by the Executive Director of the local CAS, with respect to the quality of representation they were receiving from the complainants' law firm, the context in which the opinion was expressed did not amount to judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 06-046/00

The complainant, who is a police officer, was involved in a trial in which he alleged that his former spouse had assaulted their six-year-old son. The complainant alleged that the trial judge was biased, misapprehended the evidence and had no basis for certain findings of fact, particularly in relation to the complainant's role in the investigation and the charge of assault against his former spouse. 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 evidence of judicial misconduct on the part of the judge and nothing in the transcript supported the complainant's allegations. The complaint subcommittee noted that the judge had a right, in his reasons for dismissal, to state the evidence as he saw it. If errors in law were committed by the judge in the apprehension of facts or if the judge demonstrated bias (and the OJC made 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. 06-047/00 & 06-048/00

Two complainants wrote to the Judicial Council with respect to the appearance of two judges from two different provincial courts (Manitoba and Ontario), who appeared on a program about divorce and custody on the Women's Television Network. The complainants alleged that the television program took the view that fathers are incapable, in most cases, of being good custodial parents after divorce and that the judges agreed with this view. The complainants alleged that in the television program the judges "indicated their personal biases, in direct contradiction to the impartiality we [the public] expect from the Courts". The complainants further alleged that the judges were of the view that "fathers are not involved with their children and that they have not been 'good fathers' prior to the divorce...that custody should never be given to these men, and especially to a 'travelling salesman'."

The complaint subcommittee asked for and reviewed a response to the complaint from the judge from Ontario (over whom it had jurisdiction) and viewed a copy of the videotape of the television program provided by the complainant. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that the judge's response was full and fair and the videotape offered no support for the allegations of bias. The judge's response noted that the host of the television show stated that some people may think the law is skewed in favour of women when it comes to custody of children and both judges re-iterated that the best interests of the children are paramount and that some fathers, after separation, should be encouraged to stay involved in the lives of their children (and in some cases, "get involved"). The complaint sub-

committee also noted that on the videotape the judge complained against stated, with respect to the issue of custody, that generally one tries to keep the status quo for the best interests of the children. The judge then gave an example to focus on that objective as follows: "Look at the situation before the separation. If the father was a travelling salesman and the mother a stay-at-home mother, I am not sure why at separation one would change that and then give custody to the father, and access to the mother. Generally you try to keep things – because it is so chaotic when people separate – you try to keep things as much the same as possible." The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 06-049/00

The complainant, who was represented by counsel, attended with several of his co-accused before a judge for a pre-trial hearing. The complainant wrote to the Judicial Council, complaining that the judge had forced the defendants onto trial before they had received full disclosure of the Crown's case. With his complaint, the complainant included part of a letter that had been sent to him by his lawyer. The complaint subcommittee wrote to the complainant requesting that he forward the rest of the letter from his lawyer and to also provide the Judicial Council with further information to assist it in its investigation. The complaint subcommittee reported that it had received no further information from the complainant. The complaint subcommittee recommended that the complaint be dismissed because, in its view, there was no evidence to support the complainant's allegation of bias. The complaint subcommittee further reported that, in its view, there was no



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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 Judicial Council made 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. 06-050/00

The complainant was before the court on criminal charges. He stated in his letter that he was "unfit to stand trial" but that the judge proceeded in any event and also made disparaging remarks about the complainant's "grandiose delusions of stardom". The complaint subcommittee asked for a response to the complaint from the judge but she replied that, without a transcript, she would be unable to remember the particular case or accused. The complaint subcommittee ordered a copy of the transcript of the evidence in this matter but were advised that the court reporter who monitored the trial had died and the reporter who had been assigned to cover her transcript orders could not locate the tape for the court day in question and, as a result, no transcript could be produced. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in deciding that the complainant was fit to stand trial. Insofar as the alleged comments attributed to the judge by the complainant, the complaint subcommittee was of the view that even if the comments were made they would not warrant the intervention of

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

CASE NO. 06-051/00

The complainant was in court charged with criminal harassment. The complainant alleged that he had been "victimized by the blatant misconduct" of the judge and that the judge was biased and prejudiced. The complainant further alleged that the judge "suppressed evidence" and used a typographical error to "wrongfully convict" the complainant. The complaint subcommittee asked for and reviewed a response from the judge who ordered the transcript of the proceedings on the date in question together with the subsequent sentencing proceedings. In her response, the judge noted that all of her dealings with the complainant were in open court and on the record and that the transcripts would speak for themselves as to the fairness of the proceedings. The complaint subcommittee reviewed the transcripts of evidence when they were received and recommended that the complaint be dismissed, as it was its view that the transcripts offered no support for the complainant's allegations of bias, prejudice or misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 06-052/00

The complainant was in court charged with three counts of uttering threats and one count of failing to comply with a court order. The complainant alleged that the judge overstepped his authority and was not fit to administer justice. The complainant further alleged that the judge found him



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guilty of “threat to cause bodily harm” when the charge was “threat to cause death”. 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 this case and that the decisions made were within the judge’s jurisdiction. If the judge committed errors in law (and the OJC made 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 complaint subcommittee noted that the charge of “threat to cause bodily harm” is an included offence in the charge of “threat to cause death”. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 06-053/00

The complainant, who was not represented by counsel, was in court charged with failing to comply with a court order. The complainant alleged that the charge of failing to comply was withdrawn previously in court, that the judge was aware of this fact and was “covering this up” when the judge proceeded to hear the case. The complainant further alleged that the judge suppressed evidence by not allowing attendance records in court and that a transcript was totally fictitious. The complaint subcommittee reviewed a copy of the transcript provided by the complainant and ordered and reviewed a copy of the audiotape of the evidence. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no

judicial misconduct evident in the exercise of the judge’s discretion in hearing the case. The complaint subcommittee further noted that a comparison of the transcript and the audiotape of the day in question showed that the transcript is accurate. If the judge committed errors in law (and the OJC made 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. 06-055/00

The complainant was in court on a matrimonial matter and stated that she was generally unhappy with the way the judge conducted her case. The complainant alleged that the judge allowed the other party to the proceedings to engage in several yelling matches in the courtroom. The complainant further alleged that the judge allowed the opposing party to swing his fists at another person in the waiting room outside court while a baby was present. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee recommended that the complaint be dismissed as the judge’s response constituted a full answer. The complaint subcommittee reported that the judge did recall the individual being loud and difficult in the courtroom, which the judge stated was not uncommon in matrimonial matters, and spoke to the security officer regarding this matter. The judge added that the security officer had spoken to the individual about his poor behaviour in the courtroom and he apologized. The judge further noted that she was



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unaware of what had transpired in the waiting room but that no similar activity would be tolerated in the courtroom and the matter should have been brought to the attention of court security by the complainant. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 07-001/01

The complainant appeared before the Court for a preliminary hearing on a number of charges. The complainant alleged that, during the course of the preliminary hearing, the secretary to one of the investigating police detectives had come into the courtroom and sat directly behind one of his co-accused in order to assist a witness on the stand to identify the said co-accused. The complainant alleged that the judge was involved in this "miscarriage of justice" because he must have known who the secretary was and what she was doing by coming into the courtroom and sitting where she did. The complainant also alleged that the judge "unduly interfered" with his lawyer's attempt to cross-examine one of the Crown's witnesses and thereby interfered with his defence. The complaint subcommittee reviewed the transcript of the preliminary hearing and recommended that the complaint be dismissed as the complainant had legal representation throughout his preliminary hearing and he had raised no legal objection to either the secretary coming into the court, if such an incident occurred, or the alleged "interference" in his cross-examination of a crown witness. The complaint subcommittee also 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 if errors in law were com-

mitted by the judge during the preliminary hearing (and the Judicial Council made 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. 07-002/01

The complainant alleged that the judge who was sitting on his family court matters had a conflict of interest and was biased as he was allegedly acquainted with the complainant's former spouse and had previously advised her on matters of law and advised her on how to proceed and what to say in an affidavit. He also alleged that the judge and his (the complainant's) former spouse had a common employer and were "well known" to each other. The complaint subcommittee recommended that the complaint be dismissed as abandoned. The complaint subcommittee advised that it had sent two letters to the complainant requesting further information – one letter was sent through regular post and the second was sent by priority post, which required a signature. The complaint subcommittee advised that both letters were returned to Council, marked "Moved/Unknown/Return to Sender". The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed, subject to it being re-opened if the complainant provides the requested information.

CASE NO. 07-003/01

The complainant was in court charged with intimidation and uttering threats. The complaint subcommittee reported that the complainant's

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main complaint was against his lawyer. The complainant had arrived late for his court appearance and the complainant's lawyer entered a plea of "not guilty" and requested disclosure. The complainant became upset with the amount of time it took to obtain disclosure, fired his lawyer for failing to provide disclosure and proceeded to represent himself in the matter. The complainant alleged that the judge directed the complainant to sign a "peace bond" contrary to the complainant's wishes. 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 the transcript offered no evidence of judicial misconduct on the part of the judge. The complaint subcommittee noted that the transcript revealed that the complainant voluntarily signed a peace bond after speaking to duty counsel and to his counsel (who had been re-hired by the complainant) and stated he understood it. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed. .

CASE NO. 07-004/01

The complainant is the president of an organization advocating the position that children should have equal access to both parents after separation or divorce. The complaint subcommittee reported that his main complaint was about the recommendations of the "Jordan Heikamp Inquest" and the reaction of the Catholic Children's Aid Society. The complaint subcommittee further reported that the judge complained about was not associated with the inquest but with the previous criminal proceedings against the baby's mother and the CAS worker responsible for the

baby's care. The complainant alleged that the judge should be "removed from dispensing justice, if not charged with murder, because she has proven to be very gender prejudiced in favour of women, thus, unfit to be in that position". The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no specific allegation of judicial misconduct in the complaint, only unsubstantiated generalizations. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 07-005/01

The complainant was the alleged victim of a domestic assault and had several complaints about the trial and the conduct of the police. Her main allegation against the judge who presided at the trial was that he had a conflict of interest in that he knew the defendant (her ex-husband) but continued to preside in any event. The complainant also alleged that the trial judge allowed defence counsel to "badger her" during her testimony, would not permit her to give evidence about her ex-husband's violent past, would not permit the Crown witnesses to testify, was obviously distracted during the trial as he'd stated at the start of it that he was waiting for a phone call from his wife's doctor and would have to leave when the call came, belittled the criminal charges that were laid when he ordered the parties to enter into a peace bond, refused to prohibit her ex-husband (a retired police officer) from possessing weapons and further alleged that this was a "bogus trial" in that everyone involved only wanted to protect her ex-husband. The complaint subcommittee asked for and reviewed a response to the complaint from the judge, particularly in



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regard to the allegation that he knew the accused. In his response, the judge stated that he'd been brought in to do the trial from out-of-town specifically because he did not know any of the parties involved and had no ties to the community. The judge further refuted the complainant's several allegations as groundless and/or as a result of her lack of knowledge about criminal proceedings and the rules of evidence. The judge further denied that he was distracted while waiting for his wife's doctor to call and noted that he'd advised the court that he would take a recess if and when the call came in, not adjourn the trial as the complainant had alleged. 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 the decisions he made during the trial and they were satisfied that the judge had no conflict of interest and did not know the accused. If the judge committed errors in law during the course of the trial (and the Judicial Council made 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. 07-007/01

The complainant's son was involved in a custody dispute with his ex-wife in regard to the child of their marriage, the complainant's grandson. The complainant's first letter to the Judicial Council complained that the judge was taking too long to render the decision in the matter. Another letter shortly followed that letter from the complainant

advising that the parties had received the judge's decision. The complainant then alleged that the judge, who awarded interim custody to the maternal grandparents of the child, was incompetent and biased against her son, the father of the child, as the judge had not awarded custody to him and/or to the paternal grandparents (the complainant and her husband). The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in awarding custody to the maternal grandparents and that the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge (and the Judicial Council made 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. 07-008/01

The complainant was charged with criminal harassment and stated that, after his trial and after being found "not guilty", the presiding judge sentenced him to a "one year common bound (sic)". He also complained that he was not allowed to testify on his own behalf. The complaint subcommittee reported that the complainant was represented by counsel throughout the proceeding. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. After reviewing same, the complaint subcommittee reported that, at the end of the Crown's case, the judge exercised her common law jurisdiction and required the complainant/accused to enter into a peace bond for a year with one condition



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and that condition was to stay away from the person he had supposedly criminally harassed. The judge also found the complainant/accused not guilty and dismissed the charge, noting there were insufficient grounds to make out a charge of criminal harassment. 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 exercising her common law jurisdiction and they further noted that the complainant's counsel chose not to call any evidence at the end of the Crown's case. If errors in law were committed by the judge (and the Judicial Council made 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. 07-010/01

The complainant was before the courts for a preliminary hearing. The complainant alleged that the judge acted improperly in "forcing" him on even though the lawyer he had retained was not present and the judge would not permit cross-examination of a witness regarding his prior criminal activity. The complainant further alleged that the audiotapes and transcripts of his preliminary hearing were not accurate. The complaint subcommittee recommended that the complaint be dismissed as the complainant was represented by counsel during the preliminary hearing (although the lawyer who attended was not the lawyer the complainant had retained but a partner in his law firm). Further, it was the complaint subcommittee's view that the complaints

regarding the audiotapes and transcripts were not allegations of judicial misconduct and the Judicial Council had no jurisdiction in regard to them. The complaint subcommittee further noted that, in its view, there was no judicial misconduct evident in the exercise of the judge's discretion in the decisions that he made during the preliminary hearing and if errors in law were committed by the judge during the course of the preliminary hearing (and the Judicial Council made 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. 07-011/01

The complainant alleged, "the judicial system [had] failed [him] totally. [He had] been arrested, thrown in jail for several weeks and put through constant inconvenience for a year now" but had "committed no crime". The complainant further alleged that his defence counsel was completely incompetent and the Crown Attorney's Office was determined to railroad him into a conviction. His complaint against the judge consisted of a statement that the judge had apparently been named "one of the three worst judges in the city" in a newspaper story that appeared before the complainant had gone to trial and that the judge had a reputation for being extremely hard on sentence, and supposedly believed everything that the prosecution and their witnesses alleged against the accused who appeared before him. The complainant also alleged that the lawyer of another accused person in the court the morning he was to have had his trial, "walked out" when



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he found out who the judge was and that the accused person, who was then unrepresented, was “completely terrified”. The complainant alleged that because of this judge’s “terrible reputation” he was forced to enter into a plea bargain in exchange for a conditional discharge in order to avoid having to be tried before this judge. The complaint subcommittee recommended that the complaint be dismissed, as there was no specific allegation of any misconduct by the judge in question with respect to this particular complainant. The complaint subcommittee noted that the judge could not be held accountable for irresponsible statements made in the news media or the quality of representation provided to the complainant by legal counsel. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 07-012/01

The complainant had been convicted by a Justice of the Peace under the *Highway Traffic Act*. The complainant appealed that decision to a judge of the Ontario Court of Justice who upheld the decision of the Justice of the Peace and the complainant objected to that decision. The complaint subcommittee recommended that the complaint be dismissed, as there was no allegation of any judicial impropriety against the Ontario Court Justice in the complaint. The complaint subcommittee noted that the complainant did not like the fact that the judge agreed with the Justice of the Peace but that fact, in and of itself, does not amount to judicial misconduct. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 07-013/01

The complainant was involved in a dispute over the custody of a child. The complainant alleged discrimination because the judge gave “full custody to a women (sic) who broke not only a joint custody order but also his own order”. The complaint subcommittee recommended that the complaint be dismissed because the judge made a decision about custody and access and there was no evidence of any bias against the complainant. The complaint subcommittee also noted that the complainant may appeal the decision. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 07-014/01

The complainant, who was unrepresented, was a payor in an enforcement proceeding against him. The complainant alleged that the presiding judge breached the principles of fundamental justice by making an order against him in the absence of a hearing and then tried to cover up the fact that she had done so. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended that the complaint be dismissed as the transcript revealed that the judge did not do what the complainant had alleged. The complaint subcommittee reported that the judge applied the relevant law, attempted to explain the relevant law to the complainant, made an Interim Order in accordance with the law and the evidence before her and, in its view, there was no judicial misconduct on the part of the judge on either of the dates the complainant attended. If errors in law were committed by the judge (and the Judicial Council made no such finding), such errors could be remedied on appeal and are,



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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. 07-016/01

The complainant advised that the authorities at the jail in which he was incarcerated would not permit him to take his copy of *The "Criminal Code"* with him to court. He further complained that during the hearing of a motion he was not given the opportunity to view a copy of *The "Criminal Code"* and that this prevented him from making full answer and defence to the charges which had been laid against him. The complaint subcommittee recommended that the complaint be dismissed because there was no specific complaint of misconduct made against the judge who heard the motion and, further, because the judge was not responsible for the actions of the jail staff or the Crown or court staff. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 07-017/01

The complainant claimed that he had not received transcripts that he had ordered and alleged that this was due to interference by the judge and that the judge had been involved in a "behind the scenes discussion with a female clerk" and had thus engaged "in a conspiracy to obstruct the course of justice". The complainant also made several allegations about rulings made by the judge throughout the course of the trial and various procedural matters. The complaint subcommittee recommended that the complaint

be dismissed as there was no objective evidence to support the complainant's allegations of a "conspiracy to obstruct the course of justice" and further that, in its view, there was no judicial misconduct evident in the exercise of the judge's discretion in the conduct of the hearing and the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge (and the Judicial Council made 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. 07-018/01

The complainant was a lawyer who had appeared before the judge complained against for several years. The complainant advised that, on this particular occasion, he appeared before the judge on behalf of a client. The complainant alleged that during the course of a pre-trial conference, the judge made inappropriate remarks concerning the three parties before him, and specifically the complainant alleged that the judge made anti-Semitic remarks. 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 they reported that, in his response, the judge apologized for any remarks that he'd made which could have been or were considered offensive by the parties. The complaint subcommittee further reported that the judge advised that he had not intended any of his comments to be disrespectful in any way. The review panel wanted further information before it made any



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decision on the matter and the complaint subcommittee was instructed to ask the complainant to advise what the issues under discussion were at the pre-trial and to provide a copy of the claim and the defence filed in court in the matter. The complainant provided the information as requested and, upon review of the additional material, the complaint subcommittee again recommended that the complaint be dismissed. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 07-019/01

The complainant attended for a pre-trial hearing in a Small Claims Court matter. She appeared as her own counsel and advised that the defendant was represented by a "law clerk". The complainant alleged that the judge who was conducting the pre-trial hearing, "acted in a most unprofessional manner, screaming, yelling, raising his voice, being sarcastic, rude and threatening." She also alleged that the judge would not permit her to talk and that he "threatened to get the police to escort me out". As no transcript was available for a pre-trial hearing, the complaint subcommittee asked for and received a response to this complaint from the judge in question. The judge denied the allegations contained in the complainant's letter, advising the complaint subcommittee that the complainant was "rude, demanding and disrespectful to the Bench". He advised that she frequently interrupted him and tried to monopolize the pre-trial hearing. He further advised that, although he had to be firm with her, he was "at all times fair" and denied the misconduct that she alleged. The judge also suggested that the complaint subcommittee contact the lawyer who had attended the pre-trial on behalf of the defen-

dant. The complaint subcommittee wrote to the lawyer and asked for her recollections of the pre-trial hearing, providing her with a copy of the complainant's letter and the response from the judge. After reviewing the letter received from the defendant's lawyer, the complaint subcommittee recommended to the review panel that the complaint be dismissed as this independent third party present at the pre-trial confirmed that the judge was not rude or threatening and did not prevent the complainant from speaking. The lawyer confirmed the judge's recollection of the hearing, advising that the complainant was rude and aggressive towards the judge. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 07-020/01

The complainant reported that, while sitting in a police squad car outside a courthouse where he was scheduled to appear on a charge of assault, he witnessed the brother of the man he was charged with assaulting "sneaking" from the back of the courthouse "in unusual clothing for himself to wear in [a] small town" at approximately 9:30 a.m. The complainant alleged that, since he was convicted of the assault, the judge who convicted him must have been bribed by the brother of the victim who the complainant had seen walking around from the back of the courthouse prior to the start of court. The complaint subcommittee wrote to the complainant, asking for any evidence that this alleged incident took place, other than his claim that he witnessed the victim's brother walking around to the front of the courthouse from the back of it prior to court commencing. The complainant responded by



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repeating his allegation and including further information that the O.P.P. officer who drove him to court is also one of the victim's brother's "drinking friends". The complaint subcommittee recommended that the complaint be dismissed, as it received no evidence to support the complainant's speculation that the trial judge must have been bribed in order to convict him. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 07-022/01

The complainant alleged that the judge before whom he'd previously appeared on a civil action "changed" his order, refused to issue a contempt of court order against the defendant in the matter, refused to dismiss a motion brought by the defendants and refused to bar the defendant's representative from appearing in court and, by these decisions and actions, showed his clear bias in favour of the defendant. The complaint subcommittee members reviewed the court file in order to determine whether or not there was any substance to any of the complainant's allegations and, after its review of the court file, recommended that the complaint be dismissed. The complaint subcommittee members reported that, in its view, there was no evidence of bias or improper use of authority as alleged by the complainant. The complaint subcommittee further recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion and that the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge (and the Judicial Council made 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. 07-029/01

The complainant was criminally charged and appeared in court on a charge of threatening bodily harm. The complainant alleges that, after entering his plea, the presiding judge said "Not Guilty" at the "top of her lungs" and admitted evidence at trial that the complainant maintained had been obtained in breach of his Charter rights. The complaint subcommittee reviewed the transcript that had been provided by the complainant and 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 admitting the evidence that the complainant objected to being admitted and that the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge (and the Judicial Council made 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. 07-031/01

The complainant was involved in a Children's Aid Society proceeding and a parallel custody/access dispute. The specific nature of his complaint against the judge was not outlined other than the



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fact that the complainant expressed dissatisfaction that his children were “taken away” from him several years ago by Children’s Aid and he has never been told exactly why. The complaint subcommittee recommended that the complaint be dismissed as there was no specific allegation of any judicial impropriety in the complaint and the complainant appeared to be unsatisfied with the entire process and the end result. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 07-032/01

The complainant was involved in a custody/access dispute in family court. She appeared as the respondent on a motion for support made by the paternal grandmother/custodial applicant of her child. The complainant alleged that the judge on the grandmother’s motion before the court exhibited bias against her by his alleged statements about her in his reasons for the ruling he made after the motion was heard. The complainant alleged that the judge made “derogatory and slanderous comments” about her and accusations about her as a person based on “unsupported and entirely false allegations presented by the opposing lawyer”. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence on the motion. 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 Judicial Council made 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 complaint subcommittee further reported that, in its view, any statements made by the motions judge relating to the complainant were a justified criticism of the nature of the evidence presented in her affidavit that had been submitted to the court. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 07-033/01

The complainant was involved in a Children’s Aid Society proceeding with a parallel custody/access dispute. The complaint subcommittee reported that the complainant alleged that the judge who heard a motion in this matter based his decision on “perjured” evidence contained in an affidavit and, further, that the judge knew that “perjury” had been committed and did nothing about it. The complaint subcommittee reviewed the court file that had been provided by the complainant. The complaint subcommittee recommended that the complaint be dismissed, as it was its view that there was no evidence that any decision of the motions judge had been based on “perjured” evidence or that the motions judge was aware that any perjury may have taken place. The complaint subcommittee further reported that, given the other allegations against the opposing parties and counsel, the complainant appears to be unhappy with the ruling on the motion and that there had been no misconduct on the part of the judge. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

HEARINGS

11. Hearings

CASE NO. 04-017/98

The complainant was a lawyer representing an accused person who was charged with two counts of threatening bodily harm. The complainant alleged that, after the commencement of the trial at which all witnesses were present and without any warning whatsoever, the trial judge said he did not have time to hear evidence and sent the case back for the third time to Assignment Court for a new trial date. The complainant further alleged that the judge said he did not want to have anything to do with the complainant's lawyer due to past dealings the judge had with him. The complaint subcommittee ordered and reviewed a copy of the transcript of evidence and asked for and reviewed a response from the judge. The complaint subcommittee referred the complaint to the Judicial Council with a recommendation that it hold a hearing. After consideration of the material, the members of the Review Panel rejected the recommendation that a hearing be held and decided that it would be more appropriate to refer the complaint to the Chief Justice, provided the judge acknowledged there was some merit to the complaint and that his conduct was not appropriate in the circumstances as is required by the OJC's procedures. The Judicial Council wrote to the judge several times requesting that he acknowledge that there was some merit to the complaint and that his conduct was inappropriate in order to have the complaint resolved by referral to the Chief Justice. Such a response was never received from the judge and the members of the complaint subcommittee and review panel, after consideration of all the material and the various letters which had been sent to and

received from the judge since the original decision to refer the matter to the Chief Justice decided that the complaint should go to a hearing as it was obvious that the judge did not accept that there was anything inappropriate in his conduct towards the complainant and his counsel. A Notice of Hearing was issued and a hearing was held on February 11, 2002. As the criteria for a private hearing were not met, the hearing was public.

At the conclusion of the hearing, the hearing panel determined that the judge's conduct, while constituting an error in judgment, fell short of constituting judicial misconduct for a number of reasons, which they enumerated. The hearing panel therefore dismissed the complaint.

A copy of the complete text of the "Reasons for Decision" in this matter may be found at Appendix "E".

HEARINGS

CASE NO. 05-030/99

The Judicial Council received a letter from a Regional Senior Justice who felt “obliged to lodge a complaint with the Ontario Judicial Council”. The letter alleged that a judge had “used his computer to visit pornographic sites via the internet”, “used the offices and computers of other justices...to visit pornographic sites on the internet”, and “left visible images upon his computer which a member of their court staff was exposed to”. The complainant subcommittee reviewed an unsolicited response to the complaint from the judge. The complaint subcommittee also retained a private investigator to interview witnesses and conduct a forensic examination of the computer hard drives and other equipment to which the judge had access. 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*, Notice of Hearing was issued and a hearing was held on April 20, 2001. The hearing panel was comprised as follows: -

THE HONOURABLE R. ROY MCMURTRY

Chief Justice of Ontario

PAUL HAMMOND

At the outset of the hearing, an application in writing was made by the judge under s. 51.6(7) of the *Courts of Justice Act*, for an order by the hearing panel that the hearing be held in private and that there be a prohibition of the publication of any information that might identify the judge.

The hearing panel determined that in accordance with the *Courts of Justice Act* and criteria established by the Ontario Judicial Council pursuant thereto, an order was made that the hearing be held in private and that the judge’s name not be disclosed or made public. After hearing submissions by counsel for both the OJC and the subject judge and considering all of the material filed with them, the hearing panel was of the view that the judge’s conduct was “inappropriate” and “in other circumstances could amount to misconduct”. The hearing panel also noted that the judge’s conduct had “embarrassed the judiciary and caused the judge a degree of public humiliation”. However, the hearing panel stated that, “in these particular circumstances...we do not find judicial misconduct in the meaning of that term in the context of the *Courts of Justice Act*”. The hearing panel therefore dismissed the complaint.



ONTARIO JUDICIAL COUNCIL

2001–2002 ANNUAL REPORT

APPENDICES

APPENDIX “A” *Do You Have A Complaint?*

APPENDIX “B” *Procedures Document*

APPENDIX “C” *Education Plan*

APPENDIX “D” *Legislation*

APPENDIX “E” *Reasons for Decision*

APPENDIX-A

ONTARIO JUDICIAL COUNCIL –
DO YOU HAVE A COMPLAINT?

ONTARIO JUDICIAL COUNCIL – DO YOU HAVE A COMPLAINT?

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

Provincial Judges in Ontario – Who are they?

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

Ontario's Justice System:

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

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

Is a Judge's Decision Final?

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

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

Professional Conduct of Judges

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

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

The Role of the Ontario Judicial Council

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

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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

ONTARIO JUDICIAL COUNCIL –
PROCEDURES DOCUMENT

APPENDIX - B

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT

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

B

COMPLAINTS

GENERALLY

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

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

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

subs. 51.3(4)

COMPLAINT SUBCOMMITTEES

COMPOSITION

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

subs. 51.4(1) and (2)

ADMINISTRATIVE PROCEDURES

Detailed information on administrative procedures to be followed by members of complaint subcommittees and members of review panels can be found at pages 24 – 26 of this document.

STATUS REPORTS

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

Investigation

GUIDELINES AND RULES OF PROCEDURE

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

subs. 51.1(2)

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

subs. 51.1(3)

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

subs. 51.4(21)

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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 a member advises 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 a Review Panel 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

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPLAINT SUBCOMMITTEES

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

subs. 51.4(21)

- where the complaint arises out of a working relationship between the complainant and the judge and the complainant and the judge both work at the same court location
- where allowing the judge to continue to preside would likely bring the administration of justice into disrepute
- where the complaint is of sufficient seriousness that there are reasonable grounds for investigation by law enforcement agencies
- where it is evident to the complaint subcommittee that a judge is suffering from a mental or 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 specified deadline prior to each scheduled OJC meeting to advise what files, if any, assigned to the complaint

APPENDIX - B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPLAINT SUBCOMMITTEES

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. Attendance by a complaint subcommittee or review panel member may be by teleconference when necessary.

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;

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – REVIEW PANELS

B

- (2) where the complaint involves an allegation of sexual misconduct or an allegation of discrimination or harassment because of a prohibited ground of discrimination or harassment referred to in any provision of the *Human Rights Code*; or
- (3) where the public interest requires a hearing of the complaint.

subs. 51.4(13) and 51.5

D) TO RECOMMEND A HEARING

A complaint subcommittee will refer a complaint to the Judicial Council, or a review panel thereof, and recommend that a hearing into a complaint be held where there has been an allegation of judicial misconduct that the complaint subcommittee believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct

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

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – REVIEW PANELS

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

subs. 49(14)

COMPOSITION

A review panel is made up of two 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)

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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

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – PROCEDURAL CODE FOR HEARINGS

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

PROCEDURAL CODE FOR HEARINGS

PREAMBLE

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

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

INTERPRETATION

1. The words in this code shall, unless the context otherwise indicates, bear the meanings ascribed to them by the *Courts of Justice Act*.

(1) In this code,

(a) “Act” shall mean the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended.

(b) “Panel” means the Panel conducting a hearing and established pursuant to subsection 49(14) of the *Act*.

(c) “Respondent” shall mean a judge in respect of whom an order for a hearing is made pursuant to subsection 51.4(18)(a) of the *Act*.

(d) “Presenting Counsel” means counsel engaged on behalf of the Council to prepare and present the case against a Respondent.

PRESENTATION OF COMPLAINTS

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

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

3. Legal Counsel engaged by the Council shall operate independently of the Council.

4. The duty of Legal Counsel engaged under this Part shall not be to seek a particular order against a Respondent, but to see that the complaint against the judge is evaluated fairly and dispassionately to the end of achieving a just result.

5. For greater certainty, Presenting Counsel are not to advise the Council on any matters coming before it. All communications between Presenting Counsel and the Council shall, where communications are personal, be made in the presence of counsel for the Respondent, and in the case of written communications, such communications shall be copied to the Respondents.

6. A hearing shall be commenced by a Notice of Hearing in accordance with this Part.

7. Presenting Counsel shall prepare the Notice of Hearing.

(1) The Notice of Hearing shall contain,

(a) particulars of the allegations against the Respondent;

(b) a reference to the statutory authority under which the hearing will be held;

(c) a statement of the time and place of the commencement of the hearing;

(d) a statement of the purpose of the hearing;

(e) a statement that if the Respondent does not attend at the hearing, the Panel may proceed in the Respondent’s absence and the Respondent will not be entitled to any further notice of the proceeding; and,

8. Presenting Counsel shall cause the Notice of Hearing to be served upon the Respondent by personal service or, upon motion to the Panel hearing the complaint, an alternative to personal service and shall file proof of service with the Council.

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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 re-examined as required.

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – POST-HEARINGS

- (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.
- (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

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.

- 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 undu

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPENSATION

hardship on the person responsible for meeting those needs, or was made but did not remedy the inability),

- (ii) conduct that is incompatible with the due execution of his or her office, or
- (iii) failure to perform the duties of his or her office.

subs. 51.8(1)

TABLING OF RECOMMENDATION

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

subs. 51.8(2)

ORDER REMOVING JUDGE

An order removing a 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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APPENDIX - B

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.

APPENDIX - B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ADMINISTRATIVE MATTERS

ADMINISTRATIVE MATTERS

INTAKE/OPENING COMPLAINT FILES:

- Where a complaint is made orally by a person intending to make a complaint to the Judicial Council or a member acting in their capacity as a member of the Judicial Council thereof, the person making the allegation shall be encouraged to make the complaint in writing. If such person does not within 10 days of making the allegation tender a written complaint to the Council, the Registrar shall, on consultation with legal counsel and the Judicial Council member to whom the allegation was made, set out the particulars of the complaint in writing. Such written summary of the allegation shall be forwarded by registered mail to the person making the allegation, if he or she can be located, along with a statement that the allegation as summarized will become the complaint on the basis of which the conduct of the provincially-appointed judge in question will be evaluated. On the tenth day after the mailing of such summary, and in the absence of any response from the person making the allegation, the written summary shall be deemed to be a complaint alleging misconduct against the provincially-appointed judge in question.
- if the complaint is within the jurisdiction of the OJC (any provincially-appointed judge or master – full-time or part-time) a complaint file is opened and assigned to a two-member complaint subcommittee for review and investigation (complaints that are outside the jurisdiction of the OJC are referred to the appropriate agency)
- the Registrar will review each letter of complaint upon receipt and if it is determined that a file will be opened and assigned, the Registrar will determine whether or not it is necessary to order a transcript and/or audiotape for review by the complaint subcommittee and, if so, will direct the Assistant Registrar to order same.
- 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, together with the Registrar's recommendations regarding the file, if any, is prepared. Copies of all materials are placed in the office copy and each member's 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 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, 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.

APPENDIX - B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ADMINISTRATIVE MATTERS

B

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

Transcripts and/or audiotapes 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.

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. Complaint subcommittee members may also attend by teleconference when necessary.

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.

MEETING MATERIALS:

All material prepared for meetings of the Ontario Judicial Council are confidential and shall not be disclosed or made public.

When a complaint subcommittee has indicated that it is ready to make a report to a review panel, the Registrar will prepare and circulate a draft case summary and a draft letter to the complainant to the members of the complaint subcommittee making the report and the members of the review panel assigned to hear the complaint subcommittee's report. The draft case summary and draft letter to the complainant will be circulated to the members for their review at least a week prior to the date of the scheduled Judicial Council meeting. Amendments to the draft case summary and the draft letter to the complainant may be made after discussion by the Judicial Council members at the meeting held to consider the complaint subcommittee's recommendation on individual complaint files.

APPENDIX - B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ADMINISTRATIVE MATTERS

The draft and final case summary and the draft letter to the complainant which is submitted for approval will not contain any information which would identify either the complainant or the subject judge.

A copy of the final case summary is filed in every closed complaint file together with a copy of the final letter to the complainant advising of the disposition of the complaint.

NOTICE OF DECISION – NOTIFICATION OF PARTIES:

After the draft letter to the complainant has been approved, by the investigating complaint subcommittee and the review panel, 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 return their copies of the file to the Registrar to be destroyed or advise, in writing, that they have destroyed their copy of the complaint file. If a member's copy of the complaint file, or written notice of the file's destruction, is not received within two weeks after the review panel meeting, OJC staff will contact the complaint subcommittee member, to remind him or her to destroy his or her copy of the complaint file, and provide written notice, or arrange to have the file returned to the OJC, by courier, for shredding.



APPENDIX-C

ONTARIO COURT OF JUSTICE
CONTINUING EDUCATION PLAN

APPENDIX - C

ONTARIO COURT OF JUSTICE CONTINUING EDUCATION PLAN

The Continuing Education Plan for the Ontario Court of Justice has the following goals:

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

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

EDUCATION SECRETARIAT

The coordination of the planning and presentation of education programs is assured by the Education Secretariat. The composition of the Secretariat is as follows: the Chief Justice as Chair (ex officio), four judges nominated by the Chief Justice and four judges nominated by the Ontario Conference of Judges. The Ontario Court of Justice's research counsel serve as consultants. The Secretariat meets approximately four times per year to discuss matters pertaining to education and reports to the Chief Justice. The mandate and goals of the Education Secretariat are as follows:

The Education Secretariat is committed to the importance of education in enhancing professional excellence.

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

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

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

The goals of the Education Secretariat are:

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

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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*
- *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 at the Office of the Chief Justice twice a year.

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 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 is open to any judge who spends a significant amount of his or her time presiding over family law matters.

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. Lately two seminars have been presented in February of each year at the Office of the Chief Justice by Professor Edward Berry of the University of Victoria.

In the 1997/98 fiscal year the Education Secretariat contracted with Professor Berry 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 and is now in its second edition.

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.
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 dis-

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

cussion on verbal and non-verbal communications, listening and related problems. Individual judges were videotaped and their communication techniques were critiqued in the course of the program. The program, which was presented to 25 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 respond better 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 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 met in Ottawa for a combined conference which covered, *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 & Family Law
 - International Association of Juvenile and Family Court Magistrates
 - Canadian Bar Association
 - Criminal Lawyers' Association
 - Advocate's Society Conference

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- 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 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.

The Education Secretariat has however established a Conference Attendance Committee to consider applications by individuals 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.

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 resulted in the hiring of an Education Director for the Ontario Court of Justice who is also 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

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to twelve months. Prior approval is required for such leave and a peer review committee reviews the applications in selecting those judges who will be authorized to take such leave.

4. REGIONAL MEETINGS: The current seven regions of the Court have annual regional meetings. While these meetings principally provide an opportunity to deal with regional administrative/management issues, some also have an educational component. Such is the case, for example, with the northern regional meeting in which judges of the Northeast and Northwest Regions meet together and deal with educational issues of special interest to the north, such as judicial isolation, travel and aboriginal justice.
5. In addition to the educational programs outlined above, the fundamental education of judges continues to be self-directed and is effected *inter alia* through continuing peer discussions and individual reading and research.



APPENDIX-D

COURTS OF JUSTICE ACT

CHAPTER C.43

ONTARIO JUDICIAL COUNCIL

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.

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.

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

QUORUM

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

REVIEW PANELS

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

Same

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

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

EXCEPTIONS

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

PERSONAL LIABILITY

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

REMUNERATION

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

SECTION 50

COMPLAINT AGAINST CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

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

SUSPENSION OF CHIEF JUSTICE

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

COMPLAINT AGAINST ASSOCIATE CHIEF JUSTICE OR REGIONAL SENIOR JUDGE

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

SECTION 51

PROVISION OF INFORMATION TO PUBLIC

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

Same

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

ASSISTANCE TO PUBLIC

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

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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.

SECTION 51.1

RULES

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

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

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

REGULATIONS ACT

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

SECTIONS 28, 29 AND 33 OF SPPA

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

SECTION 51.2

USE OF OFFICIAL LANGUAGES OF COURTS

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

Same

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

Same

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

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

Same

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

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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.

SECTION 51.3

COMPLAINTS

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

Same

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

Same

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

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

CARRIAGE OF MATTER

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

INFORMATION RE COMPLAINT

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

SECTION 51.4

REVIEW BY SUBCOMMITTEE

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

ROTATION OF MEMBERS

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

DISMISSAL

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

INVESTIGATION

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

EXPERT ASSISTANCE

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

INVESTIGATION PRIVATE

(6) The investigation shall be conducted in private.

NON-APPLICATION OF SPPA

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

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

INTERIM RECOMMENDATIONS

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

Same

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

POWER OF REGIONAL SENIOR JUDGE

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

DISCRETION

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

SECTION 51.5

MEDIATION

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

CRITERIA

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

Same

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

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

LEGAL ADVICE

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

TRAINED MEDIATOR

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

IMPARTIALITY

(6) The mediator shall be impartial.

EXCLUSION

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

REVIEW BY COUNCIL

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

- (a) approve the disposition of the complaint; or
- (b) if the mediation does not result in a disposition or if the Council is of the opinion that the disposition is not in the public interest,
 - (i) dismiss the complaint,
 - (ii) refer the complaint to the Chief 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).

SECTION 51.6

ADJUDICATION BY COUNCIL

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

APPLICATION OF SPPA

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

RULES OF PROCEDURE

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

COMMUNICATION RE SUBJECT-MATTER OF HEARING

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

EXCEPTION

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

PARTIES

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

EXCEPTION, CLOSED HEARING

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

DISCLOSURE IN EXCEPTIONAL CIRCUMSTANCES

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

ORDERS PROHIBITING PUBLICATION

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

PUBLICATION BAN

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

DISPOSITIONS

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

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

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

Same

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

DISABILITY

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

APPLICATION OF SUBS. (13)

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

UNDUE HARDSHIP

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

OPPORTUNITY TO PARTICIPATE

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

CROWN BOUND

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

REPORT TO ATTORNEY GENERAL

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

NON-IDENTIFICATION OF PERSONS

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

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

CONTINUING PUBLICATION BAN

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

SECTION 51.7

COMPENSATION

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

CONSIDERATION OF QUESTION COMBINED WITH HEARING

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

PUBLIC OR PRIVATE CONSIDERATION OF QUESTION

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

RECOMMENDATION

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

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Same

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

DISCLOSURE OF NAME

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

AMOUNT OF COMPENSATION

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

PAYMENT

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

SECTION 51.8

REMOVAL FOR CAUSE

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

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

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

TABLING OF RECOMMENDATION

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

ORDER FOR REMOVAL

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

APPLICATION

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

TRANSITION

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

SECTION 51.9

STANDARDS OF CONDUCT

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

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.

SECTION 51.10

CONTINUING EDUCATION

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

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.

SECTION 51.11

PERFORMANCE EVALUATION

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

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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SECTION 51.12

CONSULTATION

51.12 In establishing standards of conduct under section 51.9, a plan for continuing education under section 51.10 and a program of performance evaluation under section 51.11, the Chief Justice of the Ontario Court of Justice shall consult with judges of that court and with such other persons as he or she considers appropriate.

SECTION 87

MASTERS

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

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*.

SECTION 87.1

SMALL CLAIMS COURT JUDGES

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

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.

SECTION 45

APPLICATION FOR ORDER THAT NEEDS BE ACCOMMODATED

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

DUTY OF JUDICIAL COUNCIL

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

UNDUE HARDSHIP

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

GUIDELINES AND RULES OF PROCEDURE

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

OPPORTUNITY TO PARTICIPATE

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

CROWN BOUND

(6) The order binds the Crown.

SECTION 47

RETIREMENT

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

Same

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

CONTINUATION OF JUDGES IN OFFICE

(3) A judge who has attained retirement age may, subject to the annual approval of the Chief 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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COURTS OF JUSTICE ACT – CHAPTER C.43 – ONTARIO JUDICIAL COUNCIL

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.



APPENDIX-E

REASONS FOR DECISION

WILLIAM G. RICHARDS

APPENDIX - E

REASONS FOR DECISION

BEFORE The Honourable DENNIS R. O'CONNOR
Associate Chief Justice of Ontario
Madam Justice P.H. MARJOH AGRO
WILLIAM JAMES
PATRICIA D.S. JACKSON

COUNSEL ANDREW BURNS, Presenting Counsel
J.J. BURKE, Counsel to Mr. JUSTICE W.G.
RICHARDS

REASONS FOR DECISION

This case concerns a complaint that Mr. Justice Richards improperly terminated the trial of a criminal proceeding over which he was presiding. At the conclusion of the hearing of the complaint the panel dismissed the complaint, indicating that its reasons would follow. These are the reasons for our decision.

HISTORY OF PROCEEDINGS

The particulars of the complaint as set out in the Notice of Hearing are as follows:

1. It is alleged that on July 10, 1998 in Courtroom 124 at Old City Hall in the City of Toronto, the Honourable Mr. Justice William G. Richards (“Mr. Justice Richards”) was scheduled to preside over, and did commence the hearing of a matter concerning charges against Mr. Edford Providence of two Counts of Threatening Bodily Harm contrary to *The Criminal Code*.
2. Mr. Providence had previously appeared on March 9, 1998 ready for trial, but the trial was postponed due to the failure of the Crown to produce a security videotape to the defence showing Mr. Providence in proximity to the complainant Ms Adilman.
3. Mr. Providence was given a new trial date of July 10, 1998.
4. At the beginning of the hearing on July 10, 1998, Crown counsel Robin Flumerfelt called as its first witness Ms Anna Adilman, the complainant in respect of the first of the two counts in respect of which Mr. Providence was charged.
5. The charges involved, *inter alia*, threats allegedly uttered on July 17, 1997 by Mr. Providence against Ms Adilman at the William Ashley store where Ms Adilman was working as a “greeter”.
6. After Mr. Flumerfelt finished his examination-in-chief of Ms Adilman, counsel for Mr.

Providence, Mr. George N. Carter, commenced his cross-examination of Ms Adilman.

7. At the beginning of his cross-examination, Mr. Carter indicated that he wished to play a security videotape recorded in the William Ashley store where Ms Adilman was working at the time of the events that led to the charges against Mr. Providence.
8. Mr. Justice Richards, on hearing Mr. Carter state that he needed the videotape for his cross-examination of Ms Adilman, remarked that it was “the Crown’s videotape” and the Crown chose not to “put it in”.
9. On hearing Mr. Carter’s explanation that he wished to use the tape as part of his cross-examination, Mr. Justice Richards is alleged to have stated “all right. Hook it up and let’s see it. I knew this... so, start cross-examining while it’s getting hooked up.”
10. During the cross-examination, Mr. Flumerfelt objected twice that no activity on the videotape was occurring. Mr. Carter continued his cross-examination.
11. After the cross-examination had proceeded for some time, at approximately 11:30 a.m., Mr. Justice Richards interrupted Mr. Carter and asked the police officer operating the video equipment to turn off the videotape player.
12. After asking that the player be turned off, Mr. Justice Richards is alleged to have spoken the following words: “This matter was marked for a day. I cannot be seized. This is my last day in Toronto. I am not going to hear it. Obviously, I have been acquainted with defence counsel before and he’s very thorough and I guarantee I could not finish it today if I heard it... so, I’m going to strike the plea and stop the proceedings and ... move it back to whatever court it came from...”

APPENDIX - E

REASONS FOR DECISION

13. It is alleged that Mr. Providence was before Mr. Justice Richards for less than half an hour.
14. It is alleged that Mr. Justice Richards asked neither the Crown counsel nor Mr. Carter how many witnesses either intended to call, and heard to substantive submissions before making his decision to terminate the proceedings.
15. The above-noted conduct is incompatible with the due execution of the duties of the Honourable Mr. Justice William G. Richards.

The complaint was submitted by Mr. Providence and his counsel, Mr. Carter. Pursuant to ss.51.4(18) and 51.6 of the *Courts of Justice Act* (the “Act”), the Ontario Judicial Council (the “Council”) directed the complaint to be heard by a panel of the Council. By virtue of the Council’s procedures, established pursuant to the Act, a complaint is referred to hearing where there has been an allegation of judicial misconduct which has a basis in fact which, if believed by the finder of fact, could result in a finding of judicial misconduct. Such hearing is conducted by a panel established pursuant to s.49(16) and (17) of the Act.

Pursuant to ss.49.11 and 51.6(7) of the Act, Judicial Council hearings into complaints are open to the public unless the panel determines in accordance with criteria established under s.51.1(1) of the Act that exceptional circumstances exist and the desirability of holding open hearings is outweighed by the desirability of maintaining confidentiality. There was no suggestion of exceptional circumstances in this case. The hearing was therefore conducted in public.

THE FACTS

Mr. Justice Richards accepted the particulars set out above as substantially correct. The transcript of the proceedings before Mr. Justice Richards on July 10th was also filed in evidence, and confirms the particulars of the complaint.

Mr. Justice Richards’ counsel outlined further facts relevant to the events surrounding the complaint. Those facts were not contested, and we accept them as correct.

Mr. Justice Richards sits as a *per diem* judge. That is to say he has retired, but pursuant to an Order-in-Council is authorized to sit as a judge and be paid, on a *per diem* basis, for a fixed number of days in the year. He is not permanently assigned to any jurisdiction. His assignments are controlled by a central administrator.

On the day in question he had been assigned to sit for one day only at Old City Hall. By mid-morning, he had completed the list of matters scheduled to be heard by him. He therefore asked if there were other matters, which he understood would be guilty pleas or other short matters, with which he could deal. The request for short matters was due to the fact that he was only sitting at Old City Hall for one day. It was also in accordance with the general instruction to *per diem* judges not to take on trials because there is no assurance of being able to complete them in the scheduled one day attendance.

Mr. Justice Richards’ request for additional matters is consistent with his record as a judge who works hard, and one who effectively and efficiently deals with backlogs and guilty pleas. He is described by the local administrative justice in Brampton, Mr. Justice Cowan, in a letter filed as an exhibit in the following terms:

Throughout all my years of knowing Judge Richards he has been and continues to be one of the hardest working, fairest judges that I know. This opinion is shared by a large number of counsel and his fellow judges.

From a defence counsel’s point of view they love to appear in front of him. He gets to the issues quickly, recognizes what the crux of the case is and deals with it in a fair and efficient manner.

On a daily basis we set 30 day hours per day of trial. I particularly appreciate the amount of work that he does because I know that he is not in good health and sometimes comes to court motivated only by the love of the job that he does so well.

When the Providence matter was brought before him on the morning in question Mr. Justice Richards did not make any inquiries before commencing the trial about the complexity or potential length of the matter, nor did he observe from the information that the matter was marked for a one day trial.

After the proceedings got underway, he realized that it was neither a guilty plea nor a similarly short matter. He observed, for the first time, the notation on the information that the matter was scheduled for a one day trial. The implication of counsel’s outline of the facts is that Mr. Justice Richards judged from his experience with defence counsel that if there was more than one witness the case was likely to last two or three days. Because he was only

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scheduled to be at City Hall on that day and was not scheduled to return, Mr. Justice Richards realized that to allow the trial to continue would lead to an inevitable, and potentially very substantial delay. Without hearing from counsel, he suspended the proceedings and directed the matter to be re-assigned.

Mr. Justice Richards acknowledged that he was in error in commencing the trial, without making inquiries which would satisfy him about the length of the matter, and then terminating it. He explained that his actions were motivated by a desire to “move a list in overcrowded, understaffed courts”. He acknowledged that “[moving] the list ... may appear to the public along with the administration of justice to overshadow the appearance of justice”. He acknowledged that this was wrong and apologized.

THE ISSUE

The sole issue in this case is whether Mr. Justice Richards’ conduct constitutes misconduct within the meaning of s.51.6(11) of the *Act*. That section provides:

51.6(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 30 days; or
- (g) recommend to the Attorney General that the judge be removed from office in accordance with s.51.8.

Presenting Counsel submits that the conduct of Mr. Justice Richards, in striking the plea, apparently for reasons of his own administrative convenience and expressed antipathy towards defence counsel, could affect the reputation of the administration of justice so as to amount to judicial misconduct pursuant to s.51.6(11) of the *Act*.

ANALYSIS

The terms of s.51.6(11) of the *Act* evince a clear intention by the Legislature that judicial misconduct may embrace a wide spectrum of conduct. Before the 1995 amendments to the *Act*, the Judicial Council was charged with the investigation of complaints against provincial judges but could dispose of them only by referring them to the Chief Judge, by recommending an inquiry into the question of whether the judge should be removed from office, or by recommending the judge be compensated for the costs of the investigation.

The current *Act* clearly contemplates the concept of judicial misconduct, and that such misconduct may include conduct of a more minor nature (meriting a warning or a reprimand), to conduct of the most extreme seriousness, meriting a removal from office. It is evident from the legislation that the intention is that judicial misconduct is not limited to actions warranting removal from office.

The Supreme Court of Canada has recently considered the issue of judicial misconduct in its determination of the standard of review applicable to a decision by the New Brunswick Judicial Council in *Moreau-Bérubé v. New Brunswick (Judicial Council)*, [2002] S.C.J. No. 9. The New Brunswick statutory regime there under consideration is similar to the one governing these proceedings. The New Brunswick Judicial Council is charged with review of allegations of judicial misconduct, neglect of duty or inability to perform the duties, and may dispose of such complaints through dismissal, a reprimand with conditions, or a recommendation of removal from office. The issue before the Judicial Council in the *Moreau-Bérubé* case was whether the judge’s derogatory comments about Acadians made while presiding over a sentencing hearing amounted to an abuse of judicial independence such as to attract discipline. The Supreme Court of Canada described those cases which would attract a disciplinary process at paragraph 58:

In some cases, however, the actions and expressions of an individual judge trigger concerns about the integrity of the judicial function itself. When a disciplinary process is launched to look at the conduct of an individual judge, it is alleged that an abuse of judicial independence by a judge has threatened the integrity of the judiciary as a whole. The harm alleged is not curable by the appeal process.

In a recent decision of this Council, the panel considered the Supreme Court of Canada’s decision in *Moreau-Bérubé*

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as well as its decision in *Therrien v. Minister of Justice et al.* (2001), 155 C.C.C. (3d) 1 and described the test under s.51.6(11) as follows:

The purpose of judicial misconduct proceedings is essentially remedial. The dispositions in s.51.6(1) should be invoked, when necessary in order to restore a loss of public confidence arising from the judicial conduct in issue.

Paraphrasing the test set out by the Supreme Court in Therrien and Moreau-Bérubè, the question under s.51.6(11) is whether the impugned conduct is so seriously contrary to the impartiality, integrity and independence of the judiciary that it has undermined the public's confidence in the ability of the judge to perform the duties of office or in the administration of justice generally and that it is necessary for the Judicial Council to make one of the dispositions referred to in the section in order to restore confidence.

In this case there is no question that Mr. Justice Richards had become seized of the criminal trial when he began hearing evidence, and that his decision to terminate the trial without hearing from counsel was in error. Mr. Justice Richards concedes this, and in effect concedes that his conduct fell below the standard expected of a judge in those circumstances.

In general, a decision to terminate a trial which has already begun on the basis of personal or administrative concerns would bring the administration of justice into disrepute and could amount to judicial misconduct. The result is the inevitable delaying of the trial, with attendant prejudice, as well as the substantial inconvenience to the accused, and those witnesses in attendance. In most circumstances, such a decision would increase the likelihood that the accused's s.11(b) rights under the *Charter* had been violated. This is particularly so in a case, such as this one, where the trial had already been postponed because of the Crown's failure to produce apparently relevant evidence.

In our view, however, this case is an exception to the general rule. When we consider all of the facts, we are of the view that Justice Richards' conduct falls short of constituting judicial misconduct. There are a number of reasons:

1. The judge is known for his diligence. His reputation is not only that he does not avoid work, he seeks it out. He offered to take more cases that day.

2. The judge did not realize that the case was scheduled for more than one day when he started the trial.
3. The judge's assessment was that this counsel often caused cases to take more rather than less time.
4. The judge was a *per diem* judge, and as a matter of administration was not likely to be available for a considerable period of time – perhaps causing a longer delay than if he aborted the trial.
5. The case would not have been reached in the other court in which it was originally scheduled.
6. The judge has been on the court for 25 years with an unsullied reputation. Indeed, his reputation is that of a diligent and hard working judge.
7. The judge demonstrated a clear understanding of the significance of his error in this case. His apology was sincere.
8. The dispositions in s.51.6(11) are in general prospective, not punitive. It is highly improbable that this judge would make the same kind of mistake again. (We do not, in making this observation, consider that the need to address the possibility of future misconduct is a *sine qua non* for a finding of judicial misconduct.)
9. The judge's conduct did constitute an error in judgement. He should have addressed the issue of the length of the trial before it started and once he decided to address it he should have asked counsel how long it was likely to take. However, a reasonable member of the public knowing all of the relevant facts would not view this as more than an error in judgement.

For all of these reasons, we consider that this admitted error in judgement falls short of constituting judicial misconduct. We therefore dismiss the complaint.

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COMPENSATION

Madam Justice Agro is a member and director of the Ontario Conference of Judges. The conference has a compensation fund for judges who appear before the Judicial Council. Accordingly, Madam Justice Agro recused herself from this portion of the decision.

Section 51.7(5) of the *Act* requires that in circumstances where a complaint is dismissed the Judicial Council must recommend to the Attorney General that the judge be compensated for the costs of legal services and must indicate the amount. Pursuant to s.51.7(7) the amount of the compensation may relate to all or a portion of the judge's costs for legal services and must be based on a rate which does not exceed the maximum rate normally paid for legal services by the Government of Ontario. In this case, counsel made a joint recommendation for costs in the amount of \$3,000. It is evident from the hearing itself and the information provided to us that this is a substantial reduction from the amount that could be awarded. While we have concluded that there was no judicial misconduct, we are of the view that there was an error in judgement. The case was certainly an appropriate one to be brought forward to a hearing.

In all of the circumstances, we recommend to the Attorney General that Mr. Justice Richards be compensated for his legal costs in the amount of \$3,000.

DATED at the City of Toronto, in the Province of Ontario, June 7th, 2002.

Associate Chief Justice **DENNIS R. O'CONNOR**

Madam Justice **P. H. MARJOH AGRO**

WILLIAM JAMES

PATRICIA D. S. JACKSON

