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# ONTARIO JUDICIAL COUNCIL

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## PROCEDURES DOCUMENT

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## 1. OVERVIEW

The *Courts of Justice Act*, R.S.O. 1990, c. C. 43, establishes the Ontario Judicial Council as the independent body that receives and investigates complaints about the conduct of provincially appointed judges who sit on the Ontario Court of Justice.

The objective of the Judicial Council's complaint process is to maintain public confidence in the judiciary, and to restore that confidence when it is threatened by the conduct of a provincial judge.

The Ontario Judicial Council's website and the Annual Reports available on the Judicial Council's website provide detailed information about the role of the Judicial Council and the judicial complaints process.

## 2. DEFINITIONS

2.1 In these Rules of Procedure,

- a) "accommodation subcommittee" means a subcommittee established to determine an application made under section 45(1) of the *Courts of Justice Act* and consisting of one judge and one community member of the Judicial Council;
- b) "Act" means the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended;
- c) "complaint subcommittee" means a subcommittee established to review a complaint pursuant to section 51.4(1) of the *Courts of Justice Act* and consisting of a provincial judge other than the Chief Justice and a person who is neither a judge nor a lawyer;
- d) "Hearing Panel" means a panel established to conduct a hearing pursuant to subsection 49(16) of the *Courts of Justice Act*. Half of the members of a Hearing Panel are judges and half are not judges. The members on a panel include the Chief Justice of Ontario or another judge of the Court of Appeal designated by the Chief Justice, and at least one person who is neither a judge nor a lawyer;
- e) "judge" means a judge of the Ontario Court of Justice unless otherwise indicated.
- f) "Presenting Counsel" means counsel engaged on behalf of the Judicial Council to prepare and present the case against a judge who is the subject of a hearing into a complaint;
- g) "provincial judge" means a judge appointed by the Lieutenant Governor in Council pursuant to section 42 of the *Courts of Justice Act*;

h) “review panel” means a panel established pursuant to section 49(14) of the *Courts of Justice Act* and consisting of two provincial judges other than the Chief Justice, a lawyer, and a person who is neither a judge nor a lawyer;

i) “subject judge” means the judge who is the subject of a particular complaint.

2.2 All other words in these Rules of Procedure shall, unless the context otherwise indicates, bear the meanings ascribed to them by the *Courts of Justice Act*, as amended.

### **3. INTERPRETATION**

3.1 The *Courts of Justice Act* (Appendix A) sets out the statutory framework that governs the complaint process.

3.2 Where matters are not provided for in these Rules of Procedure, the practice shall be determined by analogy to them.

3.3 Where these Rules of Procedure refer to a section of a statute, the reference is to the corresponding provision in the *Courts of Justice Act* unless a different statute is specified.

3.4 Where these Rules of Procedure specify the number of days within which something is to be done, the passage of time shall be calculated as the number of calendar days.

3.5 These Rules of Procedure shall be interpreted in a manner consistent with the Judicial Council’s objective of preserving and restoring public confidence in the judiciary in general, rather than in any particular judge who may be the subject of a complaint.

3.6 These Rules of Procedure shall be interpreted in a manner that balances the need for judicial independence with the need for judicial accountability.

### **4. COMPLAINTS – GENERAL**

4.1 Complaints to the Judicial Council should be made in writing.

4.2 An anonymous complaint may be considered by the Judicial Council where a complaint subcommittee is satisfied that the allegations raise a serious issue of judicial misconduct that may be independently verified.

- 4.3 If a complainant indicates in writing that they wish to withdraw their complaint, a complaint subcommittee may:
- a) Treat the matter as withdrawn; or
  - b) Proceed to review the matter on the basis that it warrants further consideration by the Council.
- 4.4 If a judge is asked to respond to a complaint, the rules of natural justice require that the judge be provided with disclosure of all materials under consideration by the investigating complaint subcommittee, including the letter of complaint.
- 4.5 If a public hearing into a complaint is ordered by a review panel, the letter of complaint shall be filed by Presenting Counsel at the hearing in accordance with rule 17.
- 4.6 The Judicial Council does not have the legal authority to change any decision of a judicial officer.
- 4.7 Where any allegations in a complaint to the Judicial Council relate to an ongoing court, tribunal or other legal proceeding, the Registrar shall advise the complainant that the Judicial Council does not generally consider such complaints until the proceedings, and any appeal or judicial review thereof, have been completed. This approach prevents the Judicial Council's consideration of a complaint from interfering with, or from being perceived as interfering with, any ongoing legal proceedings.
- 4.8 The Judicial Council does not have jurisdiction over a judge who has ceased to hold office.
- 4.9 If the Judicial Council loses jurisdiction over a complaint, the Registrar shall inform the complainant that the subject of the complaint is no longer a judge and that the Judicial Council no longer has jurisdiction to continue with the complaint process.
- 4.10 If it is plain and obvious that a complaint does not contain allegations about the conduct of a provincial judge, the Registrar shall inform the complainant in writing,
- a) that the complaint does not appear to make allegations regarding the judge's conduct;
  - b) that the Judicial Council's jurisdiction is limited to the investigation and review of complaints about judicial conduct;

- c) that if the complainant disagrees with the judge's interpretation or application of the law, the complainant should seek an appropriate remedy through the courts, for example, by way of an appeal; and
  - d) that because the complaint is outside the Judicial Council's jurisdiction, the complaint will not be referred to a complaint subcommittee for investigation, and a complaint file will not be opened.
- 4.11 If a complaint relates to a participant in the justice system other than a provincial judge, staff of the Office of the Judicial Council shall refer the complainant to the appropriate agency or office where the complainant's concerns may be pursued.
- 4.12 Complaints about a judge's interpretation or application of section 136 of the *Courts of Justice Act*, which sets out the prohibition against recording in the courtroom, or of the *Protocol Regarding the Use of Electronic Communication Devices in Court Proceedings* (Appendix C) are not, in and of themselves, complaints about conduct.
- 4.13 Council staff may decline to respond to communications that:
- a) contain abusive, rude, harassing, or threatening language;
  - b) are persistent, repetitive, or vexatious, including repeated communications raising the same issue after a substantive response has been provided;
  - c) contain bald or generalized allegations of misconduct without any particulars or substantiating information; or
  - d) consist primarily of academic, hypothetical, or mischievous inquiries that do not relate to an identifiable complaint within the Council's mandate.
- 4.14 A complaint must be presented in a form that permits the Council to understand and assess the substance of the allegations. Without limiting the generality of the foregoing, a complaint must be legible and must contain sufficient particulars to enable meaningful review, including:
- a) information permitting the judge who is the subject of the complaint to be identified (e.g., by including court location and appearance dates);
  - b) a clear description of the alleged conduct giving rise to the complaint; and
  - c) relevant dates or timeframes of the alleged conduct.

Complaints that lack sufficient particulars may be declined or returned with a request for clarification or resubmission.

- 4.15 The Council is not required to review or consider voluminous or repetitive materials beyond what is reasonably necessary to understand the allegations. Where a complaint is longer than the equivalent of 6 double-spaced pages in 12-point font, irrelevant, unfocused, or otherwise framed in a manner that does not permit Council staff to efficiently identify the substance of the allegations or assess jurisdiction, Council staff may:
- a) request that the complaint be resubmitted in accordance with rule 4.14; or
  - b) refer the matter to a complaint subcommittee in accordance with rule 4.16.
- 4.16 Council staff may refer correspondence to a complaint subcommittee of the Council to obtain direction on the management of the correspondence. A subcommittee may direct that:
- a) correspondence from a complainant not be accepted or responded to;
  - b) correspondence may be accepted subject to reasonable conditions, including limits on length, frequency, or format; or
  - c) Council staff take such other administrative steps as the subcommittee considers appropriate.

## **5. COMPLAINTS ABOUT THE CHIEF JUSTICE OR THE ASSOCIATE CHIEF JUSTICE OR THE REGIONAL SENIOR JUSTICE APPOINTED TO THE JUDICIAL COUNCIL**

- 5.1 Section 50(1) of the *Courts of Justice Act* applies if the Chief Justice of the Ontario Court of Justice is the subject of a complaint to the Judicial Council.
- 5.2 Section 50(3) of the *Courts of Justice Act* applies if the Associate Chief Justice of the Ontario Court of Justice or the regional senior judge appointed to the Judicial Council is the subject of a complaint to the Judicial Council.

## **6. CONFIDENTIALITY OF THE COMPLAINT PROCESS**

- 6.1 The investigation stage and the consideration of the complaint by the review panel shall be conducted in private and are confidential. If a review panel has ordered a hearing, after the Notice of Hearing is served on the judge, the hearing becomes

public, unless there are exceptional circumstances and a Hearing Panel orders otherwise.

- 6.2 If any person, other than a judge asking about a complaint in relation to that judge's own conduct, asks whether a particular complaint has been made, the Judicial Council will consider whether it is appropriate in the circumstances to confirm or deny that a complaint has been made to it. The Council shall exercise the discretion to confirm or deny that a complaint has been made on a case-by-case basis having regard to the statutory framework set out in the *Courts of Justice Act* which requires that the complaint process is confidential unless a public hearing into a complaint is ordered. Requests shall be dealt with in writing. If it is determined that a hearing is warranted, the hearing process, by contrast, is public after the Notice of Hearing is served on the judge, unless a Hearing Panel has ordered that there are exceptional circumstances that require that all or part of the hearing be held in private.
- 6.3 If a provincial judge asks whether a complaint has been made in relation to that judge's own conduct, the Registrar or his or her delegate shall confirm whether a complaint has been made about the judge and provide the judge with a copy of the Judicial Council's procedures. However, in order to preserve the confidentiality of the investigation required by the Act and ensure the effectiveness of the investigation process, the judge shall not be provided with a copy of the complaint.
- 6.4 The Judicial Council has ordered that – subject to an order by the Council, a complaint subcommittee, a review panel or a hearing panel – any information or documents arising from or relating to the complaints process or a Council meeting or hearing that was not held in public are confidential and shall not be disclosed or made public.<sup>1</sup> The order applies whether the information or documents are in the possession of the Judicial Council, the Attorney General, or any other person, but does not apply to information and/or documents,
- a) that the *Courts of Justice 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 complaints process, Council meeting or hearing.

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<sup>1</sup> For more information about the order of confidentiality, see *In the Matter of the Application Brought by the Toronto Star and the Criminal Lawyers' Association* (OJC, 2014) posted on the OJC's website under the link "Confidentiality".

- 6.5 For greater clarity, documents reviewed by a complaint subcommittee, review panel, or the Judicial Council, as applicable, including complaint letters, complaint subcommittee reports, judges' responses to complaints, and the Chief Justice's reports to a review panel, are presumed to be confidential and may not be disclosed or made public at any stage of the complaint process unless the document is filed in evidence at a public hearing. Where such documents are filed in evidence at a public hearing, a hearing panel may make an order that certain information or documents remain confidential or are subject to a publication ban in accordance with rule 18.5.

## **7. EXCEPTIONS TO THE GENERAL REQUIREMENT OF CONFIDENTIALITY OF DOCUMENTS AND INFORMATION**

- 7.1 The Judicial Council may release letters from a complainant, and/or a disposition letter, and/or any related voicemails,
- a) to the local police and/or the Justice Sector Security Office, if the communication itself could constitute a criminal offence and those documents or audio recordings may be relevant to determining whether there is a need for action to prevent harm to a person; or
  - b) for use in any criminal trial that results from the actions or comments of a complainant that are related to the complaint or the disposition of the complaint.
- 7.2 If a complainant brings a civil action against the Judicial Council or its staff or brings an application for judicial review, the Judicial Council may release any letters to and from the complainant and/or any disposition letter to a lawyer retained on behalf of the Judicial Council to defend the Judicial Council in the proceeding. So long as it is in accordance with the Judicial Council's instructions, the lawyer retained by the Judicial Council may use the letters in whatever way the lawyer deems advisable in the course of litigation.
- 7.3 Nothing in these Rules of Procedure shall prevent a complainant from making his or her own complaint letter public. The Judicial Council recognizes a complainant's right to make his or her own complaint public.
- 7.4 If,
- a) a judge has been suspended with pay or reassigned to a different location under s. 51.4(8) pending final disposition of the complaint; and
  - b) a hearing has been ordered and the complaint process has become public,

the policy objectives of the statutory framework of preserving confidence in the judiciary and in the administration of justice are best achieved by disclosing that the judge has been suspended with pay or reassigned to a different location. Once the Notice of Hearing has been served on the judge and the complaints process has become public, it shall be disclosed on the Council's website that the judge has been suspended with pay or reassigned to a different location as a result of an interim recommendation under s. 51.4(8), subject to any order of the hearing panel.

## **8. INVESTIGATIONS**

- 8.1 The members of a complaint subcommittee shall 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.
- 8.2 A complaint subcommittee may consult with a review panel to seek its input and guidance during the investigative stages of the complaint process.
- 8.3 If the Judicial Council receives a new complaint about a judge who is already the subject of an open complaint file, and the new complaint is similar in nature to an outstanding complaint about that judge, the Registrar may assign the new complaint to the same complaint subcommittee that is investigating the earlier outstanding complaint.
- 8.4 Every complaint subcommittee shall expeditiously investigate and dispose of the complaint files for which it is responsible.
- 8.5 Neither member of a complaint subcommittee may take any action in relation to their investigation of a complaint without having obtained the agreement of the other member after a discussion between them of the merits of the action proposed.
- 8.6 If the members of a complaint subcommittee cannot agree whether a particular action should be taken in relation to its investigation of a complaint, the complaint subcommittee shall refer the matter to a review panel. The review panel assumes carriage of the matter.
- 8.7 The complaint subcommittee will examine the complaint, as well as such materials as it considers appropriate, which may include transcripts, audio recordings, and documents from the court file. The Registrar or his or her delegate shall, on behalf of a complaint subcommittee obtain such information or materials as the subcommittee determines to be appropriate in the course of its investigation.

- 8.8 If a transcript is ordered, court reporters shall be instructed by the Registrar or his or her delegate not to submit the transcript to the subject judge for editing.
- 8.9 If a complaint subcommittee decides to retain independent counsel to provide legal advice and/or to assist in its investigation by interviewing witnesses or obtaining documents, the Registrar shall retain counsel on its behalf and communicate the subcommittee's instructions to counsel.
- 8.10 The judicial discipline process is remedial. The Registrar shall bring to the attention of every complaint subcommittee any previous complaint and disposition history that the subject judge has had with the Judicial Council except dismissed complaints to which the subject judge was not invited to respond, and make available to the complaint subcommittee any materials from previous complaint files that the complaint subcommittee may request.

### **Judge's Response to a Complaint**

- 8.11 When a complaint subcommittee chooses, as part of its investigation, to invite a response from the subject judge, the Registrar shall, in accordance with the instructions of the complaint subcommittee, communicate that invitation to the subject judge in writing along with any particular concerns that the complaint subcommittee wishes to express.
- 8.12 As part of any invitation to respond to a complaint, the Registrar shall provide to the judge a copy of the materials under consideration by the subcommittee, including a copy of the complaint and all relevant materials, including transcripts, from the complaint file, and the disposition history of the judge other than dismissed complaints to which the judge was not invited to respond.
- 8.13 The judge is provided with 30 days from the date of the letter to respond to the complaint. The judge is not obliged to provide a response. If he or she does provide a response, the subcommittee shall review and consider the response in the course of its investigation.
- 8.14 If a judge requires an extension of time to respond, he or she, or counsel, must make the request in writing through the Registrar, providing brief reasons. The complaint subcommittee may grant such extension as it considers appropriate for the judge's response.
- 8.15 If the judge's response is not received within 30 days or the extended deadline, if any, the Registrar or his or her delegate shall,

- a) advise the complaint subcommittee that the judge has not responded; and
  - b) send a reminder letter to the judge by registered mail or email.
- 8.16 If the judge's response is not received within 10 days of the date of the reminder letter, and the complaint subcommittee is satisfied that the judge is aware of the complaint and has received disclosure of the complaint, the complaint subcommittee shall proceed with determining its recommendation to the review panel of the appropriate disposition, notwithstanding that the judge has not responded.
- 8.17 If a judge provides a response to the complaint, the response shall be considered for any purpose in connection with,
- a) the disposition of the complaint under section 51.4(13) by the complaint subcommittee; and/or
  - b) the disposition of the complaint under section 51.4(18) by the review panel.
- 8.18 A judge's response to a complaint may form part of the evidence tendered at a hearing under section 51.6 for consideration by the hearing panel at any stage of the hearing.

## **9. INTERIM RECOMMENDATION OF REASSIGNMENT OR SUSPENSION WITH PAY**

- 9.1 As the body designated by the *Courts of Justice Act* to investigate and determine the appropriate disposition of complaints about the conduct of provincial judges, pending the final disposition of a complaint, the Judicial Council has the primary responsibility for considering whether a judge who is the subject of a complaint should be suspended with pay or reassigned to a different location.
- 9.2 In deciding whether to recommend the temporary suspension or reassignment of a judge pending the final disposition of a complaint, a complaint subcommittee shall consider whether any of the following factors are present:
- a) the complaint arises out of a working relationship (remote or in person) between the judge and the complainant and/or an affected third party;
  - b) allowing the judge to continue to preside would likely bring the administration of justice into disrepute;
  - c) the complaint is of sufficient seriousness that there are reasonable grounds for investigation by law enforcement agencies; and/or

- d) there are concerns about the competence and/or capacity of the judge to perform the essential duties of office.
- 9.3 If a complaint subcommittee proposes to recommend temporarily suspending or reassigning a judge, it may give the judge an opportunity to be heard on that issue in writing. If the subcommittee invites a response on the question of whether or not it should make an interim recommendation, the Registrar, on behalf of the subcommittee, shall inform the judge of the applicable criterion or criteria in rule 9.2 on which the subcommittee intends to rely.
- 9.4 The complaint subcommittee shall deliver its invitation to respond to a proposed temporary suspension or reassignment by courier or email.
- 9.5 If a judge requires an extension of time to respond, he or she, or counsel, must make the request in writing through the Registrar, providing brief reasons. The complaint subcommittee may grant such extension as it considers appropriate for the judge's response.
- 9.6 If the judge does not respond within 10 days from the date of mailing or emailing, or the extended deadline, if any, the complaint subcommittee may proceed with its recommendation for a temporary suspension or reassignment.
- 9.7 If a complaint subcommittee recommends a temporary suspension or reassignment pending the final disposition of the complaint, particulars of the applicable criteria in rule 9.2 on which the complaint subcommittee's recommendation is based shall be provided contemporaneously to the regional senior judge and the subject judge to assist the regional senior judge in making his or her decision and to provide the subject judge with notice of the complaint subcommittee's recommendation and the reasons therefor.
- 9.8 If a complaint subcommittee recommends a temporary suspension or reassignment pending the final disposition of the complaint, the complaint subcommittee may provide to the regional senior judge any previous complaint and disposition history that the subject judge has had with the Judicial Council which the complaint subcommittee considers relevant to their recommendation.

## **10. REPORT OF THE COMPLAINT SUBCOMMITTEE**

- 10.1 Although the Act confers on a complaint subcommittee the power to directly dismiss a complaint or refer the complaint to mediation or to the Chief Justice, it is the policy of the Judicial Council that a complaint subcommittee shall refer a complaint to a

review panel unless, in the view of the subcommittee, the complaint is clearly outside the Council's jurisdiction, or is frivolous or an abuse of process.

- a) A complaint may be considered outside the jurisdiction of the Council if it relates to decisions made by a provincially appointed judge and does not raise an issue of judicial conduct.
- b) A complaint may be considered frivolous if it contains allegations that obviously have no merit and/or which, even if proven, do not raise an issue of judicial conduct warranting consideration by the Council.
- c) A complaint may be considered an abuse of process in circumstances where the complainant is engaging in an ongoing course of conduct of filing multiple complaints to the Council in relation to issues that the Council previously considered and dismissed as outside the jurisdiction of the Council and/or as frivolous in nature.
- d) A complaint 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 on the basis that it is outside the Council's jurisdiction, or is frivolous or an abuse of process.

10.2 If, after investigating the complaint, the complaint subcommittee concludes that there is insufficient evidence to support a finding of judicial misconduct, the complaint subcommittee may recommend dismissal of the complaint.

10.3 If, after investigating the complaint, the complaint subcommittee concludes that,

- a) referring the complaint to the Chief Justice of the Ontario Court of Justice is a suitable means of informing the judge that the judge's conduct was not appropriate in the circumstances that led to the complaint;
- b) the conduct complained of does not warrant another disposition; and
- c) there is some merit to the complaint,

the complaint subcommittee shall recommend to the review panel that the complaint be referred to the Chief Justice of the Ontario Court of Justice.

10.4 If a complaint subcommittee recommends referral of the complaint to the Chief Justice of the Ontario Court of Justice and the complaint subcommittee concludes that there is some course of action or remedial training of which the subject judge

could take advantage, the complaint subcommittee shall recommend imposing such conditions on the referral, although the complaint subcommittee may not impose such conditions without the subject judge's consent.

- 10.5 If, after investigating the complaint, a complaint subcommittee concludes that the complaint alleges judicial misconduct that,
- a) has a basis in fact; and
  - b) could result in a finding of judicial misconduct if such facts are accepted by the Hearing Panel,

the complaint subcommittee may recommend to a review panel that a hearing be held.

- 10.6 A complaint subcommittee must be unanimous in its decision to recommend dismissal of a complaint, referral of the complaint to the Chief Justice of the Ontario Court of Justice, referral of the complaint to a mediator, or referral of the complaint to a hearing. If the members of a complaint subcommittee cannot agree on the disposition of the complaint, the complaint subcommittee shall refer the matter to a review panel. The review panel assumes carriage of the matter.
- 10.7 If a complaint subcommittee refers a complaint to a review panel, the complaint subcommittee shall forward to the review panel all documents, transcripts, statements, and other evidence that it considered in reviewing the complaint, including the response of the subject judge, if the judge provided a response.
- 10.8 If a complaint subcommittee recommends holding a hearing into the complaint, the complaint subcommittee may also recommend that the hearing be held in private. If such recommendation is made, the criteria established by the Judicial Council in Rule 19.1 shall be used.
- 10.9 If a subcommittee refers a complaint to the review panel, the complainant and the subject judge may be identified to the review panel thereof, regardless of whether the complaint subcommittee recommends holding a hearing.

## **11. REVIEW PANELS**

- 11.1 The Judicial Council may form review panels at each of its regularly scheduled meetings, so long as the quorum required to address each complaint under the Act can be satisfied.

11.2 At least one member of a complaint subcommittee reporting on an investigation shall be present, whether in person or through electronic means, including telephone conferencing and video conferencing, when that complaint subcommittee's report is presented to a review panel.

## **12. REVIEW PANEL'S DECISION ON THE APPROPRIATE DISPOSITION**

12.1 The review panel shall examine,

- a) the report of the complaint subcommittee;
- b) the complaint letter;
- c) materials from the investigation as recommended by the complaint subcommittee; any response from the subject judge; and
- d) any other material it considers relevant,

and ensure that the review panel is 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 or recommendations to the review panel about the disposition of the complaint.

12.2 The review panel may refer the complaint back to the complaint subcommittee for further investigation or make any other direction or request of the complaint subcommittee that the review panel considers appropriate.

12.3 The judicial discipline process is remedial. The Registrar shall bring to the attention of the review panel any previous complaint and disposition history that the subject judge has had with the Judicial Council except dismissed complaints to which the subject judge was not invited to respond, and make available to the review panel any materials from previous complaint files that the review panel may request.

12.4 The review panel may approve of the subcommittee's recommended disposition or may impose a different disposition from that recommended by the subcommittee.

12.5 If the review panel does not approve of the complaint subcommittee's recommended disposition, it may require the complaint subcommittee to refer the complaint to the review panel.

12.6 If the majority of the members of the review panel are of the opinion that,

- a) there has been an allegation of judicial misconduct that has a basis in fact; and
- b) such allegations, if believed by a Hearing Panel, could result in a finding of judicial misconduct,

the review panel may order that the complaint proceed to a hearing under section 51.6 of the *Courts of Justice Act*.

12.7 If the review panel orders that a hearing of the complaint be held, the review panel may also recommend that the hearing be held in private. If such recommendation is made, the criteria established by the Judicial Council in Rule 19.1 shall be used.

12.8 If the majority of the members of the review panel conclude that,

- a) the complaint falls outside the Judicial Council's jurisdiction;
- b) the complaint is frivolous;
- c) the complaint is an abuse of process;
- d) the complaint is unfounded; or
- e) the evidence could not support a finding of judicial misconduct,

the review panel shall dismiss the complaint.

12.9 If the majority of the members of the review panel conclude that,

- a) referring the complaint to the Chief Justice of the Ontario Court of Justice is a suitable means of informing the judge that the judge's conduct was not appropriate in the circumstances that led to the complaint;
- b) the conduct complained of does not warrant another disposition; and
- c) there is some merit to the complaint,

the review panel shall refer the complaint to the Chief Justice of the Ontario Court of Justice.

12.10 If the review panel is considering a referral of the complaint to the Chief Justice with conditions (such as education or treatment), the judge will be asked whether they agree to such conditions, as required by section 51.4(15) of the *Courts of Justice Act*. The judge's willingness to fulfill the proposed conditions is relevant to the review

panel's deliberations in considering the dispositions provided for under section 51.4(18), including holding a hearing. If the judge does not agree to the proposed conditions of the referral, the complaint remains with the review panel for further consideration and the review panel may decide to hold a hearing in the matter.

- 12.11 If a complaint is referred to the Chief Justice of the Ontario Court of Justice, following the meeting with the judge, the Chief Justice shall provide a written report on the meeting and the course of training or recommended action, if any, to the review panel.

### **13. NOTICE OF THE DECISION TO THE COMPLAINANT AND TO THE JUDGE**

- 13.1 In accordance with the instructions of the complaint subcommittee or review panel, the Registrar or delegate shall draft a letter to the complainant advising the complainant of the disposition of the complaint. The complaint subcommittee or review panel shall consider and approve the draft letter, which shall then be prepared in final form and sent to the complainant.
- 13.2 The Registrar or delegate shall provide a copy of the disposition letter to the judge who was the subject of the complaint in circumstances where he or she was asked for a response to the complaint.
- 13.3 If the complaint is dismissed and a response was not sought from the subject judge, the Judicial Council shall provide a copy of the disposition letter to the judge unless the judge has given instructions to waive such notice.

### **14. HEARINGS**

- 14.1 These Rules of Procedure shall be liberally construed so as to ensure the just determination of every hearing on its merits.
- 14.2 The Hearing Panel's mandate is to inquire into the facts to determine whether there has been judicial misconduct, and, where judicial misconduct is found, determine the appropriate disposition or dispositions that will preserve or restore public confidence in the judiciary.

### **15. INDEPENDENT PRESENTING COUNSEL**

- 15.1 If the Judicial Council, or a review panel thereof, orders that a hearing of a complaint be held, the Registrar shall, on behalf of the Judicial Council, retain legal counsel to act as Presenting Counsel.

- 15.2 A lawyer or law firm that was retained to assist a subcommittee in its investigation of a complaint may not be retained as Presenting Counsel for any hearing of the same complaint.
- 15.3 During the OJC hearing process, Presenting Counsel is not instructed by the hearing Panel or the Registrar and shall operate independently. Once the hearing process is complete, counsel takes instructions from the Registrar in any court proceedings arising from the hearing.
- 15.4 All communications between Presenting Counsel and the Hearing Panel shall be made in the presence of counsel for the judge, where the judge has retained counsel, and in the case of written communications, such communications shall be copied to the judge.
- 15.5 The duty of Presenting Counsel is to ensure that the complaint against the judge is evaluated fairly and dispassionately so as to achieve a just result and preserve or restore confidence in the judiciary. Following a finding of judicial misconduct, Presenting Counsel may make submissions on the appropriate disposition, or combination of dispositions, necessary to restore public confidence in the judge and in the administration of justice.

## **16. LEGAL COUNSEL FOR THE JUDGE**

- 16.1 The judge has the right to be represented by counsel, or to act on his or her own behalf, in any hearing under these Rules of Procedure.

## **17. NOTICE OF HEARING**

- 17.1 A hearing shall be commenced by a Notice of Hearing, which Presenting Counsel shall prepare for the approval of the review panel that referred the complaint for a hearing.
- 17.2 The Notice of Hearing shall contain,
  - a) a reference to the statutory authority under which the hearing will be held;
  - b) the time and place of the commencement of the hearing;
  - c) a statement of the purpose of the hearing;

- d) a statement that if the judge does not attend at the hearing, the Hearing Panel may proceed in the judge's absence and the judge will not be entitled to any further notice of the proceeding;
  - e) Appendix A, containing a statement of the particulars of the allegations against the judge, including any allegations of misconduct arising during the investigation that were ordered to a hearing by a review panel of the Council; and
  - f) Appendix B, containing the letter of complaint. If there are allegations in the letter of complaint that are not part of the allegations of misconduct ordered by a review panel to a hearing, such allegations shall be redacted from the complaint letter found in Appendix B, subject to any order of the hearing panel.
- 17.3 Presenting Counsel shall cause the Notice of Hearing to be served upon the judge by personal service, or upon motion to the Hearing Panel hearing the complaint, an alternative to personal service, and shall file proof of service with the Judicial Council.
- 17.4 If counsel for the judge agrees to accept service by email on behalf of the judge, Presenting Counsel may effect service by emailing an electronic copy of the Notice of Hearing to counsel for the judge.
- 17.5 Presenting Counsel shall file the Notice of Hearing as an exhibit at the initial set-date appearance, subject to any order of the hearing panel.
- 17.6 A hearing panel may impose a publication ban in respect of any information contained in the Notice of Hearing, including any appendix thereto, in accordance with s. 51.6(9)-(10) of the *Courts of Justice Act* and/or rule 18.5.
- 17.7 Before the Notice of Hearing is filed as an exhibit, Presenting Counsel shall seek the position of the complainant(s) and any witness(es) identified in the Notice of Hearing and related appendices on whether their names or other identifying information should be redacted and/or a publication ban should be sought. The hearing panel has authority to make any direction or order in this regard as it sees fit.

## **18. PUBLIC INFORMATION ABOUT HEARING PROCEEDINGS**

- 18.1 Recognizing the role that the complaint process has in maintaining and restoring public confidence in the judiciary, and that the legislative requirements for maintaining privacy do not apply to formal hearings under section 51.6 of the *Act*, after the judge

is served with the Notice of Hearing, the complaint shall become public, subject to any orders by the Hearing Panel.

- 18.2 Once the complaint has become public, the Registrar shall cause notice of the hearing to be,
  - a) posted in the prescribed form on the Judicial Council's website, subject to any orders by the Hearing Panel; and
  - b) published in a local newspaper not less than two weeks prior to the commencement of the hearing.
- 18.3 The public notice posted and published by the Registrar shall include a brief summary of the allegations of misconduct. If the judge has been suspended with pay or reassigned to a different location under s. 51.4 pending the final disposition of the complaint, the Registrar shall include that information on the Council's website.
- 18.4 The Hearing Panel may, on such grounds as it deems appropriate, abridge the time for publication of the notice by the Registrar.
- 18.5 The Hearing Panel may, on motion by any party and at any time during the hearing, order that certain information or documents remain confidential or be subject to a publication ban, including information contained in the allegations in the Notice of Hearing.
- 18.6 When a party files a motion requesting a publication ban, the Judicial Council shall provide public notice of any motion for a publication ban on its website.
- 18.7 The onus is on the party bringing a motion for a publication ban to give proper notice of the motion to major media outlets.
- 18.8 If a party believes that a publication ban ordered by the Hearing Panel may have been violated, the party may file a motion in writing requesting that the Hearing Panel state a case to the Divisional Court, pursuant to section 13 of the *Statutory Powers Procedures Act*, so that the Court may inquire into the facts to determine whether there has been a violation of the publication ban.

## **19. EXCEPTIONS TO FULLY OPEN HEARING — CRITERIA**

- 19.1 When deciding whether there are exceptional circumstances that justify maintaining confidentiality and holding all or part of a hearing in private, the Hearing Panel shall consider,
- a) whether matters involving public security may be disclosed at the hearing; and
  - b) whether 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.

## **20. CRITERIA FOR DISCLOSING IDENTITY OF THE JUDGE WHEN A HEARING IS PRIVATE**

- 20.1 After a hearing has been held in private and the Hearing Panel has determined the appropriate disposition of a complaint, the Hearing Panel shall consider the following criteria when deciding whether to order that the name of the judge, the disposition, or any other information be disclosed:
- a) the reasons for holding a private hearing;
  - b) the disposition(s); and
  - c) whether avoiding disclosure is in the public interest and would preserve or maintain public confidence in the judiciary.

## **21. PRE-HEARING AND HEARING PROCEDURES**

### **Judge's Response to the Notice of Hearing**

- 21.1 The judge may respond to the allegations in the Notice of Hearing, in which case the judge shall file the response with the Council and serve it on Presenting Counsel. The response may contain full particulars of the facts on which the judge relies.
- 21.2 The judge may, at any time before or during the hearing, prepare an amended response, which shall be served on Presenting Counsel and filed with the Judicial Council.

21.3 Failure to file a response shall not be deemed to be an admission of any allegations against the judge.

### **Disclosure**

21.4 Presenting Counsel shall, before the hearing, forward to the judge or to counsel for the judge,

d) the names of all witnesses who will be called by Presenting Counsel to give evidence;

e) any statements taken from any witnesses that were not provided during the investigation phase; and

f) summaries of any interviews with such witnesses conducted before the hearing,

and the Hearing Panel may preclude Presenting Counsel from calling a witness at the hearing if Presenting Counsel has not provided such information.

21.5 Presenting Counsel shall confirm before the hearing that the subject judge or the judge's counsel has received full disclosure of the non-privileged materials considered by the complaint subcommittee during the investigation stage. If such materials have not been received, Presenting Counsel shall provide the disclosure.

21.6 Presenting Counsel's disclosure obligations under Rules 21.4 and 21.5 apply equally to any documents relevant to the allegations in the Notice of Hearing that are in the possession of Presenting Counsel and that come to his or her attention after pre-hearing disclosure has been completed.

### **Pre-Hearing Conference**

21.7 Upon request by Presenting Counsel or by the judge, the Hearing Panel may order that a pre-hearing conference take place before a judge for the purposes of narrowing or resolving the issues. Any discussions at the pre-hearing conference are confidential and without prejudice. Any judge who,

a) was a member of the complaint subcommittee that investigated the complaint;

b) was a member of the review panel that reviewed the complaint; or

c) is a member of the Hearing Panel that will hear the allegations against the judge,

shall not preside over the pre-hearing conference in respect of the same complaint.

## **Pre-Hearing Motions**

- 21.8 Any party to the hearing may, by motion not later than 10 days before a set-date, bring any procedural or other matters to the Hearing Panel as are required to be determined prior to the hearing of the complaint, including, without limiting the generality of the foregoing, a motion for the purposes of,
- a) objecting to the Judicial Council's jurisdiction to hear the complaint;
  - b) resolving any issues with respect to any reasonable apprehension of bias or institutional bias on the part of the Hearing Panel;
  - c) objecting to the sufficiency of disclosure by Presenting Counsel;
  - d) determining any point of law for the purposes of expediting the hearing;
  - e) determining any claim of privilege in respect of the evidence to be presented at the hearing;
  - f) any matters relating to scheduling;
  - g) seeking a publication ban or an order that the hearing or part thereof be in the absence of the public, in which case the Judicial Council shall provide public notice of any motion for a publication ban on its website; or
  - h) determining any other procedural or other matters as required.
- 21.9 A motion seeking any of the relief enumerated in Rule 21.8 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.
- 21.10 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.
- 21.11 The Hearing Panel shall appoint a time and a place for the hearing of submissions by both sides on any motion brought pursuant to Rule 21.8 as soon as is reasonably possible and shall render a decision thereon as soon as is reasonably possible.

## **Withdrawal of Allegations Prior to a Hearing**

- 21.12 Presenting Counsel may, at any time, bring a motion to the Hearing Panel with a recommendation to the Hearing Panel that some or all of the allegations in the Notice of Hearing be withdrawn.

- 21.13 Such a recommendation by Presenting Counsel shall be made in writing and state the reasons that the allegation(s) should be withdrawn. The Hearing Panel shall appoint a time and place for the hearing of the motion as soon as is reasonably possible.
- 21.14 The Hearing Panel shall order the withdrawal of any allegation(s) of judicial misconduct in the Notice of Hearing if the Hearing Panel finds that the allegation(s) of judicial misconduct no longer have a basis in fact.
- 21.15 In the absence of an order from the Hearing Panel withdrawing the allegation(s), Presenting Counsel must proceed with all allegations in the Notice of Hearing.

### **Agreed Statement of Facts & Submissions on Disposition**

- 21.16 The parties may rely upon an Agreed Statement of Facts if the parties file the Agreed Statement of Facts with the Registrar not later than 10 days before the date set for commencement of the hearing. The Hearing Panel may review the Agreed Statement of Facts in advance of the hearing.
- 21.17 The Agreed Statement of Facts shall be set out in the template provided in Appendix D to these Rules of Procedure.
- 21.18 The Hearing Panel may abridge the time for filing the Agreed Statement of Facts on such grounds as it deems appropriate.
- 21.19 The Hearing Panel may choose not to accept an Agreed Statement of Facts if the Agreed Statement of Facts would bring the administration of justice into disrepute or be otherwise contrary to the public interest in judicial discipline.
- 21.20 If the Hearing Panel is considering not to accept an Agreed Statement of Facts, the Hearing Panel shall provide the parties with notice and an opportunity to make submissions.
- 21.21 Presenting Counsel may not enter into an agreement to make a joint submission on disposition. The Hearing Panel is not bound by the submissions of either party as to disposition.

### **The Hearing**

- 21.22 On application at any time, Presenting Counsel, the subject judge or his or her counsel may request that the Registrar or Deputy Registrar issue a summons to compel any person or party to give evidence by oath or affirmation at the hearing and

to produce in evidence at the hearing any documents or things which are relevant to the subject matter of the hearing. The Registrar or Deputy Registrar shall either issue the summons or, if he or she believes that there is a question of relevancy that should be determined by the Hearing Panel, inform the party seeking the summons that he or she must bring a motion before the Hearing Panel for a determination as to whether a summons should issue.

21.23 A summons issued by the Registrar or Deputy Registrar shall be in the form prescribed by subsection 12(2) of the *Statutory Powers Procedure Act*.

21.24 (1) A Hearing Panel may hold the hearing in any combination of written, electronic, and in-person proceedings.

(2) Subject to subrule (3), every in-person hearing of the Ontario Judicial Council shall take place in Toronto.

(3) Any party may bring a motion before a Hearing Panel for an order that, on exceptional basis, an in-person hearing should be held in a location other than Toronto.

(4) In deciding on the format and location of the hearing, including whether an in-person hearing should be held in a location other than Toronto, a Hearing Panel may consider,

- a) the convenience of the parties;
- b) the cost, efficiency and timeliness of the proceeding in which the hearing is being held;
- c) the avoidance of delay or unnecessary length;
- d) the fairness of the process;
- e) public accessibility to the hearing;
- f) the fulfilment of the Judicial Council's statutory mandate; and
- g) any other matter relevant in order to secure the just and expeditious determination of the subject matter of the hearing or of the proceeding in which the hearing is being held.

21.25 The following guidelines apply to the conduct of the hearing, unless the Hearing Panel, on motion or on consent, requires otherwise:

- a) All testimony shall be given under oath, 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.
- c) Counsel for the judge or the judge 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 counsel for the judge or the judge has made an opening statement, counsel for the judge or the judge may present evidence.
- d) Without limiting the generality of subsections (b) and (c), Presenting Counsel or the judge may, subject to the discretion of the hearing panel, file in evidence all or part of the judge's written response to the complaint, and any other relevant materials from the investigation stage of the complaints process.
- e) All witnesses may be cross-examined by the opposite party or counsel for the opposite party and re-examined as required.
- f) The hearing shall be recorded verbatim and transcribed. Where counsel for the judge or the judge requests, he or she may be provided with a transcript of the hearing within a reasonable time and at no cost.
- g) Both Presenting Counsel and counsel for the judge or the judge may submit proposed findings, conclusions, recommendations, or draft orders for the consideration of the Hearing Panel.
- h) Presenting Counsel and counsel for the judge or the judge may, at the close of the evidence, make statements summarizing the evidence and any points of law arising out of the evidence. The Hearing Panel shall determine the order in which such statements shall be made.

21.26 (1) Subject to (3), on motion by a party, or on its own motion with notice to the parties, a Hearing Panel may amend the notice of hearing or an allegation in it:

- a) where there is a variance between the evidence taken at the hearing and the particulars of the allegations in the notice of hearing; or
- b) to correct any deficiencies as to form or substance in the notice of hearing.

(2) In considering whether or not an amendment should be made to the notice of hearing or an allegation in it, the Hearing Panel shall consider:

- a) the circumstances of the case;
- b) the nature of the amendment sought;
- c) whether the judge would be misled or prejudiced by the amendment;
- d) any evidence introduced at the hearing; and
- e) whether, having regard to the merits of the case, the proposed amendment would achieve a just result that is consistent with preserving or restoring public confidence in the judiciary.

(3) If additional facts are disclosed during the course of a hearing that,

- a) are outside the ambit of the complaint that is the subject of the hearing; and
- b) would constitute an allegation of misconduct against a provincial judge if they were disclosed in a complaint to the Judicial Council,

the additional facts shall not be the subject of an amendment to the notice of hearing or an allegation in it.

(4) Where the conditions in (3) are present, the Registrar shall prepare a summary of the particulars of the additional facts and forward the summary to a complaint subcommittee to be processed as an original complaint. Members of the Hearing Panel before which the additional facts were disclosed may not serve on the complaint subcommittee assigned to investigate the new complaint.

## **22. TEST FOR JUDICIAL MISCONDUCT**

22.1 To ensure that the Council may address misconduct of varying degrees of severity as contemplated by ss. 51.6(11)(a)-(g) of the *Courts of Justice Act*, the Council has adopted the following test for judicial misconduct that should be applied by hearing panels.

22.2 (1) If the Hearing Panel finds that

- a) some or all of the alleged conduct has been proven on a balance of probabilities, and

b) some or all of the proven conduct is incompatible with judicial office,

the Hearing Panel shall make a finding that the judge has engaged in judicial misconduct.

(2) In determining whether the proven conduct is incompatible with judicial office, the Hearing Panel shall consider all the circumstances, including:

- a) whether the conduct is inconsistent with the *Principles of Judicial Office* and/or any standards of conduct established by the Chief Justice of the Ontario Court of Justice and approved by the Judicial Council under s. 51.9(1) of the *Courts of Justice Act*;
- b) whether the conduct is contrary to the impartiality, integrity, and/or independence of the judiciary;
- c) whether the conduct undermines the public's confidence in the judge's ability to perform the duties of office; and
- d) whether the conduct undermines the public's confidence in the administration of justice generally.

### **23. DISPOSITIONS BY THE HEARING PANEL**

23.1 In determining the appropriate disposition of a complaint following a hearing, the Hearing Panel shall focus on what is required to restore public confidence in the judge and in the judiciary.

23.2 If the Hearing Panel determines that one of the dispositions enumerated in section 51.6(11) is required, the Hearing Panel should first consider the least serious disposition (a warning) and move sequentially to the most serious (recommendation for removal) and order only what is necessary to restore public confidence in the judge and in the administration of justice generally.

23.3 In assessing the appropriate sanction for judicial misconduct, the Hearing Panel shall consider,

- a) whether the misconduct was an isolated incident or evidenced a pattern of misconduct;
- b) the nature, extent, and frequency of the misconduct;

- c) whether the misconduct occurred in or out of the courtroom;
- d) whether the misconduct occurred in the judge's official capacity or in the judge's private life;
- e) whether the judge has acknowledged or recognized that the acts occurred;
- f) whether the judge has evidenced an effort to change or modify his or her conduct;
- g) the judge's length of service on the bench;
- h) whether there have been prior findings of judicial misconduct against the judge;
- i) the effect of the misconduct on the integrity of, and respect for, the judiciary;
- j) the extent to which the judge exploited his or her position to satisfy his or her personal desires; and
- k) any other factor that the Hearing Panel considers relevant.

23.4 The judicial discipline process is remedial. Following a finding of judicial misconduct, Presenting Counsel shall file with the Hearing Panel the judge's disposition history other than dismissed complaints to which the judge was not invited to respond.

## **24. COMPENSATION**

### **Recommending Compensation for Judges' Legal Costs**

24.1 Where a Hearing Panel has discretion to recommend or not recommend compensation for a judge's costs for legal services, this discretion shall be exercised on a case-by-case basis.

24.2 The principal objective of the complaint process is to restore and maintain public confidence in the integrity of the judiciary, not to punish the judicial officer holder. When considering whether a judge should be compensated for legal costs, the Judicial Council shall be guided by the principle that it is generally in the best interest of the administration of justice for judges who are the subject of complaints to have the benefit of legal counsel to ensure a fair, full and complete process.<sup>2</sup>

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<sup>2</sup> *Massiah v. Justices of the Peace Review Council*, 2016 ONSC 6191.

24.3 Compensation for legal costs is not automatic where there is a finding of judicial misconduct. Except in accordance with rule 24.4, when there has been a finding of judicial misconduct, the decision about whether a judge should be compensated for part, none or all of his or her legal costs shall be based upon consideration of the circumstances of the case, viewed in the context of the objectives of the complaint process, including:

- a) The nature and seriousness of the misconduct.
- b) The connection of the misconduct to the judicial function. Chief among the circumstances will be the nature of the misconduct and its connection to the judicial function. For example, misconduct that is more directly related to the judicial function may be more deserving of a compensation order than conduct that is less directly related.
- c) Whether the conduct was such that any person ought to have known it was inappropriate. Conduct that any person ought to have known was inappropriate will be less deserving of a compensation decision than would conduct that is only determined to be inappropriate as a result of the ultimate decision in a particular case.
- d) Whether the misconduct consisted of a single instance or multiple instances. Where there are multiple instances, the judge may be less deserving of a compensation recommendation than if there was a single instance of misconduct.
- e) Whether there had been prior findings of misconduct. Where there has been a previous finding of misconduct, the judge may be less deserving of a compensation recommendation.
- f) The conduct of the hearing. Compensation should not include the costs associated with steps which the decision-maker views as unmeritorious or unnecessary.

### **Recommendation for a Removal from Office**

24.4 If the complaint was made on or after July 8, 2020 and the hearing results in a recommendation for removal from office, compensation for legal costs shall not be recommended by the Hearing Panel.

### **Compensation – General**

24.5 The Judicial Council recognizes that the public expects accountability for expenditures of public funds, and that such expenditures be supported by all relevant documentation. Accordingly, a judge who requests compensation for legal costs incurred in connection with an investigation and/or hearing is deemed to waive solicitor-client privilege over statements of account setting out the services provided, time spent, and fees charged.

- a) Any recommendation for compensation for legal costs submitted to the Ministry of the Attorney General shall include the statement(s) of account issued to the judge by legal counsel.

### **Compensation – Investigation Only**

24.6 In order to uphold the confidentiality of the legislative framework, where a hearing does not occur, the name of the judge shall be redacted in the statement(s) of account submitted to the Ministry of the Attorney General.

## **25. APPLICATION FOR AN ORDER FOR ACCOMMODATION OF NEEDS**

- 25.1 A judge may not apply to the Judicial Council for an order for accommodation of needs arising from a disability unless the applicant judge has first pursued the accommodation of needs process offered to judicial officers by the Ministry of the Attorney General.
- 25.2 A judge who applies to the Judicial Council for an order for accommodation of needs arising from a disability shall provide to the Judicial Council a copy of all documents, medical evidence, and decisions resulting from the accommodation process offered to judicial officers by the Ministry of the Attorney General.
- 25.3 An application for an order for accommodation of needs arising from a disability by a judge shall be in writing and shall include,
- a) a description of the disability to be accommodated;
  - b) a description of the essential duties of the applicant judge's office for which accommodation is required;
  - c) a description of the item and/or service required to accommodate the applicant judge's disability;
  - d) a signed letter supporting the applicant judge's application for accommodation from a qualified doctor, medical specialist, or other health professional.
- 25.4 Applications for an order for accommodation and all supporting materials thereto are inadmissible in any investigation or hearing, other than the hearing to consider the question of accommodation, unless the applicant judge consents to their admission.
- 25.5 The Judicial Council shall not disclose to the public any application for accommodation, or the supporting materials thereto, without the consent of the applicant judge.
- 25.6 On receipt of an application, the Judicial Council shall convene an accommodation subcommittee composed of one judge and one lay member of the Judicial Council.
- 25.7 The accommodation subcommittee shall, at its earliest convenience, meet with the applicant judge and with any person against whom the accommodation subcommittee believes an order to accommodate may be required.
- 25.8 The accommodation committee shall retain such experts and seek such advice as it may require to formulate an opinion on the application for accommodation.

25.9 The accommodation subcommittee shall report its opinion to the Judicial Council in relation to,

- a) whether the judge has needs arising from a disability and whether those needs require accommodation;
- b) what item and/or service is necessary to accommodate the judge's needs;
- c) the period of time that the item and/or service would be required to accommodate the judge's needs;
- d) the approximate cost of the item and/or service required to accommodate the judge's needs, taking into account the estimated length of time that the item and/or service would be required,

and the report shall include all of the evidence that the accommodation subcommittee considered in determining the cost of the accommodation.

25.10 Once the accommodation subcommittee has delivered its report, the Judicial Council shall meet, at its earliest convenience, to consider the application and the report to determine whether or not the application for an order for accommodation gives rise to an obligation under the statute to accommodate the applicant short of undue hardship.

25.11 When considering the application and the report, the Judicial Council shall be guided generally by human rights jurisprudence applicable to its jurisdiction as it relates to,

- a) the definition of "disability";
- b) the content of the duty to accommodate; and
- c) the procedures developed in the jurisprudence for the purposes of determining whether an order to accommodate is warranted.

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

25.13 If the Judicial Council,

- a) is satisfied that the judge's condition meets the threshold test for qualification as a disability; and
- b) is considering making an order to accommodate the judge,

the Judicial Council shall, at its earliest convenience, provide a copy of the application for accommodation and the report of the accommodation subcommittee to the Attorney General.

- 25.14 The Judicial Council shall give notice to the Attorney General that the Attorney General may make written submissions regarding whether any order to accommodate a judge's disability that the Judicial Council is considering would cause undue hardship to the Ministry of the Attorney General or any other person affected by the said order to accommodate.
- 25.15 The Judicial Council shall request that the Attorney General respond to the notice of application for accommodation within 30 days of the Attorney General receiving such notice.
- 25.16 The Judicial Council shall stipulate in its notice to the Attorney General that, in the event that the Attorney General does not acknowledge the notice or does not make written submissions, the Judicial Council will proceed with making an order to accommodate the judge in accordance with the judge's application and the Judicial Council's initial determination of the matter.
- 25.17 The Attorney General shall, within the 30 days provided for in Rule 25.15, advise the Judicial Council whether or not the Attorney General intends to make written submissions regarding the application for accommodation.
- 25.18 If the Attorney General intends to make written submissions regarding the application for an order to accommodate, such submissions shall be made within 60 days of the Attorney General advising the Judicial Council of an intention to respond as described in Rule 25.17.
- 25.19 Upon receipt of the Attorney General's written submissions, or upon the expiration of the 30-day time period specified in Rule 25.15, whichever comes first, the Judicial Council shall, at its earliest convenience, meet to determine the Order it shall make to accommodate the applicant judge's disability.
- 25.20 The Attorney General, or any other person against whom an order to accommodate may be made, as the case may be, bears the onus of showing that accommodating the applicant will cause undue hardship.
- 25.21 The Judicial Council shall, before making its determination, consider the judge's application, supporting material, and submissions, if any are made, regarding the question of undue hardship.

- 25.22 In considering whether accommodation of the applicant will cause undue hardship, the Judicial Council shall generally be guided by human rights jurisprudence relating to the question of whether undue hardship will be caused, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.
- 25.23 The Judicial Council shall not make an order on an application for accommodation under subsection 45(2) without ensuring that the applicant judge has had an opportunity to participate and make written submissions.
- 25.24 The Judicial Council may not order that a judge should be accommodated by assigning the judge to only a portion of the judge's essential duties.
- 25.25 While the Judicial Council cannot assume responsibility for the assignment of judicial duties, the Judicial Council can consider whether, despite a disability, a judge is able to perform the essential duties of the office if the judge's needs are accommodated.
- 25.26 If the Judicial Council makes an order to accommodate a judge's disability, a copy of the order shall be provided to the judge and to any other person affected by the order within 10 days of the date on which the decision was made.

## **26. CONTINUATION IN OFFICE**

- 26.1 A judge who has attained retirement age may, subject to the annual approval of the Chief Justice, continue in office as a full-time or part-time judge until he or she attains the age of seventy-five years, unless the judge has become incapacitated or disabled from the due execution of his or her office by reason of:
- a) 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),
  - b) conduct that is incompatible with the due execution of his or her office, or
  - c) failure to perform the duties of his or her office.
- 26.2 Decisions by the Judicial Council on an application by a Chief Justice or Associate Chief Justice of the Ontario Court of Justice who has reached the age of 65 shall be made in accordance with criteria set out in Rule 26.1.

## **27. MEETINGS**

- 27.1 Meetings of the Judicial Council, including review panels, may be held in person or through electronic means, including telephone conferencing and video conferencing.

# APPENDICES

## **APPENDIX A - *Courts of Justice Act***

For the most recent version of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, see E-laws Ontario:

<https://www.ontario.ca/laws/statute/90c43>, ss. 49-51.12

## **APPENDIX B – *Statutory Powers Procedure Act***

For the most recent version of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, see E-laws Ontario:

<https://www.ontario.ca/laws/statute/90s22>

## **APPENDIX C - Protocol Regarding the Use of Electronic Communication Devices in the OJC Hearing Proceedings**

This Protocol is founded on the “open courts” principle, which requires transparency and accountability in the judicial system to foster public confidence in the administration of justice.

### **(1) Application**

This Protocol applies to all persons attending or participating in a location where public proceedings are being held before a Hearing Panel of the Ontario Judicial Council (OJC) regarding the conduct of a judge of the Ontario Court of Justice. Use of electronic communication devices should never interfere with the hearing proceedings or the ability to have a fair hearing.

### **(2) Definitions**

“Electronic communication devices” include all computers, personal electronic and digital devices, and mobile, cellular and smart phones.

“Hearing Panel” means the four-person panel consisting of a judge of the Court of Appeal of Ontario, a judge of the Ontario Court of Justice, a lawyer and a community member.

### **(3) Use of Electronic Communication Devices in Hearings**

The use of electronic communication devices in silent or vibrate mode is permitted, except as follows:

- (i) The presiding Hearing Panel orders otherwise.
- (ii) Legislation (e.g. the *Courts of Justice Act* or the *Statutory Powers Procedures Act*) or the Hearing Panel restricts public attendance.
- (iii) No photos or videos may be taken unless there is a Hearing Panel order otherwise.
- (iv) Audio recording of proceedings is permitted by counsel, members of the media, and litigants for note-taking purposes only but the Hearing Panel must be advised before the recording is commenced. These audio recordings cannot be transmitted.
- (v) Talking on electronic communication devices is not permitted while the hearing is in session.

#### **(4) Publication Bans and Other Restrictions**

Anyone using an electronic communication device to transmit information has the responsibility to identify and comply with any publication bans, sealing orders, or other restrictions imposed by statute or by order of the Hearing Panel.

#### **(5) Hearing Panel Orders**

The presiding Hearing Panel retains overriding responsibility to maintain hearing room decorum and to ensure that proceedings are conducted in a manner consistent with the proper administration of justice. In deciding whether to restrict the use of electronic communication devices, the Hearing Panel may consider whether there is evidence regarding factors such as:

- (i) whether the use of electronic communication devices would disrupt the proceedings or interfere with the proper functioning of the electronic equipment being used to make a proper record of the hearing; or
- (ii) whether the use of electronic communication devices would interfere with witness testimony, or unreasonably infringe anyone's privacy or security.

## APPENDIX D – Sample Agreed Statement of Facts

### ONTARIO JUDICIAL COUNCIL

#### In the Matter of a Hearing Under Section 51.6 of the *Courts of Justice Act* about the Conduct of the Honourable Justice [name of judge] of the Ontario Court of Justice

The Honourable Justice [name of the judge], their Counsel [name of the lawyer], and Presenting Counsel, [name of Presenting Counsel], agree as provided herein:

#### **A. General Principles**

1. The *Principles of Judicial Office for the Judges of the Ontario Court of Justice* state that the judges of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the individuals who have agreed to accept the responsibilities of judicial office.
2. 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. One factor which is capable of undermining public respect and confidence is the conduct of judges, in and out of court, that demonstrates a lack of integrity, independence or impartiality.
3. The public expects that judges must be and must give the appearance of being an example of impartiality, independence and integrity.

#### **B. Background**

4. Justice [name of the judge], the subject of the complaint, is now and was at all times referred to in this document, a judge of the Ontario Court of Justice assigned to preside in the [region]. Justice [name] has served in that capacity since [date].
5. The Ontario Judicial Council received a written complaint from ....

6. The allegations were investigated by a complaint subcommittee of the Council. On [date], Justice [name] was provided with the opportunity to respond to the complaints. The complaint subcommittee completed its investigation and reported to a review panel of the Council.

7. After reviewing the information obtained through the investigation including the response of Justice [name], the review panel ordered a hearing into the allegations set out in the Notice of Hearing pursuant to section 51.6 of the *Courts of Justice Act*.

**C. FACTS**

8. Etc.

9. Etc.

**D. ADMISSIONS (APPLICABLE IF JUDICIAL CONDUCT IS ADMITTED)**

10. Justice [name] admits that his/her actions negatively impacted the confidence of members of the public in him/her as a judge, in the judiciary in general and in the administration of justice.

11. Justice [name] admits that his/her conduct on [date] constitutes judicial misconduct that warrants a disposition under section 51.6(11) of the *Courts of Justice Act*.

\_\_\_\_\_  
Justice [name]

\_\_\_\_\_  
Date

\_\_\_\_\_  
Counsel for Justice [name]

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presenting Counsel

\_\_\_\_\_  
Date