



TENTH ANNUAL REPORT

2004 – 2005

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, 2006

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

Dear Minister:

It is our pleasure to submit the Annual Report of the Ontario Judicial Council concerning its tenth 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, 2004 to March 31, 2005.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'R. Roy McMurtry'.

R. Roy McMurtry
Chief Justice of Ontario

A handwritten signature in blue ink, appearing to read 'Brian W. Lennox'.

Brian W. Lennox
Chief Justice
Ontario Court of Justice



INTRODUCTION

The period of time covered by this Annual Report is from April 1, 2004 to March 31, 2005.

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 275 provincially-appointed judges and masters during the period of time covered by this Annual Report.



TENTH OJC 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 tenth year of operation (April 1, 2004 to March 31, 2005) was as follows:

Judicial Members:

CHIEF JUSTICE OF ONTARIO

R. 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

Raymond P. Taillon(Lindsay)
(to September 1, 2004)

REGIONAL SENIOR JUSTICE

G. Normand Glaude(Sudbury)
(from January 12, 2005)

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

The Honourable Madam Justice Marjoh Agro.....(Milton)

The Honourable Madam Justice Deborah Livingstone
.....(London)

Lawyer Members:

TREASURER OF THE LAW SOCIETY OF UPPER CANADA

Frank Marrocco, Q.C.(Toronto)

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

Julian Porter, Q.C.(Toronto)

LAWYER DESIGNATED BY THE LAW SOCIETY OF UPPER CANADA

Patricia D. S. Jackson(Toronto)

Community Members:

MADELEINE ALDRIDGE(Toronto)
Teacher, Toronto Catholic District School Board
(from October 14, 2004)

JOCELYNE COTÉ-O'HARA(Toronto)
President, CORA Group

PAUL HAMMOND(Bracebridge)
President and CEO, Muskoka Transport Ltd.
(to June 30, 2004)

WILLIAM JAMES.....(Toronto)
Chair, Inmet Mining
(to March 21, 2005)

HENRY WETELAINEN(Wabigoon)
Ontario Metis – Aboriginal Association
(to March 1, 2005)

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.
- Master R.B. Peterson

JUDGES

- The Honourable Justice M.D. Godfrey
- The Honourable Justice Pamela Thomson

Subsection 49(3) of the *Courts of Justice Act* permits the Chief Justice of the Ontario Court of Justice to appoint a provincial judge to be a temporary member of the Ontario Judicial Council to meet the quorum requirements of the legislation with respect to Judicial Council meetings, review panels and hearing panels. The following judges of the Ontario Court of Justice have been appointed by the Chief Justice to serve as temporary members of the Ontario Judicial Council when required:

The Honourable Justice Bernard M. Kelly
The Honourable Justice Claude H. Paris

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 tenth year of operation, the staff of the Ontario Judicial Council and the Justices of the Peace Review Council consisted of a registrar, an assistant registrar (for part of the year) and a secretary:

VALERIE P. SHARP, LL.B. – Registrar


THOMAS GLASSFORD – Assistant Registrar

(on parental leave from August 16 to December 13, 2004)

JANICE C. 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 2004-2005 can be found at Appendix “C”.

5. Ethical Principles for Judges

The Chief Justice of the Ontario Court of Justice, together with the Ontario Conference of Judges, proposed to the Ontario Judicial Council that the principles contained in the Canadian Judicial Council’s text, “*Ethical Principles for Judges*” form part of the ethical standards governing the conduct of judges of the Ontario Court of Justice. On February 11th, 2005, the members of the Ontario Judicial Council unanimously agreed to the adoption of this text. A copy of this document may be found at Appendix “E”

6. Communications

The website of the Ontario Judicial Council continues to include information on the Council as well as information about upcoming hearings. Copies of “Reasons for Decision” are posted on the website when released and the most recent publicly available Annual Report is included in its entirety.

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

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 Madam Justice Marjoh Agro was appointed by the OJC to act as its representative on J.A.A.C.


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, examines all complaints made to the Council. The governing legislation empowers the complaint subcommittee to dismiss 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 all recommendations for disposition of a complaint made by a complaint subcommittee and may approve the proposed 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 in 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, either singly or in combination, 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

The Council may also make a recommendation to the Attorney General that the judge be removed from office. This last sanction stands alone and cannot 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 may 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 if such a recommendation is made.

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 36 complaints in its tenth year of operation, as well as carrying forward 35 complaint files from previous years. Of these 71

complaints, 52 files were closed before March 31, 2004, leaving 19 complaints to be carried over into the eleventh year of operation. There was insufficient time to investigate the fourteen files opened near the end of 2004/beginning of 2005 in order to meet the deadline for the last meeting of Year 10 held on February 11, 2005. There were also two files carried over to Year 11 which were files ordered to a public hearing where hearing dates could not be arranged in Year 10.

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. 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, in most cases. There were six files where the members of the review panel either didn't agree with the recommendation or ordered that further investigation be conducted (please see file nos. 07-021/01, 09-002/03, 09-003/03, 09-023/03, 09-026/03 and 10-001/04).

Thirty-nine (39) of the 52 complaint files closed were **dismissed** by the Judicial Council.

Seventeen (17) of the 39 complaint files **dismissed** by the Ontario Judicial Council during the period of time covered by this report were found to be outside the jurisdiction of the Council. These files typically involved a complainant who expressed dissatisfaction with the result of a trial or with a judge's decision,

but who made no allegation of misconduct. While the decisions made by the trial judge in these cases could be appealed, the absence of any alleged misconduct meant that the complaints were outside the jurisdiction of the Judicial Council.

The remaining twenty-two (22) of the 39 complaint files that were **dismissed** by the OJC contained allegations of judicial misconduct including allegations of improper behaviour (rudeness, belligerence, etc.), lack of impartiality, conflict of interest or some other form of bias. The allegations contained in each of these files were investigated by a complaint subcommittee and determined to be unfounded.

The remaining thirteen (13) files of the 52 files which were **closed** in year 10, were closed without being dismissed: seven (7) files were referred to the Chief Justice of the Ontario Court of Justice, Mr. Justice Brian W. Lennox, to speak to the three judges in question (file nos. 07-021/01, 08-038/03, 09-002/03, 09-003/03, 09-027/03, 09-034/03 and 09-046/04); one complaint file was referred to the Chief Justice of the Superior Court of Justice, Madam Justice Heather Smith (file no. 09-026/03); two files were closed when it was determined that the matter was still before the courts and the file had been opened prematurely (file nos. 10-022/04 and 10-026/05); the remaining three files which were closed in year 10, either went to a hearing or were ordered to a hearing. Two of those 3 files were matters which had been carried over from previous years where the hearing took place in Year 10 (08-024/02 and 08-031/02). In the remaining file, the judge involved resigned after the OJC ordered a hearing and the file was then closed since the Council no longer had jurisdiction (09-053/04).

FISCAL YEAR:	00/01	01/02	02/03	03/04	04/05
Opened During Year	55	52	49	55	36
Continued from Previous Year	52	44	33	34	35
Total Files Open During Year	107	96	82	89	71
Closed During Year	63	63	48	54	52
Remaining at Year End	44	33	34	35	19



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").

Files are given a two-digit prefix indicating the year of Council's operation in which they were opened, followed by a sequential file number and by two digits indicating the calendar year in which the file was opened (i.e., file no. 10-035/04 was the thirty-fifth file opened in the tenth year of operation and was opened in calendar year 2004.).

Details of each complaint, with identifying information removed as required by the legislation, follow.





CASE SUMMARIES

CASE NO. 07-021/01

The complainant advised that he had accompanied his wife on the court appearances she'd had to make regarding the support, custody and access of the son she'd had with her ex-husband. The complainant alleged that the judge who presided over his wife's family court proceedings, "repeatedly bullied, threatened, slandered and pronounced his wife guilty of having done things she had not". The complainant advised that he had the same impression of the judge on each occasion his wife had attended at court.

After reading the transcripts and listening to the audiotapes of the various court proceedings, the complaint subcommittee requested a response from the judge. In his response the judge advised that he regretted "the intensity" of his manner in dealing with the complainant's wife which he stated derived from his desire to impress her with the seriousness of her actions and the possible consequences which could result if she did not comply with the court's access orders (i.e., she could be incarcerated). The judge also sincerely apologized for the fact that the complainant found his conduct to be offensive.

The complaint subcommittee recommended that the complaint be dismissed. In the complaint subcommittee's view, the tone of the judge's voice and some of the interactions with the complainant's wife were inappropriate but fell short of judicial misconduct. The review panel disagreed with the recommendation of the complaint subcommittee and were of the opinion that the inappropriate conduct of the judge warranted the referral of this complaint and two similar complaints (files #09-002/03 & 09-

003/03) to the Chief Justice of the Ontario Court of Justice.

The complaint was referred to the Chief Justice to review with the subject judge. In his report back to the review panel, the Chief Justice confirmed that both he and the subject judge had listened to the audiotapes of the proceedings in all three files in addition to reading the transcripts. The Chief Justice indicated in his report to the Council that the judge agreed that his expressions of frustration and exasperation could have created a misapprehension in the mind of the complainant and his wife and ultimately agreed that his conduct was inappropriate. The Chief Justice expressed his satisfaction that the judge appreciated the concerns of the Council and since being apprised of the complaints has made efforts to be more calm and to modulate his voice in court proceedings. The members of the review panel indicated their satisfaction with the report of the Chief Justice and agreed with the recommendation that this matter be closed.

CASE NO. 08-016/02

The complainant is a psychologist who was an expert witness called by the Crown on a dangerous offender application which had been brought to court by the Crown Attorney's office. The individual who was the subject of the application was subjected to various psychological tests and assessments which were conducted by the complainant/psychologist. The complainant provided the OJC with a copy of a letter which had been written to the College of Psychologists by the Asst. Crown Attorney who had brought the dangerous offender application before the



CASE SUMMARIES

court. The Assistant Crown Attorney had written to the College of Psychologists citing six specific concerns regarding the complainant/ psychologist's methodology, which had become apparent during cross-examination by defence counsel. The Asst. Crown Attorney advised that she had asked the court to dismiss the application after the testimony of the complainant/psychologist as it was obvious that the testing methods and results were seriously flawed and could not be relied upon. The Assistant Crown Attorney's letter appeared to be in support of a letter of complaint to the College of Psychologists by the defence counsel in this matter. In the Assistant Crown's letter to the College, reference was made to the presiding judge having referred to the complainant as a "monstrosity" and, further, that "he could not rely on a single word she said". The Assistant Crown indicated that this statement was made on the record. The complainant/ psychologist alleged that the judge to whom the remarks were attributed had thus improperly and unjustly vilified her character.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcripts and audiotapes of the proceedings. The initial materials received by Court Services contained only the transcripts and audiotapes for the evidence portion of the application. This material confirmed that no statements attributed by the Assistant Crown Attorney, in her letter to the College of Psychologists, to the judge had been made. The complaint subcommittee requested further information from the Assistant Crown Attorney. In her response to Council's request for more information, the Assistant Crown Attorney confirmed that no "off the

record" comments were made by the judge and that she deferred to the record as transcribed. Upon further investigation with Court Services, two additional proceedings were discovered, which related to the decision and sentencing portion of the application. These transcripts and audiotapes were provided by Court Services and were deemed complete and accurate through a thorough comparison with the audiotapes. The complaint subcommittee noted that the only reference the judge made to the creditability of the complainant was that her evidence was "unbelievable", which was an appropriate finding of credibility in the complaint subcommittee's view.

The complaint subcommittee recommended that the complaint be dismissed as there appeared to be no basis to the complaint other than the remarks attributed to the judge in the letter from the Assistant Crown Attorney and no objective evidence was found to corroborate the allegations. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 08-038/03

The complainant is a paralegal who on the first appearance in a domestic proceeding was reluctantly permitted by the presiding judge to appear on behalf of the applicant in the proceeding. The paralegal made a second appearance on behalf of the applicant and alleged the judge berated him and threatened imprisonment if he spoke out.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcripts



CASE SUMMARIES

and audiotapes of the proceedings. Based on its review of the materials, the complaint subcommittee recommended that this complaint be referred to the Chief Justice. In making that recommendation, the complaint subcommittee indicated that Rule 4(1)(c) of the Family Law Rules permits a party to be represented by a non-lawyer in special circumstances, with the permission of the court. The complaint subcommittee noted that it is therefore quite permissible for the court to refuse to permit a paralegal to represent a party unless those special circumstances are made out. In this case however, the members of the complaint subcommittee were of the view that the presiding judge was indeed rude to the complainant. The review panel agreed with the complaint subcommittee's recommendation that this matter be referred to the Chief Justice together with a similar complaint (file no. 09-034/03). The judge was provided with a copy of the complaint material and responded to Council acknowledging the complaint had some merit. The complaint was then referred to the Chief Justice to review with the subject judge. In his report back to the review panel, the Chief Justice expressed his satisfaction that the judge appreciated the concerns of Council and recommended no further action be taken. The members of the review panel indicated their satisfaction with the report of the Chief Justice and agreed with the recommendation that this matter be closed.

CASE NO. 09-002/03

The complainants are a husband and wife who were involved in a Family Court matter concerning the husband's ex-wife and the previous custody, access and support arrangements made in 1998 concerning the husband's son from the previous

marriage. From the transcript forwarded with the letter of complaint, it appeared that part of the arrangement made in 1998 was formalized in a court order which gave custody to the mother, terminated support obligations of the father, but failed to address the issue of access. The ex-wife had now returned to court to have support for her son re-instated.

The respondent to that application (the complainant) had since re-married and had two other children with his new wife. In his letter of complaint, the respondent father indicated that he and his new wife made life-changing decisions regarding their family based on the 1998 court order. He alleged that the judge who heard the application for re-instatement of support by the ex-wife failed to pay attention to the facts, evidence and circumstances of each family and instead issued a final order, awarding the reinstatement of the child support payments retroactive to the date the application was made (June 2002), but not retroactive to the termination of support in 1998. The respondent father's new wife also filed a complaint alleging that the judge showed no regard for the couple's two children (and their need for care) when he ordered support payments to be paid for the son of the previous relationship.

The complaint subcommittee reviewed the complaint and the transcript together with the audiotapes of the court proceeding. The complaint subcommittee requested a response from the judge with respect to the two letters of complaint. The complaint subcommittee recommended to the review panel that the complaints be dismissed as they were of the view that the complaint concerned the decision of the judge and the



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manner in which he made the order. The complaint subcommittee noted that the judge's tone of voice was less than ideal at times as he explained the process to the un-represented complainants, however, in their view, it fell short of judicial misconduct.

The review panel disagreed with the recommendation of the complaint subcommittee and were of the opinion that the inappropriate conduct of the judge warranted the referral of this complaint and two similar complaints (files #07-021/01 & 09-003/03) to the Chief Justice of the Ontario Court of Justice. In making the decision to refer this complaint to the Chief Justice, the review panel was of the view that in this instance the judge expressed exasperation and frustration in an extreme manner, which may have left the impression of high-handedness.

The complaint was referred to the Chief Justice to review with the subject judge. In his report back to the review panel, the Chief Justice confirmed that both he and the subject judge had listened to the audiotapes of the proceeding in addition to reading the transcript. The Chief Justice indicated in his report that the judge agreed his expressions of frustration and exasperation could have created a misapprehension in the mind of the complainants and ultimately agreed that his conduct was inappropriate. The Chief Justice expressed his satisfaction that the judge appreciated the concerns of the Council and since being apprised of the complaints has made efforts to be more calm and to modulate his voice in court proceedings. The members of the review panel indicated their satisfaction with the report of the Chief Justice and agreed with the recommendation that this matter be closed.

CASE NO. 09-003/03

The complainant was counsel for the respondent in a Family Court matter. The complainant alleged that the judge in question was rude and insulting throughout the court appearance, often interrupting and not allowing him to make submissions. The complainant further alleged that the judge suggested to his client that he report him to the Law Society of Upper Canada and accused the complainant of "habitually flaunting the rules" and not filing documents on time.

The complaint subcommittee reviewed the complaint and requested and received a transcript and audiotape of the court proceeding. The complaint subcommittee requested a response from the judge with respect to the complainant's concerns. The complaint subcommittee recommended to the review panel that the complaint be dismissed. It was the view of the complaint subcommittee that the judge and counsel (complainant) disagreed over whether the complainant habitually refused to comply with the Family Law Rules. The complaint subcommittee noted, from reviewing the audiotape of the court proceeding, that both the judge's and complainant's voices were loud and excited at times. The complaint subcommittee viewed the judge's suggestion of recusing himself from hearing any further cases with this counsel, as perhaps the most effective remedy.

The review panel disagreed with the recommendation of the complaint subcommittee and were of the opinion that the inappropriate conduct of the judge warranted the referral of this complaint and two similar complaints (files #07-021/01 & 09-002/03) to the Chief Justice of the Ontario



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Court of Justice. A letter was sent to the Judge asking for his acknowledgement that there was some merit to the complaint and that he was in agreement with the decision to have this matter referred to the Chief Justice. In the judge's response, he indicated that, in his view, his conduct was justified in dealing with the lawyer and he wished to have Council clarify its concerns. The Judicial Council advised the judge that their concern was focused on the judge's conduct and demeanor during the proceedings and not on the message about flaunting the Family Law Rules that the judge was attempting to convey. In his response, the judge acknowledged that there was some merit to the complaint, however expressed concern that Council's ultimate letter to the complainant may leave the impression that Council condoned the complainant's behaviour.

The complaint was referred to the Chief Justice to review with the subject judge. In his report back to the review panel, the Chief Justice confirmed that both he and the subject judge had listened to the audiotapes of the proceeding in addition to reading the transcript. The Chief Justice indicated in his report that the judge agreed his expressions of frustration and exasperation could have created a misapprehension in the mind of the complainant and ultimately agreed that his conduct was inappropriate. The Chief Justice expressed his satisfaction that the judge appreciated the concerns of the Council and since being apprised of the complaints has made efforts to be more calm and to modulate his voice in court proceedings. The members of the review panel indicated their satisfaction with the report of the Chief Justice and agreed with the recommendation that this matter be closed.

CASE NO. 09-010/03

The complainant was charged and convicted of assault. The complainant alleged that he "was found guilty due to the corruption of two small towns that neighbour each other and because I chose to represent myself which the court frowns upon. I proved in court beyond a shadow of a doubt that is undisputable (sic), that I am innocent."

The investigating complaint subcommittee reviewed the complainant's letters and recommended to the review panel that the complaint be dismissed because the complaint is about the decision of the judge and, without evidence of judicial misconduct is outside the jurisdiction of the Ontario Judicial Council. The complaint subcommittee noted that the proper remedy for the complainant would have been an appeal of the judge's decision. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-023/03

The complainant was a court employee who was allegedly assaulted by a judge presiding at the same court location where she works. The judge who had allegedly assaulted her was suspended with pay, awaiting a Judicial Council hearing and the outcome of a criminal charge (see OJC File no. 08-031/02). After the judge had been suspended, the complainant indicated she was told by another court employee about an e-mail concerning the assault charge that was sent by a judge to the other judges at the same court location. The complainant was concerned about what the e-mail allegedly said about the dangers of other judges working with her. She also expressed



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concern about the hostility she felt was directed towards her by some judges and some court staff because of her original complaint about the alleged sexual assault.

The complaint subcommittee reviewed the complaint and retained an investigator to ascertain the name of the judge who had allegedly authored the e-mail in question. The complaint subcommittee then requested and reviewed a response from the judge in question. The judge's letter of response explained the concern he had, after he had been advised of the suspension of the judge who had been charged. The judge explained in his response that e-mails and comments from him, after the fact, were a result of his concern about potential conflicts of interest arising out of continuing to work with the employee alleging harassment because he could be a potential witness for the judge who had been suspended. The complaint subcommittee accepted the judge's explanation and recommended that the complaint be dismissed.

The members of the review panel were of the view that further inquiries should be made in an attempt to acquire a copy of the e-mail. The review panel directed the subcommittee to contact the Local Administrative Justice and Regional Senior Justice and request a copy of the e-mail. After making inquiries, the complaint subcommittee reported that no copy of the e-mail could be found. The complaint subcommittee recommended that the complaint be dismissed. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-025/03

The complainant was the biological father of a child who was in his mother's custody. The child's mother was in a common-law relationship with a man the complainant alleged had abused his son. The complainant applied to the court to vary the final custody order that had given custody to the mother. The complainant, who was not represented by counsel, was unsuccessful in this application and complained that the judge cut him short in his presentation and alleged that the judge was rude and disrespectful, lost his composure and refused to allow the complainant an opportunity to present expert evidence as to whether or not the police and C.A.S. had followed proper interviewing techniques, policies and procedures into the allegation of assault supposedly committed by the common-law partner of the custodial parent.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcript and audiotape of the court proceeding. The complaint subcommittee recommended that the complaint be dismissed after a review of the transcript and audiotape demonstrated that the judge was patient and calm and gave rational, fair and instructive reasons. It was the view of the complaint subcommittee that the judge was not rude nor disrespectful and allowed the complainant ample opportunity to present evidence. The complaint subcommittee noted that the case had been adjourned to allow the complainant the opportunity to present expert evidence. The record indicated that the complainant's expert was not available to attend at the previous court date and the matter was adjourned to the date in question to allow for her attendance. The sub-



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committee further noted that the complainant did not have his expert available to testify, but wanted to file her report, without providing proper notice. His request to do so was denied by the judge. If errors in law were committed by the judge, in not allowing the report to be entered as evidence or in any other matter of law decided by him (and the Judicial Council made no such finding), such errors may 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. 09-026/03

The complainant is the plaintiff in a Small Claims Court matter concerning a fence dispute with his neighbour. The complainant indicated in his letter to the Judicial Council that he was well prepared and his evidence was well documented when he appeared before the subject judge for the pre-trial in this matter. The complainant alleged that the judge commented that "he could not spend much time on this case since he had an important case following". The complainant further alleged that the judge had not reviewed the evidence submitted by the complainant beforehand and that he refused to review evidence during the pre-trial. The complainant indicated that neither he nor the respondent were permitted to talk and alleged that the judge commented "if we spoke that he would send us to jail".

The complaint subcommittee reviewed the complaint and requested the transcript and

audiotape of the court proceeding. Court Services confirmed that the pre-trial was not recorded and therefore no audiotape or transcript could be provided. The complaint subcommittee then requested a response from the judge. In his letter of response, the judge denied having commented that he could not spend much time on the case since he had an important case following, as alleged by the complainant, and further indicated that he views all cases as important and worthy of the same attention. In addition, the judge indicated that he had reviewed the material and read the file in advance and recalled that the plaintiff prepared a well documented claim with many attachments. With respect to the allegation that the judge threatened imprisonment if either party spoke, the judge indicated that he usually tries to lighten the tensions felt by litigants and sometimes jokingly says "If you don't answer my question, I will give you three choices: One, jail for life; two, shot at dawn by a firing squad; or three, boiled in oil". The judge indicated that he uses these exact words and never in a serious way. The complaint subcommittee reported that the judge indicated that, in light of this complaint, he would refrain from making such comments in the future.

The complaint subcommittee recommended that the complaint be dismissed as there was no independent evidence found to support the allegations made by the complainant. The review panel members did not agree with the complaint subcommittee and recommended that the Judicial Council refer the complaint to the Chief Justice of the Superior Court of Justice to speak to the judge in question concerning the



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objectionable comments made. The Chief Justice of the Superior Court of Justice reported back to the review panel that she met with the judge complained against, reviewed the complaint and Council's concerns with him and reported that she was satisfied that the judge understood the language used was inappropriate and unwarranted and that he would avoid such conduct in future. The review panel expressed satisfaction with the report of the Chief Justice and recommended that the file be closed and the complainant be advised of the outcome of his complaint.

CASE NO. 09-027/03

The complainant was a judge who was visiting a judicial region in which the judge, who is the subject of the complaint, presided. The complainant indicated that the subject judge's ongoing courtroom conduct and practices were bringing him, and the administration of justice, into disrepute. The complainant advised that the allegations were based on personal observations, complaints by counsel and court staff that were made to the complainant, overheard conversations among staff and a newspaper article about a particular case, which was included with the letter of complaint. The complainant felt compelled to make the complaint because counsel and court staff appeared to be reluctant to make complaints themselves due to possible repercussions.

The conduct complained of included allegations that the subject judge "does not like listening to sentencing submissions", "does not like presiding over trials", "pressures people both directly and indirectly to resolve matters" and "has been

known to turn his back on the Court and say he won't listen any further and wants joint submissions for sentencing." The complainant also alleged that the subject judge "will attempt to avoid work by adjourning cases on any pretext" and thereby hears few trials and "creates chaos and delay." The complainant provided a specific example involving a case with a child witness who was to give testimony that was scheduled to be heard in an outlying court location and which was adjourned by the subject judge in order to set a date in a different court location.

The complainant further included a newspaper article about a sentencing hearing that had taken place some months previous. The complainant alleged that in this particular case the subject judge had demanded that crown and defence counsel make a joint submission on sentence and when they couldn't, he "ran an auction in the courtroom and was asking people individually [including the accused] what they thought about his sentence".

The complaint subcommittee reviewed the complaint material and requested and reviewed the transcripts of the two specific court proceedings to which the complainant had referred. The complaint subcommittee also requested and received a response from the subject judge in relation to his colleague's concerns. The subject judge was given the opportunity to await the receipt of the transcripts of the two specific court proceedings before responding to the complaint. However, the subject judge elected to respond to the complaint immediately, in an effort to resolve the matter as quickly as possible.



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In his response, the subject judge denied most of the allegations regarding his general management of his courts and his alleged reluctance to assist his colleagues. He denied categorically that he “does not like listening to sentencing submissions” and stated that he “encourage[s] the resolution of trials by having counsel prior to trial or pre-trial attempt to resolve the case themselves” but if they cannot he has always been prepared to conduct a judicial pre-trial conference. The judge also categorically denied that he “does not like presiding over trials” and “pressures people both directly and indirectly to resolve matters” as alleged and provided information on the assignment of cases in his region to refute the allegation.

The judge’s response also included specific rebuttal of the allegation that he adjourns “out of town” cases in an attempt to avoid work. His response provided a detailed explanation of the reasons for the adjournment in the specific case referred to by the complainant. The complaint subcommittee and members of the review panel were satisfied with the judge’s explanations concerning the complaints about his practices and procedures and agreed that no further action need be taken.

The judge, however, did admit that his conduct in the sentencing hearing that was the subject matter of the newspaper article was inappropriate. The complaint subcommittee recommended that the complaint be referred to the Chief Justice and the review panel agreed with the complaint subcommittee’s recommendation to refer the complaint to the Chief Justice together with a similar complaint (file no. 09-046/04).

After a meeting with the subject judge, the Chief Justice provided his report to the review panel and indicated that the judge immediately acknowledged that he had acted in an inappropriate and injudicious manner in dealing with this particular matter. This sentencing hearing was also the subject of a complaint from the victim of the assault and formed the basis of file 09-046/04, which was reviewed in conjunction with this file. The Chief Justice advised that the subject judge had explained that this proceeding was one of the most difficult over which he had ever presided and the circumstances surrounding the hearing all contributed to the conduct which led to the complaints. The Chief Justice indicated that the subject judge expressed sincere regret for conduct which he acknowledged fell below the standard of conduct expected from a judge and he further indicated that the subject judge had experienced considerable anxiety over the matter. The Chief Justice further reported that he was satisfied that the subject judge understood Council’s concerns and indicated he would not repeat such behaviour in the future. The Chief Justice recommended that no further action be taken with respect to this complaint and that the file be closed. The members of the review panel indicated their satisfaction with the report of the Chief Justice and agreed with the recommendation that this matter be closed.

CASE NO.09-029/03

The complainant was in court on a charge of Theft Under \$5,000 and was convicted. The complainant was not represented by counsel at trial and advised that during the period of time between his conviction and his sentencing date



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he spoke to a lawyer, who he believes may have been in the courthouse as duty counsel, in order to get some advice. The complainant alleged that this lawyer spoke to the judge on his behalf, and returned “shaking his head” and told the complainant, “I don’t know what you have done to this guy...He [the judge] said, ‘I am going to nail this guy [the complainant]. I can’t stand his arrogance.’” The complainant advised that he was writing to the Judicial Council to “see Justice is done and damages are PAID”.

The members of the investigating complaint subcommittee ordered a copy of the transcript of the trial and the sentencing. They also requested and received a response to the complaint from the trial judge. The judge denied saying the words attributed to him and pointed out that the Crown in the case was asking for a “short, sharp jail sentence” rather than the fine that he ordered. The complaint subcommittee then wrote to the lawyer to whom the complainant advised he’d spoken. In his response to the Judicial Council, the lawyer could not recall representing or being retained by the complainant but acknowledged that he could have spoken to him over the lunch hour or during a free moment. The lawyer advised that he might have met with the Crown on behalf of the complainant but would not have met with the trial judge and he denied categorically ever relating the remarks as reported by the complainant.

As a result of the complainant’s allegations being contradicted by an independent witness, the complaint subcommittee concluded that there was no substance to the allegations and recommended that the complaint be dismissed as being

without foundation. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 09-030/03

The complainant appeared as duty counsel for an accused person, who was charged with one count of assault and one count of mischief under \$5,000. The complainant spoke to the accused and reviewed the disclosure material that, in his opinion, justified the accused’s original plan to plead “not guilty” to the charge of damage to property. The complainant was subsequently advised by the Crown that the Crown had spoken to the accused and offered to withdraw the charge if restitution was made for a broken window. The complainant was of the belief that this amounted to extortion because, in his view, the accused had not participated in the breaking of the window. The matter was brought back into court and the complainant alleged that the judge made a gratuitous and unnecessary remark to the accused, which may have had the effect of pressuring him into accepting the Crown’s plea bargain.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcript of the court proceeding. The complaint subcommittee noted that the transcript confirmed that the judge, in granting the adjournment, did address the accused and, after confirming that the accused “had discussions with the Crown as to what alternatives there are to the prosecution of this matter”, added “Anything beats a conviction”. The complaint subcommittee requested a response from the judge. In her letter of response, the judge confirmed the comments as transcribed, however stated that as she was not



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aware of the discussions between the Crown, duty counsel and the accused or the disclosure made by the Crown, there was nothing that led her to believe there was any impropriety. Although the complaint subcommittee was of the view that the comment “Anything beats a conviction” was gratuitous and unnecessary, and was a comment that ought not to have been made, it recommended that the complaint be dismissed as the judge’s conduct fell short of the test of judicial misconduct established by the Supreme Court of Canada in *Therrien v. Minister of Justice et al* (2001), 155 C.C.C. (3d) 1. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 09-031/03

The complainant was an informant and witness for the Crown in a criminal assault trial. The complainant alleged that the judge discriminated against her by not allowing her to tell her side of the story and by not allowing her to file some photographic exhibits.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcript of the court proceeding. It was the view of the complaint subcommittee that there was nothing in the transcript to support the allegations made by the complainant and there was no evidence of judicial misconduct by the presiding judge. The complaint subcommittee noted that this was a criminal matter and therefore it was the Crown’s case and jurisdiction to determine what evidence and testimony was required from witnesses. If errors in law were committed by the judge in not allowing certain evidence to be brought or in any

other decision of law (and the Judicial Council made no such finding) such errors may be remedied on appeal by the Crown and without evidence of judicial misconduct is outside the jurisdiction of the Ontario Judicial Council. The complaint subcommittee therefore recommended that the complaint be dismissed. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 09-034/03

The complainant was the respondent in a family court proceeding dealing with the issue of responsibility for, and obligation to pay, maintenance for his daughter. An interim order was made by a judge (who is not the subject of this complaint) for the support of the child while the matter was awaiting trial. A subsequent endorsement by the same judge resulted in the matter proceeding to trial on an uncontested basis, since the respondent (the complainant) failed to pay the ordered support. The complainant appeared before the judge, who is the subject of this complaint, to ask him to order the Family Responsibility Office to refrain from suspending his driver’s license. The complainant alleged that during the course of his appearance before the subject judge, the judge yelled at him and treated him with a lack of respect.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcript and audiotape of the proceeding. The complaint subcommittee, based on a review of the materials, recommended that this complaint be referred to the Chief Justice. In making that recommen-



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dation, the complaint subcommittee suggested a set of conditions to be agreed to by the judge. Those conditions were that the judge must agree to apologize to the complainant and further that the judge must agree to seek stress/anger management counselling and be granted a leave of absence, if necessary, to obtain such counselling. The review panel agreed with the complaint subcommittee's recommendation that the complaint be referred to the Chief Justice with the aforementioned conditions. The review panel in agreeing with the condition that the judge be required to take counselling, added that the counselling is to be monitored by the Chief Justice. The subject judge was provided with a copy of the complaint material and acknowledged that the complaint had some merit. The complaint was referred to the Chief Justice of the Ontario Court of Justice to review with the judge together with a similar complaint (file no. 08-038/03). In his report back to the review panel, the Chief Justice indicated that the judge had arranged to meet with a counsellor on a regular basis and had been taking stress/anger management counselling since being advised of this complaint. In addition, the Chief Justice confirmed that the judge had sent a letter of apology to the complainant. The Chief Justice was satisfied that the judge quickly recognized the seriousness of his conduct when it was brought to his attention and took steps to avoid its repetition in the future. The Chief Justice advised that he was awaiting a counselling report and recommended that no further action be taken with respect to this complaint. The members of the review panel indicated their satisfaction with the report of the Chief Justice and agreed with the recommendation that this matter be closed.

CASE NO. 09-036/03

The complainant filed an application under the Firearms Act and had to re-apply for a license for his rifle and shotgun. The application was refused by the Firearms Officer and the complainant appealed that refusal to the courts. After a full day review of the application and the decision to refuse licensing of the firearms, the decision of the Firearms Officer was upheld by the presiding judge and the license was denied. The complainant alleged misconduct and was of the view that the judge "discriminated against the physically disabled, demeaned, belittled and made disgraceful jest about the complainant and his father concerning physical disabilities". The complainant further alleged that the judge discriminated against his religious beliefs and that the judge refused to hear some of the evidence that the complainant wished to offer.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcript of the trial and of the ruling on the application. It was the view of the complaint subcommittee that none of the allegations were supported by the complainant's material. The complaint subcommittee was also of the view that the transcripts of the proceeding did not support the allegations that the judge belittled, demeaned or made fun of the complainant or his father's physical disabilities or the complainant's religious beliefs. The complaint subcommittee recommended that the complaint be dismissed, as there was no evidence to support the allegations made by the complainant. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.



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CASE NO. 09-038/03

The complainant was charged with criminal harassment and following trial was convicted of the offence and sentenced to a term of probation for two years. The complainant was of the opinion that the conviction was in error and the sentence imposed by the presiding judge was too harsh.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcript of the reasons for decision given by the presiding judge. The complaint subcommittee recommended that the complaint be dismissed, as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in making the decisions he made in this 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. 09-039/03

The complainant was the applicant in a Small Claims Court matter. During a pre-trial, which was heard in chambers and was off the record, the complainant alleged that the judge was rude, unfair and ordered her not to talk or the police would be called.

The complaint subcommittee reviewed the complaint material provided and requested and reviewed a response from the judge, as there was no transcript available for this appearance. In

responding, the judge indicated he had no specific recollection of the pre-trial attendance nor of the complainant's allegations regarding calling for security. The judge further indicated that all pre-trials are conducted in a fair and just manner and assured Council that parties are given ample opportunity to express their views. The complaint subcommittee noted that the purpose of a pre-trial is for the judge to provide his or her opinion about the likelihood of success of a person's case or defence, which the judge did in this matter. The complaint subcommittee recommended to the review panel that the complaint be dismissed, as there is no objective evidence to support the allegations made by the complainant of rudeness on the part of the judge or of the judge ordering the complainant not to talk. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-040/03

The complainant was a member of the public who, after reading an article in his local newspaper, complained about the comments made by a judge in sentencing a defendant in a criminal case involving domestic violence. The complainant was of the opinion that the Judge's comments that the defendant was "only doing what he's been taught so well" appeared to be condoning the violence of the defendant towards his spouse. The complainant was of the view that the message being sent by the Judge's comments was inappropriate. The complainant further objected to the sentence imposed by the judge as being "a travesty".



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The complaint subcommittee reviewed the complaint and the newspaper article provided by the complainant. The complaint subcommittee then requested and reviewed the transcript of the entire trial proceedings, including the sentencing of the defendant. It was the view of the complaint subcommittee that, while the judge did use the words complained of, the newspaper article to which the complainant referred to had, in the view of the subcommittee, taken the judge's comments out of context. The complaint subcommittee noted from the review of the transcript that the judge well recognized and discussed at length the issues of domestic violence and the need to denounce such conduct. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that the judge's remarks, in context, did not support the allegation of judicial misconduct and the sentence imposed was a matter of judicial discretion. If errors in law were committed by the judge in this case (and the Judicial Council made no such finding), such errors could be remedied on appeal by the Crown 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. 09-041/03

The complainant was a mother who, while resident in Ontario in 1998, was granted custody of her children. The father of the children was granted specified access. The complainant/mother subsequently moved to Saskatchewan and ultimately obtained a divorce with associated terms for custody and access. In July 2003, when

the mother was back in Ontario for a vacation, the father brought a motion for contempt of the previous court order and sought access. The complaint subcommittee reported that the court was satisfied that the mother, who did not appear at the motion, had notice of the motion. The judge, who is the subject of the complaint, made a specific order for access to take place while the children were in the jurisdiction, in compliance with the 1998 Family Court order. The complainant alleged that the judge, in granting the motion in July 2003 and ordering access for the father, acted without jurisdiction and caused her and her family stress and anxiety.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcripts of the motion for contempt proceedings as well as the review of that motion, which was conducted by the other judge (who was not the subject of this complaint). The complaint subcommittee reported that in July 2003, the judge who is the subject of the complaint, was unaware that there was a superseding divorce order that dealt with custody and access issues. Ultimately, another judge in Ontario dismissed the father's motion for contempt due to lack of jurisdiction as the divorce order, not the 1998 Family Court order, prevailed. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that the subject judge acted appropriately based on the limited evidence before her and made a discretionary order which was limited in its scope and enforcement. The complaint subcommittee noted that once further information was before the court (and a different judge) on an automatic review of the order, the access was rescinded and the contempt motion



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dismissed for lack of jurisdiction in the Ontario Court of Justice. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-042/03

The complainant was charged with criminal offenses and represented himself at pre-trial proceedings. After a number of adjournments, the trial date was set but the accused/complainant failed to attend. In his letter to the Council, the complainant indicated that he had a doctor's appointment and required tests due to his experiencing dizziness and chest pains. The complainant further indicated that he had sent his surety to the court to request an adjournment on his behalf. A bench warrant was issued for his arrest and the complainant asserted that the judge had no jurisdiction to issue the bench warrant because the presiding justice was not a regular judge at that court location.

The complaint subcommittee reviewed the complaint material provided by the complainant. The complaint subcommittee noted that any judge of the Ontario Court of Justice has the jurisdiction to issue a bench warrant, even if he/she does not regularly preside in the city where the warrant was issued. In the opinion of the complaint subcommittee, because the accused was not present for his trial, and there was a record of advice to him about the trial date and what was expected of him, the judge had cause to issue a warrant of arrest to get the accused before the court. In the view of the complaint subcommittee, if there was a valid medical emergency which prevented

the accused from being in court, he could have produced proof of that through duty counsel when he eventually entered a plea of guilty to the charges. The complaint subcommittee recommended that the complaint be dismissed as an unfounded. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-043/03

The complainant was charged with a number of criminal offenses, including "impaired driving, fail to provide breath sample, dangerous operation of a vehicle and flight from Police". After a number of adjournments and delays including having a bench warrant issued to bring the accused before the courts, the trial of these matters finally took place. In his letter, the complainant, who was represented by duty counsel, alleged that he was coerced into pleading guilty and that he was not allowed to express himself, nor was he permitted to get necessary papers or his hearing aid.

The complaint subcommittee reviewed the complaint material provided by the complainant and requested and reviewed the transcript of the trial proceedings. The complaint subcommittee noted that the accused was represented by counsel and that the judge made sure the accused was able to hear and that he understood the proceedings and the sentence imposed. The complaint subcommittee further noted that the accused/complainant made no requests indicating that he needed any documents and made no comments to demonstrate any concern about his plea. The complaint subcommittee recommended that



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the complaint be dismissed as being without foundation after an examination of the transcript of record revealed no inappropriate conduct by the judge. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-045/04

The complainant is a bailiff who was charged with break and enter and other criminal offences allegedly arising while in the execution of his duties as a bailiff. During his bail hearing, the complainant alleged that the judge berated, abused and humiliated him. Specifically the complainant noted that the judge commented that "I don't know how this man even got a bailiff's license with a criminal record" and "I myself would have detained him in a minute". The complainant also alleged that the decision of the judge to prohibit him from working as a bailiff was unfounded as the allegations against him were unproven.

The complaint subcommittee reviewed the complaint and the transcript of the Bail hearing provided by the complainant. The complaint subcommittee noted that the accused was represented by counsel and that at no time did the judge address the complainant directly. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was nothing in the transcript to indicate that the complainant was berated, abused or humiliated. The complaint subcommittee noted that the bail term imposed by the court was a matter of judicial discretion based on the submissions and the facts of the case, and that the

condition which prohibited the complainant from continuing to work as a bailiff was reversed on appeal. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-046/04

The complainant, who was the victim of a sexual assault, appeared before the subject judge at the sentencing hearing of her husband, who had pled guilty to the assault. This sentencing hearing formed part of the complaint investigated in OJC file# 09-027/03. The complainant indicated in her letter to the Judicial Council that she and her family were "horrified, shocked and ashamed" of the way the judge handled the court proceeding. The complainant alleged that the judge displayed boredom and disinterest and allowed the accused and his family to disrupt the court proceeding and, in the process, subjected her to unnecessary and cruel treatment from them. The complainant described the situation in the court as "chaotic and uncontrolled", due to the judge's conduct in handling the accused and his family.

The complaint subcommittee reviewed this complaint in conjunction with File 09-027/03. The complaint subcommittee requested and reviewed the transcript of the court proceeding and also reviewed a response from the subject judge. In his response, the subject judge admitted that his conduct in handling and controlling the court proceeding was inappropriate and ineffective. The complaint subcommittee, based on a review of the materials, recommended that the complaint be referred to the Chief Justice. The review panel agreed with the recommendation of the



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complaint subcommittee to refer the complaint to the Chief Justice together with a similar complaint (file no. 09-027/03).

In his report back to the review panel, the Chief Justice indicated that the judge acknowledged that he had acted in an inappropriate and injudicious manner in dealing with what the judge referred to as one of the most difficult proceedings over which he had ever presided. According to the Chief Justice, the judge expressed regret for appearing to negotiate a disposition with the accused and the victim and recognized that his conduct fell below the expected standard for a judge of the Ontario Court of Justice. The Chief Justice expressed his satisfaction that the judge understood Council's concerns and recommended no further action be taken with respect to this complaint. The members of the review panel indicated their satisfaction with the report of the Chief Justice and agreed with the recommendation that this matter be closed.

CASE NO. 09-048/04

The complainant was charged with three counts of fraud and was released on a "promise to appear" and a trial date of February 2004 was set. Prior to the trial date, the complainant was charged with further counts of fraud and released on bail on all charges. The subject judge decided to retain the February 2004 trial date on the original charges and have separate proceedings for the latter charges. The complainant alleged that the subject judge forced the original charges through to trial, without regard to the fact that a) he had not had representation throughout most of the pre-trial proceedings; b) he had just

retained legal counsel; c) his newly retained counsel was not available on the trial date that had been set and d) that he, and now his new counsel, had been unable to receive disclosure on the original charges, despite repeated attempts and requests. The complainant also alleged that the judge indicated that the trial date would go ahead, regardless of whether he or his counsel was prepared and regardless of whether he was represented or not.

The complaint subcommittee reviewed the complaint and recommended that it be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in managing this matter and making the decision to retain the trial date that had been set. 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 also noted that the problems experienced by the complainant with respect to receiving disclosure from the Crown Attorney are outside the jurisdiction of the Judicial Council to review. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-049/04

The complainant was the respondent in a family court proceeding involving custody, access and child support issues. The complainant alleged that the judge "took sides" at an uncontested hearing and would not permit him or his lawyer to tell his side of the story.



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The complaint subcommittee reviewed the complaint and requested and reviewed the transcript and the audiotape of the court proceeding. The complaint subcommittee noted that a respondent in a domestic proceeding has 30 days within which to file an answer and sworn financial statement or, upon proper grounds, seek leave for late filing. Failure to do so will result in a respondent being noted in default and the matter proceeding without any further notice to him/her. The complaint subcommittee noted that in this case, the respondent failed to file his material as required and failed to seek leave for late filing. It was further noted by the complaint subcommittee that after the court had found the complainant in default and set a date for an uncontested hearing, the complainant appeared with a lawyer, and sought to file materials that were admittedly incomplete. 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 to proceed in an uncontested fashion. In fact, the complaint subcommittee was of the opinion that the judge was generous in offering to set aside his order should counsel and the parties agree to another resolution of the issues. 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 Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-052/04

The complainant is the mother of a young person convicted at trial of uttering death threats against his girlfriend. The complainant alleged that the trial judge verbally abused her son and other witnesses, calling one a "mutt", and berating her son for being "worthless, violent and vindictive" even though he suffers from "disabilities". The complainant also alleged that the trial judge was overly friendly with the victim's mother in confirming her availability to attend for the date set for judgment.

The complaint subcommittee reviewed the complaint material and the transcripts of the trial and reasons for judgment provided by the complainant. The complaint subcommittee requested and reviewed the transcript of the sentencing proceeding as well as the audiotapes for all of the appearances. After a complete review of this material, the complaint subcommittee noted that at no time was the judge rude to the young accused or any witnesses during the trial nor during the delivering of his judgment. The subcommittee confirmed that the judge did not use the language alleged by the complainant in describing or characterizing the young accused as "worthless, violent and vindictive". In addition, the subcommittee noted there was no evidence at the trial that the young person was under any disability that might have required consideration by the judge. It was the view of the complaint subcommittee that the trial judge made findings of fact based on the credibility of witnesses, including the young accused. The subcommittee noted that the reference to "mutt" was taken out of context. In delivering his reasons, the subcommittee noted that the trial judge characterized the



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group of young persons (ages 12 to 14), who accompanied the young offender, as “a group of people who might be described as ‘Mutt and Jeff’” and further identified one of the witnesses as ‘Mutt’. The complaint subcommittee was of the opinion that the judge’s comments in this context, were made to emphasize the group consciousness of a number of boys who had skipped school. With respect to the allegation that the judge was overly friendly to the victim’s mother, the record confirmed that the judge simply asked if the date for continuation was convenient as it was during the Christmas vacation period. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that the complaint related to the trial judge’s findings of credibility against the complainant’s son and not to any judicial misconduct by the presiding judge. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 09-053/04

The complainant was a Director of Crown Operations for one of the judicial regions in Ontario. The complaint was based on information brought to his attention by one of his Assistant Crown Attorneys. The complainant related the information provided to him, forming the allegation that a judge presiding in his judicial region contacted an Assistant Crown Attorney to ask for a loan of \$2000 and after the Assistant Crown Attorney declined, the subject judge phoned him and repeated his request. Shortly after this information was received by the Council, the complainant submitted a further complaint regarding the same judge, involving similar allegations brought forward by another Assistant

Crown Attorney. This material was added to the correspondence already under review by a complaint subcommittee of the Council.

After receiving the complaints, the complaint subcommittee recommended the suspension of the subject judge. The Regional Senior Judge accepted the complaint subcommittee’s recommendation and suspended the judge immediately. An investigator was retained to provide more details of the complaints and allegations. An investigation report, which included transcripts of the interviews with both Assistant Crown Attorneys, was reviewed and the complaint subcommittee requested a response from the judge to the original letters of complaint. A response from the judge was received and reviewed.

After considering the complaints, the investigation report and the response from the judge, the complaint subcommittee recommended that this matter proceed to a public hearing. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be ordered to a hearing. Subsequent to the OJC meeting at which the decision to send the complaints to a hearing was made, the complainant sent two more letters outlining allegations involving five more individuals involved in the criminal justice system in his judicial region. The OJC was in the process of arranging for investigation of the new complaints and the issuance and service of a Notice of Hearing on the original two complaints, when the OJC was advised that the judge who was the subject of the complaint had resigned from office. As a result, the OJC lost jurisdiction in the matter and the file was closed as no further action could be taken.



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CASE NO. 09-054/04

The complainant appeared in Provincial Offences Appeal Court on an application to extend time, in relation to a parking ticket. The complainant did not proceed with his application as he had resolved the appeal with the Provincial Prosecutor, who presented and explained the resolution to the presiding judge.

The complainant alleged that the judge displayed “attitude” and that the judge abused his judicial power and made inappropriate threats in questioning the Prosecutor regarding the resolution. The complainant indicated that he jokingly called the judge a “tough guy” in relation to the judge’s inquiries about the resolution, to which the complainant alleged the judge replied, “I’ll be a lot tougher if I see you reading a paper again in this room”. The complainant wrote a second letter to the Judicial Council a month later asking that his complaint be “cancelled”, stating, “I believe everyone is entitled to an opinion”.

The complaint subcommittee reviewed the letter of complaint and requested and reviewed the transcript and audiotape of the court proceeding in question. Although the complainant asked to withdraw his complaint, the Judicial Council was obligated to continue its review in compliance with the legislation. The complaint subcommittee recommended that the complaint be dismissed, as there was no evidence of judicial misconduct on the part of the judge. The complaint subcommittee was of the view that the audiotape, in particular, demonstrated that the judge was patient, courteous and professional at all times. The complaint subcommittee advised that when the judge asked reasonable questions of the

Prosecutor, the complainant displayed attitude, calling the judge a “tough guy”. It was the view of the subcommittee that the judge’s response was calm and appropriate, suggesting the complainant should not read the newspaper in court. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 09-055/04

The complainants were the grandparents of two children at the center of a highly contested family court proceeding. The complainants have complained to the Ontario Judicial Council about the same judge in the same proceedings. This matters involved custody and access litigation with numerous motions and changes in legal counsel, which have resulted in delays in determining trial issues and setting a trial date. The complainants have expressed their dissatisfaction and frustration with the entire judicial process.

The complaint subcommittee reviewed the complaint material provided and noted that this complaint covered the same timeframe as the complaint already dismissed by the Judicial Council. The complaint subcommittee recommended that the complaint be dismissed as it was of the opinion that the complaint concerned the results of the motions that had been made to the court and not issues of judicial misconduct. It was further noted by the complaint subcommittee that the litigation is still ongoing and that this judge may continue to be involved. The complaint subcommittee indicated that the Judicial Council, in reviewing the previous complaint, had already alerted the Children’s



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Aid Society about the concerns of potential abuse to the children expressed by the complainants. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 10-001/04

The complainant was a lawyer who represented a corporate accused in a serious Occupational Health and Safety Act prosecution. His client pled guilty, an Agreed Statement of Facts was filed and the corporate accused received a fine after a joint submission on sentencing. The complainant was concerned about the conduct of a different judge from the one who accepted the joint submission. The judge complained about presided over a trial that arose out of the same incident that led to the Health and Safe Act prosecution. The accused in the trial was an employee of the corporate accused who entered the plea in the O.H.S.A. prosecution. The Crown Prosecutor was the same for both the resolved matter involving the corporate accused and the trial of the employee.

The complainant alleged that the trial judge made comments about the corporate accused, specifically that "...the primary cause of the accident was the failure of the corporate accused to establish a safe working culture". The complainant also alleged that the subject judge had stated that, "part of the Agreed Statement of Fact presented to the other judge is not accurate". The complainant included a number of newspaper articles containing these comments following the trial and sentencing. The complainant alleged that the judge was guilty of judicial misconduct

because he made negative findings about a party not represented at trial and who was not present to testify or respond to the negative findings.

The complaint subcommittee reviewed the complaint material, which included the trial judge's comments as well as the newspaper articles relating to the trial and the sentencing. The complaint subcommittee noted that there was no representative of the corporate accused present at the trial of the employee and that the Crown prosecutor, who was involved in both matters, presented more detailed facts relating to the safety training of employees at the trial than had been contained in the Agreed Statement of Facts. The complaint subcommittee also noted that the judge made the statements in *obiter dictum* and were of the view that the comments were relevant to the facts before him and the decision rendered. The complaint subcommittee recommended that the complaint be dismissed, as it was of the opinion that the judge's comments did not amount to judicial misconduct. In the view of the complaint subcommittee, an appeal by the Crown was the correct remedy if the Judge made findings which were wrong in law or if the judge had misapprehended the facts. The review panel did not accept the recommendation of the complaint subcommittee to dismiss the complaint and were of the view that the judge's comments in the postscript of his decision may have been irrelevant and unnecessary and that the judge should be asked to respond to the complaint, with particular reference to his postscript comments. The judge's response was reviewed by the complaint subcommittee which did not change its recommendation to dismiss the complaint as nothing in the judge's response changed their



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view of the complaint or the judge's conduct. After considering the further material presented to them, the review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint. The Review Panel agreed that an Agreed Statement of Facts in another proceeding would not be binding on the judge in this matter and that, at the trial, more details concerning the training of employees were presented and the judge ruled based on the evidence presented to him. Ultimately, the Review Panel agreed that there was no misconduct apparent in the judge's ruling even though some of the comments he made at the conclusion of his judgment were unnecessary.

CASE NO. 10-002/04

The complainant was a plaintiff in a small claims court application where the defendant's husband, who also acted as her agent, is a "known Freemason". The complainant alleged the defendant's agent used known "Mason hand signals" to communicate with the judges before whom they appeared and who the complainant suspected were also members of the Freemason society. The complainant indicated that the defendant's agent "at times extended his arms with his palms held upward" which the complainant contends are "stress signals... that are made when they [i.e., Masons] make requests from one another".

The complainant requested that the Judicial Council investigate to determine whether or not the judges were members of the Freemason society and communicate its findings publicly.

The complaint subcommittee reviewed the complaint and recommended that it be dismissed as it was of the view that there was no judicial misconduct evident, nor any basis for an allegation of misconduct. Further, it was the view of the complaint subcommittee that the complainant was unhappy with the decision of the judges before whom he appeared. If errors in law were committed by the judges (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. 10-003/04

The complainant was in court charged with possession of cocaine for the purposes of trafficking. The complainant pled guilty to the offence and received a substantial fine. The complainant applied to the sentencing judge for an extension of the time to pay the fine, explaining that she had believed one of her co-accused (against whom the charge had been withdrawn) was going to pay the fine on her behalf. When the sentencing judge denied the extension request, the complainant wrote to the Judicial Council and alleged that her request was denied because the judge was biased against her and had an undeclared conflict of interest. The complainant explained that the judge had been her lawyer in a family court matter before being appointed to the bench and she and the judge complained against hadn't "seen eye to eye on many issues, in



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fact had a few heated words about things”. The complainant alleged that the judge “may still have bad feelings” towards her and the judge “should have stepped down from the bench since she was my lawyer before”.

The members of the investigating complaint subcommittee reviewed the complainant’s letter and the materials she had provided and also ordered and reviewed a copy of the transcript of her guilty plea and sentencing proceeding. After review of all the relevant materials, the complaint subcommittee recommended to the review panel that this complaint be dismissed as it was of the view that there was no judicial misconduct on the part of the presiding judge. The complaint subcommittee advised the review panel that the complainant was represented by counsel at the plea hearing, did not raise a concern about any conflict of interest at the time and entered a plea knowing that a joint submission made to the judge was for a fine. The complaint subcommittee further noted that the complainant’s lawyer requested the thirty-day time period to pay the fine, the details were explained to the complainant and there was no comment or complaint by her at the time of the sentencing. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 10-004/04

The complainant was convicted at trial of failing to provide for his dogs under the *Criminal Code*. The complainant, who was not represented by a lawyer, alleged that during the trial the presiding judge commented that the veterinarian witness

was “a nice lady” and that after asking a question, the judge commented that “he would not win”. The complainant indicated that he was not allowed to defend himself in court and alleged that the judge had already made his decision before hearing his defence.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcript of the trial. After a thorough review of the transcript, the complaint subcommittee was of the view that there was no basis to the complaint as the record confirmed that neither alleged comment was made by the trial judge. The complaint subcommittee noted that the judge was patient and considerate of the accused at the trial, allowing him to question witnesses while seated, due to a disability. It was also noted that the judge was accommodating in explaining the appropriateness of questions and trial procedures. The transcript confirmed that the judge asked the complainant if he wished to present evidence and, in doing so, explained the procedure of providing evidence to the court. The complaint subcommittee noted that the complainant declined to present any evidence on his own behalf. The complaint subcommittee recommended that the complaint be dismissed as unfounded. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 10-005/04

The complainant was the biological father and the applicant on a motion brought in family court to vary the access order as it applied to his



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three children. The complainant alleged that the Judge failed to read documents that were filed with the court and disregarded the complainant's submissions supporting his motion to vary the access order. Further, the complainant alleged that the Judge's remarks were "obnoxious, offensive, repugnant, sleazy and contrary to s.15 of the *Charter*".

The complaint subcommittee reviewed the complaint material provided and requested and reviewed the transcript and audiotape of the court proceeding. The complaint subcommittee recommended to the review panel that the complaint be dismissed, as it was of the view that the judge was aware of the issues before him and demonstrated an understanding of the submissions made in the case. It was Council's view that the judge gave the complainant the opportunity to present his concerns and offer alternate access arrangements to which the court could agree. In the opinion of the complaint subcommittee, the judge's comments were not viewed as "obnoxious, offensive, repugnant, sleazy and contrary to the *Charter*", as alleged by the complainant. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 10-006/04

The complainant was the grandfather of a child who was the subject of custody and access litigation which came before the same judge in 1998 and 2001. The complainant expressed many objections to the various rulings the judge had made on access issues, primarily the decision made in 2001 that others in the family could have unsupervised access to the child but that he could

not. The complainant also expressed a concern that the judge had made the decisions he did because of a "family connection" he may have had to one of the parties involved in the litigation. The complainant also noted that if he had known of the existence of the Judicial Council in 2001, he would have complained sooner.

The complaint subcommittee reviewed the material provided by the complainant, including copies of the judgments made by the judge complained against. After consideration of the complaint and the materials provided, the complaint subcommittee recommended to the review panel that the complaint be dismissed because it was of the view that there was no judicial misconduct on the part of the judge in making the decisions he did with respect to custody and access. The complaint subcommittee further noted that the allegations of a "family connection" were not specific, were impossible to investigate because of their lack of specificity and appeared as an afterthought to the substantive complaint which is about the judge's decisions on access made over the years. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 10-007/04

The complainant's ex-wife appeared in criminal court, charged with stealing from a charity for which she had done volunteer work. The complainant objected to comments made by the presiding trial judge during sentencing about his ex-wife's life of "deprivation and torment" during her 28-year marriage to the complainant. The complainant wrote to the Regional Senior Judge of the presiding trial judge to object to the



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comments made about him in court and demanded that the Regional Senior Judge take “supervisory” action against the trial judge. When the Regional Senior Judge refused to respond to his concerns, the complainant wrote to the Judicial Council to complain about the Regional Senior Judge.

The investigating complaint subcommittee reviewed the material submitted by the complainant and recommended that his complaint against the Regional Senior Judge be dismissed as there was no basis for any complaint against him. The complaint subcommittee advised that it would have been improper conduct for the Regional Senior Judge to attempt to “supervise” or exert any influence or control over the presiding trial judge in the manner suggested by the complainant and the complainant’s request for him to do so was improper in itself. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 10-008/04

The complainant’s ex-wife appeared in criminal court, charged with stealing from a charity for which she had done volunteer work. The complainant complained to the Judicial Council about comments made by the presiding trial judge regarding his ex-wife’s life of “deprivation and torment” during her 28-year marriage to the complainant.

The investigating complaint subcommittee reviewed the complaint and the supporting material that had been provided by the complainant and reviewed a copy of the transcript of

the sentencing proceedings. The members of the complaint subcommittee reported to the review panel that, in their view, the complaint should be dismissed as there was no judicial misconduct on the part of the presiding judge. The complaint subcommittee advised the review panel as follows: the judge had been provided with a pre-sentence report for sentencing purposes. That report was made up of information which had been compiled from numerous third party sources, other than the complainant. The report contained information about the state of the former marriage between the complainant and the offender. The information was relied upon by defence counsel as a partial explanation for the offender’s criminal conduct. It was the view of the complaint subcommittee that the presiding judge referred to this report, and the information about the offender’s former marriage which was contained in it, in an appropriate way. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 10-009/04

The complainant was charged with one count of “Fraud under \$5000” and one count of “Possess coins for fraudulent use” under the *Criminal Code* in relation to using foreign currency in place of proper transit/subway tokens. The complainant alleged that the judge presiding over her case adjourned the matter four times in an effort to drive-up her legal costs. In addition, the complainant alleged that the judge made comments that were unnecessary, unprofessional and racist and which revealed his alleged “prejudgment” of the case. The complainant also alleged that the judge misdirected himself on the



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evidence and failed to rule on a *voir dire*. The complainant further alleged that the judge made gratuitous remarks when he sentenced her.

The complaint subcommittee reviewed the complaint material provided and reviewed the transcripts of all of the court proceedings, which were provided by the complainant. The complaint subcommittee recommended to the review panel that the complaint be dismissed because the transcript offered no support for the allegation that the judge needlessly adjourned the case. The complaint subcommittee also reported that the transcript offered no support for the complainant's allegations that the judge had made comments that were unnecessary, unprofessional or racist or which revealed any "prejudgment" of the case. In the opinion of the complaint subcommittee, the judge's interventions during testimony were entirely appropriate in order to understand the evidence. The complaint subcommittee was of the view that the judge's comments after sentencing were not inappropriate in the context in which they were given. The complaint subcommittee noted that many of the issues contained in the complainant's letter to Council were matters for appeal, which the complainant pursued. The complaint subcommittee further noted that the complainant's appeal was dismissed by the Ontario Court of Appeal. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 10-010/04

The complainant was charged with public mischief and assault with a weapon and appeared in court in 1998. The complainant wrote to the OJC in 2004 to advise that the trial judge had abused her power and had slandered him in the remarks she made about him on sentence. The complainant also alleged that the judge had been in a conflict of interest situation at the time of the trial due to the fact that two witnesses at his trial allegedly owned and operated a restaurant that was across the street from the courthouse where the judge regularly sat.

The investigating complaint subcommittee reviewed the complainant's letter and ordered and reviewed a copy of the transcript of the complainant's trial and sentencing hearing. After review of the relevant material, the members of the complaint subcommittee recommended to the review panel that the complaint be dismissed as, in their view, there was no judicial misconduct by the trial judge. The complaint subcommittee noted that the trial judge made a finding of credibility as was required and it would appear that the complainant was simply unhappy that the trial judge didn't believe him and said so in her judgment. The complaint subcommittee also noted that there was no reference to the fact that the witnesses in the trial were known to anyone or that their restaurant was nearby and there was no conflict of interest demonstrated. The members of the complaint subcommittee further noted that the complainant was represented by counsel throughout the trial and the proper remedy if he was unhappy with the conviction or the sentence was to have appealed the result. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.



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CASE NO. 10-011/04

The complainant attended in family court at a hearing to determine child support. The complainant alleged that the judge in question “make (sic) orders according to his wishes...he doesn’t give any opportunity to the non-custodial parent to represent his case.” The complainant went on to state that the judge made an order for child support based on incorrect information about his income; which had been provided by his ex-wife, who is the custodial parent.

The investigating complaint subcommittee reviewed the letter of complaint and recommended to the review panel that the complaint be dismissed because it was apparent to them that the complainant was dissatisfied with the judgment of the court and had no basis for complaint or an allegation of judicial misconduct beyond the fact that he disagreed with the judge’s decision. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 10-013/04

Close to fifty people wrote letters and/or circulated petitions which they sent to the Ontario Judicial Council to express their unhappiness with the sentence that had been imposed by a judge in a high profile child abuse case. The members of the investigation complaint subcommittee recommended that the complaints be dismissed as all of the complaints dealt only the judge’s sentence and the Judicial Council has no jurisdiction to interfere with the decision a judge makes. The members of the complaint subcom-

mittee further advised the review panel that the Crown had appealed the judge’s sentence and that would be the only way to change the decision if the appeal court finds an error in law was made by the trial judge. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 10-014/04

A city councilor, on behalf of a constituent who was the owner of a bar that had been charged under a municipal smoking by-law, complained about a comment made by the judge who heard an appeal in the case. The judge’s comment was also picked up in an article in a local newspaper, and the complainant provided a copy of the newspaper article with his letter of complaint.

The investigating complaint subcommittee ordered the transcript of the appeal and reported to the review panel as follows: a bar owner had been charged under a municipal smoking by-law with obstruction of a municipal by-law enforcement officer. Apparently, the bar staff had refused the by-law enforcement officer access to the area behind the bar and also, the bar owner had his staff lock the doors to the bar during business hours. Regular customers had access to the bar with keys, but the by-law enforcement officers could not gain access. The bar owner was charged with obstruction under the non-smoking by-law and a trial was held before a Justice of the Peace. A signed copy of the by-law was not filed with the court at the time of the trial and the bar owner appealed the conviction on the grounds that the Justice of the Peace had no



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jurisdiction to hear the case as a result. The provincial prosecutor who appeared at the appeal of the matter advised the judge hearing the appeal that there were three other matters, pending trial, with similar facts and the prosecutor asked the appeal judge to send the matter back for a new trial. The appeal judge stated that he could not do so as there had been no proof before the trial court that there was a valid by-law in force at the time the charge was laid because the copy of the by-law that had been given to the Justice of the Peace wasn't signed. As a result, he did not allow the Crown's appeal and he did not direct a new trial.

The complaint subcommittee further reported that, after making his ruling, the appeal judge did go on to say, "...the hindering of their ability to go behind the bar amounts to an obstruction. As a gratuitous finding, to have them delayed in entering a public place because a key was required is also an obstruction. But since there was never any by-law proven before the trial judge, no one could be found guilty of having breached the bylaw." The city councilor, who wrote on behalf of his constituent (the bar owner), complained that the appeal judge had pre-determined "the outcome of a trial without hearing any evidence on this issue." (i.e., finding that locking the bar's doors amounted to obstruction).

The investigating complaint subcommittee reported to the review panel that this complaint should be dismissed because, while the judge's comments were clearly gratuitous (and he so noted they were gratuitous, on the record), they were not inappropriate in this case. The complaint subcommittee further noted that the sub-

ject judge did not send the matter back for a new trial nor did he make any ruling on the issue of obstruction and, in their view, there was no judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 10-015/04

The complainant was in family court to determine the amount of support payments that he owed to his ex-wife for his daughter's daycare costs. The complainant alleged that the case management judge who presided over the proceeding was not impartial, did not read the supporting case information, did not allow him to speak, mocked him throughout the hearing and was biased in her decision making.

The investigating complaint subcommittee reviewed the letter of complaint and also ordered and reviewed a transcript of the hearing. The members of the complaint subcommittee recommended to the review panel that the complaint be dismissed as they were of the view that there was no judicial misconduct. They advised the members of the review panel that there were two outstanding issues before the case management judge on the day in question; the complainant's income and the amount of his proportionate share of day care expenses. The complaint subcommittee reported that the case management judge was proactive in getting these issues resolved and the first issue, concerning the amount of the complainant's income, was resolved in his favour. The complaint subcommittee members advised that the issue of daycare expenses turned on \$6.00 a day and the com-



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plainant was unable to produce the evidence required by the court to support his position. The complaint subcommittee advised the review panel that the transcript showed the case management judge afforded the complainant every opportunity to speak and was polite herself and did not, in their view, demonstrate any bias. They advised that the matter before her was eventually resolved on consent of both the parties. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 10-016/04

The complainant wrote to the Judicial Council to complain about family courts in general and the decision of one family judge in particular. The complainant's sister had died, leaving two daughters who were the subject of protracted custody hearings in family court. Custody of the complainant's nieces was eventually awarded to their maternal grandfather. The complainant objected to this outcome and also objected to the "interference" of social workers at a hospital where the girls were treated. The complainant alleged that "no judge in his right mind would give custody to a 71 years (sic) old grandfather who had never even taken care of his own children" and further that the judge had "failed in his duty to administer fair justice". The complainant wanted the Judicial Council to "examine" the judge's decision.

The complaint subcommittee reviewed the complainant's letter and the documentation that she had provided in support of her complaint. The complaint subcommittee recommended that the

complaint be dismissed as there was no judicial misconduct in the exercise of the judge's discretion in making the decisions that he did in this case in awarding custody to someone other than the complainant. The members of the complaint subcommittee were of the view that the proper remedy would have been an appeal of the judge's decision to the appropriate court. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 10-017/04

The complainant wrote to the Judicial Council in August, 2004 to advise that he had been incarcerated since January, 2004 and was still awaiting trial. The complainant advised that he wanted to file a complaint "against the justice system for not dealing with me within a reasonable time".

The members of the investigating complaint subcommittee were of the view that the complaint should be dismissed as there was no allegation of judicial misconduct in the complainant's letter and it is not the responsibility of the judiciary to bring accused people before the court. The complaint subcommittee also noted that the complainant was represented by counsel and should have directed any questions about the length of his incarceration to his lawyer. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 10-018/04

The complainant's ex-wife applied to family court for child support. The complainant was the respondent in the application and he complained



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that the judge who heard the application acted improperly both procedurally and substantively.

The complaint subcommittee reviewed the material provided to the Judicial Council by the complainant and concluded that there was no judicial misconduct by the judge who heard the application and recommended to the review panel that the complaint be dismissed. The complaint subcommittee explained that if the complainant/respondent had not attended at the hearing of his ex-wife's application, the judge would have been able to make a provisional order for support and send the matter to the jurisdiction where the complainant lives for a confirmation hearing. Because the complainant chose to attend at court when the application was heard, the presiding judge was therefore entitled to make an order on the evidence before him. The complaint subcommittee further advised that because the complainant did not file any material at the hearing, as required by the Rules of the Family Court, he was not entitled to participate in the hearing and the court could proceed on a "default" or uncontested basis. The complaint subcommittee further advised that if there were any procedural or substantive irregularities (and they were not making any such finding), the remedy for the complainant would lie in an appeal to the appropriate court. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 10-019/04

The complainant is the respondent in a *Child and Family Services Act* proceeding in which the Children's Aid Society is seeking the extension of a restraining order against the respondent

mother, on behalf of the child who is the subject of the proceedings. The complainant indicated that previous restraining orders had been placed on her, often without providing her with notice of the proceedings or giving her the opportunity to submit a response to the applications. Aside from the allegations of misconduct and mistreatment by the Children's Aid Society and the Office of the Children's Lawyer, the complainant alleged that the judge was unfair and "politically motivated". During the court proceeding, which gave rise to the complaint to the Judicial Council, the complainant indicated that she walked out of court while court was still in session and alleged that the judge called for the security guards.

The complaint subcommittee reviewed the complaint material provided and reviewed the transcript of the court proceeding. The complaint subcommittee recommended to the review panel that the complaint be dismissed, as the transcript offered no support for the allegations that the judge was unfair and/or "politically motivated". In addition, they advised that the transcript did not reveal the judge calling for the security guards. In the opinion of the complaint subcommittee, the judge was exceedingly polite and patient, allowing the complainant to respond to the application before the court and express her concerns. The complaint subcommittee was of the view that the judge based his order on the evidence contained in the continuing record as well as submissions by the child's lawyer, which outlined the intentions and wishes of the child. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.



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CASE NO. 10-022/04

The complainant wrote to advise that “a while ago”, he’d had a trial in criminal court on charges of uttering death threats and assault. The complainant advised that his lawyer had been late appearing in court for trial and the judge had insisted on proceeding without him. The complainant further alleged that once his lawyer did appear in court, the judge “was very angry with him and listened to nothing he said or any of [his] witnesses”. The complainant was convicted on both counts before the court and he alleged that he didn’t receive a fair trial. He also advised that he had a letter from his lawyer saying that the lawyer “would testify that [he] never received a fair trial.” He was asked to provide Council with copies of the transcripts of his trial and the letter from his lawyer and a complaint subcommittee was assigned to investigate his allegations. In a letter included with the transcripts and a copy of his Notice of Appeal, the complainant further alleged that there were “things said in the courtroom that are not transcribed” The complaint subcommittee ordered a copy of the audiotape of the trial in order to compare it with the transcripts, and wrote to the electronic (e-mail) address provided by the complainant, asking him to confirm that the sentencing had been concluded and to advise of the status of any appeals before the court. In his reply, the complainant advised that, though the trial had taken place in 2001 he had not attended for sentencing and it became apparent that the complainant had been “at large” ever since. He advised that he hadn’t returned to court for sentencing “for the simple reason that I will not allow a tyrant to sentence me!!” On receipt of this information, the complaint subcommittee was of the view that it

could not deal with the complainant’s matter until he ceases to be a fugitive from justice and his matter before the subject judge has been concluded. The complainant was so advised and the file in this matter was closed. The complainant was also advised that his complaint could be considered when he has advised that the sentencing has been concluded and there are no further outstanding court matters before the subject judge.

CASE NO. 10-023/04

The complainant pled guilty to a “Mischief under” charge on January 31, 2001 in front of a certain judge (Judge X). She was sentenced to a conditional discharge, with probation for 12 months. The complaint advised that the sentence documents were incorrectly endorsed and showed that she had received a suspended sentence, rather than the discharge. The complainant advised that she took the appropriate steps to have the error corrected, but she felt victimized by the system, and the police specifically, since this occurred. The complainant filed a complaint against Judge Y, who was the presiding judge in a subsequent “set date” proceeding, for not allowing her to address and inform the court of the error in the previous endorsement. Generally, she felt that the judges in the court have not listened to her concerns about the system.

The complaint subcommittee reviewed the complaint material provided and recommended to the review panel that the complaint be dismissed. In the view of the complaint subcommittee, Judge X, who sentenced the complainant in January 2001, did not commit any misconduct simply because the sentence he imposed was not



CASE SUMMARIES

recorded correctly. The complaint subcommittee noted that the error, which was obviously very concerning to the complainant, was corrected. The complaint subcommittee is of the view that Judge Y did not commit any misconduct as the error in the previous endorsement and associated police reports were unrelated to the purpose of the set date proceeding before him. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 10-026/05

The complainant was a biological father involved in a family court matter with his ex-wife relating to the custody and access of their son. The complainant indicated that he'd overheard an unrecorded conversation in which it was alleged that the judge instructed the lawyer representing his son to tell him that, "his father did not like him anymore and to tell my son that his father did not want to see him anymore". The complainant alleged that these comments were "clearly intended to mislead my son into thinking that his father had given up the fight in court to free him". Further, the complainant was of the opinion that the judge had some "special relationship" with Jewish Child and Family Services and therefore tended to favour their position in his decisions.

The complainant requested the Judicial Council to look into his complaint and have the judge who was the subject of his complaint barred from having anything more to do with his case. A complaint file was opened and assigned to a complaint subcommittee to investigate the complainant's allegations. In its letter of

acknowledgment sent to the complainant, Council clarified its jurisdiction and requested further information that was missing from the original letter of complaint. The complainant responded by submitting further information and on reviewing this material, it became apparent that this was an on-going court matter. Upon confirmation from Court Services that this case was currently before the Ontario Courts of Justice and specifically before the subject judge, the complaint subcommittee was asked for its opinion regarding whether or not to continue its investigation at that time. It was the opinion of the complaint subcommittee that it would be inappropriate for the Judicial Council to investigate the complainant's concerns while the case was before the courts. The complainant was notified of the complaint subcommittee's opinion and his complaint material was returned to him. The complaint file in this matter was closed, pending advice from the complainant that the matter has concluded and he wishes to re-submit his complaint.



HEARINGS

11. Hearings

CASE NO. 08-024/02

The complainant was a defendant in a criminal case. The defendant complained about the judge's conduct and questioning of the defendant at the time of the defendant's entry of a guilty plea before the subject judge. The complaint continues by questioning the conduct of the same judge who spoke with a person outside the court facility, who had a connection to the defendant's family and, according to the complainant's information, discussed the complainant's case currently before the judge. The complainant requested on her next appearance that the judge in question recuse herself, which was done. The complainant further reports that the judge attempted to speak to the complainant's lawyer in private, which caused her further upset and concern.

The complaint subcommittee reviewed the complaint and retained the services of an investigator. Upon review of the investigation reports, the complaint subcommittee requested a response from the judge respecting this complaint. In her response, the judge acknowledged that her conduct was inappropriate and apologized for her actions. The complaint subcommittee recommended that this matter be referred to the Chief Justice. After careful consideration of the complaint and the facts brought out through investigation, the review panel decided to order a hearing. The majority of the review panel voted in favour of ordering a hearing. A Notice of Hearing was issued and a public hearing was held on June 29, 2004. As the criteria for a private hearing were not met, the hearing was held in public.

An Agreed Statement of Facts was filed at the hearing, which included a joint submission with respect to the nature of the conduct acknowledged by the judge and the degree of its seriousness. The complainant agreed with the joint submission in its entirety. At the conclusion of the hearing, the hearing panel determined that the judge's conduct, "though serious, falls within the lower end of the scale of judicial misconduct". The Hearing Panel was satisfied that the Judge had completely accepted the seriousness of her misconduct and would appreciate that any repetition could attract a more serious disposition.

The Hearing Panel believed that it was in the best interests of the administration of justice that the Judge continue to sit as a judge as she has done since the complaint was filed. There was no recommendation as to the payment of costs pursuant to section 51.7(4) of the *Courts of Justice Act*.

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

HEARINGS

CASE NO. 08-031/02

On December 6th, 2002, the OJC received an allegation of misconduct against a judge through courts administration in the Ministry of the Attorney General. The Ministry advised that one of its employees, a court clerk, had alleged that a judge had touched her inappropriately. The complaint was assigned to a complaint subcommittee and its members immediately retained an investigator to conduct interviews with the court clerk and with other courts administration employees. The members of the complaint subcommittee also asked the judge to respond to the complaint on December 10th, 2002. On December 13th, 2002 the members of the complaint subcommittee made a recommendation to a Regional Senior Judge (RSJ) that the judge complained against be suspended, with pay (as provided for in the *Courts of Justice Act*), until the complaint against him was finally disposed of or the complaint subcommittee and/or the OJC was made aware of facts or circumstances that would alter its recommendation. After a discussion with the subject judge, the RSJ agreed with the recommendation of the complaint subcommittee and the subject judge was suspended effective December 20, 2002. Further complaints about inappropriate conduct from five other members of the court staff in the court location where the subject judge presided were forwarded to Council's attention and were added to the investigation. The judge was asked for a response to the further complaints by letter dated January 17, 2003 and the Judicial Council was advised that a police investigation had been commenced. Judge's counsel asked for an extension of the time to provide a response to the complaints and an extension of time was granted to March 3, 2003.

A further request for an extension of time was denied. In his letter acknowledging the denial of the time extension, judge's counsel did advise that the judge denied any suggestion or allegation of misconduct or that he had engaged in any inappropriate contact with court staff. The complaint subcommittee reported to the review panel on March 11, 2003 that it was their recommendation that all six complaints go to a hearing and the members of the review panel agreed with that recommendation.

A Hearing Panel was struck and a Notice of Hearing, dated April 11, 2003, was prepared and served on counsel for the subject judge. On May 28th, the O.P.P. issued a press release advising that it had charged the subject judge with sexual assault with respect to the first incident brought to Council's attention involving the court clerk. On August 27, 2003, the OJC Hearing Panel convened to set a date for the hearing and to consider any preliminary motions. Counsel for the subject judge moved for an order adjourning the hearing until the criminal charge was concluded. Judge's counsel also moved for an order that the OJC hearing, whenever it occurred, be held *in camera*. The matter was adjourned to January 15, 2004 for an update on the status of the criminal charge and to set a date for the OJC hearing. On January 15, 2004, a date of June 15, 2004 was established for the determination of preliminary matters and the dates of August 3 to 13, 2004 were established for the hearing itself. Following the establishment of the hearing date, two more complaints about the judge's allegedly inappropriate conduct came into the OJC and were forwarded to the complaint subcommittee



HEARINGS

for investigation. These new complaints were disclosed to judge's counsel. After its investigation was concluded, the complaint subcommittee recommended that the two further complaints proceed to the hearing with the other six complaints, and this recommendation was accepted by the review panel.

The judge was acquitted of the criminal charge of sexual assault on May 6, 2004. The motion by judge's counsel to hold the OJC hearing *in camera* was heard by the Hearing Panel on June 15, 2004 and the application was rejected. The hearing was held in Toronto from August 3rd to 13th, inclusive. On September 24th, 2004, the Hearing Panel released its decision, finding that there had been misconduct and posted its reasons for decision on the OJC website on September 27th. A copy of the complete text of the "Reasons for Decision" in this matter may be found at Appendix "F". The date of November 16th, 2004 was established for the continuation of the hearing on the question of the appropriate sanction and to deal with any request for compensation for legal services to be made by judge's counsel. On November 15th, the OJC was advised by judge's counsel that the judge had resigned his judicial office and, as a result, was no longer under the jurisdiction of the Ontario Judicial Council.



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.

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

Ontario's Justice System:

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

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

Professional Conduct of Judges

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

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

Is a Judge's Decision Final?

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

The Role of the Ontario Judicial Council

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

APPENDIX – A

ONTARIO JUDICIAL COUNCIL – DO YOU HAVE A COMPLAINT?

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.

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.

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.

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)

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.

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

TRANSCRIPTS, ETC.

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

RESPONSE TO COMPLAINT

If a complaint subcommittee requires a response from the judge, the complaint subcommittee will direct the Registrar to ask the judge to respond to a specific issue or issues raised in the complaint. A copy of the complaint, the transcript (if any) and all of the relevant materials on file will be provided to the judge with the letter requesting the response. A judge is given thirty days from the date of the letter asking for a response, to respond to the complaint. If a response is not received within that time, the complaint subcommittee members are advised and a reminder letter is sent to the judge by registered mail. If no response is received within ten days from the date of the registered letter, and the complaint subcommittee is satisfied that the judge is aware of the

APPENDIX – B

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complaint and has full particulars of the complaint, they will proceed in the absence of a response. Any response made to the complaint by the subject judge at this stage of the procedure is deemed to have been made without prejudice and may not be used at the hearing.

GENERALLY

Transcripts of evidence and responses from judges to complaints are sent to complaint subcommittee members by courier, unless 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

APPENDIX – B

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

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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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- (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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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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Referral of Complaint to a Review Panel

WHEN REFERRED

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

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

POWER OF A REVIEW PANEL ON REFERRAL

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

- decide to hold a hearing,
- dismiss the complaint,
- refer the complaint to the Chief Justice of the Ontario Court of Justice (with or without imposing conditions), or
- refer the complaint to a mediator.

subs. 51.4(16) and (18)

GUIDELINES AND RULES OF PROCEDURE

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

subs. 51.1(2)

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

subs. 51.4(19)

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

subs. 51.1(3)

The Ontario Judicial Council has established the following guidelines and rules of procedures under subsection 51.1(1) with respect to the consideration of complaints that are referred to it by a complaint subcommittee or in consideration of complaints that it causes to be referred to it from a complaint subcommittee and the Judicial Council, or a review panel thereof, shall follow its guidelines and rules of procedure established for the purpose.

subs. 51.4(22)

Guidelines re: Dispositions

A) ORDERING A HEARING

A review panel will order a hearing be held in circumstances where the majority of members of the review panel are of the opinion that there has been an allegation of judicial misconduct which the majority of the members of the review panel believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct. The recommendation to hold a hearing made by the review panel may be made with, or without, a recommendation that the hearing be held in camera and if such recommendation is made, the criteria established by the Judicial Council (see page 18 below) will be used.

B) DISMISSING A COMPLAINT

A review panel will dismiss a complaint in circumstances where the majority of members of the review panel are of the opinion that the allegation of judicial misconduct falls outside the jurisdiction of the Judicial Council, is frivolous or an abuse of process, or where the review panel is of the view that, the complaint is unfounded. A review panel will not generally dismiss as unfounded a complaint unless it is satisfied that there is no basis in fact for the allegations against the provincially-appointed judge.

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C) REFERRING A COMPLAINT TO THE CHIEF JUSTICE

A review panel will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the majority of members of the review panel are of the opinion that the conduct complained of does not warrant another disposition and there is some merit to the complaint and the disposition is, in the opinion of the majority of members of the review panel, a suitable means of informing the judge that his/her course of conduct was not appropriate in the circumstances that led to the complaint. A review panel will recommend imposing conditions on their referral of a complaint to the Chief Justice of the Ontario Court of Justice where a majority of the members of a review panel agree that there is some course of action or remedial training of which the subject judge can take advantage of and there is agreement by the judge in accordance with subs. 51.4(15). The Chief Justice of the Ontario Court of Justice will provide a written report on the disposition of the complaint to the review panel and complaint subcommittee members.

D) REFERRING A COMPLAINT TO MEDIATION

A review panel may refer a complaint to mediation when the Judicial Council has established a mediation process for complainants and judges who are the subject of complaints, in accordance with section 51.5 of the Courts of Justice Act. When such a mediation process is established by the Judicial Council, complaints may be referred to mediation in circumstances where a majority of the members of the review panel are of the opinion that the conduct complained of does not fall within the criteria established to exclude complaints that are inappropriate for mediation, as set out in subsection 51.5(3) of the Courts of Justice Act. Until such time as criteria are established, complaints are excluded from the mediation process in the following circumstances:

- (1) where there is a significant power imbalance between the complainant and the judge, or there is such a significant disparity between the complainant's and the judge's accounts of the event with which the complaint is concerned that mediation would be unworkable;

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

Notice of Decision

DECISION COMMUNICATED

The Judicial Council, or a review panel thereof, shall communicate its decision to both the complainant and the subject judge and if the Judicial Council decides to dismiss the complaint, it will provide the parties with brief reasons.

subs. 51.4(20)

ADMINISTRATIVE PROCEDURES

Detailed information on administrative procedures to be followed by the Judicial Council when notifying the parties of its decision can be found at pages 25 and 26 of this document.

HEARING PANELS

APPLICABLE LEGISLATION

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

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

subs. 51.1(2)

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

subs. 51.1(3) and 51.6(2)

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

subs. 51.6(3)

COMPOSITION

The following rules apply to a hearing panel established for the purpose of holding a hearing under section 51.6 (adjudication by the Ontario Judicial Council) or section 51.7 (considering the question of compensation):

- 1) half the members of the panel, including the chair, must be judges and half of the members of the panel must be persons who are not judges
- 2) at least one member must be a person who is neither a judge nor a lawyer
- 3) the Chief Justice of Ontario, or another judge of the Ontario Court of Appeal designated by the Chief Justice, shall chair the hearing panel
- 4) the Judicial Council may determine the size and composition of the panel, subject to paragraphs 1, 2 & 3 above
- 5) all the members of the hearing panel constitute a quorum (subs. 49(17))
- 6) the chair of the hearing panel is entitled to vote and may cast a second deciding vote if there is a tie
- 7) the members of the complaint subcommittee that investigated the complaint shall not participate in a hearing of the complaint
- 8) the members of a review panel that received and considered the recommendation of a complaint subcommittee shall not participate in a hearing of the complaint (subs. 49(20))

subs. 49(17), (18), (19) and (20)

POWER

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

subs. 49(16)

HEARINGS

COMMUNICATION BY MEMBERS

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

subs. 51.6(4) and (5)

PARTIES TO THE HEARING

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

subs. 51.6(6)

PUBLIC OR PRIVATE/ALL OR PART

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

subs. 49(11) and 51.6(7)

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

subs. 51.6(2)

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

subs. 51.6(9)

OPEN OR CLOSED HEARINGS – CRITERIA

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

subs. 51.6(7)

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

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

REVEALING JUDGE'S NAME WHEN HEARING WAS PRIVATE – CRITERIA

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

subs. 51.6(8)

The members of the Judicial Council will consider the following criteria before a decision is made about when it is appropriate to publicly reveal the name of a judge even though the hearing has been held in private:

- a) at the request of the judge, or
- b) in circumstances where it would be in the public interest to do so.

WHEN AN ORDER PROHIBITING PUBLICATION OF JUDGE'S NAME MAY BE MADE, PENDING THE DISPOSITION OF A COMPLAINT – CRITERIA

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

subs. 51.6(10)

The members of the Judicial Council will consider the following criteria to determine when the Judicial Council may make an order prohibiting the publication of information that might identify the judge who is the subject of a complaint, pending the disposition of a complaint:

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

NEW COMPLAINT

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

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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(16) 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.

NOTICE OF HEARING

6. A hearing shall be commenced by a Notice of Hearing in accordance with this Part.
7. Presenting Counsel shall prepare the Notice of Hearing.
 - (1) The Notice of Hearing shall contain,
 - (a) particulars of the allegations against the Respondent;
 - (b) a reference to the statutory authority under which the hearing will be held;
 - (c) a statement of the time and place of the commencement of the hearing;
 - (d) a statement of the purpose of the hearing;
 - (e) a statement that if the Respondent does not attend at the hearing, the Panel may proceed in the Respondent’s absence and the Respondent will not be entitled to any further notice of the proceeding; and,
8. Presenting Counsel shall cause the Notice of Hearing to be served upon the Respondent by personal service or, upon motion to the Panel hearing the complaint, an alternative to personal service and shall file proof of service with the Council.

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RESPONSE

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

DISCLOSURE

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

PRE-HEARING CONFERENCE

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

THE HEARING

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

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- (e) The hearing shall be recorded verbatim and transcribed where requested. Where counsel for the Respondent requests, he or she may be provided with a transcript of the hearing within a reasonable time and at no cost.
- (f) Both Presenting Counsel and the Respondent may submit to the Panel proposed findings, conclusions, recommendations or draft orders for the consideration of the Hearing Panel.
- (g) Presenting Counsel and counsel for the Respondent may, at the close of the evidence, make statements summarizing the evidence and any points of law arising out of the evidence, in the order to be determined by the Hearing Panel.

PRE-HEARING RULINGS

18. Either party to the hearing may, by motion, not later than 10 days before the date set for commencement of the hearing, bring any procedural or other matters to the Hearing Panel as are required to be determined prior to the hearing of the complaint.

- (1) Without limiting the generality of the foregoing, a motion may be made for any of the following purposes:
 - (a) objecting to the jurisdiction of the Council to hear the complaint;
 - (b) resolving any issues with respect to any reasonable apprehension of bias or institutional bias on the part of the Panel;
 - (c) objecting to the sufficiency of disclosure by Presenting Counsel;
 - (d) determining any point of law for the purposes of expediting the hearing; or
 - (e) determining any claim of privilege in respect of the evidence to be presented at the hearing; or
 - (f) any matters relating to scheduling.

- (2) A motion seeking any of the relief enumerated in this section may not be brought during the hearing, without leave of the Hearing Panel, unless it is based upon the manner in which the hearing has been conducted.

- (3) The Hearing Panel, may, on such grounds as it deems appropriate, abridge the time for bringing any motion provided for by the pre-hearing rules.

19. The Council shall, as soon as is reasonably possible, appoint a time and a place for the hearing of submissions by both sides on any motion brought pursuant to subsection 19(1), and shall, as soon as is reasonably possible, render a decision thereon.

POST-HEARINGS

Disposition at Hearing

DISPOSITION

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

- a) warn the judge;
- b) reprimand the judge;
- c) order the judge to apologize to the complainant or to any other person;
- d) order the judge to take specified measures such as receiving education or treatment, as a condition of continuing to sit as a judge;
- e) suspend the judge with pay, for any period;
- f) suspend the judge without pay, but with benefits, for a period up to thirty days; or
- g) recommend to the Attorney General that the judge be removed from office (in accordance with section 51.8).

subs. 51.6(11)

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – POST-HEARINGS

COMBINATION OF SANCTIONS

The Judicial Council may adopt any combination of the foregoing sanctions except that the recommendation to the Attorney General that the judge be removed from office will not be combined with any other sanction.

subs. 51.6(12)

Report to Attorney General

REPORT

The Judicial Council may make a report to the Attorney General about the complaint, investigation, hearing and disposition (subject to any orders made about confidentiality of documents by the Judicial Council) and the Attorney General may make the report public if he/she is of the opinion this would be in the public interest.

subs. 51.6(18)

IDENTITY WITHHELD

If a complainant or witness asked that their identity be withheld during the hearing and an order was made under subsection 51.6(9), the report to the Attorney General will not identify them or, if the hearing was held in private, the report will not identify the judge, unless the Judicial Council orders the judge's name be disclosed in the report in accordance with the criteria established by the Judicial Council under subsection 51.6(8) (please see page B – 11 above).

subs. 51.6(19)

JUDGE NOT TO BE IDENTIFIED

If, during the course of a hearing into a complaint, the Judicial Council made an order prohibiting publication of information that might identify the judge complained-of pending the disposition of the complaint, pursuant to subsection 51.6(10) and the criteria established by the Judicial Council (please see page B – 11 above) and the Judicial Council subsequently dismisses the complaint with a finding that it was unfounded, the judge shall not be identified in the report to the Attorney General without his or her consent and the Judicial Council shall order that information that relates to the complaint and which might identify the judge shall never be made public without his or her consent.

subs. 51.6(20)

Order to Accommodate

If the effect of a disability on the judge's performance of the essential duties of judicial office is a factor in a complaint, which is either dismissed or disposed of in any manner short of recommending to the Attorney General that the judge be removed, and the judge would be able to perform the essential duties of judicial office if his or her needs were accommodated, the Judicial Council shall order the judge's needs to be accommodated to the extent necessary to enable him or her to perform those duties.

Such an order to accommodate may not be made if the Judicial Council is satisfied that making the order would impose undue hardship on the person responsible for accommodating the judge's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

The Judicial Council shall also not make an order to accommodate against a person without ensuring that the person has had an opportunity to participate and make submissions.

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

subs. 51.6(13), (14), (15), (16) and (17)

Removal from Office

REMOVAL

A provincially-appointed judge may be removed from office only if:

- a) a complaint about the judge has been made to the Judicial Council; and
- b) the Judicial Council, after a hearing, recommends to the Attorney General that the judge be removed on the ground that he or she has become incapacitated or disabled from the due execution of his or her office by reason of,
 - (i) inability, because of a disability, to perform the essential duties of his or her office (if an order to accommodate the judge's needs would not remedy the inability, or could not be made because it would impose undue

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPENSATION

B

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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AMOUNT AND PAYMENT

The amount of compensation recommended to be paid may relate to all, or part, of the judge's costs for legal services and shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services. The Attorney General shall pay compensation to the judge in accordance with the recommendation.

subs. 51.7(7) and (8)

CONFIDENTIALITY AND PROTECTION OF PRIVACY

INFORMATION TO PUBLIC

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

subs. 51.3(5)

POLICY OF JUDICIAL COUNCIL

The complaint subcommittee's investigation into a complaint shall be conducted in private, and its report about a complaint or referral of a complaint to the Judicial Council, or a review panel thereof, is considered in private, in accordance with subsections 51.4(6) and 51.4(17) and (18). It is the policy of the Judicial Council, made pursuant to subsections 51.4(21) and (22), that it will not confirm or deny that a particular complaint has been made to it, as permitted by subsection 51.3(5), unless the Judicial Council, or a hearing panel thereof, has determined that there will be a public hearing into the complaint.

COMPLAINT SUBCOMMITTEE INVESTIGATION PRIVATE

The investigation into a complaint by a complaint subcommittee shall be conducted in private. The Statutory Powers Procedure Act does not apply to the complaint subcommittee's activities in investigating a complaint.

subs. 51.4(6) and (7)

REVIEW PANEL DELIBERATION PRIVATE

The Judicial Council, or a review panel thereof, shall: –

- consider the complaint subcommittee's report, in private, and may approve its disposition, or
- may require the complaint subcommittee to refer the complaint to the Council.

subs. 51.4(17)

If a complaint is referred to it by a complaint subcommittee, the Judicial Council, or a Review Panel thereof, shall consider such complaint, in private, and may:

- decide to hold a hearing,
- dismiss the complaint,
- refer the complaint to the Chief Judge (with or without imposing conditions), or
- refer the complaint to a mediator.

subs. 51.4(18)

WHEN IDENTITY OF JUDGE REVEALED TO REVIEW PANEL

If a complaint is referred to the Judicial Council, with or without a recommendation that a hearing be held, the complainant and the subject judge may be identified to the Judicial Council or a review panel thereof, and such a complaint will be considered in private.

subs. 51.4(16) and (17)

HEARINGS MAY BE PRIVATE

If the Judicial Council determines, in accordance with criteria established under subsection 51.1(1) that the desirability of holding an open hearing is outweighed by the desirability of maintaining confidentiality, it may hold all or part of a hearing in private.

subs. 51.6(7)

JUDGE'S NAME NOT DISCLOSED

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

subs. 51.6(8)

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

ORDER PROHIBITING PUBLICATION

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

subs. 51.6(10)

CRITERIA ESTABLISHED

For the criteria established by the Judicial Council under subsection 51.1(1) with respect to subsections 51.6(7), (8) and (10), please see page B – 11 above.

REPORT TO ATTORNEY GENERAL

If a complainant or witness asked that their identity be withheld during the hearing, and an order was made under subsection 51.6(9), the report to the Attorney General will not identify them or, if the hearing was held in private, the report will not identify the judge, unless the Judicial Council orders the judge's name be disclosed in the report in accordance with criteria established under subsection 51.6(8).

subs. 51.6(19)

JUDGE NOT TO BE IDENTIFIED

If, during the course of a hearing into a complaint, the Judicial Council made an order prohibiting publication of information that might identify the judge complained-of pending the disposition of the complaint, pursuant to subsection 51.6(10) and the criteria established by the Judicial Council and the Judicial Council subsequently dismisses the complaint with a finding that it was unfounded, the judge shall not be identified in the report to the Attorney General without his or her consent and the Judicial Council shall order that information that relates to the complaint and which might identify the judge shall never be made public without his or her consent.

subs. 51.6(20)

ORDER NOT TO DISCLOSE

The Judicial Council or a complaint subcommittee may order that any information or documents relating

to a mediation or a Judicial Council meeting or hearing that was not held in public, whether the information or documents are in the possession of the Judicial Council or of the Attorney General, or of any other person, are confidential and shall not be disclosed or made public.

subs. 49(24) and (25)

EXCEPTION

The foregoing does not apply to information and documents that the Courts of Justice Act requires the Judicial Council to disclose or that have not been treated as confidential and were not prepared exclusively for the purpose of mediation or a Judicial Council meeting or hearing.

subs. 49(26)

AMENDMENTS TO THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

Section 65 of the Freedom of Information and Protection of Privacy Act is amended by adding the following subsections:

- (4) This Act does not apply to anything contained in a judge's performance evaluation under section 51.11 of the Courts of Justice Act or to any information collected in connection with the evaluation.
- (5) This Act does not apply to a record of the Ontario Judicial Council, whether in the possession of the Judicial Council or of the Attorney General, if any of the following conditions apply:
 1. The Judicial Council or its complaint subcommittee has ordered that the record or information in the record not be disclosed or made public.
 2. The Judicial Council has otherwise determined that the record is confidential.
 3. The record was prepared in connection with a meeting or hearing of the Judicial Council that was not open to the public.

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ACCOMMODATION OF DISABILITIES

ACCOMMODATION OF DISABILITIES

APPLICATION FOR ORDER

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

subs. 45.(1)

DUTY OF JUDICIAL COUNCIL

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

subs. 45.(2)

UNDUE HARDSHIP

Subsection 45.(2) does not apply if the Judicial Council is satisfied that making an order would impose undue hardship on the person responsible for accommodating the judge's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

subs. 45.(3)

GUIDELINES AND RULES OF PROCEDURE

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

subs. 45.4(4)

OPPORTUNITY TO PARTICIPATE

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

subs. 45.(5)

ORDER BINDS THE CROWN

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

subs. 45.(6)

CHAIR FOR MEETING

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

subs. 49.(8)

CHAIR ENTITLED TO VOTE

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

subs. 49.(10)

QUORUM FOR MEETING

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

subs. 49.(13)

EXPERT ASSISTANCE

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

subs. 49.(21)

CONFIDENTIAL RECORDS

The Judicial Council or a subcommittee may order that any information or documents relating to a mediation or a Council meeting or hearing that was not held in public are confidential and shall not be disclosed or made public. An order of non-disclosure may be made whether the information or documents are in the possession of the Judicial Council, the Attorney General or any other person. An order of non-disclosure cannot be made with respect to information and/or documents that the Courts of Justice Act

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ACCOMMODATION OF DISABILITIES

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

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

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

subs. 51.1(1)

ACCOMMODATION ORDER AFTER A HEARING

If, after a hearing into a complaint has been held, the Judicial Council finds that the judge who was the subject of the complaint is unable, because of a disability, to perform the essential duties of the office, but would be able to perform them if his or her needs were accommodated, the Council shall order that the judge's needs be accommodated to the extent necessary to enable him or her to perform those duties.

subs. 51.6(13)

RULES OF PROCEDURE AND GUIDELINES

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

APPLICATION IN WRITING

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

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

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

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

ACCOMMODATION SUBCOMMITTEE

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

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

REPORT OF ACCOMMODATION SUBCOMMITTEE

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

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

INITIAL CONSIDERATION OF APPLICATION AND REPORT

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

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ACCOMMODATION OF DISABILITIES

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

THRESHOLD TEST FOR QUALIFICATION AS DISABILITY

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

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

NOTIFICATION OF MINISTER

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

SUBMISSIONS ON UNDUE HARDSHIP

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

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

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

TIME FRAME FOR RESPONSE

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

MEETING TO DETERMINE ORDER TO ACCOMMODATE

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

COPY OF ORDER

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

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – SPECIAL CONSIDERATIONS

SPECIAL CONSIDERATIONS

FRENCH-SPEAKING COMPLAINANTS/JUDGES

Complaints against provincially-appointed judges may be made in English or French.

subs. 51.2(2)

A hearing into a complaint by the Judicial Council shall be conducted in English, but a complainant or witness who speaks French or a judge who is the subject of a complaint and who speaks French is entitled, on request, to be given before the hearing, French translations of documents that are written in English and are to be considered at the hearing; to be provided with the assistance of an interpreter at the hearing; and to be provided with simultaneous interpretation into French of the English portions of the hearing.

subs. 51.2(3)

This entitlement to translation and interpretation extends to mediation and to the consideration of the question of compensation, if any.

subs. 51.2(4)

The Judicial Council may direct that a hearing or mediation of a complaint where a complainant or witness speaks French, or the complained-of judge speaks French, be conducted bilingually, if the Judicial Council is of the opinion that it can be properly conducted in that manner.

subs. 51.2(5)

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

subs. 51.2(6)

In a bilingual hearing or mediation,

- a) oral evidence and submissions may be given or made in English or French, and shall be recorded in the language in which they are given or made;
- b) documents may be filed in either language;
- c) in the case of a mediation, discussions may take place in either language;

- d) the reasons for a decision or the mediator's report, as the case may be, may be written in either language.

subs. 51.2(7)

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

subs. 51.2(8)

COMPLAINTS AGAINST CHIEF JUSTICE ET AL

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

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

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

subs. 50(1)(c)

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

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – SPECIAL CONSIDERATIONS

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

subs. 50(2)(a)

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

subs. 50(2)(b)

If either the Associate Chief Justice or Regional Senior Justice appointed to the Judicial Council is the subject of a complaint, the Chief Justice of the Ontario Court of Justice shall appoint another judge of the Ontario Court of Justice to be a member of the Judicial Council instead of the Associate Chief Justice or Regional Senior Justice, as the case may be, until the complaint against the Associate Chief Justice, or Regional Senior Justice appointed to the Judicial Council, is finally disposed of.

subs. 50(3)

COMPLAINTS AGAINST SMALL CLAIMS COURT JUDGES

Subsection 87.1(1) of the Courts of Justice Act applies to provincially-appointed judges who were assigned to the Provincial Court (Civil Division) immediately before September 1, 1990, with special provisions.

COMPLAINTS

When the Judicial Council deals with a complaint against a provincially-appointed judge who was assigned to the Provincial Court (Civil Division) immediately before September 1, 1990, the following special provisions apply:

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

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

2. Complaints shall be referred to the Chief Justice of the Superior Court of Justice, rather than to the Chief Justice of the Ontario Court of Justice.
3. Complaint subcommittee recommendations with respect to interim suspension shall be made to the appropriate Regional Senior Justice of the Superior Court of Justice, to whom subsections 51.4(10) and (11) apply, with necessary modifications.

subs. 87.1(4)

COMPLAINTS AGAINST MASTERS

Subsection 87.(3) of the Courts of Justice Act states that sections 44 to 51.12 applies to masters, with necessary modifications, in the same manner as to provincially-appointed judges.

COMPLAINTS

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

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

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ADMINISTRATIVE MATTERS

ADMINISTRATIVE MATTERS

INTAKE/OPENING COMPLAINT FILES:

- Where a complaint is made orally by a person intending to make a complaint to the Judicial Council or a member acting in their capacity as a member of the Judicial Council thereof, the person making the allegation shall be encouraged to make the complaint in writing. If such person does not within 10 days of making the allegation tender a written complaint to the Council, the Registrar shall, on consultation with legal counsel and the Judicial Council member to whom the allegation was made, set out the particulars of the complaint in writing. Such written summary of the allegation shall be forwarded by registered mail to the person making the allegation, if he or she can be located, along with a statement that the allegation as summarized will become the complaint on the basis of which the conduct of the provincially-appointed judge in question will be evaluated. On the tenth day after the mailing of such summary, and in the absence of any response from the person making the allegation, the written summary shall be deemed to be a complaint alleging misconduct against the provincially-appointed judge in question.
- if the complaint is within the jurisdiction of the OJC (any provincially-appointed judge or master – full-time or part-time) a complaint file is opened and assigned to a two-member complaint subcommittee for review and investigation (complaints that are outside the jurisdiction of the OJC are referred to the appropriate agency)
- the 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.

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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

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 five 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 – 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)
- Family Law Statutes of the Ontario Court of Justice
- The Conduct of a Trial
- The Conduct of a Family Law Trial
- Judge's Manual
- Family Law Rules
- Writing Reasons
- Ethical Principles for Judges (Canadian Judicial Council)
- The Finder
- The Sentencing Finder

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 so soon thereafter as is possible, new judges attend the New Judges' Training Program presented by the Canadian Association of Provincial Court judges (C.A.P.C.J.) at Carling Lake in the Province of Quebec. This intensive one-week program is practical in nature and is oriented principally to the area of criminal law, with some reference to areas of family law.

In November, 2004 the Ontario Court of Justice and the National Judicial Institute jointly presented a New Judges Skills-Based program at Niagara-on-the-Lake for 28 newly appointed provincial judges from across Canada. The program included sessions on the delivery of judgments both written and oral, communication skills and the effective conduct of a judicial pre-trial. Twelve newly appointed judges from the Ontario Court of Justice attended this program which will be repeated in November, 2005.

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").

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ONTARIO COURT OF JUSTICE – CONTINUING EDUCATION PLAN

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 and funded through the Education Secretariat. 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 Centre for Judicial Research and Education (discussed below), computer courses and courses in *Quicklaw* (a computer law database and research facility).

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. The chair of each committee is nominated by the Ontario Conference of Judges to be on the Education Secretariat. 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, leg-

islative 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, Youth Criminal Justice 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.

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 February 2005 the Judgment Writing Program will be replaced by an Oral Judgment Program which was developed by the National Judicial Institute and features Professor Berry together with judges of the Ontario Court of Appeal as presenters. This program was presented at the Annual Conference to 25 judges of the Court and to the 12 judges who attended the New Judges Skills-Based Program. A further 25 judges have registered for the February 2005 program in

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ONTARIO COURT OF JUSTICE – CONTINUING EDUCATION PLAN

Toronto. It is anticipated that after most judges have attended an Oral Judgment Program the Court will be able to alternate Written and Oral Judgment programs in future years.

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 entitled, *Writing Reasons*. 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 discussion on verbal and non-verbal communications, listening and related problems. Individual judges were videotaped and their communication techniques were critiqued in the course of the program. The program, which was presented to 25 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. The program was presented again in March, 2002 to another 21 judges of the Ontario Court of Justice.

From June 2 to June 4, 2003 the Court in Partnership with the National Judicial Institute developed a Courtroom Communications Workshop presented at Stratford. The focus of the seminar was on communications skills in the courtroom. Judges learned and practiced specific techniques in realistic exercises designed to simulate difficult courtroom situations. They had an opportunity to learn about their own communications style and how to improve it, with coaches from the theatre and other communication professionals. Twelve judges from the Court were selected to attend the program together with an equal number of federally appointed judges. The program was presented again in Stratford in June, 2004 and is scheduled to be repeated in June, 2005.

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

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ONTARIO COURT OF JUSTICE – CONTINUING EDUCATION PLAN

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.

At the Court's Annual Meeting in 2003, the theme of the education program was "Access to Justice". The vehicle of a play followed by a panel discussion was used to describe issues of literacy, race, poverty, neglect, abuse and violence in the home affecting access to justice. Another session used lectures, videos, panel discussions and small group work to explore the issue of literacy and the courts in a meaningful way.

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 Conference.

5. UNIVERSITY EDUCATION PROGRAM. 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 judges to deal in depth with criminal law education topics in a more academic context. The same program, with some modification, is presented each year over a three-year period to enable a larger number of judges to receive the same benefits of the program.

III. EXTERNAL EDUCATION PROGRAMS

The Education Secretariat has established a Conference Attendance Committee to consider applications by individual judges for funding to attend conferences/seminars/programs other than those presented by the Ontario Court of Justice. Funding, when provided, is usually less than 100% since it is designed to provide supplementary assistance to judges who are prepared to commit some of their own resources to attend.

1. FRENCH-LANGUAGE COURSES: Judges of the Ontario Court of Justice who are proficient in French may attend courses presented by the Office of the Commissioner for Federal Judicial Affairs. The frequency and duration of the

courses are determined by the judge's level of proficiency. The purpose of the courses is to assure and to maintain the French language proficiency of those judges who are called upon to preside over French language matters in the Ontario Court of Justice. There are two levels of courses: (a) Terminology courses for francophone judges; (b) Terminology courses for anglophone (bilingual) judges.

2. OTHER EDUCATIONAL PROGRAMS: Judges of the Ontario Court of Justice are encouraged to pursue educational interests by attending education programs presented by other organizations and associations including:
 - Canadian Association of Provincial Court Judges
 - National Judicial Institute
 - Federation of Law Societies: Criminal (Substantive Law/Procedure/Evidence) & Family Law
 - International Association of Juvenile and Family Court Magistrates
 - Canadian Bar Association
 - Criminal Lawyers' Association
 - Advocate's Society
 - 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 (Cambridge Lectures)
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

APPENDIX – C

ONTARIO COURT OF JUSTICE – CONTINUING EDUCATION PLAN

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 was 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.

In September 2002 the Ontario Court of Justice and the National Judicial Institute jointly presented a conference on Child Welfare Law that was attended by both federal and provincial judges from across the country. The Ontario Court of Justice and the N.J.I. have also jointly presented the annual Courtroom Skills Program in Stratford and, most recently, the New Judges Skills-Based at Niagara-on-the-Lake.

IV. OTHER EDUCATIONAL RESOURCES

1. CENTRE FOR JUDICIAL RESEARCH AND EDUCATION: Judges of the Ontario Court of Justice have access to the Ontario Court of Justice Centre for Judicial Research and Education located at Old City Hall in Toronto. The Centre, a law library and computer research

facility, is staffed by three research counsel together with support staff and is accessible in person, by telephone, E-mail or fax. The 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'*. Counsel at the Centre attend meetings of the Education Secretariat and take part in seminars and programs presented by the Conference of Judges and Education Secretariat.

2. RECENT DEVELOPMENTS: The Honourable Mr. Justice Ian MacDonnell also provides judges of the Ontario Court of Justice with his summary and comments on current criminal law decisions of the Ontario Court of Appeal and of the Supreme Court of Canada in a publication entitled *'Recent Developments'*.
3. SELF-FUNDED LEAVE: In order to provide access to educational opportunities that fall outside the parameters of regular judicial education programs, the Ontario Court of Justice has developed a self-funded leave policy that allows judges to defer income over a period of years in order to take a period of self-funded leave of up to twelve months. Prior approval is required for such leave and a peer review committee reviews the applications in selecting those judges who will be authorized to take such leave.
4. REGIONAL MEETINGS: 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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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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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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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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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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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

CANADIAN JUDICIAL COUNCIL – ETHICAL PRICIPLES FOR JUDGES

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APPENDIX – E

CANADIAN JUDICIAL COUNCIL – ETHICAL PRINCIPLES FOR JUDGES



ETHICAL PRINCIPLES FOR JUDGES

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APPENDIX – E

CANADIAN JUDICIAL COUNCIL – ETHICAL PRINCIPLES FOR JUDGES

© Canadian Judicial Council
Catalogue Number JU11-4/2004E-PDF
ISBN 0-662-38118-1

Available from:
Canadian Judicial Council
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and at: www.cjc-ccm.gc.ca

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FOREWORD

The ability of Canada’s legal system to function effectively and to deliver the kind of justice that Canadians need and deserve depends in large part on the ethical standards of our judges.

The Canadian Judicial Council has a central concern in this matter. The adoption of a widely accepted ethical frame of reference helps the Council fulfill its responsibilities and ensures that judges and the public alike are aware of the principles by which judges should be guided in their personal and professional lives.

Since its creation in 1971, the Council has supported the judiciary in a positive way with tools that will help to improve the delivery of justice in this country. The publication in 1998 of Ethical Principles for Judges constitutes a valuable achievement in this regard.

We owe a continuing debt of gratitude to the working committee that the Council established in 1994 and to the many experts who collaborated to give Canadian judges an essential tool for the delivery of justice in this country. The Canadian Judicial Council is pleased to renew its endorsement of the high standards of conduct that are expressed in these principles.

The Right Honourable Beverley McLachlin
Chief Justice of Canada

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APPENDIX – E

CANADIAN JUDICIAL COUNCIL – ETHICAL PRINCIPLES FOR JUDGES

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1. PURPOSE

Statement

The purpose of this document is to provide ethical guidance for federally appointed judges.

Principles:

1. The Statements, Principles and Commentaries describe the very high standards toward which all judges strive. They are principles of reason to be applied in light of all of the relevant circumstances and consistently with the requirements of judicial independence and the law. Setting out the very best in these Statements, Principles and Commentaries does not preclude reasonable disagreements about their application or imply that departures from them warrant disapproval.

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2. The Statements, Principles and Commentaries are advisory in nature. Their goals are to assist judges with the difficult ethical and professional issues which confront them and to assist members of the public to better understand the judicial role. They are not and shall not be used as a code or a list of prohibited behaviours. They do not set out standards defining judicial misconduct.

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CANADIAN JUDICIAL COUNCIL – ETHICAL PRINCIPLES FOR JUDGES

3. An independent judiciary is the right of every Canadian. A judge must be and be seen to be free to decide honestly and impartially on the basis of the law and the evidence, without external pressure or influence and without fear of interference from anyone. Nothing in these Statements, Principles and Commentaries can, or is intended to limit or restrict judicial independence in any manner. To do so would be to deny the very thing this document seeks to further: the rights of everyone to equal and impartial justice administered by fair and independent judges. As indicated in the chapter on Judicial Independence, judges have the duty to uphold and defend judicial independence, not as a privilege of judicial office but as the constitutionally guaranteed right of everyone to have their disputes heard and decided by impartial judges.

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Commentary:

1. These Statements, Principles and Commentaries are the latest in a series of Canadian efforts to provide guidance to judges on ethical and professional questions and to better inform the public about the high ideals which judges embrace and toward which they strive. They build upon the earlier work of the Hon. J.O. Wilson in *A Book for Judges* published in 1980, the Rt. Hon. Gerald Fauteux in *Le livre du magistrat* also published in 1980, the Canadian Judicial Council's *Commentaries on Judicial Conduct* published in 1991 and Professor Beverley Smith's text, *Professional Conduct for Lawyers and Judges* (1998). While drawing heavily on these invaluable resources, the present publication is by far the most comprehensive treatment of the subject to date in Canada. But it cannot provide exhaustive coverage of the myriad issues that arise in practice. The sources just mentioned, as well as those referred to in the next Commentary, will continue to be of assistance to Canadian judges.

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2. As the references throughout the text indicate, a wide variety of sources have been consulted in the process of preparing this document. These include not only Canadian sources but also the Code of Judicial Conduct applying to the United States Federal judiciary, the American Bar Association's *Model Code of Judicial Conduct* (1990) as well as scholarly writing and rulings concerning judicial conduct in Canada, the United Kingdom, Australia and the United States. Of particular note are J.B. Thomas, *Judicial Ethics in Australia* (2d, 1997), J. Shaman et al, *Judicial Conduct and Ethics* (2d, 1995) and S. Shetreet, *Judges on Trial* (1976). While all of these sources are helpful, this document is uniquely the work of Canadian judges. The process which resulted in these Statements, Principles and Commentaries was carried forward by a Working Committee representative of both the Canadian Judicial Council and the Canadian Judges Conference. An extensive process of consultation within the judiciary and beyond ensured that these Statements, Principles and Commentaries have been the subject of painstaking examination and vigorous debate. The intention is that Canadian judges will accept these Statements, Principles and Commentaries as reflective of their high ethical aspirations and that they will find them worthy of respect and deserving of careful consideration when facing any of the issues addressed in them.

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3. A document of this nature can never be viewed as the “final word” on such an important and complex subject. Publication of these Statements, Principles and Commentaries coincides with the establishment of an Advisory Committee of Judges to which specific questions may be submitted by judges and which will respond with advisory opinions. This process will contribute to ongoing review and elaboration of the subjects dealt with in the Principles as well as introduce new issues that they do not address. More importantly, the Advisory Committee will ensure that help is readily available to judges looking for guidance.

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2. JUDICIAL INDEPENDENCE

Statement: *An independent judiciary is indispensable to impartial justice under law. Judges should, therefore, uphold and exemplify judicial independence in both its individual and institutional aspects.*

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Principles:

1. Judges must exercise their judicial functions independently and free of extraneous influence.
2. Judges must firmly reject any attempt to influence their decisions in any matter before the Court outside the proper process of the Court.
3. Judges should encourage and uphold arrangements and safeguards to maintain and enhance the institutional and operational independence of the judiciary.
4. Judges should exhibit and promote high standards of judicial conduct so as to reinforce public confidence which is the cornerstone of judicial independence.

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CANADIAN JUDICIAL COUNCIL – ETHICAL PRINCIPLES FOR JUDGES

Commentary:

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1. Judicial independence is not the private right of judges but the foundation of judicial impartiality and a constitutional right of all Canadians. Independence of the judiciary refers to the necessary individual and collective or institutional independence required for impartial decisions and decision making.¹ Judicial independence thus characterizes both a state of mind and a set of institutional and operational arrangements. The former is concerned with the judge's impartiality in fact; the latter with defining the relationships between the judiciary and others, particularly the other branches of government, so as to assure both the reality and the appearance of independence and impartiality. The Statement and Principles deal with judges' ethical obligations as regards their individual and collective independence. They do not deal with the many legal issues relating to judicial independence.

2. In *Valente v. The Queen*, LeDain, J. noted that "...judicial independence involves both individual and institutional relationships: the individual independence of a judge, as reflected in such matters as security of tenure and the institutional independence of the court or tribunal over which he or she presides, as reflected in its institutional or administrative relationships to the executive and legislative branches of government."² He concluded that "...judicial independence is a status or relationship resting on objective conditions or guarantees as well as a state of mind or attitude in the actual exercise of judicial functions...."³ The objective conditions and guarantees include, for example, security of tenure, security of remuneration and immunity from civil liability for judicial acts.

¹ S. Shetreet, *Judges on Trial*, (1976) (hereafter "*Shetreet*") at 17.

² [1985] 2 S.C.R. 673 at 687.

³ *Ibid.* at 689.

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CANADIAN JUDICIAL COUNCIL – ETHICAL PRINCIPLES FOR JUDGES

3. The first qualification of a judge is the ability to make independent and impartial decisions. The subject of judicial impartiality is treated in detail in chapter 6. However, judicial independence is not only a matter of appropriate external and operational arrangements. It is also a matter of independent and impartial decision making by each and every judge. The judge's duty is to apply the law as he or she understands it without fear or favour and without regard to whether the decision is popular or not. This is a cornerstone of the rule of law. Judges individually and collectively should protect, encourage and defend judicial independence.

4. Judges must, of course, reject improper attempts by litigants, politicians, officials or others to influence their decisions. They must also take care that communications with such persons that judges may initiate could not raise reasonable concerns about their independence. As the Honourable J.O. Wilson put it in *A Book for Judges*:

It may be safely assumed that every judge will know that [attempts to influence a court] must only be made publicly in a court room by advocates or litigants. But experience has shown that other persons are unaware of or deliberately disregard this elementary rule, and it is likely that any judge will, in the course of time, be subjected to ex parte efforts by litigants or others to influence his decisions in matters under litigation before him.

...

Regardless of the source, ministerial, journalistic or other, all such efforts must, of course, be firmly rejected. This rule is so elementary that it requires no further exposition.⁴

⁴ J.O. Wilson, *A Book for Judges* (1980) (hereafter "*Wilson*") at 54-55.

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5. Given the independence accorded judges, they share a collective responsibility to promote high standards of conduct. The rule of law and the independence of the judiciary depend primarily upon public confidence. Lapses and questionable conduct by judges tend to erode that confidence. As Professor Nolan points out, judicial independence and judicial ethics have a symbiotic relationship.⁵ Public acceptance of and support for court decisions depends upon public confidence in the integrity and independence of the bench. This, in turn, depends upon the judiciary upholding high standards of conduct.

[O]nly by maintaining high standards of conduct will the judiciary (1) continue to warrant the public confidence on which deference to judicial rulings depends, and (2) be able to exercise its own independence in its judgements and rulings.⁶

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In short, judges should demonstrate and promote high standards of judicial conduct as one element of assuring the independence of the judiciary.

6. Judges should be vigilant with respect to any attempts to undermine their institutional or operational independence. While care must be taken not to risk trivializing judicial independence by invoking it indiscriminately in opposition to every proposed change in the institutional arrangements affecting the judiciary, judges should be staunch defenders of their own independence. Although the form and nature of the defence must be carefully considered, the propriety in principle of such defence cannot be questioned.⁷

⁵ B. Nolan, “The Role of Judicial Ethics in the Discipline and Removal of Federal Judges,” in *Research Papers of the National Commission on Judicial Discipline & Removal Volume I* (1993), pp. 867-912, at 874.

⁶ *Ibid.* at 875.

⁷ These issues are addressed further in chapter 6, *infra*.

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7. Judges should also recognize that not everyone is familiar with these concepts and their impact on judicial responsibilities. Public education with respect to the judiciary and judicial independence thus becomes an important function, for misunderstanding can undermine public confidence in the judiciary. There is, for example, a danger of misperception about the nature of the relationship between the judiciary and the executive, particularly given the Attorney General’s dual roles as the cabinet minister responsible for the administration of justice and as the government’s lawyer. The public may not get a completely balanced view of the principle of judicial independence from the media which may portray it incorrectly as protecting judges from review of and public debate concerning their actions. Judges, therefore, should take advantage of appropriate opportunities to help the public understand the fundamental importance of judicial independence, in view of the public’s own interest.⁸

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⁸ The phrase “appropriate opportunities” should remind judges that the circumstances of such public interventions must be considered carefully given the constraints of the judicial role. Some of the relevant considerations are discussed more fully in chapter 6, “Impartiality”; see also, for example, J.B. Thomas, *Judicial Ethics in Australia* (2d, 1997) (hereafter “Thomas”) at 106–111.

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8. Judges are asked frequently to serve as inquiry commissioners. In considering such a request, a judge should think carefully about the implications for judicial independence of accepting the appointment. There are examples of Judicial Commissioners becoming embroiled in public controversy and being criticized and embarrassed by the very governments which appointed them. The terms of reference and other conditions such as time and resources should be examined carefully so as to assess their compatibility with the judicial function.⁹ The Position of the Canadian Judicial Council on the Appointment of Federally Appointed Judges to Commissions of Inquiry, approved in March 1998, provides useful guidance in this area.

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⁹ It is interesting to note that the Australian High Court has ruled that, on separation of powers grounds, there are strict limits in law on the nature of commissions to which judges may be appointed: *Wilson v. Minister for Aboriginal and Torres Strait Islander Affairs* (1996) 70 A.L.J.R. 743; *Kable v. D.P.P.* (1996) 70 A.L.J.R. 814; see also R. MacGregor Dawson, *The Government of Canada* (3d) at 482: “There would seem to be little purpose in taking elaborate care to separate the judge from politics and to render him quite independent of the executive, and then placing him in a position as a Royal Commissioner where his impartiality may be attacked and his findings — no matter how correct and judicial they may be — are liable to be interpreted as favouring one political party at the expense of the other. For many of the inquiries or boards place the judge in a position where he cannot escape controversy: ...It has been proved time and again that in many of these cases the judge loses in dignity and reputation, and his future is appreciably lessened thereby. Moreover, if the judge remains away from his regular duties for very long periods, he is apt to lose his sense of balance and detachment; and he finds that the task of getting back to normal and of adjusting his outlook and habits of mind to purely judicial work is by no means easy.”

3. INTEGRITY

Statement: *Judges should strive to conduct themselves with integrity so as to sustain and enhance public confidence in the judiciary.*

Principles:

1. Judges should make every effort to ensure that their conduct is above reproach in the view of reasonable, fair minded and informed persons.

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2. Judges, in addition to observing this high standard personally, should encourage and support its observance by their judicial colleagues.

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CANADIAN JUDICIAL COUNCIL – ETHICAL PRINCIPLES FOR JUDGES

Commentary:

1. Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. Many factors, including unfair or uninformed criticism, or simple misunderstanding of the judicial role, can adversely influence public confidence in and respect for the judiciary. Another factor which is capable of undermining public respect and confidence is any conduct of judges, in and out of court, demonstrating a lack of integrity. Judges should, therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality and good judgment. The Canadian judiciary has a strong and honourable tradition in this area which serves as a sound foundation for appropriate judicial conduct.

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2. While the ideal of integrity is easy to state in general terms, it is much more difficult and perhaps even unwise to be more specific. There can be few absolutes since the effect of conduct on the perception of the community depends on community standards that may vary according to place and time.

3. As one commentator put it, the key issue about a judge's conduct must be how it "...reflects upon the central components of the judge's ability to do the job."¹⁰ This requires consideration of first, how particular conduct would be perceived by reasonable, fair minded and informed members of the community and second, whether that perception is likely to lessen respect for the judge or the judiciary as a whole. If conduct is likely to diminish respect in the minds of such persons, the conduct should be avoided. As Shaman put it, "...the ultimate standard for judicial

¹⁰ J. Shaman et al., *Judicial Conduct and Ethics* (2d, 1995) (hereafter "Shaman") at 335.

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conduct must be conduct which constantly reaffirms fitness for the high responsibilities of judicial office.”¹¹ The judge should exhibit respect for the law, integrity in his or her private dealings and generally avoid the appearance of impropriety.

4. Judges, of course, have private lives and should enjoy, as much as possible, the rights and freedoms of citizens generally. Moreover, an out of touch judge is less likely to be effective. Neither the judge’s personal development nor the public interest is well served if judges are unduly isolated from the communities they serve. Legal standards frequently call for the application of the reasonable person test. Judicial fact-finding, an important part of a judge’s work, calls for the evaluation of evidence in light of common sense and experience. Therefore, judges should, to the extent consistent with their special role, remain closely in touch with the public. These issues are discussed more fully in the “Impartiality” chapter, particularly section C thereof.

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5. A judge’s conduct, both in and out of court, is bound to be the subject of public scrutiny and comment. Judges must therefore accept some restrictions on their activities — even activities that would not elicit adverse notice if carried out by other members of the community. Judges need to strike a delicate balance between the requirements of judicial office and the legitimate demands of the judge’s personal life, development and family.

6. In addition to judges’ observing high standards of conduct personally they should also encourage and support their judicial colleagues to do the same as questionable conduct by one judge reflects on the judiciary as a whole.

¹¹ *Ibid.* at 312.

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7. Judges also have opportunities to be aware of the conduct of their judicial colleagues. If a judge is aware of evidence which, in the judge's view, is reliable and indicates a strong likelihood of unprofessional conduct by another judge, serious consideration should be given as to how best to ensure that appropriate action is taken having regard to the public interest in the due administration of justice. This may involve counselling, making inquiries of colleagues, or informing the chief justice or associate chief justice of the court.

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4. DILIGENCE

Statement: *Judges should be diligent in the performance of their judicial duties.*

Principles:

1. Judges should devote their professional activity to judicial duties broadly defined, which include not only presiding in court and making decisions, but other judicial tasks essential to the court's operation.
2. Judges should take reasonable steps to maintain and enhance the knowledge, skills and personal qualities necessary for judicial office.
3. Judges should endeavour to perform all judicial duties, including the delivery of reserved judgments, with reasonable promptness.
4. Judges should not engage in conduct incompatible with the diligent discharge of judicial duties or condone such conduct in colleagues.

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CANADIAN JUDICIAL COUNCIL – ETHICAL PRINCIPLES FOR JUDGES

Commentary:

1. Socrates counselled judges to hear courteously, answer wisely, consider soberly and to decide impartially. These judicial virtues are all aspects of judicial diligence. It is appropriate to add to Socrates' list the virtue of acting expeditiously, but diligence is not primarily concerned with expedition. Diligence, in the broad sense, is concerned with carrying out judicial duties with skill, care and attention, as well as with reasonable promptness.

2. Section 55 of the *Judges Act* (which applies to federally appointed judges) provides that judges must devote themselves to judicial duties.¹² Subject to the limitations imposed by the *Judges Act* and the judicial role, judges are free to participate in other activities that do not detract from the performance of judicial duties. In short, the work of the judge's court comes first.

3. While judges should exhibit diligence in the performance of their judicial duties, their ability to do so will depend on the burden of work, the adequacy of resources including staff, technical assistance and time for research, deliberation, writing and other judicial duties apart from sitting in court. The importance of the judge's responsibility to his or her family is also recognized. Judges should have sufficient vacation and leisure time to permit the maintenance of physical and mental wellness and reasonable opportunities to enhance the skill and knowledge necessary for effective judging.

¹² *Judges Act*, R.S.C. 1985, c.J-1, s.55. The text of the section is as follows:

55. No judge shall, either directly or indirectly, for himself or others, engage in any occupation or business other than his judicial duties, but every judge shall devote himself exclusively to those judicial duties.

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4. As mentioned in Commentary 8 of the “Judicial Independence” chapter, judges are sometimes called upon by governments to undertake tasks which take them away from the regular work of their courts. Service on royal commissions of inquiry is one example. A judge should not accept such an appointment without consulting with his or her chief justice to ensure that acceptance of the appointment will not unduly interfere with the effective functioning of the court or unduly burden its other members. The position of the Canadian Judicial Council, approved at its March 1998 mid-year meeting, provides useful guidance in this area.

5. As long ago as *Magna Carta*, it was recognized that judges should have a good knowledge of the law.¹³ This knowledge extends not only to substantive and procedural law, but to the real life impact of law. As one scholar put it, law is not just what it says; law is what it does.¹⁴ Sustained efforts to maintain and enhance the knowledge, skills and attitudes necessary for effective judging are important elements of judicial diligence. This involves participation in continuing education programs as well as private study.¹⁵

6. It is useful to consider the subject of judicial diligence under three headings: Adjudicative Duties, Administrative and Other Out of Court Duties, and Contributions to the Administration of Justice Generally.

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¹³ The reference is to Article 45 of *Magna Carta*: “We will not make any justices, sheriffs, or bailiffs, but of such as know the law of the realm and mean duly to observe it” as quoted in D.K. Carrol, *Handbook for Judges* (1961) at 29.

¹⁴ R.A. Samek, “A Case for Social Law Reform” (1977), 55 Can. Bar Rev. 409 at 411.

¹⁵ See for example, Canadian Bar Foundation, *Report of the Canadian Bar Association Committee on the Independence of the Judiciary in Canada* (1985) at 36: “Competence in the discharge of judicial duties is an important factor in the public’s support of an independent judiciary.”; see generally, M.L. Friedland, *A Place Apart: Judicial Independence and Accountability in Canada* (1995) at 167 ff.; see also chapter 5, “Equality”; the current goal recommended by the National Judicial Institute is a minimum of 10 days of continuing education per year for each judge although workload does not always allow this goal to be achieved.

Adjudicative Duties

7. Diligence in the performance of adjudicative duties includes striving for impartial and even-handed application of the law, thoroughness, decisiveness, promptness and the prevention of abuse of the process and improper treatment of witnesses. While these are all qualities and skills a judge needs, the variety of cases and the particular conduct of counsel and parties require a judge conducting a hearing to emphasize one or more, sometimes at the expense of some of the others, in order to achieve the proper balance. Striking this balance may be particularly challenging when one party is represented by a lawyer and another is not. While doing whatever is possible to prevent unfair disadvantage to the unrepresented party, the judge must be careful to preserve his or her impartiality.

8. The obligation to be patient and treat all before the court with courtesy does not relieve the judge of the equally important duty to be decisive and prompt in the disposition of judicial business. The ultimate test of whether the judge has successfully combined these ingredients into the conduct of the matters before the court is whether the matter has not only been dealt with fairly but in a fashion that is seen to be fair.¹⁶ These issues are addressed in the “Impartiality” chapter, section B.

9. Generally speaking, a judge should perform all properly assigned judicial duties, be punctual unless other judicial duties prevent it and be reasonably available to perform all assigned duties.

¹⁶ See *Brouillard v. The Queen*, [1985] 1 S.C.R. 39 per Lamer, J. (as he then was) for the court at 48: “...although the judge may and must intervene for justice to be done, he must none the less do so in such a way that justice is seen to be done.” (emphasis in original). The court also cited with approval the discussion of this subject in G. Fauteux, *Le livre du magistrat* (1980) (hereafter “*Livre*”).

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10. The proper preparation of judgments is frequently difficult and time consuming. However, the decision and reasons should be produced by the judge as soon as reasonably possible, having due regard to the urgency of the matter and other special circumstances. Special circumstances may include illness, the length or complexity of the case, an unusually heavy workload or other factors making it impossible to give judgment sooner. In 1985, the Canadian Judicial Council resolved that, in its view, reserved judgments should be delivered within six months after hearings, except in special circumstances.¹⁷

11. It is, of course, often necessary for judges to make findings of credibility and to rule on the propriety of others' conduct. However, judges should avoid making comments about persons who are not before the court unless it is necessary for the proper disposition of the case. For example, irrelevant or otherwise unnecessary comments in judgments about a person's conduct or motives ought to be avoided.¹⁸

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Administrative and Other Out of Court Duties

12. Today, judicial duties include administrative and other out of court activities. Judges have important responsibilities, for example, in case management and pre-trial conferences as well as on committees of the court. These are all judicial duties and should be undertaken with diligence.

¹⁷ Canadian Judicial Council Resolution September 1985; Legislation and Rules of Court may establish times within which judgment is to be given: see for example *Code of Civil Procedure* (Qc), article 465; repeated inability to give timely judgment has been the basis of a number of complaints to the Canadian Judicial Council: see Canadian Judicial Council, *Annual Report 1992-93* at 14.

¹⁸ See *Commentaries on Judicial Conduct* (1991) (hereafter "Commentaries") at 82-83; Shetreet at 294-5.

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CANADIAN JUDICIAL COUNCIL – ETHICAL PRINCIPLES FOR JUDGES

Contributions to the Administration of Justice Generally

13. Judges are uniquely placed to make a variety of contributions to the administration of justice. Judges, to the extent that time permits and subject to the limitations imposed by judicial office, may contribute to the administration of justice by, for example, taking part in continuing legal education programs for lawyers and judges and in activities to make the law and the legal process more understandable and accessible to the public. These activities are discussed in the “Impartiality” chapter, particularly sections B and C.

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14. It is a delicate question whether and in what circumstances a judge should report, or cause to be reported, a lawyer to the lawyer’s professional governing body. Taking such action may affect the ability of the judge to continue in the proceeding in which that lawyer is appearing, given that the judge’s view of the lawyer’s conduct may give rise to a reasonable apprehension of bias against the lawyer or the lawyer’s client. On the other hand, a judge is in a special position to observe lawyers’ conduct before the court. Putting aside any issue of contempt, generally a judge should take, or cause to be taken, appropriate action where the judge has clear and reliable evidence of serious misconduct or gross incompetence by a lawyer. The judge will have to weigh carefully whether the interests of justice require that he or she wait until the end of the proceeding or whether there are circumstances which require earlier action even though the judge, nonetheless, continues to preside.

5. EQUALITY

Statement: *Judges should conduct themselves and proceedings before them so as to assure equality according to law.*

Principles:

1. Judges should carry out their duties with appropriate consideration for all persons (for example, parties, witnesses, court personnel and judicial colleagues) without discrimination. 2
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2. Judges should strive to be aware of and understand differences arising from, for example, gender, race, religious conviction, culture, ethnic background, sexual orientation or disability.
3. Judges should avoid membership in any organization that they know currently practices any form of discrimination that contravenes the law.
4. Judges, in the course of proceedings before them, should disassociate themselves from and disapprove of clearly irrelevant comments or conduct by court staff, counsel or any other person subject to the judge’s direction which are sexist, racist or otherwise demonstrate discrimination on grounds prohibited by law.

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Commentary:

1. The Constitution and a variety of statutes enshrine a strong commitment to equality before and under the law and equal protection and benefit of the law without discrimination. This is not a commitment to identical treatment but rather “...to the equal worth and human dignity of all persons” and “...a desire to rectify and prevent discrimination against particular groups suffering social, political and legal disadvantage in our society.”¹⁹ Moreover, Canadian law recognizes that discrimination is concerned not only with intent, but with effects.²⁰ Quite apart from explicit constitutional and statutory guarantees, fair and equal treatment has long been regarded as an essential attribute of justice. While its demands in particular situations are sometimes far from self evident, the law’s strong societal commitment places concern for equality at the core of justice according to law.

2. Equality according to law is not only fundamental to justice, but is strongly linked to judicial impartiality. A judge who, for example, reaches a correct result but engages in stereotyping does so at the expense of the judge’s impartiality, actual or perceived.

3. Judges should not be influenced by attitudes based on stereotype, myth or prejudice. They should, therefore, make every effort to recognize, demonstrate sensitivity to and correct such attitudes.

¹⁹ *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 per LaForest, J. for the court at 667.

²⁰ *Ibid.* at 670-671.

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4. As is discussed in more detail in the “Impartiality” chapter, judges should strive to ensure that their conduct is such that any reasonable, fair minded and informed member of the public would justifiably have confidence in the impartiality of the judge. Judges should avoid comments, expressions, gestures or behaviour which reasonably may be interpreted as showing insensitivity to or disrespect for anyone. Examples include irrelevant comments based on racial, cultural, sexual or other stereotypes and other conduct implying that persons before the court will not be afforded equal consideration and respect.

Inappropriate conduct may arise from a judge being unfamiliar with cultural, racial or other traditions or failing to realize that certain conduct is hurtful to others. Judges therefore should attempt by appropriate means to remain informed about changing attitudes and values and to take advantage of suitable educational opportunities (which ought to be made reasonably available) that will assist them to be and appear to be impartial. In doing this, however, it is also necessary to take care that these efforts enhance and do not detract from judges’ perceived impartiality. All forms or vehicles of education are not necessarily appropriate for judges given the demands of independence and impartiality. Care must be taken that exaggerated or unfounded concern in this regard does not undermine efforts to enhance good judging.

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Principle 4 deals with the role of the presiding judge in addressing clearly irrelevant comments which are sexist or racist or other such inappropriate conduct in proceedings before them. This does not require that proper advocacy or admissible testimony be curtailed where, for example, matters of gender, race or other similar factors are properly before the court. This advice is consistent with the judge's general duty to listen fairly but, when necessary, to assert firm control over the proceeding and to act with appropriate firmness to maintain an atmosphere of dignity, equality and order in the courtroom. Principle 4 certainly does not counsel perfection. Further, applying it may sometimes be a formidable challenge for the judge. The adversarial system gives the parties and their counsel considerable leeway and the relevance and importance of evidence may be difficult to assess accurately as it is being presented. The judge should always do her or his best to strike the right balance. The fact that, when reconsidered later with the benefit of hindsight and the opportunity for further reflection, the situation might have been handled differently is not, of itself, any indication that the judge failed to deal with inappropriate conduct during the proceeding.

6. IMPARTIALITY

Statement: *Judges must be and should appear to be impartial with respect to their decisions and decision making.*

Principles:

A. General

1. Judges should strive to ensure that their conduct, both in and out of court, maintains and enhances confidence in their impartiality and that of the judiciary. 2
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2. Judges should as much as reasonably possible conduct their personal and business affairs so as to minimize the occasions on which it will be necessary to be disqualified from hearing cases.
3. The appearance of impartiality is to be assessed from the perspective of a reasonable, fair minded and informed person.

B. Judicial Demeanour

1. While acting decisively, maintaining firm control of the process and ensuring expedition, judges should treat everyone before the court with appropriate courtesy.

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C. Civic and Charitable Activity

1. Judges are free to participate in civic, charitable and religious activities subject to the following considerations:

(a) Judges should avoid any activity or association that could reflect adversely on their impartiality or interfere with the performance of judicial duties.

(b) Judges should not solicit funds (except from judicial colleagues or for appropriate judicial purposes) or lend the prestige of judicial office to such solicitations.

(c) Judges should avoid involvement in causes or organizations that are likely to be engaged in litigation.

(d) Judges should not give legal or investment advice.

D. Political Activity

1. Judges should refrain from conduct such as membership in groups or organizations or participation in public discussion which, in the mind of a reasonable, fair minded and informed person, would undermine confidence in a judge's impartiality with respect to issues that could come before the courts.

2. All partisan political activity must cease upon appointment. Judges should refrain from conduct that, in the mind of a reasonable, fair minded and informed person, could give rise to the appearance that the judge is engaged in political activity.

3. Judges should refrain from:

(a) membership in political parties and political fund raising;

(b) attendance at political gatherings and political fund raising events;

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(c) contributing to political parties or campaigns;

(d) taking part publicly in controversial political discussions except in respect of matters directly affecting the operation of the courts, the independence of the judiciary or fundamental aspects of the administration of justice;

(e) signing petitions to influence a political decision.

4. Although members of a judge's family have every right to be politically active, judges should recognize that such activities of close family members may, even if erroneously, adversely affect the public perception of a judge's impartiality. In any case before the court in which there could reasonably be such a perception, the judge should not sit.

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E. Conflicts of Interest

1. Judges should disqualify themselves in any case in which they believe they will be unable to judge impartially.

2. Judges should disqualify themselves in any case in which they believe that a reasonable, fair minded and informed person would have a reasoned suspicion of conflict between a judge's personal interest (or that of a judge's immediate family or close friends or associates) and a judge's duty.

3. Disqualification is not appropriate if: (a) the matter giving rise to the perception of a possibility of conflict is trifling or would not support a plausible argument in favour of disqualification, or (b) no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a miscarriage of justice.

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Commentary:

A. General

A.1 From at least the time of John Locke in the late seventeenth century, adjudication by impartial and independent judges has been recognized as an essential component of our society.²¹ Impartiality is the fundamental qualification of a judge and the core attribute of the judiciary. The Statement and Principles do not and are not intended to deal with the law relating to judicial disqualification or recusation.

A.2 While judicial impartiality and independence are distinct concepts, they are closely related. This relationship was explored recently by Gonthier, J. on behalf of the majority of the Supreme Court of Canada in *Ruffo v. Conseil de la Magistrature*.²² The court noted that the right to be tried by an independent and impartial tribunal is an integral part of the principles of fundamental justice protected by s.7 of the Canadian Charter²³ and reaffirmed the following statement by Le Dain, J. in *R. v. Valente*:

Although there is obviously a close relationship between independence and impartiality, they are never the less separate and distinct values and requirements. Impartiality refers to a state of mind or attitude of the tribunal in relation to the issues and the parties in a particular case. The word “impartial”...connotes absence of bias, actual or perceived

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²¹ Peter H. Russell, *The Judiciary in Canada: The Third Branch of Government* (1987) (hereafter “Russell”).

²² [1995] 4 S.C.R. 267 at 296–299.

²³ *Ibid.*

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Both independence and impartiality are fundamental, not only to the capacity to do justice in a particular case but also to individual and public confidence in the administration of justice. Without that confidence the system cannot command the respect and acceptance that are essential to its effective operation. It is, therefore, important that a tribunal should be perceived as independent, as well as impartial...²⁴

Lamer C.J.C. put it this way in *R. v. Lippé*:

The overall objective of guaranteeing judicial independence is to ensure a reasonable perception of impartiality; judicial independence is but a “means” to this “end.” If judges could be perceived as “impartial” without judicial “independence” the requirement of “independence” would be unnecessary. However, judicial independence is critical to the public’s perception of impartiality. Independence is the cornerstone, a necessary prerequisite for judicial impartiality.²⁵

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A.3 Impartiality is not only concerned with perception, but more fundamentally with the actual absence of bias and prejudgment. This dual aspect of impartiality is captured in the often repeated words that justice must not only be done, but manifestly be seen to have been done. As de Grandpre, J. put it in *Committee for Justice and Liberty v. National Energy Board*,²⁶ the test is whether “an informed person, viewing the matter realistically and practically — and having thought the matter through —” would apprehend a lack of impartiality in the decision maker. Whether there is a reasonable apprehension of bias is to be assessed from the point of view of a reasonable, fair minded and informed person.

²⁴ [1985] 2 S.C.R. 673 at 685 and 689.

²⁵ [1991] 2 S.C.R. 114 at 139.

²⁶ [1978] 1 S.C.R. 369, most recently endorsed in *R.D.S. v The Queen*, [1997] 3 S.C.R. 484 per Cory, J. at 530 and per L’Heureux-Dubé and McLachlin, JJ. at 502.

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A.4 “True impartiality does not require that the judge have no sympathies or opinions; it requires that the judge nevertheless be free to entertain and act upon different points of view with an open mind.”²⁷ The judge’s fundamental obligation is to strive to be and to appear to be as impartial as is possible. This is not a counsel of perfection. Rather it underlines the fundamental nature of the obligation of impartiality which also extends to minimizing any reasonable apprehension of bias.

A.5 A reasonable perception that a judge lacks impartiality is damaging to the judge, the judiciary as a whole and the good administration of justice. Judges should, therefore, avoid deliberate use of words or conduct, in and out of court, that could reasonably give rise to a perception of an absence of impartiality.²⁸ Everything from his or her associations or business interests to remarks which the judge may consider to be “harmless banter,” may diminish the judge’s perceived impartiality.²⁹

A.6 The expectations of litigants may be very high. Some will be quick to perceive bias quite unjustifiably when a decision is not in their favour. Therefore every effort should be made to ensure that reasonable grounds for such a perception are avoided or minimized. On the other hand, judges have an obligation to treat all parties fairly and evenhandedly; those litigants who perceive bias where no reasonable, fair minded and informed person would find it are not entitled to different or special treatment for that reason. Moreover, as discussed below, the judge also has the obligation to ensure that proceedings are conducted in an orderly and efficient manner. This may well require an appropriate degree of firmness.

²⁷ In *R.D.S. v. The Queen*, *supra*, note 26, at 504, L’Heureux-Dubé and McLachlin, JJ. (Gonthier and LaForest, JJ., concurring) cited this passage from page 12 of *Commentaries* with approval.

²⁸ American Bar Association, *Model Code of Judicial Conduct (1990)* (hereafter “ABA Model Code (1990)”), Commentary to Canon 3B.

²⁹ *Canadian Judicial Council Annual Report 1992-93* at 16.

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It is helpful to address the question of impartiality under more specific headings.

B. Judicial Demeanour

B.1 Litigants and others scrutinize judges very closely for any indication of unfairness. Unjustified reprimands of counsel, insulting and improper remarks about litigants and witnesses, statements evidencing prejudgment and intemperate and impatient behaviour may destroy the appearance of impartiality. On the other hand, judges are obliged to ensure that proceedings are conducted in an orderly and efficient manner and that the court's process is not abused. An appropriate measure of firmness is necessary to achieve this end. A fine balance is to be drawn by judges who are expected both to conduct the process effectively and avoid creating in the mind of a reasonable, fair minded and informed person any impression of a lack of impartiality. These issues are more fully discussed in chapters 4 and 5, "Diligence" and "Equality." It bears repeating, however, that any action which, in the mind of a reasonable, fair minded and informed person who has considered the matter, would give rise to reasoned suspicion of a lack of impartiality must be avoided. When such impressions are created, they affect not only the litigants before the court but public confidence in the judiciary generally.³⁰

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C. Civic and Charitable Activity

C.1 A judge is appointed to serve the public. Many persons appointed to the bench have been and wish to continue to be active in other forms of public service. This is good for the community and for the judge, but carries certain risks. For that reason, it is important to address the question of the limits that judicial appointment places upon the judge's community activities.

³⁰ See chapter 4, "Diligence" and chapter 5, "Equality."

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C.2 The judge administers the law on behalf of the community and therefore unnecessary isolation from the community does not promote wise or just judgments. The Right Honourable Gerald Fauteux put the matter succinctly and eloquently in *Le livre du magistrat*³¹ (translation):

[there is no intention] to place the judiciary in an ivory tower and to require it to cut off all relationship with organizations which serve society. Judges are not expected to live on the fringe of society of which they are an important part. To do so would be contrary to the effective exercise of judicial power which requires exactly the opposite approach.

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C.3 The precise constraints under which judges should conduct themselves as regards civic and charitable activity are controversial inside and outside the judiciary. This is not surprising given that the question involves balancing competing considerations. On one hand, there are the beneficial aspects, both for the community and the judiciary, of the judge being active in other forms of public service. This needs to be assessed in light of the expectations and circumstances of the particular community. On the other hand, the judge's involvement may, in some cases, jeopardize the perception of impartiality or lead to an undue number of recusals. If this is the case, the judge should (unless the principle of necessity, discussed in section E.17, is implicated) avoid the activity.

C.4 *The Code of Conduct for United States Judges* applicable to the federally appointed judiciary in the United States, while not completely appropriate for Canadian adoption, provides a useful starting point:

³¹ *Livre* at 17.

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Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of the judicial office for that purpose, but the judge may be listed as an officer, director, or trustee of such an organization. A judge should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

(3) A judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

C.5 These provisions seek to strike a reasonable balance between community involvement and the preservation of judicial impartiality and, although not specifically adopted in these Principles, nonetheless may provide helpful guidance.

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C.6 Subject to the discussion that follows, judges are at liberty to be members and directors of civic and charitable organizations and, of course, to exercise freedom of religion. In general, however, a judge should not allow the prestige of judicial office to be used in aid of fund raising for particular causes, however worthy. This principle suggests that judges (apart from requests to judicial colleagues) should not personally solicit funds or lend their names to financial campaigns. *Commentaries on Judicial Conduct* notes that when a judge is directly involved in fund raising there may be a temptation for lawyers or litigants who are canvassed to try to curry favour with the judge by contributing. Moreover, such solicitation identifies the judge with the objects of the organization.³² However, the simple appearance of the judge's name as a director (or similar position) on the organization's general letterhead is not inappropriate.

C.7 Judges must carefully assess whether to serve on Boards of Directors of organizations other than those serving the professional or educational requirements of judges. It is inappropriate (and prohibited) for a judge to serve on the Board of Directors of a commercial enterprise.³³

C.8 What is the position with respect to volunteer service on boards of community, charitable, religious or educational organizations? Many institutions solicit and/or receive money from government. Except for funds required for the proper administration of justice, it is not appropriate for the judge to be directly involved in soliciting funds from government. Boards of Directors are responsible for the conduct of the organization. The organization may become involved in disputes with staff or others, sue or be sued, breach government regulations of all sorts or otherwise be implicated in matters of public controversy.

³² *Commentaries* at 18-19.

³³ *Judges Act*, R.S.C. 1985, c.J-1, s.55. (See note 12.)

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Any of these situations could be embarrassing for the judge or his or her colleagues and might give rise to reasonable apprehension of a lack of impartiality with respect to certain issues that might arise for judicial consideration. Fellow directors may seek and rely upon the judge's advice on legal matters. But it is inappropriate for the judge to give such advice. The decision to serve must be made after carefully weighing these risks in the particular circumstances.

C.9 Several Canadian judges have served as chancellors of universities or dioceses. Others have served on the boards of schools, hospitals or charitable foundations. Such participation may now present risks that did not appear evident in the past. These risks must be carefully weighed. Universities, churches and charitable and service organizations are now involved in litigation and matters of public controversy in ways that were virtually unheard of even in the very recent past. A judge serving as a chancellor of a university or a diocese or as a board member may be placed in an awkward position if the organization should become involved in litigation or matters of public controversy.

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C.10 Requests for letters of reference may be difficult for a judge. There are certainly factors a judge will want to consider before agreeing to provide such a letter. One is that the judge should avoid being seen as using the prestige of judicial office to advance a person's private interests. The judge must also avoid giving the impression that certain persons stand in a particular position of influence or favour with the judge. These factors combine to suggest that the judge should agree to give a reference only where it is clear, first, that it is the judge's knowledge of the individual that is called for and not simply the status of the judge and, second, where the judge has an important perspective about the individual to contribute such that it would be unfair to the individual and the selection process were the judge to refuse.

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Commentaries reports that a large majority of the judges who responded to the questionnaire leading to the production of that text approved a judge's giving character references. *Commentaries* also noted however that the practices of judges vary and that a number of respondents professed some reluctance.³⁴ While this matter is one on which judges differ, the two part test set out in the preceding paragraph is offered as an approach that strikes an acceptable balance between the desirability of obtaining the benefit of the judge's views while minimizing the risk of undermining the judge's neutrality.

Commentaries states that judges may properly assist judicial appointment advisory committees on a strictly confidential basis. More generally, the commentary on the *ABA Model Code (1990)* addresses the matter as follows:

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Although a judge should be sensitive to possible abuse of the prestige of office, a judge may provide a letter or recommendation based on the judge's personal knowledge. A judge also may permit the use of the judge's name as a reference, and respond to a request for a personal recommendation when solicited by a selection of authorities, such as a prospective employer, Judicial Selection Committee or Law School Admissions Office.³⁵

Once again, it is suggested that the two part test proposed for letters of reference generally strikes the right balance in the specific context of judicial appointments even though the result is a somewhat more restrictive approach than that of *ABA Model Code (1990)*.

³⁴ *Commentaries* at 33–35.

³⁵ *ABA Model Code (1990)*, Commentary to Canon 2B.

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D. Political Activity

D.1 This section deals with out of court activities of judges. In particular, it addresses political activity and other conduct such as memberships in groups or organizations or participation in public debate and comment which, from the perspective of a reasonable, fair minded and informed person could undermine a judge’s impartiality as regards issues that could come before the courts.

D.2 Commentators are unanimous that “all partisan political activity and association must cease absolutely and unequivocally with the assumption of judicial office.”³⁶ Two considerations support this rule. Impartiality, actual and perceived, is essential to the exercise of the judicial function. Partisan political activity or out of court statements concerning issues of public controversy by a judge undermine impartiality. They are also likely to lead to public confusion about the nature of the relationship between the judiciary on the one hand and the executive and legislative branches on the other. Partisan actions and statements by definition involve a judge in publicly choosing one side of a debate over another. The perception of partiality will be reinforced if, as is almost inevitable, the judge’s activities attract criticism and/or rebuttal. This in turn tends to undermine judicial independence.³⁷ In short, a judge who uses the privileged platform of judicial office to enter the political arena puts at risk public confidence in the impartiality and the independence of the judiciary.

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³⁶ *Commentaries* at 9; see also *Livre* at 28; *Shaman* at 360 ff; *Wilson* at 7; Judges in Canada (as in the U.S. and England) are entitled to vote and there is nothing unethical in doing so.

³⁷ *Russell* at 87–88.

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D.3 Principles D.3(a) and (b) are widely accepted examples of overt political activity in which judges should not engage after appointment.³⁸ Judges should also consider whether mere attendance at certain public gatherings might reasonably give rise to a perception of ongoing political involvement or reasonably put in question the judge's impartiality on an issue that could come before the court.

D.4 Principle D.3(c) counsels against making contributions to political parties. The rationale of this advice is that the judge should not be identified with the political process or, subject to principle D.3(d), with specific positions on matters of political controversy. The Nova Scotia Judicial Council was confronted with a complaint that a judge had contributed to a political party's fund to alleviate the financial distress of its former leader who was a friend and classmate of the judge. The judge had also contributed to the political campaigns of close relatives and made three other undesignated contributions to the same political party. The Nova Scotia Judicial Council cautioned the judge, reasoning that:

The public perception, we believe, is that where a judge makes a financial contribution to such highly placed political persons, as the three who benefitted from the gifts of this judge, it is impossible to separate them from the political organizations of which they are a part... Since, in our opinion, donations of money are but one way of participating in a political organization, the making of them is deemed to be political activity in which a judge should not engage.³⁹

³⁸ See e.g. *Wilson* at 7-9; *Thomas* at 156.

³⁹ Nova Scotia Judicial Council, *Report Concerning the Conduct of His Honour Paul S. Niedermeyer*, June 17, 1991. (Hereafter "Niedermeyer Ruling.")

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D.5 The application of Principle D.3(d), which counsels avoidance of public participation in controversial political discussions, is more open to debate and problems of application than the other principles in this section. Judges on appointment do not surrender all of the rights to freedom of expression enjoyed by everyone else in Canada. But, the office of judge imposes restraints that are necessary to maintain public confidence in the impartiality and independence of the judiciary. In defining the appropriate degree of involvement of the judiciary in public debate, there are two fundamental considerations. The first is whether the judge's involvement could reasonably undermine confidence in his or her impartiality. The second is whether such involvement may unnecessarily expose the judge to political attack or be inconsistent with the dignity of judicial office. If either is the case the judge should avoid such involvement.

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D.6 Principle D.3(d) recognizes that, while restraint is the watchword, there are limited circumstances in which a judge may properly speak out about a matter that is politically controversial, namely, when the matter directly affects the operation of the courts, the independence of the judiciary (which may include judicial salaries and benefits), fundamental aspects of the administration of justice, or the personal integrity of the judge. Even with respect to these matters, however, a judge should act with great restraint. Judges must remember that their public comments may be taken as reflective of the views of the judiciary; it is difficult for a judge to express opinions that will be taken as purely personal and not those of the judiciary generally. There are usually alternatives to public discussion. For example, the chief justice of the court may raise the matter formally with the appropriate official or officials. Except for statutory and constitutional duties and matters affecting the operation of the courts or the proper administration of justice, chief justices are in no different position than their colleagues.

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The Principle suggests a somewhat larger sphere for such interventions than that described in the 1982 comments of the Canadian Judicial Council in the Berger matter. In dealing with that complaint, the Council stated that judges should not speak on controversial political matters that do not directly affect the operation of the courts. The suggestion here is that, having regard to judges' special knowledge and experience in matters relating to the administration of justice and their obligation to preserve judicial independence, the proper ambit for their out of court interventions may be somewhat wider in appropriate cases. Where the terms of reference require, judges serving on Commissions of Inquiry may exercise greater latitude in commenting on issues relevant to the inquiry. Judges serving in this way, however, must continue to bear in mind that they are judges even while serving for the time being as commissioners.

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D.7 Nothing in these Principles prevents or indeed discourages judicial participation in law reform or other scholarly or educational activities of a nonpartisan nature directed to the improvement of the law and the administration of justice. Judges seconded to law reform commissions may exercise greater latitude with respect to matters under consideration by the Commission. The Commentary to the *ABA Model Code (1990)* indicates that "...[a]s a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system and administration of justice... Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession."⁴⁰ However, when engaging in such activities, the judge must not be seen as "lobbying" government or as indicating how he or she would rule if particular situations were to come before the judge in court. This, of course, does not prevent judges from making representations to government concerning judicial independence or, through the appropriate mechanisms, with respect to salaries

⁴⁰ *ABA Model Code (1990)*, Commentary to Canon 4B.

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and benefits. Discussion of the law for educational purposes or pointing out weaknesses in the law in appropriate settings is in no way discouraged. For example, in certain special circumstances, judicial commentary on draft legislation may be helpful and appropriate, so long as the judge avoids giving informal interpretations or opinions on constitutionality.⁴¹ Normally, judicial commentary on proposed legislation or on other questions of government policy should relate to practical implications or legislative drafting and should avoid issues of political controversy. In general, such judicial commentary should be made as part of a collective or institutionalized effort by the judiciary, not that of an individual judge.

D.8 Principle D.3(e) suggests that judges should not sign petitions to influence political decisions. Petitions are an example of a situation in which a judge is likely to be perceived as supporting a particular point of view or as lobbying, albeit rather passively, to bring about change. As the Nova Scotia Judicial Council put it, the requirement of complete severance from all political activities means that “a judge shall not try to influence politicians or political issues.”⁴² This is precisely the purpose of petitions.

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D.9 The duties of chief justices and, in some cases, those of other judges having administrative responsibilities will lead to contact and interaction with government officials, particularly the attorneys general, the deputy attorneys general and court services officials. This is necessary and appropriate, provided the occasions of such interactions are not partisan in nature and the subjects discussed relate to the administration of justice and the courts and not to individual cases. Judges, including chief justices, should take care that they are not perceived as being advisors to those holding political office or to members of the executive.

⁴¹ The Canadian Judicial Council, for example, struck a special committee which reviewed proposals for a new General Part of the *Criminal Code* and facilitated meetings between senior government officials and judges to discuss child support guidelines.

⁴² *Niedermeyer Ruling* at 12.

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E. Conflicts of Interest

E.1 Judges should organize their personal and business affairs to minimize the potential for conflict with their judicial duties. Notwithstanding the judge’s best efforts, situations will arise in which the appearance of justice requires the judge to disqualify himself or herself. The issues to be addressed in this section are: (1) what constitutes a conflict of interest? (2) in what circumstances should a judge disclose circumstances which may constitute a conflict of interest? (3) in what circumstances will consent of the parties obviate the need for the judge to be disqualified? and (4) in what circumstances will it be necessary for a judge to preside even though there is an apparent conflict of interest? Each will be addressed in turn.

E.2 What Constitutes a Conflict of Interest?

As Perell puts it, “A common or unifying theme for the various classes of conflicts of interest is the theme of divided loyalties and duties.”⁴³ The potential for conflict of interest arises when the personal interest of the judge (or of those close to him or her) conflicts with the judge’s duty to adjudicate impartially. Judicial impartiality is concerned both with impartiality in fact and impartiality in the perception of a reasonable, fair minded and informed person. In judicial matters, the test for conflict of interest must include both actual conflicts between the judge’s self interest and the duty of impartial adjudication and circumstances in which a reasonable fair minded and informed person would reasonably apprehend a conflict.

E.3 A number of texts and commentaries offer guidance to judges on this subject. The Hon. J.O. Wilson in *A Book for Judges*, for example, says a judge’s disqualification would be justified by a pecuniary interest in the outcome; a close family, personal or professional relationship with a litigant, counsel or witness; or the judge having expressed views evidencing bias regarding a litigant.⁴⁴

⁴³ Paul M. Perell, *Conflicts of Interest in the Legal Profession* (1995) at 5.

⁴⁴ *Wilson* at 23.

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E.4 The *Code of Civil Procedure* of Quebec is unique in Canada in offering authoritative guidance. The subject of disqualification is expressly addressed in articles 234 and 235. Included among the grounds for disqualification are, for example, the judge being related to one of the parties within the degree of first cousin, having acted for one of the parties, having an interest in the outcome, etc.⁴⁵

E.5 As elsewhere in this area, the concern is with reasonable perception, as well as actual conflict of interest. In general, a judge should not preside over a case in which he or she has a financial or property interest that could be affected by its outcome or in which the judge's interest would give rise in a reasonable, fair minded and informed person, to reasoned suspicion that the judge would not act impartially.⁴⁶ This general rule applies whether the interest is itself the subject matter of the controversy or where the outcome of the case could substantially affect the value of any interest or property owned by the judge, the judge's family or close associates. It will not apply where the judge's interest is limited to one shared by citizens generally.

E.6 This broadly formulated rule cannot be strictly applied, however. Owning an insurance policy, having a bank account, using a credit card or owning shares in a corporation through a mutual fund would not, in normal circumstances give rise to conflict or the appearance of conflict unless the outcome of the proceedings before the judge could substantially affect such holdings. Nor should small holdings, such as those contemplated by the *de minimis* provisions of *ABA Model Code (1990)* give rise to any reasonable question concerning the judge's impartiality.⁴⁷ However, if the holding is more substantial, the judge should not sit, subject to considerations of necessity discussed in section E.17.

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⁴⁵ *Code of Civil Procedure*, art. 234–235.

⁴⁶ *Shaman* at 136; the language is modelled on that of Rand, J. in *Szilard v. Szasz*, [1965] S.C.R. 3 at 4.

⁴⁷ See note 28; *de minimis* is defined as being “an insignificant interest that could not raise a reasonable question as to the judge's impartiality.”

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CANADIAN JUDICIAL COUNCIL – ETHICAL PRINCIPLES FOR JUDGES

E.7 Should interests of members of the judge’s family, close friends or associates be considered as giving rise to a perception of conflict of interest? As a matter of broad general principle, one can imagine circumstances in which the interests of the judge’s family, close friends or associates in matters before the judge could give rise to a reasonable apprehension of conflicting interest and duty. To attempt to define these matters with greater precision, however, is another matter. Article 234(1) and (9) of the *Code of Civil Procedure* define precisely the degree of family relationship with parties or counsel which requires recusal. Article 235 refers to the personal interest of the judge or “his consort” as justifying recusal. *ABA Model Code (1990)* defines the degree of family relationship which should lead to disqualification.⁴⁸

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E.8 While these approaches introduce much needed clarity, it may come at the expense of attention to the general principle that a judge (subject to the discussion in section E.17 below) should disqualify him or herself if aware of any interest or relationship which, to a reasonable, fair minded and informed person would give rise to reasoned suspicion of lack of impartiality. For the purposes of national principles of judicial ethics for Canada, the temptation to become more specific than this should be avoided.

⁴⁸ See for example, Canon 3E(d):

(d) the judge or the judge’s spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have a more than de minimis interest that could be substantially affected by the outcome of the proceeding;

(iv) is to the judge’s knowledge likely to be a material witness in the proceeding.

“Third degree of relationship.” The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece.

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CANADIAN JUDICIAL COUNCIL – ETHICAL PRINCIPLES FOR JUDGES

E.9 Personal insolvency and bankruptcy give rise to a variety of potential difficulties for judges. Whether, and if so in what circumstances, these difficulties will provide grounds for removal of a judge is not an issue that falls within the range of questions addressed by these Principles. As the *Bankruptcy Act*, section 175, recognizes, bankruptcy may occur by misfortune and without misconduct. For instance, a judge could be held liable for a defalcation of a former law partner or for an accident involving the judge's vehicle driven by his or her spouse or child. Having regard to this fact, no general rule can, or should be formulated.

E.10 The judge who is in financial difficulty will have to be particularly vigilant for conflicts of interest, both actual and perceived. There will be difficulties in the judge presiding over matters involving any of his or her creditors or, perhaps, other matters raising similar issues. Serious questions arise if any aspect of the judge's financial difficulties becomes contentious. In this event, the possibility of the judge appearing before a judicial colleague as a party or a witness would arise. The actual day-to-day impact of the financial difficulties on the judge's ability to perform the job will obviously vary considerably depending on the circumstances and the size of the jurisdiction. Circumstances which might cause very minor inconvenience to a large court might nonetheless have a significant practical impact on a smaller court. Once again, however, it seems impossible and unwise to try to deal with the scores of possibilities other than through application of the general principle that, where a reasonable, fair minded and informed person would have a reasoned suspicion that the judge will not be impartial, the judge should not sit. In certain circumstances, the principles relating to diligence might also be relevant if the judge's conflicts were so extensive that they effectively prevented the judge from carrying out his or her duties. A judge's bankruptcy may raise many of these issues in acute form. When judges become aware of financial or other similar circumstances likely to affect public perception of their impartiality, they should draw them to the attention of their chief justices.

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CANADIAN JUDICIAL COUNCIL – ETHICAL PRINCIPLES FOR JUDGES

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E.11 Disclosure

The absence in Canada of a general statutory requirement for financial disclosure does not resolve the ethical question of when a judge should disclose to the parties a matter which might be considered as giving rise to a potential conflict of interest. The position in England and Australia appears to be that the judge should disclose any interest or factor which might suggest that the judge should be disqualified.⁴⁹ This approach, however, is premised on the view that the disclosure is made with a view to seeking the consent of the parties for the judge to hear the case.

E.12 Whether there are circumstances in which the consent of the parties is essential to permit the judge to hear the case is the subject of the next section. However, the issues of disclosure and consent are not necessarily linked. For now, it can be concluded that a judge should disclose on the record anything which might support a plausible argument in favour of disqualification.

E.13 Consent of the Parties

Commentaries on Judicial Conduct acknowledges the practical difficulty of attempting to cure a concern about disqualification by disclosure to and consent of the parties. The main concern is that such an approach puts counsel in an unfair position — as one respondent put it, to either consent or to risk being seen as a trouble maker.⁵⁰

E.14 It is not suggested that consent of the parties would justify a judge continuing in a situation in which he or she felt that disqualification was the proper path. The issue of consent, therefore, arises only in those cases in which the judge believes that there is an arguable point about disqualification but in which the judge believes, at the end of the day, a reasonable person would not apprehend a lack of impartiality. Putting the matter this way perhaps highlights the difficult position in which counsel

⁴⁹ See for example, *Shetreet* at 305; *Thomas* at 53-55; *Commentaries* at 72; *Wilson* at 30-31.

⁵⁰ *Commentaries* at 74.

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CANADIAN JUDICIAL COUNCIL – ETHICAL PRINCIPLES FOR JUDGES

is placed. By disclosing the matter and seeking consent to continue, the judge is in essence saying that no reasonable person should apprehend a lack of impartiality. Therefore, if counsel fails to consent, counsel (or their clients) may appear to be taking an unreasonable position. A partial answer to this concern may be to adopt the English practice in which the judge is told that an objection was made by one of the parties without being told which side objected.⁵¹

E.15 The better approach is for the judge to make the decision without inviting consent, perhaps in consultation with his or her chief justice or other colleague. If the judge concludes that no reasonable, fair minded and informed person, considering the matter, would have a reasoned suspicion of a lack of impartiality, the matter should proceed before the judge. If the conclusion is the opposite, the judge should not sit.

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E.16 The judge should make disclosure on the record and invite submissions from the parties in two situations. The first arises if the judge has any doubt about whether there are arguable grounds for disqualification. The second is if an unexpected issue arises shortly before or during a proceeding. The judge's request for submissions should emphasize that it is not counsel's consent that is being sought but assistance on the question of whether arguable grounds exist for disqualification and whether, in the circumstances, the doctrine of necessity applies.

E.17 Necessity

Extraordinary circumstances may require departure from the approaches discussed above. The principle of necessity holds that a judge who would otherwise be disqualified may hear and decide a case where failure to do so could result in an injustice. This might arise where an adjournment or mistrial would work undue hardship or where there is no other judge reasonably available who would not be similarly disqualified.⁵²

⁵¹ See *Shetreet* at 305.

⁵² See, for example, *Wilson* at 29; *Shaman* at 99-101 and *Shetreet* at 304.

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E.18 Acting as Executor

There is a range of views as to whether a judge should serve as an executor. Shetreet describes the English practice in which judges may serve as executors of estates of friends or relatives, provided there is no remuneration, the judge is not involved in the day-to-day administration of the estate and the required work does not interfere with his or her judicial duties.⁵³ In the United States, the *ABA Model Code (1990)* deals with this point as follows:

4E. Fiduciary Activities

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(1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.⁵⁴

In Canada, *A Book for Judges*, *Le livre du magistrat*⁵⁵ and *Commentaries on Judicial Conduct*⁵⁶ agree that, as a general rule, the judge should not act but that it is permissible to do so if the estate is of a

⁵³ Shetreet at 331.

⁵⁴ *ABA Model Code (1990)*, Canon 4E.

⁵⁵ *Livre* at 24.

⁵⁶ *Commentaries* at 35–6.

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relative or close friend and it appears to be simple and not contentious. Should these predictions prove wrong, these authorities all advise the judge to retire from the executorship.

In summary, it is suggested that a sound approach to the question is as follows:

1. As a general rule, a judge should not act as an executor.

2. It is not improper for a judge to so act if:

(a) he or she does so without fee;

(b) the estate is of a close friend or relative;

(c) it is unlikely to be contentious; and,

(d) performance of the obligations will not interfere with judicial duties.

3. Having embarked on the executorship, the judge should retire from it if the estate becomes contentious or if the executorship interferes with the performance of judicial duties.

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E.19 Former Clients

Judges will face the issue of whether they should hear cases involving former clients, members of the judge's former law firm or lawyers from the government department or legal aid office in which the judge practised before appointment. There are three main factors to be considered. First, the judge should not deal with cases concerning which the judge actually has a conflict of interest, for example, as a result of having had confidential information concerning the matter prior to appointment. Second, circumstances must be avoided in which a reasonable, fair minded and informed person would have a reasoned suspicion that the judge is not impartial. Third, the judge should not withdraw unnecessarily as to do so adds to the burden of his or her colleagues and contributes to delay in the courts.

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CANADIAN JUDICIAL COUNCIL – ETHICAL PRINCIPLES FOR JUDGES

The following are some general guidelines which may be helpful:

(a) A judge who was in private practice should not sit on any case in which the judge or the judge's former firm was directly involved as either counsel of record or in any other capacity before the judge's appointment.

(b) Where the judge practised for government or legal aid, guideline (a) cannot be applied strictly. One sensible approach is not to sit on cases commenced in the particular local office prior to the judge's appointment.

(c) With respect to the judge's former law partners, or associates and former clients, the traditional approach is to use a "cooling off period," often established by local tradition at 2, 3 or 5 years and in any event at least as long as there is any indebtedness between the firm and the judge and subject to guideline (a) above concerning former clients.

(d) With respect to friends or relatives who are lawyers, the general rule relating to conflicts of interest applies, i.e., that the judge should not sit where a reasonable, fair minded and informed person would have a reasoned suspicion that the judge would not be impartial.

Related issues, requiring similar approaches, may arise in relation to overtures to the judge while still on the bench for post-judicial employment. Such overtures may come from law firms or prospective employers. There is a risk that the judge's self-interest and duty would appear to conflict in the eyes of a reasonable, fair minded and informed person considering the matter. A judge should examine such overtures in this light. It should also be remembered that the conduct of former judges may affect public perception of the judiciary.

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ONTARIO JUDICIAL COUNCIL – REASONS FOR DECISION

F-1 – F-4

**IN THE MATTER OF a complaint respecting
The Honourable Madam Justice Dianne Nicolas**

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**IN THE MATTER OF complaints respecting
The Honourable Justice Kerry P. Evans**

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REASONS FOR DECISION – D. NICHOLAS

ONTARIO JUDICIAL COUNCIL

IN THE MATTER OF a complaint respecting The Honourable Madam Justice Dianne Nicholas

BEFORE: The Honourable R. Roy McMurtry – Chief Justice of Ontario
The Honourable David Wake – Associate Chief Justice of the Ontario Court of Justice
Mr. Julian Porter, Q.C.
Mr. William James

COUNSEL: Mr. Douglas C. Hunt, Q.C. and Mr. Michael Meredith, Presenting Counsel
Mr. David Scott, Q.C. Counsel to Madam Justice Nicholas

REASONS FOR DECISION

The Ontario Judicial Council (the “Council”), pursuant to section 51.4 (18) and 51.6 of the *Courts of Justice Act*, R.S.O. 1990, c.43, as amended, conducted a hearing in relation to the Honourable Madam Justice Dianne Nicholas on June 29, 2004.

An agreed Statement of Facts was filed at the hearing which included a joint submission with respect to the nature of the conduct acknowledged by Justice Nicholas and the degree of its seriousness.

A brief of letters of support for Justice Nicholas was also filed.

The Agreed Facts

The facts are summarized as follows:

The complainant, Silvana Segreto appeared with her counsel, Ronald Guertin, before Justice Nicholas in Ottawa on April 29, 2002 with respect to a welfare fraud allegation.

Ms. Segreto pleaded guilty to a charge of welfare fraud. The complainant’s counsel wished to have the sentencing put over to permit him to present medical information regarding physical and psychological

injuries which Ms. Segreto sustained as a result of the alleged alienation of her father’s estate by one of her brothers. Following this remark, Justice Nicholas asked Ms. Segreto if her brother was Rick Segreto. Ms. Segreto replied that he was.

Justice Nicholas indicated that she knew Rick Segreto, indicating “he used to be my daughter’s soccer coach and I really didn’t like him so...”, and then, “he’s got a criminal record”.

Justice Nicholas was concerned that Ms. Segreto and her counsel be apprised of the fact that she had known Rick Segreto personally in the event that they wished the matter to proceed before another judge.

Ms. Segreto’s counsel indicated it was “Okay”. Ms. Segreto indicated her family did not speak with Rick Segreto. Justice Nicholas then replied “Are you sure because like I don’t want - I’m not going to take it out on your client, but I’m just [sic] my policy is if I know anybody, I say so”.

Ms. Segreto again indicated that her family did not speak with her brother and that he had caused a lot of anguish for the family, was not included in her father’s will and was alienated from the rest of the family.

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REASONS FOR DECISION – D. NICHOLAS

Justice Nicholas replied that he was a “loser” and that he “basically left his wife and two children for the mother of one of our team who was the manager”. She also stated “...he actually took up with one of the mothers on the team. Not a big fan of that. I pulled my daughter off the team. So, I’m just letting you know that if you want somebody else to do this...” and then said “I don’t think it’s a problem, but I’m just letting you know”.

Mr. Guertin requested and was granted time to confer with his client in the courtroom and then advised Justice Nicholas that Ms. Segreto was comfortable.

Justice Nicholas referred again to the alienation of the estate, indicating “That’s why I asked if he was the one who alienated the estate, because I wouldn’t put that past him”.

Justice Nicholas accepted Ms. Segreto’s guilty plea and put the matter over to July 24, 2002 for sentencing.

Shortly after the April 29, 2002 plea, but before the sentencing date of July 24, 2002 while the Segreto matter was still before her, Justice Nicholas spoke of the matter with one Thomas Grumley when they met up, coincidentally on the street directly across from the courthouse.

Justice Nicholas has known Mr. Grumley as a neighbour and involved with a number of fellow soccer parents for approximately ten years. They lived within blocks of each other and Mr. Grumley worked directly across from the courthouse at Place Bell Canada.

Although the case was still before her, Justice Nicholas advised Mr. Grumley that Ms. Segreto had appeared before her and pled guilty to a welfare fraud charge. She told Mr. Grumley that it was not very serious and that Ms. Segreto seemed nice.

Ms. Segreto later learned of this conversation from her niece, daughter of Rick Segreto. According to Ms. Segreto, her niece had heard it from Mr. Grumley’s children, who in turn had heard it from Mr. Grumley over dinner.

In her complaint, Ms. Segreto alleges that “Justice Nicholas passed on every imaginable detail” of her case to Mr. Grumley. Mr. Grumley disagrees and has

communicated directly with the Judicial Council on this issue, indicating that Justice Nicholas only told him that Rick Segreto’s sister appeared before her and that she was found guilty in a welfare fraud case. Mr. Grumley states that the other assertions made by Ms. Segreto as reported in the Ottawa Citizen are false.

Justice Nicholas acknowledges she should not have spoken to Mr. Grumley about the Segreto case and that it was inappropriate. Justice Nicholas feels terrible about the effect this may have had on Ms. Segreto and her family and that this embarrassed Ms. Segreto.

Shortly after Ms. Segreto’s complaint was made to the Ontario Judicial Council on August 19, 2002, the Ottawa Citizen reported on the complaint and published articles both in print and electronically, setting out the details of the April 29th court proceeding, the conversation with Thomas Grumley and Ms. Segreto’s reaction to it.

On the sentencing date of July 24th, counsel for Ms. Segreto moved for Justice Nicholas to recuse herself on the basis of her conversation with Mr. Grumley. Justice Nicholas immediately struck the guilty plea and suggested that the matter be transferred to the guilty plea court that very day to be dealt with by another judge. Mr. Guertin wished to consider his position.

After striking the plea, Justice Nicholas returned to Judges’ Chambers on the 6th floor of the courthouse. She then felt that she should have apologized to Ms. Segreto and her counsel and asked the receptionist to page Mr. Guertin to come up to her office so that she could make an apology.

Mr. Guertin did not attend Judges’ Chambers. Justice Nicholas returned to the courtroom shortly thereafter to deal with her trial matters. She asked her courtroom clerk, Lucille Bordeleau to locate Mr. Guertin and his client and have them return to the courtroom.

Ms. Bordeleau found Mr. Guertin and asked him that he attend in the courtroom. Counsel has stated he was asked to attend in Chambers. On this point the evidence of Mr. Guertin and Ms. Bordeleau varies. Ms. Bordeleau has stated that her intention was to bring Mr. Guertin back to the courtroom where Justice Nicholas was waiting on the bench.

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REASONS FOR DECISION – D. NICHOLAS

Mr. Guertin has indicated that he advised the courtroom clerk that he had sought legal advice and considered it would be inappropriate for him to speak to Justice Nicholas on the matter.

There is no suggestion that Justice Nicholas summoned counsel to her judicial chambers or to the courtroom for any other purpose than to apologize.

Justice Nicholas indicated in her letter that she sincerely regretted the position in which counsel and Ms. Segreto were placed and said the request for the recusal was “completely appropriate”. Justice Nicholas had conferred with a senior judge of the court on the content of the letter before sending it.

Issue of Misconduct

Justice Nicholas acknowledges that her statements in court on April 29, 2002, as described above and her subsequent conversation with Mr. Grumley constitutes judicial misconduct on her part.

Joint Submission

Justice Nicholas agrees and acknowledges that her conduct was inappropriate and indiscreet and that her judicial misconduct is a serious matter. Her counsel and presenting counsel agree and jointly submit that this judicial misconduct acknowledged by Justice Nicholas “though serious, falls within the lower end of the scale of judicial misconduct. Accordingly, it should attract a sanction, proportional to its gravity, within the lower end of the scale of sanctions for judicial misconduct. Counsel submit that a sanction in accordance with section 51.6(11)(a) through (d) is the appropriate sanction in this case.”

The dispositions contained in section 51.6(11) are as follows:

- (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 of up to thirty days; or
- (g) recommend to the Attorney General that the judge be removed from office in accordance with section 51.8.

Letters of Support

As noted earlier a brief of letters of support for Justice Nicholas was filed which included letters from two sitting justices of the Superior Court of Justice, one former justice of the Superior Court, one justice from the Ontario Court of Justice and four senior criminal defence lawyers, one of whom being formerly a senior Crown Attorney.

The letters make the following observations about Justice Nicholas:

- (a) she is a sound judge;
- (b) she has a tendency to speak frankly in the courtroom which is related to her motivation to “demystify the court process”;
- (c) she has all the right instincts and is an extremely caring person;
- (d) she takes on very difficult cases and is generally extremely hardworking;
- (e) she is a person of high integrity;
- (f) she generally demonstrates very good judgment and an excellent knowledge of the law.

Complainant’s View

The complainant agrees with the joint submission in its entirety.

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Conclusion

We are satisfied that Justice Nicholas is mortified and embarrassed by her conduct as submitted by her counsel. She was also motivated to admit her misconduct spontaneously and expeditiously and made a sincere apology. She is clearly embarrassed by the media reporting which has given the complaint to the Council wide coverage.

The panel is satisfied that Justice Nicholas has completely accepted the seriousness of her misconduct and would appreciate that any repetition could attract a more serious disposition.

We believe that it is in the best interests of the administration of justice that Justice Nicholas continue to sit as a judge as she has done since the complaint was filed almost two years ago.

Costs

There will be no recommendation as to the payment of costs pursuant to section 51.7(4) of the *Courts of Justice Act*.

DATED at the City of Toronto, in the
Province of Ontario, July 12th, 2004.

Chief Justice R. Roy McMurtry
Associate Chief Justice David Wake
Mr. Julian Porter, Q.C.
Mr. William James



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REASONS FOR DECISION – K.P. EVANS

ONTARIO JUDICIAL COUNCIL

IN THE MATTER OF complaints respecting The Honourable Justice Kerry P. Evans

BEFORE: The Honourable Justice Louise Charron - Court of Appeal for Ontario
The Hon. Justice J. David Wake - Associate Chief Justice, Ontario Court of Justice
Mr. Henry G. Wetelainen
Ms. Jocelyne Côté-O'Hara

COUNSEL: Mr. Douglas C. Hunt, Q.C.]
Mr. Michael J. Meredith] Presenting Counsel
Mr. Donald Park]

Mr. Brian H. Greenspan] Counsel for The Honourable
Mr. Seth P. Weinstein] Justice Kerry P. Evans

REASONS FOR DECISION

[1] The Ontario Judicial Council, pursuant to s. 51.4(18) and s. 49(16) of the Courts of Justice Act, R.S.O. 1990, c.43, conducted a hearing in relation to complaints that the Honourable Justice Kerry P. Evans has conducted himself in a manner that is incompatible with the due execution of the duties of his office. The particulars of the complaints are set out in Appendix “A” to these reasons.

[2] Over the course of nine days of hearing, the Council heard the testimony of eight complainants together with other witnesses who provided some supporting evidence; 14 witnesses called on behalf of Justice Evans who, for the most part, provided character evidence; and Justice Evans himself. The eight complainants, at the relevant times, all worked in one capacity or the other as employees of the court system in Barrie and other satellite courthouses. All of the allegations concern conduct of Justice Evans outside the courtroom. Most of the allegations relate to improper touching of the complainants by Justice Evans, some in a sexual manner. Other allegations

concern inappropriate remarks with sexual innuendoes. The events in question occurred between sometime in 1999 until December 2002 at the time Justice Evans was suspended.

[3] The Council is unanimous in finding that many of the particulars have been proven and, consequently, we find that there has been misconduct. Our findings of fact turned largely on questions of credibility. For that reason, individual members of the panel reached the same conclusion but, at times, for different reasons. However, each was guided by the following principles.

[4] First, the Council considered the meaning of judicial misconduct. We were guided by the reasons of the Supreme Court of Canada in *Re Therrien*, [2001] 2 S.C.R. 3 where the Court, in the context of an inquiry into the conduct of a judge, discussed the role of the judge in Canadian society. The analysis of the Court on this question is instructive and we reproduce it here in its entirety:

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3. The Role of the Judge: “A Place Apart”

¶ 108 The judicial function is absolutely unique. Our society assigns important powers and responsibilities to the members of its judiciary. Apart from the traditional role of an arbiter which settles disputes and adjudicates between the rights of the parties, judges are also responsible for preserving the balance of constitutional powers between the two levels of government in our federal state. Furthermore, following the enactment of the Canadian Charter, they have become one of the foremost defenders of individual freedoms and human rights and guardians of the values it embodies: *Beauregard*, supra, at p. 70, and *Reference re Remuneration of Judges of the Provincial Court*, supra, at para. 123. Accordingly, from the point of view of the individual who appears before them, judges are first and foremost the ones who state the law, grant the person rights or impose obligations on him or her.

¶ 109 If we then look beyond the jurist to whom we assign responsibility for resolving conflicts between parties, judges also play a fundamental role in the eyes of the external observer of the judicial system. The judge is the pillar of our entire justice system, and of the rights and freedoms which that system is designed to promote and protect. Thus, to the public, judges not only swear by taking their oath to serve the ideals of Justice and Truth on which the rule of law in Canada and the foundations of our democracy are built, but they are asked to embody them (*Justice Jean Beetz*, Introduction of the first speaker at the conference marking the 10th anniversary of the Canadian Institute for the Administration of Justice, observations collected in *Mélanges Jean Beetz* (1995), at pp. 70-71).

¶ 110 Accordingly, the personal qualities, conduct and image that a judge projects affect those of the judicial system as a whole and, therefore, the confidence that the public places in it. Maintaining confidence on the part of the public in its justice system ensures its effectiveness and proper functioning. But beyond that,

public confidence promotes the general welfare and social peace by maintaining the rule of law. In a paper written for its members, the Canadian Judicial Council explains:

Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. Many factors, including unfair or uninformed criticism, or simple misunderstanding of the judicial role, can adversely influence public confidence in and respect for the judiciary. Another factor which is capable of undermining public respect and confidence is any conduct of judges, in and out of court, demonstrating a lack of integrity. Judges should, therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality, and good judgment.

(Canadian Judicial Council, *Ethical Principles for Judges* (1998), p. 14)

¶ 111 The public will therefore demand virtually irreproachable conduct from anyone performing a judicial function. It will at least demand that they give the appearance of that kind of conduct. They must be and must give the appearance of being an example of impartiality, independence and integrity. What is demanded of them is something far above what is demanded of their fellow citizens. This is eloquently expressed by Professor Y.-M. Morissette:

[TRANSLATION] [T]he vulnerability of judges is clearly greater than that of the mass of humanity or of “elites” in general: it is rather as if his or her function, which is to judge others, imposed a requirement that he or she remain beyond the judgment of others.

(“Figure actuelle du juge dans la cité” (1999), 30 R.D.U.S. 1, at pp. 11-12)

In *The Canadian Legal System* (1977), Professor G. Gall goes even further, at p. 167:

The dictates of tradition require the greatest restraint, the greatest propriety and the greatest decorum from the members of our judiciary. We

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REASONS FOR DECISION – K.P. EVANS

expect our judges to be almost super-human in wisdom, in propriety, in decorum and in humanity. There must be no other group in society which must fulfil this standard of public expectation and, at the same time, accept numerous constraints. At any rate, there is no question that a certain loss of freedom accompanies the acceptance of an appointment to the judiciary.

[5] It is readily apparent from this analysis that a wide spectrum of conduct may constitute misconduct deserving of reprobation. This is consonant with the terms of s. 51.6(11) of the Courts of Justice Act which contemplates a range of possible sanctions:

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

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

[6] Hence, there may be instances of judicial misconduct ranging from conduct that is more minor in nature, meriting a warning or a reprimand, to conduct that is so serious that it warrants removal from office. The Supreme Court of Canada described

the kind of conduct that would merit the heaviest sanction in Therrien at para. 147:

Thus, before making a recommendation that a judge be removed, the question to be asked is whether the conduct for which he or she is blamed is so manifestly and totally contrary to the impartiality, integrity and independence of the judiciary that the confidence of individuals appearing before the judge, or of the public in its justice system, would be undermined, rendering the judge incapable of performing the duties of his office (Friedland, *supra*, at pp. 80-81).

[7] The appropriate sanction remains to be determined. Counsel have not yet made their submissions on this question because, of course, the outcome of this inquiry depends on the Council's particular findings of misconduct. Hence, the Council has refrained from considering the question of sanction during the course of its deliberations. The Council was mindful, however, of the relative gravity of each allegation because the level of seriousness impacts on the requisite standard of proof.

[8] The standard of proof required to establish a complaint of professional misconduct has been defined differently over the years but now seems settled. In the *Law Society of Upper Canada v. G.N.*, [2003] L.S.D.D. No. 41 (L.S.U.C.) the panel refers to the commentary of Mr. Gavin MacKenzie, an expert on professional disciplinary proceedings, who makes the following observations in his work *Lawyers and Ethics: Professional Responsibility and Discipline*, at pages 26-40 to 26-42:

It is now established that:

- (a) The standard is a civil standard rather than the criminal standard of proof beyond a reasonable doubt, even if the misconduct alleged is also a criminal offence: *Camgoz v. College of Physicians and Surgeons (Saskatchewan)* (1989), 74 Sask. R. 73 (C.A.); *Miller v. Saskatchewan Psychiatric Nurse's Association* (1992), 103 Sask. R. 61 (Q.B.); *Bater v. Bater* (1950), 2 All E.R. 458 (C.A.); *Hryciuk v. Ontario (Lieutenant Governor)* (1994), 18 O.R. (3d) 695 (Div. Ct.); *Re Khaliq-Kareemi v. Nova Scotia (Health Services and Insurance Commission)* (1988), 84 N.S.R. (2d)

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425 (T.D.), reversed on other grounds (1989), 89 N.S.R. (2nd) 388 (C.A.), leave to appeal to

S.C.C. refused (1989), 93 N.S.R. (2nd) 269 (S.C.C.); and *Glassman v. College of Physicians and Surgeons (Ontario)*, [1966] 2 O.R. 81 (C.A.);

- (b) The standard nevertheless rises in direct proportion to the gravity of the allegation and the seriousness of the consequences, and accordingly, if the allegations are serious, the trier of fact must scrutinize the cogency of the evidence with greater care than would be required, for example, in an ordinary negligence case; and
- (c) In order to find an allegation of professional misconduct or conduct unbecoming a barrister and solicitor made out, clear and convincing proof based on cogent evidence is required: *Coates v. Ontario (Registrar of Motor Vehicle Dealers and Salesman)* (1988), 52 D.L.R. (4th) 272 (Div. Ct.); *R. v. Oakes*, [1986] 1 S.C.R. 103 (S.C.C.); *Hryciuk*, (op.cit.); *Beckon v. Ontario (Deputy Chief Coroner)* (1992), 9 O.R. (3rd) 256 (C.A.); *Lanford v. General Medical Council* (1990), 1 A.C. 13 (P.C.); *Gillen v. College of Physicians and Surgeons (Ontario)* (1989), 68 O.R. (2nd) 278 (Div. Ct.).

The Council accepts and adopts these parameters.

[9] In its assessment of credibility, the Council was mindful that the task should not be approached as a credibility contest. In this respect, the Council was largely informed by the usual instructions given by a trial judge to a jury in a criminal trial, subject of course to the different standard of proof as discussed earlier.

[10] Character evidence figured prominently in this inquiry. As stated earlier, fourteen witnesses testified about Justice Evans's reputation in the community for honesty, integrity and decency. All but two of those witnesses performed some function in the legal community such as court clerk, court reporter, police officer, justice of the peace, lawyer, legal instructor, or judge. Each character witness was asked to review a book of testimonials that contained numerous supporting letters from members of the

community gathered by Justice Evans or by counsel on his behalf. Although this book did not form part of the evidence, its contents, together with the character witnesses' personal knowledge of Justice Evans, formed the evidentiary basis for their testimony.

[11] Each character witness attested to the very high regard held for Justice Evans in the community. Many witnesses attested to his caring and compassionate nature, a person who would "go to great lengths to help other people", one to whom every one would readily go for advice or for a sympathetic ear. A fellow judge described Justice Evans as the "conscience of the court." Justice Evans is also regarded as a hard worker who is incredibly devoted to legal education in the community. Everyone viewed Justice Evans as a very friendly and approachable person.

[12] In addition to this general reputation evidence, counsel for Justice Evans inquired of every witness, including the complainants, about Justice Evans's reputation for being "a close talker", and a demonstrative kind of person. The question in respect of the latter trait was couched in terms of whether Justice Evans was perceived as being "touchy-feely". Every witness agreed that Justice Evans had the habit of standing quite close to the person he would be speaking to, at times causing the person to back up. His personal space was described as much smaller than that of the average person. All agreed that Justice Evans was a very exuberant person who would come in physical contact with people when he spoke to them. He would either take someone's arm, or put his arm around someone's shoulders, slap shoulders, touch hands, or give pats on the back. Most agreed that Justice Evans would act in this way with men and women alike. The character witnesses testified that they were not offended by this approach; they viewed it simply as part of Justice Evans's friendly and enthusiastic nature. Some acknowledged, however, that some persons could be offended by such conduct. Also, some of the character witnesses who are the colleagues of Justice Evans testified that they had mentioned to him, in light conversation, but on more than one occasion, that he stands too close to them when they talk and that he

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should “back off”. More will be said about this later.

[13] We have considered the character evidence in assessing the testimony of the various witnesses in accordance with the principles that apply in a criminal trial. Evidence of good character has a bearing on the improbability of the accused committing the offence and is also relevant to credibility: *R. v. Tarrant* (1981), 63 C.C.C. (2d) 385 (Ont. C.A.). In cases of alleged sexual impropriety it has often been observed that character evidence has less weight in supporting the inference that an individual is unlikely to have committed the offence charged *R. v. Profit*, [1993] 3 S.C.R. 637. After all, sexual misconduct usually occurs in private and in most cases will not be reflected in one’s reputation in the community for morality. However, though this observation has considerable force in relation to most cases of alleged sexual impropriety, to the extent that the conduct in question is said to have occurred in public places, the character evidence should be carefully considered in assessing the likelihood that the conduct occurred: *R. v. Strong*, [2001] O.J. No. 1362 (C.A.).

[14] Consonant with these principles, we have found the reputation evidence more helpful in reaching a conclusion in respect of those acts that are alleged to have occurred in public. We have also taken it into account in assessing credibility in respect of some of the private encounters that formed the subject-matter of this hearing.

[15] We have arrived at our conclusions in respect of each particular complaint based on our assessment of the evidence that specifically related to the incident in question. In assessing the cogency of that evidence, however, we have considered from time to time other allegations when the similarities between them were such that we found it improbable that the similarity was just coincidental. It is important in this respect to note that there is no allegation of collusion in this case. Nonetheless, we have carefully scrutinized the evidence regarding the timing of the complaint and any contact between the complainants. We have found no basis to suspect collaboration between the witnesses.

[16] Orders prohibiting the publication of information that may identify the witness were made in

respect of five of the eight complainants. These orders were made at the request of each complainant, pursuant to s. 51.6(9) of the *Courts of Justice Act*. Because of the particular circumstances of one of the complainants, the precise scope of the publication ban that would effectively protect her privacy was determined *in camera*, after hearing submissions from all concerned, including the complainant’s counsel and counsel for the *Toronto Star* and the *Globe and Mail*. As a result, the ban against publication in respect of this complainant is somewhat wider than the usual order. In keeping with the spirit of the publication bans, we will not refer to any of the complainants by name, thereby better ensuring the anonymity of the complainants who have sought protection. We will refer to each complainant by the use of initials that do not correspond to their actual names. In addition, we will not refer to the particular duties of employment held by any of the complainants. Suffice it to say that all the complainants were one of the following: court clerk, court reporter, judge’s secretary or probation officer.

[17] We will deal with the allegations of each complainant in turn. Before doing so, we make the following general observations about Justice Evans’s notorious habit of coming in close contact and touching the people with whom he communicates. We say at the outset that we recognize this habit as a feature that reflects the many fine qualities that were described about Justice Evans as a warm, caring, compassionate, friendly, approachable, energetic, and even exuberant person. Undoubtedly, these personality traits have generally served him, and the community, very well. However, as a number of the character witnesses themselves have expressly recognized, it is plain to see how this behaviour can be considered by some as intrusive and offensive.

[18] Much depends on who is at the receiving end. It is one thing to act in this manner with friends, relatives, or colleagues who stand on a more equal footing, but quite another with a subordinate employee. It is unrealistic, and also unfair, to expect that the employee will confidently, without fear of recrimination, stand his or her ground against a person in authority to ensure respect of his or her private space. The gender of the employee, in this

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case they are all female, adds another dimension to the issue of closeness. Where the employee is of the opposite gender, there is an added risk that the conduct, witting or otherwise, will be perceived by the employee as violative of her sexual integrity. Indeed, any touching to the buttocks, legs or pelvic/genital area that is not immediately acknowledged by an apology would be reasonably construed as an undesired sexual contact.

[19] Hence, the onus cannot be on the employee to mark the boundary. It must be on Justice Evans. As will become apparent from our analysis, it is our view that Justice Evans has demonstrated on a number of occasions a disturbing insensitivity to other persons' comfort zones. On other occasions, he has clearly crossed the line.

Ms. A

[20] We will start firstly with the testimony of Ms. A, as some of the incidents that she related appear to have occurred earliest in time, probably in 1999. Ms. A had occasion to go to Justice Evans's chambers from time to time to have some documentation signed. She appeared to us and was described as a highly professional, very private, and somewhat nervous person. Ms. A testified that there was more than one occasion where Justice Evans made her feel uncomfortable because he was standing too close to her, patting or rubbing her arm, patting her on the back of the shoulder or neck. She stated that she told him in light conversation on two occasions that he was a little close and to keep a few feet away. He would then move away. She testified that she lied to Justice Evans about being married to a police officer because she wanted Justice Evans to believe that she was involved with someone. Justice Evans agreed that this was one of the very first things she told him about herself after they started working together.

[21] We found Ms. A's testimony about these incidents entirely credible. It was not only consistent with the evidence about Justice Evans's general habit of touching and standing close, it was supported by the specific testimony of other complainants who stated that Justice Evans's closeness made them feel uncomfortable. We will refer to some of that evidence

later in these reasons.

[22] Ms. A's testimony is also consistent with another incident related by Justice Evans himself. When questioned by his counsel about this question of invasion of personal space, Justice Evans acknowledged that a previous employee, who is not part of these proceedings, had once complained to him about his conduct. He related that this employee had told him that, because of certain events that happened in her childhood, she did not feel comfortable with him being close to her. He stated that he had felt embarrassed when he received her complaint and that he had thereafter respected her wishes. This incident bears close resemblance to Ms. A's testimony.

[23] As stated earlier, it is not acceptable that an employee in the position of Ms. A be forced to confront the person in authority in order to have her private space respected. The employee should be entitled to work in an environment that is free from such unwarranted invasions.

[24] Ms. A testified as to a further incident that shows that Justice Evans did not abide by her express wish that he respect her private space. Ms. A related an incident that occurred in Justice Evans's chambers when, during the course of a conversation, he touched her in the pelvic area. She demonstrated the part of her body where she was touched. It appeared to be in the area of the abdomen on the left side just below the hip bone. Although the versions differ somewhat on the contents of the conversation, it seems clear that somehow they got to discussing work-related difficulties that Ms. A was experiencing with a gentleman. Ms. A testified that during this conversation Justice Evans got up from his desk, came around in front of the desk where she was standing with her arms crossed, and said to her something about "you could grab him here". It was then that he reached out and touched her in the area described. She took it as a suggestion that she should hit the gentleman in the penis area. She was shocked and did not know what to say. She stepped back without saying anything and the conversation ended shortly thereafter. Following this incident she avoided being alone with Justice Evans. Indeed, she told her supervisor that she wasn't going to go into his chambers alone anymore. However, if he called

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her into his chambers, she went.

[25] Justice Evans testified that he was alone in chambers with Ms. A over the lunch hour one day when she came to discuss with him a work-related problem she was having with a particular gentleman. She was visibly upset during the conversation. He testified that she is a nervous person and it looked like she was about to cry. She told him that she was afraid of this man and he advised her to go to the police. He told her to tell her husband because he believed that she was married to a police officer. He also told her to tell co-workers so that they could watch the parking lot for her if she went to her car late at night. He then said to her “if worst comes to worst, [...] get him in a public area like on the main street of Collingwood or the parking lot of the grocery store, and just scream at him at the top of your lungs and tell him to stay the [hell] away from you.” During this conversation he was seated at his desk but at this point in the conversation he got up and walked over to where Ms. A was standing. According to his evidence, Justice Evans then advised Ms. A as follows:

And I said, “And if he comes near you, you’re going to have to hit him,” and I brought my hand up, and I struck the outside of her leg. She said to me, “Well, then I’ll get charged with assault.” I said, “No, you won’t.” And I said, “You’ve got to make sure that you do something, otherwise no one is going to know about this.”

He further testified that he did not intend to strike her on the leg during this exchange, that it was an accident and that she did not appear to react to it at the time.

[26] Even on the basis of Justice Evans’s account of the circumstances leading to the physical contact in question, we see no justification for his demonstrative acts that, given the proximity to Ms. A, inevitably led to this invasion of her private space. Ms. A was quite perturbed by this incident and talked about it to some of her friends, including a police officer and a judge. She testified that when she spoke to the latter two, she downplayed the incident by stating that she was touched on the leg because she did not want to place them in a position where they would have to act upon it. She didn’t want to

lose control of the situation and was afraid of coming forward. One of the friends to whom Ms. A spoke about these incidents was Ms. B, a complainant in this inquiry.

[27] When viewed reasonably and objectively, it would not be unreasonable for Ms. A to have concluded that a sexual connotation was intended by the physical contacts. In fact, Justice Evans testified that he had been told about Ms. A in effect warning other employees about him standing too close and he stated that he was very upset at the fact that there would be some sexual innuendo about this conduct. Indeed, that is the real risk of this kind of conduct. It makes it all the more unacceptable.

[28] Ms. A testified about a further incident, when Justice Evans phoned her at home around 11:00 p.m., which lends credence to her level of discomfort about Justice Evans’s conduct. Again the versions differ somewhat as to the reason for the call and the exact words spoken, but nothing turns on these variances in the evidence. It seems clear, on either account, that the reason for the call was work related. Ms. A was asleep and awakened by the call. During the course of the conversation, Justice Evans said – according to her: “now that you’re awake, you can have sex with your partner” or – according to him: “sorry I woke you up, I guess your husband won’t be sorry.” Whatever words were spoken, Justice Evans concedes that there was a sexual connotation and that it was improper.

[29] Justice Evans did not conduct himself appropriately in his interactions with Ms. A.

Ms. B

[30] Ms. B met Justice Evans in the late 1970’s when she worked with him for two summers. She next saw him briefly on one occasion in 1995 or 1996. On September 5, 2000, she attended the swearing-in ceremony of the Barrie Chief of Police with her husband. Following the ceremony, she attended a reception with some 70 to 100 other people. She noticed Justice Evans at the reception. Ms. B testified that she felt uncomfortable in greeting Justice Evans because of what she had been told by her friend Ms. A. She stated however that she felt she

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would be protected from inappropriate behaviour because of her age, the setting and her relationship with Justice Evans. At one point during the reception, Justice Evans and Ms. B ended up in the same circle and they greeted each other. Ms. B stated that Justice Evans shook her right hand and embraced her at the same time with his left arm; as they came together, Ms. B felt the back of his hand in her pubic area. She stated that she moved back thinking that she'd "been done."

[31] During the course of her testimony, Ms. B demonstrated how the greeting took place. Justice Evans gave very similar testimony about the incident. He remembered the encounter and the manner in which he had greeted Ms. B, however, he testified that he did not know that his hand had come into contact with Ms. B as she described. Ms. B, quite fairly, could not rule out the possibility that the touch was accidental. However, she did not believe that it was accidental because she would have expected Justice Evans to apologize or look embarrassed, and he didn't. In response, Justice Evans stated that he would not have cause to apologize since he was unaware of the touching.

[32] We do not doubt Ms. B's sincerity, or her honest belief that the touch was intentional. However, given the manner in which the greeting took place, we accept that any touching of her pubic area could have been accidental.

[33] We find it important to note, however, that this incident exemplifies the inherent risk and potential damage that can be caused by Justice Evans's habit of coming in close physical contact when he communicates with people. Ms. B was quite troubled by this incident. She testified that she felt shocked by the incident and told her husband about it when they left the reception. She also told her supervisor within one week of the incident. She chose not to complain further, however, until much later when the news of Justice Evans's acquittal at a criminal trial in respect of a similar touching came to her attention. She then felt that she had an obligation to come forward, albeit reluctantly. This whole incident caused her a lot of distress that could easily have been avoided by a more careful comportment.

Ms. C

[34] We will deal next with the testimony of Ms. C. The incident involving Ms. C formed the subject matter of a criminal charge laid against Justice Evans. Justice Evans was acquitted at his criminal trial. In essence, the trial judge was not satisfied beyond a reasonable doubt that there had been an intentional assault, and more particularly, an intentional sexual assault.

[35] On December 3, 2002 Justice Evans and Ms. C were chatting in the Justice's chambers while court was in recess. Their respective versions of the exact content of the conversation differ somewhat, but the gist of it is the following. During discussion of Christmas gifts for Justice Evans's wife, Ms. C suggested that her husband's cousin, a pilot, could provide a helicopter ride. Justice Evans inquired what her cousin looked like. When Ms. C indicated that he was young and good-looking, Justice Evans reacted in jest by demonstrating what he would have to do to the pilot. Ms. C testified that Justice Evans placed his hand on her crotch, over her court gown, and said words to the effect, "Well, I'd just hold a gun to him right here, then". In giving his testimony, Justice Evans demonstrated how he pointed his right index in the air and brought his arm down saying words to the effect "we'll just have to shoot him down" thereby coming accidentally in contact with the front of Ms. C's gown. On either version, we interpreted the words and actions to mean that Justice Evans, jokingly of course, would put a gun or shoot the helicopter pilot in the genital area.

[36] There is no doubt that Justice Evans's hand came into contact with Ms. C's genital area. The question remains whether the act was deliberate or accidental. Of course, we are not bound by the findings of the trial judge at the criminal trial. We have also had the benefit of hearing the evidence in a much wider context than that presented at the criminal trial. Nonetheless, given the gravity of the allegation, we are governed by a standard of proof that comes perilously close to the criminal standard of beyond a reasonable doubt.

[37] We are not satisfied beyond a reasonable doubt that Justice Evans intended to sexually assault

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Ms. C by deliberately touching her in the crotch area. However, it is our view, given the proximity of Ms. C to Justice Evans when this demonstrative communication took place, that Justice Evans, at the very least, ought to have known that his hand would likely come in contact with some part of Ms. C's body. We find that he was reckless in his actions and that he acted without proper regard and respect for Ms. C's person. In this respect, this incident bears disturbing similarity with the two previous incidents involving Ms. A and Ms. B.

[38] Justice Evans did not apologize when his hand came into contact with Ms. C. Rather, as Ms. C testified, he patted her on the rear and said "let's go", and they entered the court. We accept her testimony on this point. One other complainant testified to similar pats on the buttocks before entering the courtroom. We will deal with those allegations later in these reasons. Obviously, such conduct is totally unacceptable.

[39] Other incidents involving Ms. C, although not particularized in the Notice of Hearing, provide further context and lend support to our conclusion that Justice Evans improperly invaded Ms. C's private space. Ms. C testified, and we accept, that Justice Evans on one occasion removed the hair from her eyes; on another occasion, he took a jujube from his pocket and put it in her mouth despite her resistance; and in general, she felt that he always stood too close for comfort. Justice Evans agrees that the incidents with the hair and the candy took place, albeit with a different explanation as to the context. Even on Justice Evans's own account of these incidents, we are of the view that his actions were unwarranted and inappropriate.

Ms. D

[40] Ms. D testified about a number of incidents where she felt that Justice Evans touched her inappropriately.

[41] Both Ms. D and Justice Evans gave evidence about a first incident when Ms. D was very upset about the disturbing nature of some evidence she had heard in court and Justice Evans, in the course of trying to comfort her and assist her, attempted to

remove, according to Ms. D, or removed her court gown, according to Justice Evans. Ms. D thought nothing untoward about this incident at the time. It is only later when she thought about it in the light of other incidents that she believed it was improper for Justice Evans to reach out in the back of her gown to untie it and remove it. While it is not entirely clear why Ms. D's gown had to be removed, we accept that she was very upset at the time and that this was done in an attempt to come to her assistance. In all the circumstances, we find it unnecessary to comment further on this incident. The other incidents related by Ms. D were the following.

[42] In or about February of 2001, Ms. D and Justice Evans were working at the Collingwood courthouse. As court was about to open, Ms. D went upstairs to Justice Evans's chambers to get him. While she was waiting for him to finish a phone conversation, she stood in the corridor outside his chambers, with her back towards a wall and briefly lowered her eyes. She heard him hang up the phone and come towards her. He took his hands and intertwined his fingers in hers and backed her to the wall that was approximately one foot away. He put his chest against hers and pinned her to the wall. She recalls him saying something to her but cannot recall what it was. She could not recall exactly how she got away from this position but knew she wiggled out somehow. Justice Evans moved away from her, and then continued on to the courtroom.

[43] Ms. D testified that she felt shocked that Justice Evans would walk up to her and "help himself to me as if I was nothing." At the first morning recess she tucked her arms in her gown to avoid further touching. Justice Evans tried to grab her hands but found her sleeve instead. He asked her what was wrong and she told him "Oh, I'm just cold." She testified that after that incident she always walked around with her hands inside her gown so that he could not reach them. She did not tell anyone in the courtroom about this incident that day because, as the judge, "he has all the power" and she was afraid that she would not be believed.

[44] Two other judges testified that they observed Ms. D walking with her arms underneath her gown. One stated that she walked like that all the time; even

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in his court. The other stated that he had observed that often; in particular, he testified that Ms. D did not like the gowns that zipped down the front but she still walked around with her hands underneath. Ms. D's distinctive walk became a subject of humour among the judges who referred to her as "the Flying Nun".

[45] On August 2, 2001, two court staff and Ms. D, along with Justice Evans, took a government car up to the Collingwood courthouse. Before arriving at the courthouse, the group stopped to pick up coffee. They returned to the car, and Ms. D was standing at the door, alongside Justice Evans, as they waited for the driver to unlock the doors. As she was getting into the car, Justice Evans grabbed her left buttock.

[46] Ms. D expressed her utter disbelief at this event happening in the middle of a public parking lot. However, other than telling her husband, she kept the matter to herself. She vowed to herself, however, that if he touched her again, she would do something about it. Ms. D did not work with Justice Evans for the rest of 2001 after the incident in the parking lot.

[47] However, throughout the months of February, April, June and September of 2002, Ms. D worked on occasion with Justice Evans. She testified that whenever she would open the doors to get to court, she would feel Justice Evans touching her on the arm, she would feel his chest or his stomach against her, making her feel uncomfortable. Often he would have jujubes in his pocket and offer her candy. Only if she was firm and stepped back would he not try to put one in her mouth.

[48] In cross-examination Ms. D confirmed that on one occasion she and Justice Evans had an argument in which they both raised their voices. This argument took place right at the time of the opening of the new Collingwood courthouse in August of 2001. She testified that one of her responsibilities was to see that the protocols at the new courthouse were enforced, including a new security measure designed to restrict the flow of people into the area of the judge's chambers. She had a serious dispute with Justice Evans over the fact that no one was allowed back into his chambers without prior approval. She reported this matter to her supervisor and was not

paired with Justice Evans for some time.

[49] We are satisfied that Ms. D felt a high degree of discomfort, if not dismay, with Justice Evans coming into unnecessary physical contact with her as she carried out her duties. We accept her testimony that sometime in February 2001, Justice Evans came into physical contact with her by touching her hands and standing so close to her that his body came into contact with hers. We also accept her evidence about the occasions she worked with Justice Evans in 2002 when she felt he was always so close to her that she could feel his arm, or parts of his body touching her. This evidence is consistent with the evidence that we heard from just about everyone in this inquiry, and it is credible. Many witnesses stated that they were not perturbed by Justice Evans's closeness and took it simply as being a characteristic of Justice Evans's friendly nature; others felt the need to tell him to back off and did so; but all readily identified this conduct as highly characteristic of Justice Evans. As we stated earlier, we are of the view that this conduct is inappropriate with employees such as Ms. D who is neither in, nor should she be placed in, a position where she has to stand her ground and tell Justice Evans to back off.

[50] We come now to the incident in the parking lot. Justice Evans denies that this occurred. There is no suggestion that there may have been an accidental touching of Ms. D's buttock as she entered the car. Rather, it was suggested that it was not likely that this act could have occurred in the manner described by Ms. D given the distance between Justice Evans and Ms. D as they each opened their respective car door. We do not accept that argument. In our view, there was nothing implausible about the incident as it was described by Ms. D. The issue turns entirely on credibility.

[51] We have carefully considered Ms. D's testimony in its entirety. Throughout, and particularly in cross-examination, she gave her testimony in a very responsive and spontaneous manner. Her testimony, when considered on its own, was entirely credible. It also stacked up against the other evidence. For example, it is noteworthy that this incident would have happened right before, if not on the very morning of, the opening of the new courthouse in Collingwood.

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Justice Evans and Ms. D gave consistent accounts of the heated arguments between the two that occurred later in the day. Justice Evans agreed that this appeared uncharacteristic of Ms. D. It also accords with Justice Evans's recollection that Ms. D did not work with him for quite awhile after that day. Ms. D's conduct is consistent with this incident having happened as she described. Her attitude towards Justice Evans changed dramatically after that day.

[52] In addition, Ms. D's testimony that she was improperly touched on the buttock does not stand alone. We have already reviewed Ms. C's evidence that Justice Evans patted her on the buttock as they entered the courtroom. We will review the evidence of Ms. F who recalls two occasions when the same conduct occurred. There is also the evidence of Ms. E, which bears even greater similarity to this incident. The similarity of these allegations defies the suggestion that all these witnesses are mistaken or lying about these incidents. We are satisfied that Justice Evans touched Ms. D on the buttock as she entered the car in the McDonald's parking lot.

Ms. E

[53] Ms. E testified as to an incident that happened at the Simcoe County Criminal Lawyers' Association Christmas party in December 2000 in the offices of a group of Barrie lawyers. She was talking with some people; her back was to a corner of the room; Justice Evans was standing beside her; then he reached over and touched her buttocks. She was a little bit shocked, but did not say anything and continued talking with the group.

[54] Ms. E testified that she didn't think a whole lot about it at the time. She agreed that the touch was momentary. However, she would not describe it as just fleeting. She was definite that she felt a touch. She was cross-examined on her statement to the police in which she told them that she was not sure whether or not the touch was intentional and testified that, upon further reflection, she thinks that it was intentional. When asked to describe the pressure of the touch, she described it "like a grab. It wasn't hard, it didn't leave marks or anything, but well, like you cop a feel, I guess is the term." She agreed in cross-examination that she told the police in her

statement that she was "not sure if it was a grab or not". She explained that she used the word "grab" at that time as meaning "like really grab somebody hard" but when testifying used the words "grab, touch or a feel" to describe the act while recognizing that those words can have different meanings.

[55] Ms. E did not mention the incident until sometime after April 2001 when she started going out with a man to whom she is now married. She mentioned the incident to him. Her husband testified and confirmed that Ms. E had told him that Justice Evans had placed his hand on her buttock at a Christmas party. He stated that she did not seem unduly alarmed by the incident. He was not sure whether she told him or whether he was simply left with the impression that the touch was fairly momentary, nothing worth complaining about, and that she was not sure whether it was sexual in nature or whether Justice Evans had just been careless and overly tactile.

[56] Justice Evans remembers attending the Christmas party in question but does not remember talking to or even seeing Ms. E there. We find it entirely credible that he may forget whom he may have seen or spoken to at this party. However, in our view, this does not detract from the credibility of Ms. E's testimony. We are persuaded that this is yet another incident where Justice Evans's overly friendly and tactile approach crossed the line and became inappropriate.

Ms. F

[57] Ms. F worked at the Barrie courthouse. Ms. F testified that sometime in February 2001, Justice Evans phoned her at home one evening at approximately 7:00 p.m. She had been napping at the time. Justice Evans told her that he needed help with some photocopying and told her to join him at the courthouse. She stated that she did not feel like going back out as it was winter. However, she felt that she owed him a favour because he had been very helpful to her; listening; helping; generally being a friend.

[58] Justice Evans was in his chambers and she went in. Justice Evans shut the door to his chambers. He sat on the couch and she sat on the couch as well.

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Justice Evans talked about a variety of things; he began to ask her about what her ideal dream date would be like, her ideal man; what would make her happy. There was more conversation about matters pertaining to her personal life. There was no discussion about photocopying. Ms. F testified that she doesn't "know how it happened" but they ended up dancing, although there was no music. While they were dancing, he was still asking her the same questions about her personal life. She looked at the clock and decided that if she was not going to photocopy then she was going to go home and workout. At the door, just before she left, he kissed her. Although she did not feel threatened, she felt uncomfortable. However, she did not react as she does not like confrontation. A few days later, Justice Evans phoned her and though she couldn't recall his exact words, she took it to be an apology. At the end of the conversation, he said "But you didn't fight me." She took that to mean that it was all right since she didn't fight him off.

[59] Ms. F also testified that, a few times, Justice Evans would give her "a slap on the ass" before going to court. She was annoyed by this. However, she did not see this as sexual, but more "a football type of thing" which we take to mean an action intended to instill a sense of team play. Justice Evans also did not deny that he may have made contact with Ms. F on the rear as she described. He testified that they had a good relationship and that, as with other court clerks, there would be a lot of patting on the back "or even when going into court, you would hit somebody, and when I say hit, I came in contact with them with the back of my hand". He agreed that it is possible that he came into contact with Ms. F's buttocks when he tapped her on her gown, but denied that he would do so intentionally. There is no question that this conduct, even in a context of "team play" is highly inappropriate.

[60] Ms. F's situation was canvassed more fully in cross-examination. Ms. F testified that she was relatively new to the job at the beginning of 2001 and that she found it stressful. She stated that she had personal problems at that period of time and that she was often in tears. She agreed that she discussed some of her personal problems with Justice Evans.

Justice Evans made arrangements for her to seek professional assistance. She vaguely recalled a conversation about dogs and about wanting a dog; she recalled Justice Evans giving her a stuffed dog and agreed that she was touched by this gesture. It was suggested to her that, because she was touched by this gift, she kissed Justice Evans and the kiss became more than friendly, and she had apologized. She testified that she did not recall that and that, if it had happened, she would recall it.

[61] Justice Evans testified that he first met Ms. F in the fall of 2000. She sought his advice on some personal matters. During their first such discussion, she told him that she was upset that she was making mistakes on the job. He asked her if something was wrong and she told him that she was having difficulty sleeping at night and was using sleeping pills. During the day she was groggy and making mistakes. She was afraid that she was going to lose her job. During this discussion, she also told him about a personal problem and he recommended a psychologist to her. During their second conversation he told her that he had made contact with the physician on her behalf and she thanked him. However, she was concerned about paying for the sessions on her wages and he recommended a second job for her at the local flea market.

[62] During a third conversation Justice Evans testified that Ms. F told him that she was having difficulty in relationships with men. He testified that she initiated the discussion and told him that she always ended up with the wrong kind of guy. He asked her what kind of man she wanted and they discussed the matter further. Justice Evans agreed that they did have a conversation about Ms. F's "ideal dream man" and what would make her happy, but he testified that it happened at a different time and in a different manner than that testified to by Ms. F. He denied calling her at home in February of 2001 to come to the office to assist with photocopying. Rather he testified that this third conversation occurred in his chambers one day after court. He agreed that during this third conversation he gave her a little stuffed dog so that she would have a dog to talk to. The conversation ended at around 6:00 p.m. and as she was walking out the door she started

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to cry and laugh a little and she gave him a hug and started to leave his chambers. He further testified that she came back in and kissed him on the mouth, and that he kissed her back, for about five seconds. According to Justice Evans they both jumped away and then apologized to each other. Though denying that he called her at home in February of 2001, Justice Evans did testify that it was possible that he might have called her at home to “check up on her” on other occasions, though he does not recall having done so.

[63] There is considerable consistency between Ms. F’s and Justice Evans’s respective versions. It is clear that their relationship was a good one. Justice Evans expressly said so in his testimony. Ms. F was going through a difficult time in her life, she discussed many of her personal problems with Justice Evans and he was very helpful to her. This is entirely consistent with the character evidence that we heard.

[64] However, there are important inconsistencies between the two versions. On Justice Evans’s account, apart from the slaps in the rear, the incident in his chambers was simply one where both, first Ms. F and then he, had been overcome by the emotion of the moment and they kissed. On the other hand, on Ms. F’s account, Justice Evans abused his position of authority in bringing Ms. F to his chambers for the purpose of making romantic advances to her. The issue turns on credibility.

[65] Ms. F appeared as a very mild and gentle person. She felt no animosity towards Justice Evans. On the contrary, she was grateful for his assistance and friendship. She gave her testimony without exaggeration, and fairly. For example, when Justice Evans’s version of the kissing incident was put to her, she simply answered to every suggestion that she did not recall that happening. It is in re-examination when asked if she would recall it if it happened that way, that she testified that she would have remembered if it had happened that way.

[66] Justice Evans’s account of his relationship with Ms. F did not have the same ring of truth. The portrayal that he put forth of three distinct, mostly business-like meetings with Ms. F did not stack up with the highly personal content of the conversations that she had with him. In fact, his account seemed

incongruous with the overwhelming evidence about his friendly, caring, compassionate, helpful nature. It also doesn’t fit well with him having called her a couple of times at home to see how she was.

[67] Ms. F’s testimony about the romantic advances made by Justice Evans is also supported by similar evidence from the next complainant’s evidence that we will review. When the evidence is considered as a whole, we are persuaded that the incident in Justice Evans’s chambers happened as Ms. F described it.

Ms. G

[68] Ms. G first described an incident in 1999 when Justice Evans had assisted her in the preparation of an affidavit that she required to obtain student loans as she was planning on going back to university in Western Canada. One night, he phoned her at home at 11:30 p.m., indicating that he had signed the affidavit. She thanked him and suggested he put it in the inter-departmental mailbox at work but he suggested he would drop it at her home that night and she said “O.K.” She was surprised that he would have her phone number. She may have had to give him the address over the phone. She doesn’t recall. She lived in a rental unit of a house approximately three minutes from the courthouse. Another court staff member owned the house and lived above. Justice Evans stayed about 15 minutes and when he left, he told her not to say anything to that court staff member because it would not look good. In cross-examination, the gist of it all was that Justice Evans needed to bring this affidavit to her in person so that she could sign it in his presence and he could commission it. The witness indicated that that was not true; that was not how it happened. Justice Evans also provided a reference letter for her, then she went off to school until she came back to the same job at the courthouse in Barrie in September 2001.

[69] Ms. G testified that she had personal conversations with Justice Evans mostly related to her career choices. He would assist in giving her advice. In the Fall of 2001, she developed a relationship with a lawyer, Mr. M. Ms. G testified that Justice Evans phoned her at home one evening after dinner, or close to dinnertime. He told her, “I hear that you like

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a certain lawyer” and she said, “Yes.” He said, “Do you dare me to tell Mr. M that you like him?” She said, “Sure.” Justice Evans asked, “What will you give me if I do? Would you sleep with me? Would you ever sleep with a fat man with a big dick?” He indicated he was having marital difficulties and asked her if she would have an affair with him. She told him she did not engage in sex without involvement. She was shocked and felt that if she spoke up it would mean trouble with her job. She had no security of employment at that time. She told her sister about this incident, also Mr. M, though not the details. Ms. G was not cross-examined on this incident.

[70] Ms. G then described that she had been away for 5 weeks around Christmas of 2001 and she had sent Christmas cards to different people, including Justice Evans. In the card, she wrote a note thanking him for his advice about potential employment. Upon her return, when she asked him, he said he had not received the card. They were in his chambers at the time. Justice Evans then gave her a holiday kiss and a hug. However, instead of getting out of the embrace, he said, “That’s not what I want.” He kissed her, put his tongue in her mouth. She said, “People could walk in”. He then closed his door, did it again and asked her to repeat: “Say ‘Kerry, I like kissing you.’” She started by saying “Kerry” and then she couldn’t go on, she just said, “I don’t talk like that at the best of times, so I can’t say it” and “I’ve got to get ready for court.” She thought of making a formal complaint, but was afraid of losing her job. At the end of that day in the parking lot, he motioned for her to come with her car and she rolled down her window and he said, “Thanks. Thanks for today.” She took that to mean either thanks for the kiss or for not saying anything. Again, there was no cross-examination about this incident.

[71] Ms. G then described an incident that would have happened at Shirley’s Bar where, at the end of it all, Justice Evans would have gone up to where she was seated, put his hands on her thighs and kissed her. The gist of the cross-examination on that incident suggested that Justice Evans’s friend, Mr. Regan, would have been present throughout the evening. The witness agreed that Mr. Regan was with Justice Evans, but not at that particular point in time.

She agreed that she was upset that night. A girlfriend of Mr. M’s had shown up and she was upset. In an earlier statement to the police, Ms. G had said that Justice Evans had kissed her on the cheek. She maintained in her testimony that it was a kiss on the lips and that she had made a mistake in her police statement. She stated the police were more interested in the event at the courthouse. Ms. G has commenced a civil action against Justice Evans jointly with Ms. D.

[72] Justice Evans denied the incidents with Ms. G. He gave detailed testimony about the circumstances surrounding the delivery of the affidavit to her home. He testified that it occurred in the winter, not in the summer. He came into the office after supper on a Thursday night and was getting things ready for court in Collingwood the next day. In the pile of materials in his office he found the affidavit that his secretary had typed at his request for Ms. G’s student loan application. Ms. G had left him a note asking him to notify her when the affidavit was ready, but she hadn’t told him that it was urgent at that point. Nonetheless, Justice Evans called her at home shortly after 11:00 p.m. and told her the affidavit was ready and that she should come to court the next day so that she could sign it. She told him that she had been ill in court that day and that she was not scheduled to go to court the next day. He offered to leave it at the office so that she could come in on Monday to sign it but she told him it had to go out Friday, the following day, or she would not get her loan. It was at this point that he offered to drive it to her home. When he arrived, she was standing outside the doorway to the house in a t-shirt and track pants and waved to him. He told her to get in the house so she didn’t “freeze to death”. He spent approximately 10 minutes in the house with her while commissioning the affidavit. At the conclusion of their discussion Ms. G asked Justice Evans if he wanted to say “Hi” to the court staff member that lived upstairs and he told her that he did not and that, “I don’t want you to even tell her I came here because then there will be talk all over the courthouse.” He subsequently wrote two letters of reference for Ms. G.

[73] Justice Evans acknowledged that he learned of Ms. G’s interest in Mr. M. He stated that he was shocked by it as he had not heard of Mr. M’s break-

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up with his wife. Justice Evans testified that Ms. G announced to him “I broke up his marriage.” This suggestion was never put to Ms. G in cross-examination.

[74] Justice Evans also gave very detailed evidence about the evening at Shirley’s Bar. He agreed that he saw Ms. G one night at Shirley’s Bar. However, he was with his friend Mr. Regan the entire time and the restaurant was filled with Crown Attorneys and other people that he knew. He denied having come into physical contact with Ms. G as she described.

[75] In cross-examination, Justice Evans related two incidents that occurred when Ms. G was upset with him. He testified that he was leaving a Christmas party in 2001 when Ms. G approached him and asked him to stay because her former boyfriend was still there with his new girlfriend. He detached her from his arm and told her that he was going home. He further testified that in November of 2002 Ms. G chastised him for not having completed a letter of reference for her and he told her that she was self-centered and that he didn’t do reference letters on demand and that he would not be writing a letter for her then or ever. Ms. G was not cross-examined about either of these events.

[76] We do not find it necessary to determine what precise circumstances led to the delivery of the affidavit to Ms. G’s home late in the evening. Other than providing additional context to the relationship between Justice Evans and Ms. G, nothing turns on that incident. We are also not persuaded that there was improper physical contact in Shirley’s Bar. There may well have been some friendly contact sometime during the evening, but again, nothing turns on the events of that evening.

[77] The question for determination is whether Justice Evans made sexual advances to Ms. G as she described. Again the issue turns on credibility.

[78] Ms. G gave reasonable testimony. She was not shaken in cross-examination. Indeed, as stated earlier, she was not cross-examined about most of her testimony except in respect of some peripheral incidents.

[79] Justice Evans’s testimony did not have the same ring of truth. Parts of his testimony seemed incredible. For example, he related a number of instances where Ms. G, rather than he, would have

been the one giving him instructions. On his evidence he made a number of suggestions to Ms. G that would have avoided him having to attend at her home with the affidavit but because she rejected each of them he ended up dropping it off that very night, after 11:00 p.m., a few minutes from the courthouse and in the opposite direction to his own home. Justice Evans’ vivid recollection of the circumstances surrounding the delivery of the affidavit in 1999 and the evening in Shirley’s Bar in 2001 as evidenced by his very detailed account of those incidents do not seem commensurate with the relative unimportance of the events. His description of his attitude and conduct with Ms. G, as it was in respect of Ms. F, seemed to be at odds with the friendly, approachable and caring person as he was described by everyone.

[80] In January 2002 Justice Evans was experiencing some medical issues. On January 7th he was diagnosed with non-Hodgkin’s lymphoma. On January 10th he talked to Justice Palmer about his diagnosis. Justice Evans was only at the Barrie courthouse on certain days in January as he was either sitting in the satellite courts in Bradford or Parry Sound or attending medical appointments. On January 15th he had a biopsy. He testified that his medical concerns were impacting on his emotional state. We don’t doubt his evidence in that regard. But it does not detract from the credibility of Ms. G’s testimony.

[81] On the totality of the evidence, we are satisfied that the phone call and the kiss in the chambers happened as described by Ms. G.

Ms. H

[82] Initially Ms. H alleged that five separate incidents of sexual contact occurred with Justice Evans in his chambers, two of which involved oral sex. Sometime before the hearing, Ms. H told presenting counsel that she was no longer certain whether the two incidents of oral sex were only one incident. Her best recollection at the hearing was that there was only one incident involving oral sex. Her testimony was essentially as follows.

[83] The witness first described how Justice Evans helped her in various respects. She described

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how he had helped her dictate a letter relating to a court case in which she had been involved. He also helped her in July 2002 on another occasion when certain events left her without any money. At that time, Justice Evans gave her a cheque for \$150 so that she could buy groceries. She testified that she did not cash the cheque and arranged for an overdraft at the bank. She also discussed how there would be frequent discussions about her personal problems. She then described all incidents of sexual contact as happening during the course of the month of August 2002 and, possibly during the first week of September 2002. Her testimony can be summarized as follows.

[84] Ms. H testified that, sometime in August, 2002, while she was in Justice Evans's chambers for work-related reasons, she mentioned that she was thirsty. Justice Evans told her to get a drink out of the fridge located in the closet. The closet consists in fact of a small hallway leading into Justice Evans's private washroom. Ms. H bent over to remove a drink from the fridge; when she attempted to stand up, Justice Evans was in the closet with her, held her by the shoulder, touched her left breast, and possibly kissed her. Ms. H said she was shocked. Justice Evans asked her if she was o.k.; she did not comment and left his office.

[85] On a separate occasion, Ms. H was in Justice Evans's chambers, again for work-related reasons. At one point, she was seated in his chair; Justice Evans began massaging her shoulders and then down her body. He also took her hand and rubbed it up and down the front of his trouser pants. According to Ms. H, Justice Evans then took her underwear down and played with her vagina. Justice Evans talked throughout the incident, telling Ms. H she was enjoying it.

[86] Ms. H described how, on another occasion, over a lunch hour, Justice Evans approached her as she was leaving his chambers and manoeuvred her backwards through his change room and into his private washroom. She was wearing a skirt; Justice Evans took down her underwear and performed oral sex on her. She testified that she kept telling him that she would lose her job. After she had an orgasm, he told her: "I've pleased you, now it's your turn." He leaned against the bathroom door and she started to

perform oral sex on him. They were interrupted when someone knocked at the chambers door.

[87] Ms. H also testified that at some point, Justice Evans suggested to her that she tell her manager she was sick and leave for the day so that they could meet at a hotel. He also offered her money to buy lingerie to wear for him.

[88] On a final occasion again in August or possibly September, 2002, Ms. H was in Justice Evans's chambers for work-related reasons when he came up behind her and began grabbing her breasts through her clothes. A clerk knocked on the door and walked in, and Justice Evans stopped.

[89] Ms. H testified that, in addition to those specific incidents, there was a lot of kissing during the course of the month of August. When asked how it all came to an end, she stated that she simply started to avoid him. For example, whenever he needed anything, she insisted that the door be open; or she would let someone know that she was going into his chambers.

[90] Ms. H did not tell anyone about these incidents until Justice Evans was suspended in December 2002 as a result of the complaint brought by Ms. C. She became aware of an e-mail message sent by one of the judges to the other judges, essentially expressing his view that the process was not fair and that other judges should consider not working with Ms. C. Ms. H said she was shocked that the judges would treat Ms. C in this way. She then raised the issue with Justice Evans, asking him, "What about me?" He said she should do what she thought was best. After Justice Evans was suspended, she revealed to Ms. G that something had happened to her as well, but provided no details. Ms. G gave Ms. H's number to the police and the police contacted her. She indicated that the O.P.P. and Mr. Hunt are the only people to whom she has given details about these incidents.

[91] Justice Evans denies that there were any incidents of the kind with Ms. H. He denies ever engaging in oral sex with Ms. H. He denies ever being in his washroom with her or lowering his pants in front of her. The only physical contact he says occurred between them was on the night of a mock trial that he organized. She thanked him for giving

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her recognition and then hugged him and he briefly hugged her back. He testified that it was not until the time of disclosure in relation to these complaints that he learned about some of her other personal history.

[92] He testified that on occasion he would ask her to assist him in his chambers with work-related matters. However, he denied any of the physical or sexual conduct that she alleges took place, including massaging her breasts, removing her underwear or suggesting they go to a hotel. He denied giving Ms. H a cheque. He agrees, however, that he did give her \$80.00 cash to assist her on another occasion.

[93] The allegations made by Ms. H are very serious. The overall tenor of her testimony is not that Justice Evans engaged in consensual sexual acts with her. Rather, on her account, he would have committed serious sexual assaults on her person. We have carefully assessed the evidence about these allegations having regard to the high standard of proof that must be met. In our view, that onus has not been met.

[94] Several features about Ms. H's testimony raise concerns about her overall credibility. In many respects, there was a certain inconsistency between the manner in which she often portrayed herself as a victim during the course of her testimony and her conduct, as she described it and as she exhibited at the hearing. Details about these matters could serve to identify Ms. H; hence we will not expand upon that aspect of her testimony.

[95] There was also some inconsistency between the incidents as she described and other conduct by Justice Evans. For example, she alleged that in August Justice Evans arranged to have her speak to a counsellor associated with the courthouse with respect to her personal problems. If indeed she was the victim of sexual abuse at the hands of Justice Evans, this would have formed part of the personal stress she was under and it would seem astounding that he would send her for counselling to someone associated with the Barrie courthouse.

[96] Ms. H was under extreme stress during the relevant period of time for various personal reasons that, again in the interest of her privacy, we do not want to give specific details. However, we are left with some concern about her ability to recollect the events of August 2002 with accuracy.

[97] Ms. H did not seem careful in presenting her testimony and several times, particularly when confronted in cross-examination, she gave exaggerated responses. For example, she disagreed with the suggestion put to her in cross-examination that there were frequently people opening Justice Evans's door without knocking first. She testified that his office was "practically sealed most of the time" because he had meetings in there and the "door was closed most of the time." This evidence stands in contrast to the evidence of the numerous other witnesses that testified to Justice Evans open door policy. As well, Ms. H testified that on the occasion where she was retrieving a drink from his fridge, Justice Evans grabbed her shoulder and her right breast. However, in cross-examination it was put to her that she told the police that he touched her shoulders and her arms and "probably my chest." She explained that she was too embarrassed to say the word "breast" at that time but that her ability to do so had improved over time. She was cross-examined on why she had told the police about two episodes of oral sex when she was now testifying they occurred at the same time and she sought to explain the apparent contradiction by suggesting that the police misunderstood her, as she had meant "one for him, one for me". However, in her interview with Mr. Hunt she explains the contradiction by telling him that she is still confused as to whether there was one incident of oral sex or two and that she is not sure if they were at the same time or on two separate occasions. As well, she testified that Justice Evans did not ejaculate during this episode of oral sex but told the police that she was not sure whether he had or not. She also exhibited obvious hostility towards Justice Evans during the course of her testimony.

[98] In many respects, it was improbable that all the incidents happened in the time frame that she described. She testified that they occurred in August and into September of 2002. However, a review of Justice Evans's schedule that month shows that he was only in attendance at the Barrie courthouse on the 1st, 2nd, 6th, 7th and 8th of August. On the days that he did attend the courthouse he made a point of leaving as soon as possible to join his wife and daughter at the side of his father-in-law who was then sick in the hospital. The other days of the month he was either sitting in one of the satellite

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courts, in Bradford, Collingwood or Parry Sound, or on a two week scheduled vacation or at the funeral of his father-in-law. In September of 2002, Monday the 2nd was the Labour Day weekend. On the 3rd, 4th and 5th of September Justice Evans was sitting in Barrie.

[99] It was also unlikely that these incidents would have occurred during the regular work day. Many of the other judges would routinely enter Justice Evans's chambers to use the fridge or the microwave. For example, Justice Palmer would bring his lunch and attend in his chambers three out of five days a week. In addition to the judges, other court staff were constantly entering Justice Evans's chambers. Most of the clerks knocked before entering but the judges often did not. Justice Evans never locked the door.

[100] There were a number of inconsistencies between her testimony and her previous statements, the most significant of which relates to the number of incidents of oral sex. At the very least, this inconsistency seriously impacts on the accuracy of her testimony.

[101] Much was made at the hearing about the fact that Ms. H had failed to note anything unusual about Justice Evans's genitals during the incident of oral sex. Justice Evans testified that he shaves his groin area and, at the time of the alleged oral sex had a red rash on his leg that would have been noticeable to Ms. H. In the overall assessment of Ms. H's evidence, we did not consider this evidence particularly helpful. Hence we do not find it necessary to comment on it further.

[102] In the end result, we are not satisfied that there was sexual misconduct in respect of Ms. H as alleged. We dismiss that complaint.

Conclusion

[103] We find that there has been misconduct as described in these reasons. Counsel will be contacted to fix a date for the continuation of this hearing on the question of appropriate sanction.

DATED at the City of Toronto, in the
Province of Ontario, this 23rd day of
September, 2004.

The Honourable Louise Charron
The Honourable J. David Wake
Jocelyne Côté-O'Hara
Henry G. Wetelainen

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APPENDIX “A” TO DECISION – PARTICULARS OF THE COMPLAINT

The particulars of the complaint regarding the conduct of Justice Kerry P. Evans are set out below:

MS. G

1. Ms. G worked with Justice Evans at the Barrie courthouse. One night during the summer of 1999, Justice Evans called her at her apartment at approximately 11:30 pm. He insisted that, on his way home from the courthouse, he come by and drop off a reference letter that she had requested. Ms. G thought it odd that he insisted on coming by, but provided her address. Justice Evans arrived and stayed for approximately 15 minutes. He was very concerned that Ms. G's landlord, who also worked at the Barrie courthouse, not be woken up or otherwise know of his visit.
2. In November 2001, upon discovering that Ms. G had a romantic interest in a particular lawyer, Justice Evans phoned her at home and challenged her to dare him to tell the lawyer about her interest. Justice Evans asked Ms. G what he would get from her in return if he followed through on the dare. He then asked her, "Would you sleep with me?" Ms. G tried to dismiss the comment as a joke. Justice Evans then went on to disclose that he was having marital problems and asked if she would consider having an affair with him; he said words to the effect, "Would you ever consider sleeping with a fat guy with a big dick?" Ms. G told him she couldn't sleep with him, and the conversation ended.
3. In December 2001, Ms. G was in a Barrie bar with a group of her friends. Justice Evans was also there, and upon noticing her with her friends, he approached her. She was sitting on a bar stool and he put his hands on her upper thighs, leaned in and gave her a kiss on the lips.
4. In January 2002, Ms. G having sent Justice Evans a Christmas card inquired if he had received it when she returned to work after the Christmas holidays. He said no, and led her into his chambers, whereupon he gave her a kiss. Ms. G said "No", and then he kissed her on the lips and put his tongue in her mouth. Ms. G pulled away from

him, but he placed himself between her and the door as she tried to leave. He kissed her again and said, "Say, 'Kerry, I like kissing you'." Ms. G hesitated, said "Kerry..." and then said, "I can't do this. I don't talk like this at the best of times so I can't say that." She then said, "I've got to go." and left his chambers. Later that day, when he was leaving the courthouse parking lot, he waved her over and said, "Thanks, kiddo."

MS. D

5. Ms. D worked with Justice Evans at the Barrie courthouse. On June 19, 2000, she had been in court listening to a pretrial, and was upset by some of the evidence and had to leave the courtroom. As she was standing in the hallway, regaining her composure, Justice Evans noticed her and took her into his chambers to get a tissue. Once there, he began to tug at her gown, trying to remove it. She resisted, telling him, "No". He continued to try and remove her gown, and she told him that it was tied in the back and wouldn't come off. Ms. D's supervisor walked in at that moment, and he stopped.
6. In or about February or March of 2001, Ms. D and Justice Evans were working at the Collingwood courthouse. As court was about to open, Ms. D went upstairs to Justice Evans' chambers to get him. While she was waiting for him to finish a phone conversation, she stood in the corridor outside his chambers, with her back towards a wall and briefly lowered her eyes. She heard him hang up the phone and come toward her. He took his hands and intertwined his fingers in hers, put his chest against hers and pinned her to the wall. She recalls him saying something to her, but cannot recall what it was. He moved away from her, and then continued on to the courtroom.
7. In August 2001, two court staff and Ms. D, along with Justice Evans, took a government car up to the Collingwood courthouse. Before arriving at the courthouse, the group stopped to pick up coffee. They returned to the car, and Ms. D was standing at the door, alongside Justice Evans, as

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they waited for the driver to unlock the doors. As she was getting into the car, Justice Evans grabbed her left buttock.

8. Throughout the months of February, April, June and September of 2002, Ms. D was working with Justice Evans. Whenever Ms. D would open the doors to get to court, she would feel Justice Evans’ arm against her, or his chest or his stomach pressing against her, making her feel uncomfortable. On at least two occasions during this time, he asked her if she wanted a candy. When she refused, he took advantage of her arms being full of files to try and put the candy in her mouth. Ms. D backed away, removed his hand, and refused the candy.

MS. E

9. Ms. E worked with Justice Evans at the Barrie courthouse. She was standing with a group of friends at the Criminal Lawyers’ Association Christmas party in December 2000. The event was held at the offices of a group of Barrie lawyers. She was talking with her friends, and her back was to a corner; Justice Evans was standing beside her. He reached over and touched her buttocks. She was surprised, but continued talking with the group. She believes that she moved away from Justice Evans at that point.

MS. F

10. Ms. F worked with Justice Evans at the Barrie courthouse. In February 2001, Justice Evans phoned Ms. F at home one evening at approximately 7:00 pm, and told her to join him at the court to help photocopy. Justice Evans was in his chambers and she went in. They sat on his couch and he began to ask her about what her ideal dream date would be like, her ideal man, what would make her happy. She asked where the photocopying was, and seeing no work to be done, she said she was leaving. When she stood up to leave, Justice Evans grabbed her and began dancing with her. She tried to leave and when she placed her hand on the doorknob, he leaned

in and kissed her. She thinks he may have done it a second time, and recalls him saying, “C’m on, kiss me, kiss me.” She said she had to go, and left. Several days later, Justice Evans called Ms. F at home and apologized, but commented to her that, in any event, she had not fought him off.

MS. H

11. Ms. H worked with Justice Evans at the Barrie courthouse. In or about August 2002, Justice Evans called Ms. H into his chambers, and while there, asked her to get a drink out of the fridge located in the closet. She bent over to remove a drink from the fridge; when she attempted to stand up, Justice Evans was in front of her and grabbed her. He began caressing her shoulders, chest and arms and stroking her breasts, saying, “I know you like this”. Ms. H believes he kissed her. She told him that she had to get back to work.
12. On a separate occasion in or about August 2002, Justice Evans called Ms. H into his chambers and when she sat down, Justice Evans began massaging her shoulders and touching her breasts. Ms. H recalls him constantly talking during the incident, asking, “Do you like this?” repeatedly. Justice Evans then took Ms. H’s underwear down and touched her vagina. Justice Evans talked throughout the incident, telling Ms. H she was enjoying it. Justice Evans also offered Ms. H money to buy lingerie to wear for him.
13. On a separate occasion in or about August 2002, Justice Evans called Ms. H into his chambers. As she stood up to leave, he approached her and manoeuvred her backwards through his change room and into his private washroom. She was wearing a skirt; Justice Evans took down her underwear and performed oral sex on her. He suggested to her that she tell her manager she was sick and leave for the day so that they could meet at a hotel. She refused.
14. On a separate occasion in or about August 2002, Ms. H was in Justice Evans’ chambers at the Barrie courthouse and he manoeuvred her into his washroom. He took her hands and began

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rubbing them across his crotch and putting her hands in his pants. He pushed her towards the floor and told her to her to perform oral sex on him, which she did.

15. On a separate occasion in or about August or September of 2002, Ms. H was in Justice Evans's chambers when he came up behind her and began grabbing her breasts through her clothes. Another court employee knocked on the door and walked in, and Justice Evans stopped.

MS. C

16. In or about December 2002, Justice Evans and Ms. C were chatting in his chambers while court was in recess. During discussion of Christmas gifts for Justice Evans's wife, Ms. C suggested that her husband's cousin, a pilot, could provide a helicopter ride. Justice Evans inquired if the cousin was young and good-looking. When she indicated that she thought so, Justice Evans placed his open hand on her crotch, over her gown, and said words to the effect, “Well, I'd just hold a gun to him right here, then”. When she protested, he patted her on her buttocks, and said, “Ok, come on, let's go.” and proceeded back to court.

MS. A

17. On a series of occasions throughout 2000, and into early 2001, Justice Evans stood close to Ms. A and would on occasion touch Ms. A while standing close to her. These actions made her feel uncomfortable and she twice asked Justice Evans to step back.
18. On a separate occasion in 2000, Justice Evans telephoned Ms. A at home at approximately 11:00 p.m. There was no real reason for the call and the conversation was casual. Justice Evans asked Ms. A if he had woken her up. She said he had. He replied with words to the effect, “Well, now that you're awake, you can have sex with your partner.” Ms. A made no comment in reply.
19. On a separate occasion in 2000, Ms. A was alone with Justice Evans in his chambers in

Collingwood. She commented about a gentleman who was giving her some difficulty. Justice Evans rose from his desk and stood in front of Ms. A. He said she should have grabbed the gentleman who was giving her difficulty, and put his hand toward her groin and touched her there. Ms. A was given the impression that Justice Evans was trying to portray grabbing someone by the penis.

20. On a subsequent occasion, Justice Evans called Ms. A into his chambers and asked whether she had told anyone that he had sexually harassed her. She indicated she had. Justice Evans replied that there was a possibility of an investigation. He asked Ms. A what she would say if she was asked about the allegation of sexual harassment. She stated she would “tell the truth”. Justice Evans then said, “I'd prefer it if you said it was unfounded.” Justice Evans then went on to say that he could only recall being told once by Ms. A not to stand too close to him. Ms. A indicated she had told him twice.

MS. B

21. On September 5, 2000, Ms. B attended the swearing-in ceremony of the Barrie Chief of Police. Ms. B had known Justice Evans professionally for many years. As guests were socializing amongst themselves after the ceremony, Justice Evans and Ms. B greeted one another. Justice Evans reached out his hand in what she thought was a greeting, and touched Ms. B in her pubic area.

