



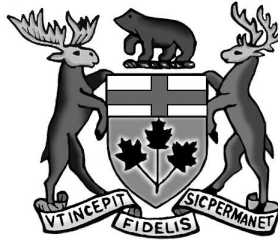
# ELEVENTH ANNUAL REPORT

2005 – 2006

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ONTARIO JUDICIAL COUNCIL

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ONTARIO JUDICIAL COUNCIL

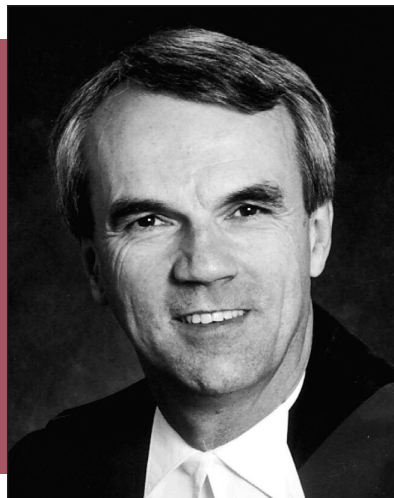
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*The Honourable R. Roy McMurtry*

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

September 30, 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 eleventh 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, 2005 to March 31, 2006.

Respectfully submitted,

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

R. Roy McMurtry  
Chief Justice of Ontario

A handwritten signature in black 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, 2005 to March 31, 2006.

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





# ELEVENTH O.J.C. ANNUAL REPORT

2005 – 2006

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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 of the Ontario Court of 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 went through significant changes in its eleventh year of operation. With the exception of the two co-Chairs and one of the lawyer members, the term of every other member of the OJC expired during the course of the year. This resulted in a great deal of extra administrative work for the Registrar and the support staff.

The membership of the Ontario Judicial Council in its eleventh year of operation (April 1, 2005 to March 31, 2006) 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)  
(to May 5, 2005)

#### ASSOCIATE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

Annemarie Bonkalo .....(Toronto)  
(from May 18, 2005)

#### REGIONAL SENIOR JUSTICE

G. Normand Glaude.....(Sudbury)  
(from January 12, 2005 to May 18, 2005)

#### REGIONAL SENIOR JUSTICE

Alexander Graham.....(London)  
(from May 18, 2005)

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

The Honourable Madam Justice Marjoh Agro....(Milton)  
(to May 10, 2005)

The Honourable Madam Justice Deborah Livingston  
.....(London)  
(to September 2, 2005)

The Honourable Madam Justice Lucy Glenn  
.....(Chatham)  
(from August 10, 2005)

The Honourable Madam Justice Judith Beaman .....  
.....(Ottawa)  
(from September 2, 2005)

***Lawyer Members:***

**TREASURER OF THE LAW SOCIETY OF UPPER CANADA**

Frank Marrocco, Q.C.....(Toronto)  
(to June 24, 2005)

George D. Hunter .....(Ottawa)  
(from June 24, 2005 to January 23, 2006)

Gavin MacKenzie.....(Toronto)  
(from February 23, 2006)

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

Julian Porter, Q.C. ....(Toronto)  
(to June 24, 2005 – re-appointed as Treasurer’s designate  
on August 18, 2005)

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

Patricia D. S. Jackson.....(Toronto)  
(to August 18, 2005)

J. Bruce Carr-Harris .....(Ottawa)  
(from August 18, 2005)

***Community Members:***

MADELEINE ALDRIDGE .....(Toronto)  
Teacher, Toronto Catholic District School Board  
(retired from teaching, June, 2005)

JOCELYNE CÔTÉ-O’HARA .....(Toronto)  
President, The Cora Group

MILA VELSHI .....(Toronto)  
Independent Associate – Able Travel  
(from August 8, 2005)

*Lay Member (Position Vacant since March 21, 2005)*

***Members – Temporary***

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

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

**MASTERS**

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

**JUDGES**

- The Honourable 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. Both the Office of the Chief Justice and the Ontario Judicial Council/Justices of the Peace Review Council offices and staff were relocated to a different floor in the same office tower in the summer of 2005. Planning for and executing this move consumed a great deal of time and effort on the part of 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 eleventh 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 and a secretary:

VALERIE P. SHARP, LL.B. – Registrar  
THOMAS GLASSFORD – Assistant Registrar

ANA BRIGIDO – A/Assistant Registrar  
(from March 18, 2006)

JANICE C. CHEONG – Secretary  
(on secondment from July 11, 2005)

BETTY GIOVANIELLO – A/Secretary  
(from July 11, 2005)

### 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 2005-2006 can be found at Appendix "C".

### 5. 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/](http://www.ontariocourts.on.ca/).

### 6. 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 Lucy Glenn was appointed by the OJC to act as its representative on J.A.A.C.

## 7. 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 (if any) made by a complaint subcommittee and may approve the proposed disposition or substitute its own decision for that 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 that 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 payment 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.

## 8. Summary of Complaints

The Ontario Judicial Council received 23 complaints in its eleventh year of operation, as well as carrying forward 19 complaint files from previous years. Of these 42 complaints, 21 files were closed before March 31, 2006, leaving 21 complaints to be carried over into the twelfth year of operation. All complaint files from previous years (i.e., years nine and ten) were closed by the end of year 11, with the exception of three files. Two of those files involved complaints which had been ordered to a public hearing where hearing dates could not be arranged in Year 11. The other file, which had been opened near the end of Year 10, involved a complicated investigation and a long delay in acquiring an audiotape. As a result, all of the files carried over into year 12, except for these

FISCAL YEAR:	01/02	02/03	03/04	04/05	05/06
Opened During Year	52	49	55	36	23
Continued from Previous Year	44	33	34	35	19
Total Files Open During Year	96	82	89	71	42
Closed During Year	63	48	54	52	21
Remaining at Year End	33	34	35	19	21

three, were files opened in year 11 where there was not sufficient time to complete the investigation before the end of March 31, 2006.

An investigation was conducted in all cases by a complaint subcommittee of Council, which was composed of a provincial judge and a community member. 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 a fully informed decision about a complaint. In some instances, further investigation was conducted where warranted. At the conclusion of its investigation, the complaint subcommittee made a recommendation as to the disposition of the complaint. This recommendation was reviewed by a four member committee, called a review panel. The review panel is composed of representatives from the community, the bench and the bar and none of its members had any prior knowledge of the complaint or knew the names of those involved. The review panel may agree with and approve the disposition recommended by the complaint subcommittee or disagree and make its own disposition. In all cases in Year 11 that went to a review panel, the review panel, after examining the complaint and the investigation, agreed with the recommended disposition of the complaint by the complaint subcommittee.

Twenty (20) of the 21 complaint files closed in Year 11 were **dismissed** by the Judicial Council.

Six (6) of the 20 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 fourteen (14) of the 20 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. In three of these fourteen cases, the complainant also expressed dissatisfaction with the judge's decision, as well as making an allegation of improper behaviour. The allegations contained in each of these files were investigated by a complaint subcommittee and determined to be unfounded.

The remaining file (10-028/05) which had been carried over from year 10, was **closed** in year 11, following a public hearing at the end of which the hearing panel found no misconduct and dismissed the complaint.

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## 9. 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 also 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. 11-015/05 was the fifteenth file opened in the eleventh year of operation and was opened in calendar year 2005.).

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



## CASE SUMMARIES

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### **CASE NO. 09-050/04**

The complainant is the biological mother of two daughters who had been apprehended by the Children's Aid Society and who resided in the Society's care. The children were described by the complainant as disabled with a muscular disorder restricting them to wheelchairs. The complainant indicated that both of her daughters required special care. According to the complainant, she had been fighting for the return of her daughters to her care for years and alleged that the Children's Aid Society and the judges hearing her matters were abusive and biased against her.

The complainant originally wrote the Council in September 2003 complaining that the judge, who was the subject of this complaint, acted in a demeaning and demoralizing manner towards her. She further alleged that the judge "abused her power" by continually interrupting the complainant's cross-examination in order to "assist the other side". The complainant also alleged that the judge would "throw tantrums" in court. Since the court matter was on-going, a complaint subcommittee was assigned to assess whether or not Council should commence an investigation. It was the subcommittee's opinion not to intervene by investigating the complainant's allegations while the trial was ongoing.

The complainant provided more complaint material on two further occasions relating to the on-going court matter, insisting that the Council intervene to stop the "corruption and obstruction of justice" in her trial. The complainant alleged the judge set unrealistic timelines, "continuously snaps at me" and commented that "everything that happens in the courtroom she says is my

fault". All of the complaint material was reviewed by the same complaint subcommittee that reviewed the original complaint material. The subcommittee's opinion remained the same, in that no investigation should commence while the trial was on-going before the courts.

The complainant wrote again in February 2004 advising that the trial had concluded. The complainant alleged that the judge denied her the right to legal counsel and continued the trial in her absence despite the fact "a doctor and my entire support team gave letters to the court saying that I should not attend without counsel". The complainant insisted on the Judicial Council conducting an investigation immediately.

Although the judge's decision was reserved, Council was of the view that some preliminary investigation could be conducted prior to the release of the judge's decision. Considering the length of the trial, the complaint subcommittee ordered the complete set of audiotapes for the trial in an effort to identify relevant court appearances for which transcripts should be ordered. When released, Council received a copy of the judge's decision in the case, whereby the judge decided that the children should remain wards of the Children's Aid Society.

The complaint subcommittee reviewed all of the complaint material submitted by the complainant. Further, the complaint subcommittee reviewed the audiotapes of the court appearances for which the complainant was in attendance and reviewed the decision rendered by the subject judge.

## CASE SUMMARIES

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The complaint subcommittee recommended to the review panel that the complaint be dismissed as being without foundation after a review of the audiotapes and after reading the judge's comments relating to the complainant in her decision. In the opinion of the complaint subcommittee, the audiotape record demonstrated that the judge was patient, professional and courteous towards the complainant throughout the proceedings. In the view of the complaint subcommittee, there was no evidence to support the complainant's allegations of abuse, mistreatment, bias or obstruction of justice by the judge. The complaint subcommittee recognized the difficult nature of this case and the emotional intensity engendered by the issues and evidence. However, in its opinion the presiding judge did an admirable job in managing the case and balancing the views and rights of all the parties involved. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

### **CASE NO. 09-051/04**

The complainant was an accused in a criminal proceeding where he alleged that the presiding judge was biased and unfair towards him. The complainant alleged that the judge intentionally delayed the completion of his criminal trial, and "abused his power in several ways". Further, the complainant indicated that the judge was supposedly good friends with lawyers in the community and "associated" with the complainant's former family lawyer. In addition to the criminal proceeding, the complainant was involved in a family law matter with the victim of the criminal assault charge, and these matters were before the courts concurrently (although not before the same judge).

The complaint subcommittee reviewed the complaint material provided, which included the transcript of a bail variation proceeding relating to the criminal charges. Upon review of this material, the complaint subcommittee requested further particulars from the complainant, including copies of transcripts, which the complainant referenced in his letters to the Judicial Council. The complaint subcommittee sent numerous requests to the complainant for the additional information and supporting materials. In response the complainant provided Council with the names and contact numbers of two of his lawyers, whom the complainant indicated would support his concerns respecting the subject judge. In an attempt to gather relevant information concerning this complaint, Council contacted both lawyers. However, both lawyers indicated they would not support the complainant's allegations and advised that if they had concerns themselves they would file a complaint with the Judicial Council. After additional requests over the course of several months, the complainant finally provided the transcripts of four appearances before the subject judge in relation to the criminal charges he had been facing. Although requested by Council, the complainant did not provide further details of his allegations, nor did the complainant directly reference areas of concern within the transcripts.

After a full review of the complaint material and transcripts, the complaint subcommittee recommended to the review panel that the complaint be dismissed as being without foundation. In the opinion of the complaint subcommittee, the transcripts disclosed no factual basis for the complainant's allegations

## CASE SUMMARIES

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of misconduct in the courtroom context. In fact, the complaint subcommittee was of the view that the subject judge was polite and accommodating throughout the trial and that there was no evidence that the judge delayed the criminal proceedings. In the view of the subcommittee, the allegations of social contact with lawyers were without factual support and are not in themselves evidence of judicial misconduct. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

### **CASE NO. 10-012/04**

The complainant was the plaintiff in a Small Claims Court proceeding where he was suing an employee of a community care organization for negligence in the treatment his grandmother had received from the organization. The complainant alleged that he was being denied his right to a fair trial because he was advised that the judge complained about had “taken the liberty of changing the [name of the] defendant I have filed a claim against”. The complainant advised that he thought this action by the judge was “unconstitutional”.

The complaint subcommittee reviewed the complaint material provided and requested and received a response from the subject judge. In the response, the judge outlined the discretion that judges have to correct perceived errors made in pleadings, particularly by people who are not represented by lawyers. In general, the judge noted that law suits against employees are often dismissed and the employer is typically named in their place. After reviewing the claim and the statement of defence, the judge took the view

that the employee was acting within the authority of her employment (which was conceded by the defence) and that the employer was more appropriately the named defendant. The complaint subcommittee was of the view that the judge erred in changing the name of the defendant in the plaintiff’s claim and in the unilateral dismissal of an action without representations being made by the parties affected. As per the judge’s later endorsement however, Council noted that the judge corrected the error, thereby reinstating the claim against the employee. The complaint subcommittee recommended to the review panel that the complaint be dismissed, as it was of the view that the judge’s actions did not constitute judicial misconduct. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

### **CASE NO. 10-020/04**

The complainant was charged with impaired driving and alleged that the judge “intruded” on her right to privacy and humiliated her by mentioning the various forms of stress she was suffering from, when she appeared in court for sentencing. The complainant further alleged that the judge ridiculed her by stating that she was going through menopause.

The complaint subcommittee reviewed the complaint material provided and requested and reviewed the transcripts of the proceedings including the Reasons for Judgment and Sentencing. According to the transcript of the Reasons for Judgment, the judge simply reiterated the stresses that the complainant herself had offered as a defence and discussed during the

## CASE SUMMARIES

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trial and weighed their relevance to the charges. After consideration, the complaint subcommittee recommended to the review panel that the complaint be dismissed, as the transcripts of record did not support the allegations made. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

### **CASE NO. 10-021/04**

The complainant was the plaintiff in a Small Claims Court proceeding involving the collection of money from the plaintiff's husband's ex-wife. The plaintiff alleged that the judge displayed bias against her by extending deadlines for the defendant and then ordering a stay of proceedings until the family case between the plaintiff's husband and his ex-wife had concluded. The complainant alleged that the bias displayed against her was due to the judge's dislike for her husband and the judge's disbelief that the plaintiff's corporation was not acting as an agent for her husband. The complainant alleged that the judge had previous business and social relationships with the defendant, which the complainant viewed as a conflict. The complainant alleged that the judge repeatedly refused requests for recusal from the case.

The complaint subcommittee reviewed the complaint material provided and requested and received a response from the subject judge. In response, the judge denied being aware of the identity of any of the parties in the litigation. In reviewing this complaint and recalling this case, the judge indicated that there was an on-going family dispute between the plaintiff's husband and his ex-wife (the named defendant) seeking

an order for support payments and equalization of family property. According to the judge, the defendant was taking the position that the Small Claims Court action was part of a counter-action to the family case and that the plaintiff's husband, (the defendant's ex-husband), was the directing mind behind the claim. After consideration, the complaint subcommittee recommended to the review panel that the complaint be dismissed, as it was of the view there was no objective evidence to support the allegation of bias by the judge against the complainant. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

### **CASE NO. 10-024/04**

The complainant is a lawyer who was representing the biological father in a family court matter involving the Children's Aid Society (CAS). In this case, a newborn baby was apprehended by the CAS from the mother. The biological father (the complainant's client), who no longer cohabits with the mother, was tendering himself as a prospective caregiver. This application before the court became contested when the Society indicated their opposition to the father's application and his assertion in an affidavit filed with the court that Counsel for the CAS was acting in a conflict of interest, as she was the lawyer who represented his former wife in a hotly contested divorce and custody battle a decade earlier. The complainant brought a motion, on behalf of his client, for the removal of the CAS lawyer as well as a CAS worker, who had allegedly made false statements against the father. This motion was spoken to before another judge, who is not the subject of this complaint, and it was directed that the matter

## CASE SUMMARIES

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be heard by the visiting trial judge. The motion was heard by the judge, who is the subject of this complaint, and upon ruling on the motion, issues surrounding costs were considered and ultimately ordered.

The complainant alleged that the judge “took an overtly adversarial approach against the viability of the motion, displaying clear animus towards the position of (the father), and ultimately escalating to a vituperative attack against me”. The complainant indicated that during his submissions, the judge interrupted, making “hostile and acerbic remarks” and acted in a demeaning manner toward the complainant. During a two-day hearing of the motion and costs, the complainant alleged that the judge made “the suggestion that I was somehow responsible for bringing the motion” and therefore ordered costs against the father as well as the complainant personally. According to the complainant, the judge “was not remotely open to persuasion on the critical issues and displayed what would objectively be construed as a reasonable apprehension of bias”.

In addition to these allegations, the complainant asserted that the judge made several errors and misapprehensions of the facts and law in his decision. The complainant advised that he did appeal the judge’s decision and was successful in having the judge’s order set aside.

The complaint subcommittee reviewed the complaint material provided and requested and reviewed the complete transcripts of the two-day motion. The complaint subcommittee also requested and reviewed a response to the complaint from the subject judge. After

consideration, the complaint subcommittee recommended to the review panel that the complaint be dismissed. The complaint subcommittee noted that the judge did intervene frequently during the complainant’s submissions. However, the complaint subcommittee was of the view the interruptions were necessary to clarify the issues being argued and to seek from the complainant the legal basis and case law pertaining to his position. While some of the judge’s comments to the complainant were viewed as unnecessary, in the overall context of the case, the complaint subcommittee advised that, in their opinion, the judge’s conduct, comments and interventions fell short of judicial misconduct. The complaint subcommittee also noted that if errors in law or findings of fact were committed by the judge (and the Judicial Council is making no such finding) such errors are remedied on appeal and are, without evidence of judicial misconduct outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint. After being advised that the complaint had been dismissed, the judge wrote to the Judicial Council and requested compensation of his legal costs associated with responding to Council. The matter was brought back to the review panel who had considered the recommendation of the complaint subcommittee and it was the consensus of the review panel to recommend to the Attorney General that the judge be compensated for the full legal costs he had incurred and such recommendation was made.

## CASE SUMMARIES

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### **CASE NO. 10-025/04**

The complainant was charged with, and acquitted of, two counts of assault and one count of public mischief during a trial in December of 1998. After the trial, the complainant ordered the transcripts and alleged that the transcripts were substantially edited and do not reflect a true record of the proceedings. The complainant alleged that the judge is responsible for the editing and the delay in acquiring two additional transcripts from Court Services. In addition to these specific allegations, the complainant also made general complaints about the judge's demeanour and reputation.

The complaint subcommittee reviewed the complaint material provided and requested and reviewed the transcript and audiotape of the December 1998 proceeding in question. After review, the complaint subcommittee was of the view that the transcript is an accurate reflection of the audiotape of record. In addition, the complaint subcommittee viewed the judge's demeanour, tone and comportment as polite, courteous and professional. The complaint subcommittee noted that judges have no control over the production of transcripts by court staff. After consideration, the complaint subcommittee recommended to the review panel that the complaint be dismissed, as the transcripts of record did not support the allegations made. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

### **CASE NO. 10-027/05**

The complainant is the biological father of an infant boy who was the subject of a family custody/access dispute. The complaint against the subject judge was in relation to comments the judge allegedly made during a family court proceeding. The complainant indicated that the subject judge awarded custody of his son to the child's mother and alleged the judge "proclaimed in no uncertain terms that women are better caregivers to small children than men". The complainant believed that the judge's remarks are "an obvious example of gender bias".

The complaint subcommittee reviewed the complaint and requested and reviewed the transcript and audiotape of the family court proceedings. The complaint subcommittee recommended to the review panel that the complaint be dismissed as it was the subcommittee's opinion that there was no misconduct on the part of the judge in making the comments he made. Although the judge did comment that "mothers often are more suited to take care of [the child] in these early stages", these remarks, in the context they were made, were interpreted by the complaint subcommittee to recognize the judge's experience within the family court in dealing with very young children who are the subject of custody and access claims. The subcommittee noted that the judge made only an interim order for custody and access in light of the limited affidavit evidence before the court, commenting that in the future the family situation may change, thereby requiring a change in the order. The complaint subcommittee further noted that the judge went on to stress the importance of the father's role in the child's life

## CASE SUMMARIES

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and made an order for access by the father. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

### **CASE NO. 10-029/05**

The complainant, who is a lawyer, filed a complaint against a judge he was appearing before in relation to comments the judge allegedly made during a motion and in a complaint made against him to the Law Society of Upper Canada by the judge and a fellow judge. The complainant alleged that the judge, without evidence of any wrongdoing, accused him of defrauding Legal Aid by billing for work done by others as well as by encouraging a non-lawyer to misrepresent himself as a lawyer before the courts. The complainant alleged that, “Given my racial background, I have no doubt that it is also a case of racism and racial stereotyping in that Blacks allegedly commit the crime of fraud and by extension Black lawyers could and do engage in such practices of billing Legal Aid for work done by others.” The complainant alleged that the judge was guilty of judicial misconduct by displaying racism, discrimination and partiality against him and by misusing his judicial authority in questioning him in court and filing a complaint with the Law Society. Although, the judge’s original complaint to the Law Society was not enclosed, the complainant’s response to the Law Society was attached, along with the judge’s response to a Motion in a civil matter, which the complainant had filed.

The complaint subcommittee reviewed the complaint material provided and requested a

copy of the judge’s complaint to the Law Society. After consideration, the complaint subcommittee recommended to the review panel that the complaint be dismissed, as it was of the view that the complainant’s allegations of judicial misconduct were without merit. The complaint subcommittee was of the opinion that the judge’s conduct and questioning of the complainant during the court appearance were appropriate in the circumstances and there was no evidence of discrimination, racism or partiality against the complainant by reason of being a “Black lawyer”. In addition, the complaint filed by the judge with the Law Society against the complainant was not viewed by the complaint subcommittee as an abuse of judicial authority. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

### **CASE NO. 10-030/05**

The complainant was a Crown witness testifying against his former girlfriend who was accused of six criminal offenses against different people, including a theft charge relating to the complainant’s Persian rug. The complainant alleged that the trial judge “publicly denigrated my Victim Statement and commented at length on my demeanour, arrogance, etcetera whilst giving testimony in support of the Crown”. The complainant indicated that he felt “demeaned, embarrassed and humiliated by this judge and his public comments”.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcripts of the complainant’s testimony during the trial as well as the judge’s reasons for judgment.

## CASE SUMMARIES

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Although the complaint subcommittee viewed the judge's comments about the complainant as perhaps un-diplomatic in nature, it noted that judges are obliged to assess the credibility of witnesses and to explain why the evidence of a witness is, or isn't, being accepted. It was also noted by the complaint subcommittee that a judge is obligated to weigh the relevancy of comments in a Victim Impact Statement as they pertain to the charges before the court. In the complaint subcommittee's view, the judge's comments regarding the Victim Impact Statement and his comments relating to the manner in which the complainant testified, do not amount to judicial misconduct and therefore recommended to the review panel that the complaint be dismissed. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

### **CASE NO. 10-031/05**

The complainant is the biological mother involved in a family court matter concerning access arrangements and issues about the parenting of her son by his father. In this case, the child resides with the father in another city, under the temporary supervision of the Children's Aid Society. The complainant alleged that the judge's conduct during a case conference was demeaning and disrespectful towards her. Specifically, the complainant indicated that the judge was "talking to me as if I were a child, telling me I have to make my son a priority as if I haven't". The complainant further alleged that the judge would not review the affidavit she had prepared. The complainant is seeking an apology from the judge. The complaint subcommittee reviewed the

complaint material provided and requested and reviewed the transcript and audiotape of the court appearance. The complaint subcommittee recommended to the review panel that the complaint be dismissed, as the record offered no support to the allegations that the judge was demeaning and disrespectful towards the complainant. The complaint subcommittee noted that the complainant was served with the Children's Aid Society's claim as well as an Answer from the biological father, however she served only an affidavit in response, which did not appear to have been filed with the court. Instead of reviewing the affidavit, the subcommittee noted that the judge wished to receive and review an Answer from the complainant before considering the issues and rendering a decision. In reviewing the judge's conduct and demeanour, the complaint subcommittee was of the view that the judge was courteous and professional and treated the complainant and her case fairly. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

### **CASE NO. 10-032/05**

The complainant has had a history of court appearances before the subject judge in relation to criminal charges against him and has filed complaints respecting those court matters with the Judicial Council. All previous complaints were dealt with by Council prior to receiving this complaint. Although the complainant restated his previous concerns regarding this judge, Council opened a file on the basis that the complainant alleged that the subject judge had "improperly" seized himself with the case that was currently before the courts.

## CASE SUMMARIES

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Council requested from the complainant the court dates for his most recent charges, however only received information pertaining to complaint matters that Council had previously investigated and closed. Since there was no information received to conduct an investigation into the complainant's newest concerns about the subject judge, the complaint subcommittee recommended to the review panel that the file be closed. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

### **CASE NO. 10-033/05**

The complainant was the Plaintiff in a Small Claims Court motion before the subject judge. The complainant alleged that the judge displayed “unusually unfair and harassive (sic) conduct” during this motion attendance. Specifically, the complainant indicated that when she attempted to explain her motion and supporting material, the judge refused to allow her to speak and called for security and had her removed from the court.

The complaint subcommittee reviewed the complaint and requested and reviewed a response from the judge with respect to the complainant's allegations. In the response, the judge indicated that the complainant was allowed the opportunity to present her evidence and offered to provide the complaint subcommittee with a copy of the audiotape of the proceedings.

The complaint subcommittee subsequently requested and received a copy of the judge's audiotape. After reviewing the audiotape of the proceedings, the complaint subcommittee was of

the opinion that the record did not support the complainant's allegations. In the opinion of the complaint subcommittee, the audiotape disclosed that the judge did listen to the complainant and although it was noted that security was requested by the judge, it appears that the judge did not actually direct security to remove the complainant, if in fact the complainant was escorted from the motion's room.

The complaint subcommittee recommended to the review panel that the complaint be dismissed as unfounded. The review panel agreed with the complaint subcommittee's recommendation to dismiss the complaint.

### **CASE NO. 10-034/05**

The complainant was convicted of an offence under Part II of the *Provincial Offences Act* and wished to file an appeal. He indicated that he had read the procedural guide produced by the Ministry of the Attorney General on how to go about doing this. The complainant indicated that when he attended to file his appeal, the court administrator informed him that he was also required to order a transcript of his trial and pay a deposit for the production of the transcript. The complainant informed the Ontario Judicial Council that he was advised that a judge had made a “standing order” to that effect, contrary to what the complainant had been advised was the practice in other court locations in the vicinity. The complainant was of the opinion that the judge, who he was advised made the “standing order”, is discriminating against citizens of the complainant's municipality.

## CASE SUMMARIES

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The complainant was asked by Council to provide additional information relating to his concerns, including a copy of the “standing order” he was referring to and/or the contact name of the court administrator he had dealt with. The complainant responded with the name of the Manager of Court Services for the municipality in question.

The complaint subcommittee reviewed the complaint and requested and reviewed a response from the Manager of Court Services with respect to the issues raised by the complainant. In his response, the Manager of Court Services explained that prior to *Provincial Offences Act* matters being downloaded to municipalities by the province, the practice requiring appellants to obtain transcripts in order to perfect their appeal had been established by the Criminal Courts and had been followed since at least 1990, if not before. The Manager added that this practice was continued after the transfer of jurisdiction to municipalities, although he was unable to acquire a written practice direction from the Provincial Criminal Court office. Due to the complainant having raised the issue, the Manager advised that he had reviewed this practice with the subject judge and it was decided that appellants should not be required to obtain a transcript of the trial to perfect their appeal.

The complaint subcommittee recommended to the review panel that this complaint be dismissed as there was no evidence of misconduct on the part of the subject judge in that the practice had been wrongly attributed to him by court staff. The complaint subcommittee noted that the judge assisted the Manager of Court Services in reviewing and changing the historical practice in

the area. The complaint subcommittee further noted that this matter appears to have been resolved to everyone’s satisfaction and that the complainant had been reimbursed his transcript deposit of \$75. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

### **CASE NO. 10-036/05**

The complainant is the agent for the biological mother who is involved in a family court matter with the Children’s Aid Society and the biological father. The two children of the relationship reside with the mother, who is being supervised by the Children’s Aid Society and is under court order to seek counselling to assist her in overcoming the effects of her abusive relationship with the father of the children. During a court appearance to review the status of the current arrangements, the complainant alleged that the judge was abusive in making inappropriate statements to his client (the mother), who was crying in the courtroom. Specifically the complainant alleged that the judge “insisted that she tell him why she was crying” and when she couldn’t, it was alleged that the judge stated something to the effect, “Do you want me to give you something to cry about”? The complainant also alleged that the judge expressed disapproval over the relationship between the spouses.

The complaint subcommittee reviewed the complaint material provided and requested and reviewed the transcript and audiotape of the court appearance. The complaint subcommittee recommended to the review panel that the complaint be dismissed, as the record confirmed

## CASE SUMMARIES

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the statements were taken out of context and offered no support to the allegations that the judge was abusive or threatening towards the complainant's client. The complaint subcommittee was of the view that the presiding judge was attempting to show some compassion to the distraught party, while emphasizing the importance of cooperating with the Children's Aid Society and following the court order in seeking the assistance of counselling. The judge's remarks regarding the couple's relationship was viewed by the complaint subcommittee as relevant within the context of the proceedings. In the subcommittee's opinion, the judge was merely relating how a difficult relationship can affect the children of the relationship. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

### **CASE NO. 11-001/05**

The complainant was the respondent on an application for child support for his daughter, which was brought to court by the child's mother. According to the complainant, who quit his job in Ontario and now lives outside of the province, the order for child support made by the subject judge has "caused much grief and despair in my personal life and in my family". The complainant alleged that the judge made his decision "without considering my documentation sent to the court, and issued support payments not reflecting my situation". As a result, the complainant believes he was discriminated against for being a man and a father.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcript

and audiotape of the family court proceedings, which the complainant did not attend. In addition, the complaint subcommittee requested and reviewed from Court Services the Answer the complainant had filed with the Court in response to the application. After consideration of all the materials, the complaint subcommittee recommended to the review panel that the complaint be dismissed as there was no evidence of misconduct by the subject judge. The complaint subcommittee was of the view that there was no evidence in the transcript to suggest the judge was biased against men or fathers and that the judge based his decision on the information available to him. If errors in law were committed by the judge (and the Judicial Council is making 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 recommendation of the complaint subcommittee to dismiss the complaint.

### **CASE NO. 11-003/05**

The complainant filed a complaint against the subject judge alleging that the judge does not sit in a court of competent jurisdiction to hear his Charter challenge. The complainant indicated that the judge heard his case and rendered a decision.

The complaint subcommittee reviewed the complaint and recommended to the review panel that the complaint be dismissed as there was no misconduct on the part of the judge in her assigned duties. Judges of the Ontario Court of Justice have jurisdiction to hear Charter arguments.

## CASE SUMMARIES

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The complaint subcommittee also noted that Council had received, investigated and dismissed a similar complaint against the subject judge from the same complainant in 2002/03. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

### **CASE NO. 11-007/05**

The complainant indicated she was wrongfully convicted of an offence in December 1997 relating to giving false statements with respect to having insurance on a motor vehicle. The complainant, who contends she was never issued any ticket nor given notice of any court dates for the trial, wished to present a motion to extend the time to appeal her conviction. Although almost eight years had lapsed since the conviction, the complainant was given a motion date and appeared before the subject judge. The complainant alleged that the judge “did not listen to my request and explanation” and “concluded that I was abusing the system”. The complainant’s motion was denied by the judge.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcript of the motion proceedings. The complaint subcommittee noted that the conviction was very dated and because of this the Crown was adamantly opposed to granting the extension of time for filing an appeal. In the opinion of the complaint subcommittee, the subject judge asked direct questions of the complainant during the proceedings and received vague responses regarding the inquiries the complainant had made to become informed of this matter earlier.

The complaint subcommittee recommended to the review panel that the complaint be dismissed as there was no misconduct evident in the exercise of the judge’s discretion to deny the complainant’s motion and, as a result, the complaint is not within the Judicial Council’s jurisdiction. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

### **CASE NO. 11-009/05**

The complainant filed a complaint against the subject judge in relation to a Small Claims Court application involving the misappropriation of funds from him by another individual for fees associated with overseas writing assignments. The complainant alleged that the subject judge prejudged his case and dismissed his application before hearing the supporting facts and further comments that he had no right of appeal. In addition, the complainant alleged that the reason stated by the subject judge for the dismissal was due to the plaintiff (complainant) not having a qualified interpreter. The complainant is of the opinion that he was not considered “equal before the Law” and the judge was biased against him because he is a senior, a person of low income, a litigant who was not represented by a lawyer and a member of a visible minority group.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcript of the trial proceedings. The complaint subcommittee recommended to the review panel that the complaint be dismissed as there was no misconduct evident in the judge’s conduct of the trial or in the judge’s dismissal of the case. The

## CASE SUMMARIES

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complaint subcommittee noted that the lawsuit was for less than \$500 and the judge explained at the outset of the trial that there is no option for appeal when the amount is below \$500. The complaint subcommittee was of the view that the judge dismissed the case based on the facts and not due to the plaintiff using an unqualified interpreter or due to any bias for being unrepresented or a visible minority. The subcommittee noted that the judge allowed both parties to use non-professional and unqualified interpreters. At the conclusion of the evidence, the complaint subcommittee noted that the judge's Reasons for Judgment provided the plaintiff (complainant) with details regarding the reasons for dismissal. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

### **CASE NO. 11-012/05**

The complainant was the Plaintiff in a Small Claims Court proceeding. According to the complainant, he filed a claim for non-payment of a bill for construction drawings, which he did for the Defendant. The matter scheduled before the subject judge was a motion by the Defendant to change the geographic jurisdiction where the matter was to be heard. The matter was scheduled for 10 a.m. and the complainant indicated that no one for the Defendant was in attendance. The complainant indicated that the judge decided to wait 30 minutes to allow for someone to show before dealing with the motion. According to the complainant, the judge ruled in favour of the Plaintiff, as no one had attended on behalf of the Defendant within the required time. However, according to the complainant, several minutes later the Defendant's father appeared and the

complainant alleged that the judge set aside the earlier ruling and proceeded to hear the motion to change the geographical jurisdiction. In the end, the complainant indicated that the judge ruled in favour of the Defendant, indicating the matter should be heard in another location. According to the complainant "the real issue of importance here is ... how the case was restarted after it was decided".

The complaint subcommittee reviewed the complaint and was of the opinion that there was no misconduct of the part of the judge in re-opening the matter. The complaint subcommittee noted that it is usual to re-open a matter if the absent party appears before the other party leaves court. In explanation, the complaint subcommittee commented that by re-opening the matter, it negates the requirement of appearing at a motion to set aside the judgment by default; which, in the complaint subcommittee's experience, is inevitably granted on the principle of the right to be heard.

The complaint subcommittee noted that by automatically granting the re-opening, the judge spared both the Plaintiff (complainant) and the Defendant the inconvenience of an additional court appearance. It was further noted that this court appearance was not a trial proceeding, but merely a hearing to decide if the case had been brought in the proper territorial jurisdiction. For the aforementioned reasons, the complaint subcommittee recommended to the review panel that the complaint be dismissed. The review panel agreed with the complaint subcommittee's recommendation to dismiss the complaint.

### 10. Hearing

#### **CASE NO. 10-028/05**

A complaint was filed by the Criminal Lawyer's Association against a judge who presided over "Impaired Driving" offences on a regular basis. The complainant indicated that, in its view, the judge had engaged in improper exchanges of correspondence with various Crown Attorneys relating to an appeal of a decision in an Impaired Driving case. The complainant contended that this correspondence showed that the judge was taking an active interest in the outcome of a particular case and that the judge was displaying a bias with respect to Impaired Driving cases which led the complainant to question the judge's ability to preside fairly over future cases. It was also alleged that, through his correspondence with Crown Attorneys, the judge was seeking to "affect the course of litigation and obtain an appellate ruling consistent with that interest". The complainant further alleged that the judge expressed an opinion about "over 80" cases and the defence commonly referred to as "evidence to the contrary" in an earlier decision that he had rendered, thereby displaying "partiality toward a particular offence and an unwillingness to accept the clear dicta (decisions) of appellate courts regarding legitimate defences that can be raised". The complainant provided copies of the e-mail and other correspondence between the judge and the Crown Attorneys. Copies of the relevant transcripts of court decisions were also provided by the complainant.

The complaint subcommittee reviewed the complaint material provided. After consideration, the complaint subcommittee requested and reviewed a response from the judge with respect to the complainant's allegations. No recommendation to the review panel was made and the complaint subcommittee referred the matter to the review panel as required by statute.

After consideration of the complaint and the supporting material, the review panel directed that this complaint be the subject of a public hearing. A Notice of Hearing was issued and a hearing was held on December 9, 2005. As the criteria for a private hearing were not met, the hearing was public.

An Agreed Statement of Facts was filed at the hearing. In the "Reasons for Decision" released after the hearing, the hearing panel indicated that it was satisfied that the judge was sincere in acknowledging his inappropriate conduct, noting that "there was nothing that he said or did that we are able to condone. However, considering all of the circumstances, we are not prepared to conclude that he engaged in judicial misconduct, although we are bound to say that his conduct was very close to the line."

The hearing recommended that the judge be compensated for his costs incurred for legal services in connection with the complaint and asked the judge's counsel for submissions.

The full text of the Reasons for Decision in this matter may be found at Appendix "E".



# APPENDIX-A

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ONTARIO JUDICIAL COUNCIL –  
DO YOU HAVE A COMPLAINT?

# APPENDIX – A

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

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

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

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

### Ontario's Justice System:

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

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

### Is a Judge's Decision Final?

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

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

### Professional Conduct of Judges

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

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

### The Role of the Ontario Judicial Council

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

# APPENDIX – A

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

A

### *Making a Complaint*

If you have a complaint of misconduct about a Provincial Judge or a Master, you must state your complaint in a signed letter. The letter of complaint should include the date, time and place of the court hearing and as much detail as possible about why you feel there was misconduct. If your complaint involves an incident outside the courtroom, please provide as much information as you can, in writing, about what you feel was misconduct on the part of the judge.

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.

### *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.

### *For Further Information*

If you need any additional information or further assistance, in the greater Toronto area, please call 416-327-5672. If you are calling long distance, please dial the toll-free number: 1-800-806-5186. TTY/Teletypewriter users may call 1-800-695-1118, toll-free.

### *Written complaints should be mailed or faxed to:*

The Ontario Judicial Council  
P.O. Box 914  
Adelaide Street Postal Station  
31 Adelaide Street East  
Toronto, Ontario M5C 2K3  
416-327-2339 (FAX)

### *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

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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT

# APPENDIX – B

OJC – PROCEDURES DOCUMENT – INDEX

## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT

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# APPENDIX – B

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# APPENDIX – B

## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT

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

### COMPLAINTS

#### GENERALLY

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

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

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

**subs. 51.3(4)**

### COMPLAINT SUBCOMMITTEES

#### COMPOSITION

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

**subs. 51.4(1) and (2)**

#### ADMINISTRATIVE PROCEDURES

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

### STATUS REPORTS

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

### Investigation

#### GUIDELINES AND RULES OF PROCEDURE

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

**subs. 51.1(2)**

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

**subs. 51.1(3)**

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

**subs. 51.4(21)**

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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPLAINT SUBCOMMITTEES

### AGREEMENT ON HOW TO PROCEED

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

### DISMISSAL OF COMPLAINT

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

**subs. 51.4(3)**

### CONDUCTING INVESTIGATION

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

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

### PREVIOUS COMPLAINTS

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

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

### INFORMATION TO BE OBTAINED BY REGISTRAR

Complaint subcommittee members will endeavour to review and discuss their assigned files and determine whether or not a transcript of evidence and/or a response to a complaint is necessary within a month of receipt of the file. All material (transcripts, audiotapes, court files, etc.) which a complaint subcommittee wishes to examine in relation to a complaint will be obtained on their behalf by the Registrar, on their instruction, and not by individual complaint subcommittee members.

### TRANSCRIPTS, ETC.

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

### RESPONSE TO COMPLAINT

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

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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPLAINT SUBCOMMITTEES

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 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

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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPLAINT SUBCOMMITTEES

judge and the complainant and the judge both work at the same court location

- where allowing the judge to continue to preside would likely bring the administration of justice into disrepute
- where the complaint is of sufficient seriousness that there are reasonable grounds for investigation by law enforcement agencies
- where it is evident to the complaint subcommittee that a judge is suffering from a mental or physical impairment that cannot be remedied or reasonably accommodated

### INFORMATION RE: INTERIM RECOMMENDATION

Where a complaint subcommittee recommends temporarily suspending or re-assigning a judge pending the resolution of a complaint, particulars of the factors upon which the complaint subcommittee's recommendations are based shall be provided contemporaneously to the Regional Senior Justice and the subject judge to assist the Regional Senior Justice in making his or her decision and to provide the subject judge with notice of the complaint and the complaint subcommittee's recommendation.

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

### Reports to Review Panels

#### WHEN INVESTIGATION COMPLETE

When its investigation is complete, the complaint subcommittee shall either:

- dismiss the complaint,
- refer the complaint to the Chief Justice of the Ontario Court of Justice,

- refer the complaint to a mediator, in accordance with criteria established by the Judicial Council pursuant to section 51.1(1), or
- refer the complaint to the Judicial Council, with or without recommending that it hold a hearing.

**subs. 51.4(13)**

### GUIDELINES AND RULES OF PROCEDURE

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

**subs. 51.1(2)**

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

**subs. 51.1(3)**

If the complaint is against the Chief Justice of the Ontario Court of Justice, an Associate Chief Justice of the Ontario Court of Justice or the Regional Senior Justice who is a member of the Judicial Council, any recommendation or suspension, with pay, or temporary reassignment shall be made to the Chief Justice of the Superior Court of Justice, who may suspend or reassign the judge as the complaint subcommittee recommends.

**subs. 51.4(12)**

### PROCEDURE TO BE FOLLOWED

One member of each complaint subcommittee will be responsible to contact the Assistant Registrar by a specified deadline prior to each scheduled OJC meeting to advise what files, if any, assigned to the complaint subcommittee are ready to be reported to a review panel. The members of the complaint subcommittee will also provide a legible, fully completed copy of the appropriate pages of the complaint intake form for each file which is ready to be reported and will advise as to what other file material, besides the complaint, should be copied from the file and provided to the members of the review panel for their consideration.

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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPLAINT SUBCOMMITTEES

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;
- (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**

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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – REVIEW PANELS

### D) TO RECOMMEND A HEARING

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

**subs.51.4(13) and (16)**

### RECOMMENDATION RE: HEARING

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

### E) COMPENSATION

The complaint subcommittee's report to the review panel may also deal with the question of compensation of the judge's costs for legal services, if any, incurred during the investigative stage of the process if the complaint subcommittee is of the opinion that the complaint should be dismissed and has so recommended in its report to the Judicial Council. The Judicial Council may then recommend to the Attorney General that the judge's costs for legal services be paid, in accordance with section 51.7 of the Act.

**subs. 51.7(1)**

The decision as to whether or not to recommend compensation of a judge's costs for legal services will be made on a case by case basis.

### REFERRING COMPLAINT TO COUNCIL

As noted above, a complaint subcommittee may also refer the complaint to the Judicial Council, with or without making a recommendation that it hold a hearing into the complaint. Both members of the complaint subcommittee need not agree with this recommendation and the Judicial Council, or a review panel thereof, has the power to require the complaint subcommittee to refer the complaint to it if it does not approve the complaint subcommittee's

recommended disposition or if the complaint subcommittee cannot agree on the disposition. If a complaint is referred to the Judicial Council, with or without a recommendation that a hearing be held, the complainant and the subject judge may be identified to the Judicial Council, or a review panel thereof.

**subs.51.4(16) and (17)**

### INFORMATION TO BE INCLUDED

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

## REVIEW PANELS

### PURPOSE

The Judicial Council may establish a review panel for the purpose of: -

- considering the report of a complaint subcommittee,
- considering a complaint referred to it by a complaint subcommittee
- considering a mediator's report
- considering a complaint referred to it out of mediation, and
- considering the question of compensation

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

**subs. 49(14)**

### 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

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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – REVIEW PANELS

members who served on the complaint subcommittee who investigated the complaint and made the recommendation to the review panel. One of the judges, designated by the Council, shall chair the review panel and four members constitute a quorum. The chair of the review panel is entitled to vote and may cast a second deciding vote if there is a tie.

**subs. 49(15),(18) and (19)**

### WHEN REVIEW PANEL FORMED

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

### GUIDELINES AND RULES OF PROCEDURE

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

**subs. 51.1(2)**

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

**subs. 51.4(19)**

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

**subs. 51.1(3)**

The Ontario Judicial Council has established the following guidelines and rules of procedure under subsection 51.1(1) with respect to the consideration of complaint subcommittee reports made to a review panel or referred to it by a complaint subcommittee and the Judicial Council, or a review panel thereof, shall follow its guidelines and rules of procedure established for this purpose.

**subs. 51.4(22)**

## Review of Complaint Subcommittee's Report

### REVIEW IN PRIVATE

The review panel shall consider the complaint subcommittee's report, in private, and may approve its disposition or may require the complaint subcommittee to refer the complaint to the Council in which case the review panel shall consider the complaint, in private.

**subs. 51.4(17)**

### PROCEDURE ON REVIEW

The review panel shall examine the letter of complaint, the relevant parts of the transcript (if any), the response from the judge (if any), etc., with all identifying information removed therefrom, as well as the report of the complaint subcommittee, until its members are satisfied that the issues of concern have been identified and addressed by the complaint subcommittee in its investigation of the complaint and in its recommendation(s) to the review panel about the disposition of the complaint.

A review panel may reserve its decision on a complaint subcommittee's recommendation and may adjourn from time to time to consider its decision or direct the complaint subcommittee to conduct further investigation and report back to the review panel.

If the members of the review panel are not satisfied with the report of the complaint subcommittee, they may refer the complaint back to the complaint subcommittee for further investigation or make any other direction or request of the complaint subcommittee that they deem to be appropriate.

If it is necessary to hold a vote on whether or not to accept the recommendation of a complaint subcommittee, and there is a tie, the chair will cast a second and deciding vote.

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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – REVIEW PANELS

### ***Referral of Complaint to a Review Panel***

#### **WHEN REFERRED**

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

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

#### **POWER OF A REVIEW PANEL ON REFERRAL**

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

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

**subs. 51.4(16) and (18)**

#### **GUIDELINES AND RULES OF PROCEDURE**

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

**subs. 51.1(2)**

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

**subs. 51.4(19)**

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

**subs. 51.1(3)**

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

**subs. 51.4(22)**

### ***Guidelines re: Dispositions***

#### **A) ORDERING A HEARING**

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

#### **B) DISMISSING A COMPLAINT**

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

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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – REVIEW PANELS

### C) REFERRING A COMPLAINT TO THE CHIEF JUSTICE

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

### D) REFERRING A COMPLAINT TO MEDIATION

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

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

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

### Notice of Decision

#### DECISION COMMUNICATED

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

**subs. 51.4(20)**

#### ADMINISTRATIVE PROCEDURES

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

## HEARING PANELS

#### APPLICABLE LEGISLATION

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

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

**subs. 51.1(2)**

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

**subs. 51.1(3) and 51.6(2)**

# APPENDIX – B

## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – HEARINGS

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

**subs. 51.6(3)**

### COMPOSITION

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

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

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

### POWER

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

**subs. 49(16)**

## HEARINGS

### COMMUNICATION BY MEMBERS

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

**subs. 51.6(4) and (5)**

### PARTIES TO THE HEARING

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

**subs. 51.6(6)**

### PUBLIC OR PRIVATE/ALL OR PART

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

**subs. 49(11) and 51.6(7)**

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

**subs. 51.6(2)**

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

# APPENDIX – B

## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – HEARINGS

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 same to a complaint subcommittee of the Judicial Council to be processed as an original complaint. The Complaint subcommittee shall be composed of

# APPENDIX – B

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

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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# APPENDIX – B

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

### RESPONSE

9. The Respondent may serve on Presenting Counsel and file with the Council a Response to the allegations in the Notice Hearing.

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

### DISCLOSURE

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

### PRE-HEARING CONFERENCE

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

### THE HEARING

15. For greater certainty, the Respondent has the right to be represented by counsel, or to act on his own behalf in any hearing under this Code.

16. The Panel, on application at any time by Presenting Counsel or by the Respondent, may require any person, including a party, by summons, to give evidence on oath or affirmation at the hearing and to produce in evidence at the hearing any documents or things specified by the Panel which are relevant to the subject matter of the hearing and admissible at the hearing.

- (1) A summons issued under this section shall be in the form prescribed by subsection 12(2) of the *Statutory Powers Procedure Act*.

17. The hearing shall be conducted by a Panel of members of the Council composed of members who have not participated in a complaint sub-committee investigation of the complaint or in a Panel reviewing a report from such complaint sub-committee.

- (1) The following guidelines apply to the conduct of the hearing, unless the Panel, on motion by another party, or on consent requires otherwise.
  - (a) All testimony shall be under oath or affirmation or promise.
  - (b) Presenting Counsel shall commence the hearing by an opening statement, and shall proceed to present evidence in support of the allegations in the Notice of Hearing by direct examination of witnesses.
  - (c) Counsel for the Respondent may make an opening statement, either immediately following Presenting Counsel's opening statement, or immediately following the conclusion of the evidence presented on behalf of Presenting Counsel. After Presenting Counsel has called its evidence, and after the Respondent has made an opening statement, the Respondent may present evidence.
  - (d) All witnesses may be cross-examined by counsel for the opposite party and re-examined as required.

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

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

### PRE-HEARING RULINGS

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

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

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

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

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

### POST-HEARINGS

#### *Disposition at Hearing*

##### DISPOSITION

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

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

**subs. 51.6(11)**

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

### COMBINATION OF SANCTIONS

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

**subs. 51.6(12)**

### *Report to Attorney General*

#### REPORT

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

**subs. 51.6(18)**

### IDENTITY WITHHELD

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

**subs. 51.6(19)**

### JUDGE NOT TO BE IDENTIFIED

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

**subs. 51.6(20)**

### *Order to Accommodate*

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

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

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

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

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

### *Removal from Office*

#### REMOVAL

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

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

# APPENDIX – B

## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPENSATION

those needs, or was made but did not remedy the inability),

(ii) conduct that is incompatible with the due execution of his or her office, or

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

**subs. 51.8(1)**

### TABLING OF RECOMMENDATION

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

**subs. 51.8(2)**

### ORDER REMOVING JUDGE

An order removing a provincially-appointed judge from office may be made by the Lieutenant Governor on the address of the Legislative Assembly.

**subs. 51.8(3)**

### APPLICATION

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

**subs. 51.8(4)**

## COMPENSATION

### AFTER COMPLAINT DISPOSED OF

When the Judicial Council has dealt with a complaint against a provincially-appointed judge, it shall consider whether the judge should be compensated for all or part of his or her costs for legal services incurred in connection with the steps taken in relation to the complaint, including review and investigation of a

complaint by a complaint subcommittee, review of a complaint subcommittee's report by the Judicial Council, or a review panel thereof, review of a mediator's report by the Judicial Council, or a review panel thereof, the hearing into a complaint by the Judicial Council, or a hearing panel thereof, and legal services incurred in connection with the question of compensation. The Judicial Council's consideration of the question of compensation shall be combined with a hearing into a complaint, if one is held.

**subs. 51.7(1) and (2)**

### PUBLIC OR PRIVATE

If a hearing was held and was public, the consideration of the compensation question shall be public; otherwise, the consideration of the question of compensation shall take place in private.

**subs. 51.7(3)**

### RECOMMENDATION

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

**subs. 51.7(4)**

### WHERE COMPLAINT DISMISSED AFTER A HEARING

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

**subs. 51.7(5)**

### DISCLOSURE OF NAME

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

**subs. 51.7(6)**

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

### AMOUNT AND PAYMENT

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

**subs. 51.7(7) and (8)**

### CONFIDENTIALITY AND PROTECTION OF PRIVACY

#### INFORMATION TO PUBLIC

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

**subs. 51.3(5)**

#### POLICY OF JUDICIAL COUNCIL

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

#### COMPLAINT SUBCOMMITTEE INVESTIGATION PRIVATE

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

**subs. 51.4(6) and (7)**

#### REVIEW PANEL DELIBERATION PRIVATE

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

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

**subs. 51.4(17)**

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

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

**subs. 51.4(18)**

#### WHEN IDENTITY OF JUDGE REVEALED TO REVIEW PANEL

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

**subs. 51.4(16) and (17)**

#### HEARINGS MAY BE PRIVATE

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

**subs. 51.6(7)**

#### JUDGE'S NAME NOT DISCLOSED

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

**subs. 51.6(8)**

# APPENDIX – B

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

### ORDER PROHIBITING PUBLICATION

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

**subs. 51.6(10)**

### CRITERIA ESTABLISHED

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

### REPORT TO ATTORNEY GENERAL

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

**subs. 51.6(19)**

### JUDGE NOT TO BE IDENTIFIED

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

**subs. 51.6(20)**

### ORDER NOT TO DISCLOSE

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

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

**subs. 49(24) and (25)**

### EXCEPTION

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

**subs. 49(26)**

### AMENDMENTS TO THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

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

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

# APPENDIX – B

## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ACCOMMODATION OF DISABILITIES

### ACCOMMODATION OF DISABILITIES

#### APPLICATION FOR ORDER

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

**subs. 45.(1)**

#### DUTY OF JUDICIAL COUNCIL

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

**subs. 45.(2)**

#### UNDUE HARDSHIP

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

**subs. 45.(3)**

#### GUIDELINES AND RULES OF PROCEDURE

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

**subs. 45.4(4)**

#### OPPORTUNITY TO PARTICIPATE

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

**subs. 45.(5)**

#### ORDER BINDS THE CROWN

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

**subs. 45.(6)**

#### CHAIR FOR MEETING

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

**subs. 49.(8)**

#### CHAIR ENTITLED TO VOTE

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

**subs. 49.(10)**

#### QUORUM FOR MEETING

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

**subs. 49.(13)**

#### EXPERT ASSISTANCE

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

**subs. 49.(21)**

#### CONFIDENTIAL RECORDS

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

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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ACCOMMODATION OF DISABILITIES

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

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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ACCOMMODATION OF DISABILITIES

the accommodation subcommittee in order to determine whether or not the application for accommodation gives 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 otherwise

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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – SPECIAL CONSIDERATIONS

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, audiotapes, court files, etc.) which a complaint subcommittee wishes to examine in relation to a complaint will be obtained on their behalf by the Registrar, 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

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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.

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## 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

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ONTARIO COURT OF JUSTICE  
CONTINUING EDUCATION PLAN

# APPENDIX – C

## ONTARIO COURT OF JUSTICE CONTINUING EDUCATION PLAN

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

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

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

### EDUCATION SECRETARIAT

The coordination of the planning and presentation of education programs is assured by the Education Secretariat. The composition of the Secretariat is as follows: the Chief Justice as Chair (ex officio), four judges nominated by the Chief Justice and four judges nominated by the Ontario Conference of Judges. The Ontario Court of Justice's research counsel serve as consultants. The Secretariat meets approximately 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;
8. To establish and maintain structures and systems to implement the mandate and goals of the Secretariat; and

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## ONTARIO COURT OF JUSTICE – CONTINUING EDUCATION PLAN

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 largely substantive 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 initiated a New Judges Skills-Based program at Niagara-on-the-Lake for newly appointed provincial judges from across Canada. The program includes sessions on the delivery of judgments both written and oral, communication skills and the effective conduct of a judicial pre-trial. The program was very successful and was repeated in November 2005. Fourteen newly appointed judges from the Ontario Court of Justice joined sixteen judges from across Canada to learn new skills.

Judges in the first year of appointment are also encouraged to attend all education programs relating to their field(s) of specialization presented by the Ontario Court of Justice (These programs are outlined under the heading "Continuing Education").

Each judge at the time of appointment is invited to participate in a mentoring program which has been developed within the Ontario Court of Justice by the Ontario Conference of Judges and funded through the Education Secretariat. New judges also have the

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## ONTARIO COURT OF JUSTICE – CONTINUING EDUCATION PLAN

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 two education programs in the area of family law, one each in January (the Judicial Development Institute), and September. Generally speaking, the principal topics are a) Child Welfare, and b) Family Law (custody, access and support). Additional topics involving skills development, case management, legislative changes, social context and other areas are incorporated as the need arises. Each program is of two to three days duration and is open to any judge who spends a significant amount of his or her time presiding over family law matters.

A concurrent family law education programme is held in May, in conjunction with the annual meeting of the Court.

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/ORAL JUDGMENTS:  
This two-day seminar is presented to a group of approximately 10 judges at a time as funding permits and demand dictates. Professor Edward Berry of the University of Victoria and the National Judicial Institute respectively have presented two seminars in February of each year at the Office of the Chief Justice.

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.

In February 2006 a one-day intensive judgment writing program will be presented to a small group of judges by Professor Berry.

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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 develop and present a training program on Judicial Communication involving directed activities and discussion on verbal and non-verbal communications, listening and related problems. The first of these programs was held in March, 2000. The program was presented again in March, 2002.

Subsequently, 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. The program is now presented annually to about 20 judges.

4. SOCIAL CONTEXT PROGRAMS: The Ontario Court of Justice has presented significant programs dealing with social context. The first such program, entitled *Gender Equity*, was presented in the fall of 1992. That program used professional and community resources in its planning and presentation phases. A number of Ontario Court of Justice judges were trained as facilitators for the purposes of the program during the planning process, which lasted over 12 months. Extensive use was made of videos and printed materials which form a permanent reference. The facilitator model has since been used in a number of Ontario Court of Justice education programs.

The Court undertook its second major social context program, presented to all of its judges, in May 1996. The program, entitled *The Court in an Inclusive Society*, was intended to provide information about the changing nature of our society, to determine the impact of the changes and to equip the Court to respond better to those changes. A variety of pedagogical techniques including large and small group sessions were used in the course of the program. A group of judge facilitators were specifically trained for this program which was presented following significant community consultation.

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

At the Court's annual meeting in 2003, the theme of the education program was "Access to Justice". 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.

As part of the Court's commitment to social context education, the Ontario Conference of Judges 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 annually 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.

# APPENDIX – C

## ONTARIO COURT OF JUSTICE – CONTINUING EDUCATION PLAN

### III. EXTERNAL EDUCATION PROGRAMS

1. **FRENCH-LANGUAGE COURSES:** Judges of the Ontario Court of Justice who are proficient in French may attend courses presented by the Office of the Commissioner for Federal Judicial Affairs. The frequency and duration of the courses are determined by the judge's level of proficiency. The purpose of the courses is to assure and to maintain the French language proficiency of those judges who are called upon to preside over French language matters in the Ontario Court of Justice. There are two levels of courses: (a) Terminology courses for francophone judges; (b) Terminology courses for anglophone (bilingual) judges.
2. **OTHER EDUCATIONAL PROGRAMS:** Judges of the Ontario Court of Justice are encouraged to pursue educational interests by attending education programs presented by other organizations and associations including:
  - Canadian Association of Provincial Court Judges
  - National Judicial Institute
  - Federation of Law Societies: Criminal (Substantive Law/Procedure/Evidence) & Family Law
  - International Association of Juvenile and Family Court Magistrates
  - Canadian Bar Association
  - Criminal Lawyers' Association
  - Advocate's Society
  - 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)

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.

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

As the Desktop Computer Implementation (D.C.I.) Project 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.

# APPENDIX – C

## ONTARIO COURT OF JUSTICE – CONTINUING EDUCATION PLAN

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.

5. Remote learning computer based courses prepared and hosted by the N.J.I. covering substantive law and issues including sentencing, evidence and mental health.

Since 1999 the National Judicial Institute and the Canadian Association of the Provincial Court Judges have been developing and offering online education programs. Our Court has been very supportive in the design and delivery of these web-based education courses. Typically groups of 15 – 20 judges participate in a three to four week interactive session focusing on a selected area of interest. These programs have been found to be successful in an independent evaluation by Dr. David Kirby of the Centre for Higher Education Research and Development with the University of Manitoba. These programs are available at no cost to the participants.

#### 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

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

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

# APPENDIX – D

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

### SECTION 49

#### JUDICIAL COUNCIL

49. (1) The Ontario Judicial Council is continued under the name Ontario Judicial Council in English and Conseil de la magistrature de l'Ontario in French.

#### COMPOSITION

- (2) The Judicial Council is composed of,
  - (a) the Chief Justice of Ontario, or another judge of the Court of Appeal designated by the Chief Justice;
  - (b) the Chief Justice of the Ontario Court of Justice, or another judge of that division designated by the Chief Justice, and the Associate Chief Justice of the Ontario Court of Justice;
  - (c) a regional senior judge of the Ontario Court of Justice, appointed by the Lieutenant Governor in Council on the Attorney General's recommendation;
  - (d) two judges of the Ontario Court of Justice, appointed by the Chief Justice;
  - (e) the Treasurer of The Law Society of Upper Canada, or another bencher of the Law Society who is a lawyer, designated by the Treasurer;
  - (f) a lawyer who is not a bencher of The Law Society of Upper Canada, appointed by the Law Society;
  - (g) four persons who are neither judges nor lawyers, appointed by the Lieutenant Governor in Council on the Attorney General's recommendation.

#### TEMPORARY MEMBERS

(3) The Chief Justice of the Ontario Court of Justice may appoint a judge of that division to be a temporary member of the Judicial Council in the place of another provincial judge, for the purposes of dealing with a complaint, if the requirements of subsections (13), (15), (17), (19) and (20) cannot otherwise be met.

#### CRITERIA

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

#### TERM OF OFFICE

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

Same

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

#### STAGGERED TERMS

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

#### CHAIR

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

Same

(9) The Chief Justice of the Ontario Court of Justice, or another judge of that division designated by the Chief Justice, shall chair all other meetings and hearings of the Judicial Council.

Same

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

#### OPEN AND CLOSED HEARINGS AND MEETINGS

(11) The Judicial Council's hearings and meetings under sections 51.6 and 51.7 shall be open to the public, unless subsection 51.6 (7) applies; its other hearings and meetings may be conducted in private, unless this *Act* provides otherwise.

#### VACANCIES

(12) Where a vacancy occurs among the members appointed under clause (2) (d), (f) or (g), a new member similarly qualified may be appointed for the remainder of the term.

# APPENDIX – D

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

### QUORUM

(13) The following quorum rules apply, subject to subsections (15) and (17):

1. Eight members, including the chair, constitute a quorum.
2. At least half the members present must be judges and at least four must be persons who are not judges.

### REVIEW PANELS

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

Same

(15) The following rules apply to a panel established under subsection (14):

1. The panel shall consist of two provincial judges other than the Chief Justice, a lawyer and a person who is neither a judge nor a lawyer.
2. One of the judges, as designated by the Judicial Council, shall chair the panel.
3. Four members constitute a quorum.

### HEARING PANELS

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

Same

(17) The following rules apply to a panel established under subsection (16):

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

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

### CHAIR

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

### PARTICIPATION IN STAGES OF PROCESS

(19) The members of the subcommittee that investigated a complaint shall not,

- (a) deal with the complaint under subsection 51.4 (17) or (18) or subsection 51.5 (8) or (10); or
- (b) participate in a hearing of the complaint under section 51.6.

Same

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

### EXPERT ASSISTANCE

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

### SUPPORT SERVICES

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

Same

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

### CONFIDENTIAL RECORDS

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

Same

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

# APPENDIX – D

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

### EXCEPTIONS

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

### PERSONAL LIABILITY

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

### REMUNERATION

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

## 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.

# APPENDIX – D

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

### TELEPHONE ACCESS

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

### PERSONS WITH DISABILITIES

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

### ANNUAL REPORT

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

### TABLING

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

## 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.

# APPENDIX – D

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

### BILINGUAL HEARING OR MEDIATION

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

### PART OF HEARING OR MEDIATION

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

Same

(7) In a bilingual hearing or mediation,

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

Same

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

## 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.

# APPENDIX – D

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

### INTERIM RECOMMENDATIONS

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

Same

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

### POWER OF REGIONAL SENIOR JUDGE

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

### DISCRETION

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

### EXCEPTION: COMPLAINTS AGAINST CERTAIN JUDGES

(12) If the complaint is against the Chief Justice of the Ontario Court of Justice, an associate chief justice of the Ontario Court of Justice or the regional senior judge who is a member of the Judicial Council, any recommendation under subsection (8) in connection with the complaint shall be made to the Chief Justice of the Superior Court of Justice, who may suspend or reassign the judge as the subcommittee recommends.

### SUBCOMMITTEE'S DECISION

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

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

Same

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

### CONDITIONS, REFERENCE TO CHIEF JUSTICE

(15) The subcommittee may, if the judge who is the subject of the complaint agrees, impose conditions on a decision to refer the complaint to the Chief Justice.

### REPORT

(16) The subcommittee shall report to the Judicial Council, without identifying the complainant or the judge who is the subject of the complaint, its disposition of any complaint that is dismissed or referred to the Chief Justice or to a mediator.

### POWER OF JUDICIAL COUNCIL

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

Same

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

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

### NON-APPLICATION OF SPPA

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

### NOTICE TO JUDGE AND COMPLAINANT

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

### GUIDELINES AND RULES OF PROCEDURE

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

# APPENDIX – D

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

Same

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

### SECTION 51.5

#### MEDIATION

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

#### CRITERIA

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

Same

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

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

#### LEGAL ADVICE

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

#### TRAINED MEDIATOR

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

#### IMPARTIALITY

(6) The mediator shall be impartial.

#### EXCLUSION

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

#### REVIEW BY COUNCIL

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

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

#### REPORT

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

#### REFERRAL TO COUNCIL

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

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

#### NON-APPLICATION OF SPPA

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

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

### NOTICE TO JUDGE AND COMPLAINANT

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

### GUIDELINES AND RULES OF PROCEDURE

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

## SECTION 51.6

### ADJUDICATION BY COUNCIL

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

### APPLICATION OF SPPA

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

### RULES OF PROCEDURE

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

### COMMUNICATION RE SUBJECT-MATTER OF HEARING

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

### EXCEPTION

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

### PARTIES

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

### EXCEPTION, CLOSED HEARING

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

### DISCLOSURE IN EXCEPTIONAL CIRCUMSTANCES

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

### ORDERS PROHIBITING PUBLICATION

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

### PUBLICATION BAN

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

### DISPOSITIONS

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

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

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

- (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.

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## SECTION 51.7

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### COMPENSATION

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

### CONSIDERATION OF QUESTION COMBINED WITH HEARING

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

### PUBLIC OR PRIVATE CONSIDERATION OF QUESTION

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

### RECOMMENDATION

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

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

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

### 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.

# APPENDIX – D

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

### 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.

# APPENDIX – D

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

### 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

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IN THE MATTER OF  
A COMPLAINT RESPECTING  
THE HONOURABLE JUSTICE  
NORMAN DOUGLAS

# APPENDIX – E

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## ONTARIO JUDICIAL COUNCIL

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### *IN THE MATTER OF a complaint respecting the Honourable Justice Norman Douglas*

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BEFORE	The Honourable Justice Stephen Borins – Court of Appeal for Ontario The Honourable Annemarie E. Bonkalo – Associate Chief Justice, Ontario Court of Justice Mr. J. Bruce Carr Harris Ms. Madeline Aldridge
COUNSEL	Mr. Douglas C. Hunt, Q.C. and Mr. Michael J. Meredith – Presenting Counsel  Mr. Paul Stern for The Honourable Justice Norman Douglas

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### REASONS FOR DECISION

#### I

[1] On December 9, 2005 the Ontario Judicial Council (the “Council”), pursuant to ss. 51.4(18) and 51.6 of the Courts of Justice Act, R.S.O. 1990, c. C. 43, (“CJA”), conducted a hearing in respect of a complaint by the Criminal Lawyers’ Association that the Honourable Justice Norman Douglas has conducted himself in a manner that is incompatible with the due execution of the duties of his office. The particulars of the complaint are contained in Appendix “A” to these reasons.

#### II

[2] The evidence considered by the Council consisted of an Agreed Statement of Facts and the numerous references that were attached to the complaint. Justice Douglas did not testify and relied on the submissions made by his lawyer.

[3] The issue to be decided is whether some, or all, of Justice Douglas’ conduct constitutes judicial misconduct. Specifically, this requires the Council to decide whether Justice Douglas has conducted himself in a manner that amounts to judicial misconduct.

The Council is unanimous in finding that none of the conduct in which Justice Douglas engaged constitutes judicial misconduct, a term that is not defined in the CJA.

#### III

[4] Section 51.6(11) of the CJA sets out dispositions available to the Council upon completion of a hearing into whether a judge has engaged in judicial misconduct. It reads as follows:

s. 51.6(11) After completing the hearing, the Judicial Council may dismiss the complaint, with or without a finding that it is unfounded or, if it finds that there has been misconduct by the judge, may,

- (a) warn the judge;
- (b) reprimand the judge;
- (c) order the judge to apologize to the complainant or to any other person;
- (d) order that the judge take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a judge;

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## IN THE MATTER OF A COMPLAINT RESPECTING THE HONOURABLE NORMAN DOUGLAS

- (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.

Thus, Council is empowered to impose a broad range of sanctions if it finds that a judge has engaged in misconduct relative to the degree of the misconduct. In addition, where the Council dismisses a complaint it may comment on the appropriateness of the impugned conduct.

[5] Focusing on the broad scope of s. 51.6(1), in *Re: Baldwin* (2002) a Hearing Panel of this Council considered the meaning of judicial misconduct. In doing so, it relied primarily on two leading decisions of the Supreme Court of Canada: *Therrien v. Minister of Justice*, [2001] 2 S.C.R. 3 and *Moreau Bérubé v. New Brunswick (Judicial Council)*, [2002] 1 S.C.R. 249. The Council stated:

In *Moreau - Bérubé v. New Brunswick (Judicial Council)*, the Supreme Court discussed the tension between judicial accountability and judicial independence. Judges must be accountable for their judicial and extra-judicial conduct so that the public has [sic] confidence in their capacity to perform the duties of office impartially, independently and with integrity. When public confidence is undermined by a judge's conduct there must be a process for remedying the harm that has been occasioned by that conduct. It is important to recognize, however, that the manner in which complaints of judicial misconduct are addressed can have an inhibiting or chilling effect on judicial action. The process for reviewing allegations of judicial misconduct must therefore provide for accountability without inappropriately curtailing the independence or integrity of judicial thought and decision-making.

The purpose of judicial misconduct proceedings is essentially remedial. The dispositions in s. 51.6(11) should be invoked, when necessary,

in order to restore a loss of public confidence arising from the judicial conduct in issue.

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

It is only when the conduct complained of crosses this threshold that the range of dispositions in s. 51.6(11) is to be considered. Once it is determined that a disposition under s. 51.6(11) is required, the Council should first consider the least serious - a warning - and move sequentially to the most serious - a recommendation for removal - and order only what is necessary to restore the public confidence in the judge and in the administration of justice generally [emphasis added].

[6] A more discursive analysis of judicial misconduct was undertaken by another hearing panel of this Council in *Re: Evans* (2004). In doing so, the panel made extensive reference to *Therrien* in which the Supreme Court emphasized the close connection between standards of judicial conduct and the definition of judicial misconduct found in the operative principles of judicial impartiality, integrity and independence.

[7] In considering *Therrien*, the Council quoted extensively from the Supreme Court's discussion on the role of the judge in Canadian society. Significant, in our view, are the following passages from *Therrien* at paras. 110 and 111:

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

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## IN THE MATTER OF A COMPLAINT RESPECTING THE HONOURABLE NORMAN DOUGLAS

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)

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.

[8] Based on *Re: Baldwin* and *Re: Evans*, the test for judicial misconduct combines two related concerns: (1) public confidence; and (2) the integrity, impartiality and independence of the judge or the administration of justice. The first concern requires that the Hearing Panel be mindful not only of the conduct in question, but also of the appearance of that conduct in the eyes of the public. As noted in *Therrien*, the public will at least demand that a judge give the appearance of integrity, impartiality and independence. Thus, maintenance of public confidence in the judge personally, and in the administration of justice generally, are central considerations in evaluating impugned conduct. In addition, the conduct must be such that it implicates the integrity, impartiality or independence of the judiciary or the administration of justice.

[9] Accordingly, a judge must be, and appear to be, impartial and independent. He or she must have, and appear to have, personal integrity. If a judge conducts himself, or herself, in a manner that displays a lack of any of these attributes, he or she may be found to have engaged in judicial misconduct.

[10] To make a finding of misconduct, the Council must be satisfied that the evidence meets the requisite standard of proof required to demonstrate judicial misconduct. In *Re: Evans*, the Hearing Panel reviewed the authorities and adopted the requirement that a finding of professional misconduct requires clear and convincing proof based on cogent evidence. The evidence in this inquiry consists of an agreed statement of facts documented through transcripts of trials, reasons for judgment written by Justice Douglas and other judges, e mail communications and other correspondence. Thus, the facts are not in dispute. It follows that the evidence before us is clear and cogent. Accordingly, the issue is whether this evidence is “convincing” evidence of judicial misconduct on the part of Justice Douglas.

### IV

[11] Justice Douglas was appointed to the Ontario Court of Justice in 1994 and was assigned to the court in Brampton. In 1996, he was re assigned to the court in Guelph where he has been the only judge of the Ontario Court of Justice conducting criminal trials. As such, Justice Douglas has presided over the trials of individuals charged with offences contrary to s. 253(b) of the *Criminal Code*, which states:

253. Every one commits an offence who operates a motor vehicle or vessel or operates or assists in the operation of an aircraft or of railway equipment or has the care or control of a motor vehicle, vessel, aircraft or railway equipment, whether it is in motion or not,

...

(b) having consumed alcohol in such a quantity that the concentration in the person's blood exceeds eighty milligrams of alcohol in one

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## IN THE MATTER OF A COMPLAINT RESPECTING THE HONOURABLE NORMAN DOUGLAS

hundred millilitres of blood.

These are known colloquially as “over 80” cases.

[12] To prove “over 80” charges, the Crown relies on the results of a breath analysis of the driver. Section 258(1)(c) provides that where the officer who obtained samples of the driver’s breath has followed the correct procedure, evidence of the result of the breath analysis, “in the absence of evidence to the contrary”, is proof that the concentration of alcohol in the driver’s blood was “over 80”. It is very common for drivers charged with “over 80” to introduce as “evidence to the contrary” the opinion of a toxicologist that, based on the driver’s evidence of what he or she had consumed, as well as the weight, height and age of the driver and other factors, his or her maximum blood alcohol level would have been “under 80”. It would seem that toxicologists qualified to provide opinions of this nature are much in demand among members of the bar who defend people charged with “over 80” offences. Consequently, it is on occasion necessary to adjourn “over 80” cases for months to accommodate the schedules of busy toxicologists. Based on his experience in conducting “over 80” cases, it would appear that Justice Douglas was displeased with the number of defendants who elected to defend “over 80” cases by relying on the opinion of a toxicologist, and the delays resulting from the busy schedules of the few toxicologists who seemed to be much in demand among the defence bar in the Guelph area. Justice Douglas believed that this situation was causing serious backlogs in the Guelph Court and reflected poorly on the administration of justice.

[13] It is Justice Douglas’ reasons for judgment in *R. v. Moore*, an “over 80” case, that is the starting point in the chain of events that culminated in the Criminal Lawyers’ Association’s complaint of March 1, 2004, to the Ontario Judicial Council about Justice Douglas’ conduct. Justice Douglas delivered oral reasons for judgment in convicting Mr. Moore. In his reasons for judgment he was critical of those who enter a defence to charges of “over 80” and of the law which the court is obliged to follow in adjudicating such a charge. Mr. Moore commenced a summary conviction appeal from conviction and sentence.

[14] The appeal was heard by Langdon J., whose

reasons for judgment are reported as *R. v. Moore*, [2004] O.J. No. 3128. One of the grounds of appeal was that there was a reasonable apprehension of bias on the part of Justice Douglas in convicting Mr. Moore. In dealing with this ground of appeal, Langdon J. quoted the following passage from Justice Douglas’ reasons for judgment in an earlier “over80” case, *R. v. Campbell*, [2004] O.J. No. 871, which he had decided about three weeks before he decided *Moore*:

Allow me some obiter dicta now, at this stage. This requirement that the Crown disprove bolus drinking as referred to in *R. v. Grosse*, should be revisited. While I intend to follow the reasoning in that case, because I am bound by it, I wonder if the Court of Appeal, today in 2004 would decide it the same way. In this present day when the backlog is strangling our courts, and one of the main culprits doing the choking is the over 80 trial. All across the province, and I sit in various locations across the province, there are a number of defence counsel who hold themselves out to be experts in this field, who are demanding two and three days of court time to litigate over 80 charges. They often have the same handful of toxicologists who have a caseload larger than most lawyers, and often courts are held hostage by the diary of the toxicologist whose dancecard is sometimes full for the next two years.

My humble view, a judge in the trenches, is that it might be time for our higher courts, particularly in this age of backlog, to come to the relief of the court by revisiting some of these decisions in over 80 cases, keeping in mind that in most of these cases we are talking about Charter arguments. We are not talking about the possibility, in many of the cases, of innocent people who did not drink and drive being convicted, we are talking about exclusion of evidence. That is the end of my obiter.

[15] Langdon J. then made reference to several passages from the reasons of Justice Douglas in *Moore* indicating his views of those who enter a defence to “over 80” charges. The final passage that he quoted reads:

Smarter minds than mine have determined that there is no presumption of accuracy on those

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machines. Notwithstanding, thousands and thousands of people plead guilty because they register more than 80 on those machines but in cases where the evidence to the contrary is adduced, I must give the accused the benefit of the doubt if I have some doubt that the evidence to the contrary has raised a doubt about the guilt of the accused.

[16] Langdon J. accepted the position of Mr. Moore's counsel that Justice Douglas' *obiter dicta* in *Campbell* and his comments in *Moore* demonstrated on his part a patent distaste for those who exercise their right to defend "over 80" charges and for the law that the court is obliged to administer. Langdon J. continued:

One clear possible inference from the judge's remarks is that it is simply ludicrous for anyone to challenge the accuracy of the machine. Why is its accuracy not presumed when thousands and thousands of people accept it by pleading guilty? One also perceives the frustration engendered by the tension between ever longer trials resulting from Charter motions and the pressure of attempting to cope with them in a timely and "11(b)-compliant" manner.

[17] Accordingly, Langdon J. allowed Mr. Moore's appeal on the ground that a reasonable and informed observer would perceive a reasonable apprehension of bias on the part of Justice Douglas. His reasons for judgment were released on July 19, 2004.

[18] Langdon J.'s decision did not come to Justice Douglas's attention until August 16, 2004, just two days before the time for the Crown to appeal the decision to the Court of Appeal for Ontario would elapse.<sup>1</sup> On August 17, 2004, Justice Douglas initiated a series of e mail exchanges with Crown counsel in the Crown Law Office Criminal in an attempt to determine whether the Crown had appealed, or was intending to appeal, the decision in *Moore*. He was concerned about whether he was "...stuck with the result" because if there was no appeal he said: "...I am going to have to find a way around it or I'm going

to be hit with recusal motions on every case – about 10 a week". He wanted to be able "to tell the lawyers who are lining up with recusal motions that the case is under appeal". As well, in his view an appeal presented "an opportunity for the Court of Appeal to address head on the issue of the over . 80 cases back logging our courts". Justice Douglas was informed that the decision was being appealed and was given the name of the Crown lawyer to whom the appeal had been assigned. As will be seen, Justice Douglas' concern about "recusal motions" proved to be accurate.

[19] The next day Justice Douglas wrote an e mail to the Crown lawyer to whom the appeal had been assigned in which he said, in part:

I'm told that you have been assigned this Crown appeal. I would like to send you my thoughts on it, since Langdon J. granted the summary conviction appeal on his interpretation of what I said as opposed to what I did say. If you believe they could be of some assistance to you, please advise.

Crown counsel responded to Justice Douglas, but only to advise him that it would not be appropriate for him to communicate with the judge regarding the appeal. On the same day, a senior lawyer with the Crown Law Office Criminal wrote to Regional Senior Justice Graham to apprise him of the e mail inquiries from Justice Douglas and to inform him that the policy of that office was to decline contact with judges in regard to whether an appeal should be taken in a given case.

[20] It is significant to note that on September 17, 2004, the Assistant Deputy Attorney General – Criminal Law Division informed Regional Senior Justice Graham that it was determined that the Crown was legally obliged to disclose to defence counsel the e mail exchange between Justice Douglas and the lawyers in the Crown Law Office Criminal.

[21] On July 14, 2004, Justice Douglas had presided in *R. v. McKee*, another "over 80" case. Dr. Michael Ward, a toxicologist, testified for the defence and provided an opinion on the level of alcohol in

<sup>1</sup> Langdon J., a judge of the Superior Court of Justice, sat as a judge of the summary conviction appeal court in *R. v. Moore*: s. 829(1) of the Criminal Code. An appeal from the summary conviction appeal court to the Court of Appeal for Ontario may be taken only with leave of the court or a judge thereof on any ground that involves a question of law alone: s. 839(1) of the Criminal Code. The *Moore* case has not been heard by the Court of Appeal for Ontario. It was perfected on February 7, 2006 and at this time has not been listed for hearing.

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the defendant's blood at the relevant time. At the conclusion of Dr. Ward's testimony, Justice Douglas ascertained in a discussion with him that he had no available dates on which to testify until 2005 as he was scheduled to testify in "over 80" cases every day of the week. This discussion does not appear to have been relevant to any issue in the case. In his oral reasons for convicting Mr. McKee, reported at [2004] O.J. No. 3640, Justice Douglas had this to say in para. 5 about the defence expert, Dr. Ward:

With regard to Dr. Ward, I accept his evidence when he does the math. That is basically what these toxicologists do. That is basically what he did here. He did the math, based on what the accused said he had to drink and based on what the accused eliminates per hour. That is not rocket science. It is not even probably Grade 8 math. It is probably Grade 4 math. And that is what he did.... Dr. Ward also gave some evidence on Constable Fisher's evidence. I do not need to go here with regards to finding the accused guilty, but I do go here because I think it is time somebody did. When he comments, in his opinion, on Constable Fisher's expertise with regard to the machine, let me just say this, that I take his evidence in the context that he is a professional witness with a vested interest in the outcome of this case. I say that because he said in his evidence under oath that he testifies every day for the defence in these types of cases, and he is so booked that he is booked into next year, and he only has room for cases in the near future if something else falls off the table. That tells me these cases are his bread and butter, or should I say steak and lobster, and therefore, when he offers his opinion on things other than doing the math, I am entitled to take into account that he is not a completely objective, independent witness. And therefore, since I have rejected the accused's evidence, in any event, Dr. Ward's evidence is of no use to me, and I find the accused guilty as charged.

Mr. McKee appealed his conviction.

[22] In another "over 80" case, *R. v. Locke*, on three occasions between July 6, 2004 and July 27, 2004 Justice Douglas considered a defence request for an adjournment on the ground that the defence

expert, Dr. Ward, was not available to testify on the scheduled trial date. As he had done on previous occasions, Justice Douglas stated his concern about the number of toxicologists testifying in "over 80" cases:

My concern is this. With the number of toxicologists that are being subpoenaed in our courts I will not be held hostage by the diary of toxicologists. In other words, we are getting more and more concerned about delay.

[23] At the suggestion of Justice Douglas, and with the consent of the Crown, the defendant was able to avoid a lengthy adjournment of his trial by tendering a written report and opinion prepared by Dr. Ward, thereby avoiding the need for him to testify. This pleased the trial judge, who stated:

That's very good news because this matter has been adjourned twice already, once on the Crown's request and once on your request and I had a judgment prepared in the event that you were going to ask me to put this over in to the New Year to accommodate Dr. Ward's schedule. I'll just keep this judgment in abeyance until I need it because this issue needs to be addressed, particularly when two weeks ago I asked Dr. Ward in the witness stand how busy he is and he is in court every day, five days a week, until the New Year just about. I was going to give judgment today that I won't need to now.

[24] On September 3, 2004, which was about two weeks after he had attempted to become involved in the Crown appeal in *R. v. Moore*, Justice Douglas heard an adjournment application in another "over 80" case, *R. v. Laird*, in which the proceedings and the judge's ruling are reported at [2004] O.J. No. 3713. Mr. Laird had been charged about a year earlier. His trial, which had been adjourned on four occasions to accommodate Dr. Ward's schedule, was fixed for September 14, 2004. Defence counsel sought an adjournment on the grounds of pending appeals in *R. v. Moore* and *R. v. McKee*. Defence counsel proposed, with the consent of the Crown, that the trial should be adjourned until the appeals had been decided.

[25] Justice Douglas dismissed the application for an adjournment. In a lengthy oral ruling, Justice

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Douglas used the occasion to review and analyze his reasons for judgment in *R. v. Moore*, and those delivered by Langdon J. in ordering a new trial on the ground that there was a reasonable apprehension of bias. In doing so, he reproduced his *obiter* in *R. v. Campbell* as well as portions of Langdon J.'s reasons and a dialogue between Langdon J. and Crown counsel that took place while counsel was making her submissions in *Moore*. Justice Douglas' counsel conceded that he had prepared this part of his ruling previously with the intention of using it should there be an opportunity to do so. It is to be recalled that in *R. v. Locke* Justice Douglas indicated that he had a judgment prepared in the event that the defendant was going to ask him to grant an adjournment to accommodate Dr. Ward's schedule.

[26] After extensive reference to, and criticism of Langdon J.'s reasons, Justice Douglas stated at para. 47 of *Laird*:

I am bound by Justice Langdon's decision in *Moore*. I am not bound, and do not accept Justice Langdon's following conclusions:

1. That I approach my responsibilities as a judge with cynicism, impartiality and intolerance.
2. That I criticized the Supreme Court of Canada.
3. That I have a distaste for those lawyers who argue cases before me.
4. That I have a distaste for the law.
5. That I think it is ludicrous to challenge the accuracy of the breath machine.

[27] After quoting passages from his reason for judgment in *R. v. Moore* and providing his characterization of what he meant, at para. 56 he concluded:

Since I am the only one who can, with any authority, convey the meaning of what I said, let me say this: I meant what I said. There was no hidden meaning. There was no sarcasm. There was no need to interpret it differently. I was not disingenuous. I did not disregard the law that binds me. I mean no disrespect to Mr. Justice Langdon. I am bound by his decision and I intend to abide by it. The issue is, "What am I

bound by?" Clearly I am bound by the result. In that specific case I am bound by the conclusion that I erred in that case by making the *obiter* remarks that I did. The issue isn't what my intentions were. The issue is would a reasonable, informed observer walk away from the courtroom saying the judge was biased. While my intention was merely to provide detailed reasons as the Court of Appeal requires me to do and explain that I had not tripped on any of the "land mines" that are strewn along the path in every "over 80" journey, that is not the test. Justice Langdon says I ought not to have made the remarks that I did and I am bound by that, I should not have made them.

[28] *R. v. Musselman* was another "over 80" charge over which Douglas J. was scheduled to preside. The defendant asked Justice Douglas to recuse himself on the ground that there was a reasonable apprehension of bias. He relied on five grounds arising from the judge's comments in other cases: (1) he had criticized the "bolus" drinking defence; (2) he characterized Dr. Ward as not being a completely objective independent witness; (3) he had an "intolerance" for "over 80" trials; (4) he had become "exasperated" by the backlog caused by "over 80" trials; and (5) he had corresponded with counsel in the Attorney General's office, and this conduct "might be interpreted to be influential on the agents" of the Attorney General.

[29] Justice Douglas devoted most of his 19-page ruling to responding to each of the five grounds. As in *R. v. Laird* (a copy of which he attached to his ruling), he wrote a lengthy criticism of Langdon J. and his reasons for allowing the appeal and a detailed explanation of why he considered it important for the Crown to appeal the result in *R. v. Moore*. In dismissing the application that he recuse himself, Justice Douglas said:

My conclusion is that an objective, informed, reasonable person would conclude these grounds do not meet the burden on the applicant. They do not rebut the presumption that a judicial officer can be expected before a trial even begins to honour his oath of office.

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When all the smoke clears, what did I do? I mused about the backlog issue. I carefully explained my reasons in *R. v. Moore* over a 26 page transcript. I assessed a witness who had offered an opinion. I tried to find out if Moore was being appealed. I tried to explain the need for someone to challenge the conclusions by Justice Langdon; not in the case but about my manner of judging generally, and I was worried that Justice Langdon's decision would result in days like we are having today.

This application falls far short in convincing me that any 'reasonable person' would see these facts in the same way as the applicant. The application is therefore dismissed.

[30] Mr. Musselman's appeal from Justice Douglas' ruling was allowed by Corbett J. who concluded that there was a reasonable apprehension of bias and who issued an order prohibiting Justice Douglas from presiding over Mr. Musselman's trial: *R. v. Musselman* (2004), 25 C.R. (6th) 295 (S.C.J.). Corbett J. provided a thorough summary of the facts commencing with the *Moore* trial, the appeal heard by Langdon J., Justice Douglas's e mail communications with the Crown law office urging an appeal from Langdon J's ruling, his reasons for refusing an adjournment in the *Laird* case and for refusing to recuse himself in the *Musselman* case. In reviewing the facts and the rulings written by Justice Douglas, Corbett J. identified a number of indiscretions on the part of Justice Douglas which we, respectfully, adopt.

[31] In paras. 3 and 4, Corbett J. stated:

The learned trial judge did not believe Moore. Thus the foundation for Dr. Ward's evidence was not established and it was, therefore, irrelevant. The learned trial judge believed police witnesses. For these reasons the charges were found proved.

However, the trial judge did not restrict his reasons to making these findings. He made obiter dicta statements, some identified as such, and some strewn among the rest of his reasons, that could create the impression that he was less than pleased with the state of the law on the defence of "bolus drinking", the impact it was having on court delays, and the general independence and objectivity of defence expert toxicologists.

[32] Corbett J. properly characterized as a serious error in judgment Justice Douglas' communications with the Crown law office to determine whether an appeal was planned in *R. v. Moore*. He further described Justice Douglas' attempt to intervene as a "serious error" that could have had serious consequences in the *Moore* appeal.

[33] In respect to Justice Douglas' reasons for denying a request for an adjournment in *R. v. Laird*, Corbett J. had this to say at para. 12:

...The way in which this request was framed was rather impractical: it was suggested that Laird be adjourned until after the disposition of the appeal in *Moore* in the Court of Appeal. The learned trial judge noted, rightly, that the *Moore* appeal might not be disposed of for a great many months, or longer, and it is possible that a further appeal might be taken to the Supreme Court of Canada. Clearly the *Laird* trial should not be postponed for years. However, the learned trial judge's reasons for refusing the adjournment request went well beyond a denial on practical grounds. Instead, he addressed Langdon J.'s decision in terms that reflected his deep disagreement, and profound hurt at the decision. I do not engage in a detailed review of his reasons in this judgment. Those reasons are similar to those given in the trial judge's ruling in the case before me, and similar concerns apply to them: in summary, the trial judge became an advocate in his own cause, and did not restrict himself to interpreting and applying the decision of Langdon J.

[34] Turning to Justice Douglas's reasons for refusing to recuse himself in *R. v. Musselman*, at paras. 13 and 14 Corbett J. stated:

...In lengthy reasons, the trial judge denied the request. In the process of doing so he defended his language and obiter dicta statements in *Moore* while at the same time acknowledging that he is bound by that decision until such time as it may be reversed. The tone and language of the decision on the recusal motion again reflect the trial judge's deep and personal dissatisfaction with Langdon J.'s decision. He goes so far as to say that Langdon J. has called his integrity into question.

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Again, the trial judge should have restricted himself to interpreting and applying Langdon J.'s decision, and should not have gone further.

I am impelled to the conclusion that the learned trial judge has now entered the “fray”, on his own behalf, and has so personalized the Moore decision, and the impact of that decision on the perception of his ability to try “over 80” cases impartially, that an atmosphere has been created where it appears that the trial judge has matters of his own reputation and integrity in mind when approaching these cases, rather than the dispassionate adjudication of the underlying cases.

[35] Justice Corbett made references to the numerous *obiter dicta* found in the reasons delivered by Justice Douglas in *Campbell*, *Moore*, *Laird* and *Musselman*, pointing out at para. 35:

Further, the inclusion of obiter dicta is not, by itself, reversible error or, by itself, a basis for finding an apprehension of bias. But it generally detracts and distracts from the purpose of reasons for judgment which are to give a reasoned explanation for the disposition of the case. By definition, obiter dicta comments are irrelevant to the disposition of the case.

Justice Corbett continued at paras. 36 and 37:

But - and in this respect the learned trial judge is in error - obiter dicta comments remain a part of the reasons for judgment. They may be “aside comments”, in the sense of being unnecessary to the outcome, but if they are not part of the decision, why have they been said at all? The task of the judge is not to voice his personal opinions on topics diverse. In *Moore*, Langdon J. found that the cumulative effect of all the obiter dicta remarks was to leave the impression that the trial judge might be deciding the case on an irrelevant basis, because the trial judge had spent so much time on irrelevancies. Put another way, if the comments are made while delivering judgment, the reasonable observer could well infer that, at least in the mind of the trial judge, they had something to do with the matter at hand. At the very least, that bystander may have concluded that the trial judge was more concerned with his

“other thoughts” than with the case before him.

And that is why obiter dicta is discouraged. It usually adds nothing and may detract greatly. See *Sawridge Band v. Canada*, [1997] 3 F.C. 580 (F.C.A.).

[36] Justice Corbett went on to point out that if Justice Douglas felt that he was unable to dispose of the applications without “engaging” directly with Langdon J.’s reasoning in *Moore*, then perhaps he should have recused himself. He went on to state in para. 44 that “decisions should be restricted to the reasoning necessary to dispose of the case. ‘Asides’ are dangerous”. In this regard, at para. 50 he concluded:

“Longstanding tradition in Canada and in Great Britain is that a Judge speaks but once on a given case and that is in the Reasons for Judgment. Thereafter, the Judge is not free to explain, or defend, or comment upon the judgment or even to clarify that which critics perceive to be ambiguous.” (Canadian Judicial Council, *Commentaries On Judicial Conduct*, p. 86). Most commentary on this principle concerns public or academic criticism. It is surely beyond question that it is improper for a lower court to review, comment upon, or attack an appellate decision criticizing or overturning that trial court [emphasis added].

[37] At paras. 63 and 64, Corbett J. stated these significant conclusions:

The trial judge has sought to defend himself from what he regards as an unfair personal rebuke by Langdon J.

In seeking to defend himself, the trial judge has crossed the line, both in promoting and offering to help in the appeal of Langdon J.’s decision, and in responding directly to Langdon J.’s reasoning in the decision in *Laird* and in the case before this court.

[38] Significant, as well, is what Corbett J. said in para. 67:

On the record before me, there is no reason to fear that the trial judge is anything other than a jurist of integrity, commitment, and passion for justice. There is no reason to doubt that he has

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been very hurt by these events. I am confident that he will rise above these matters, and preside over criminal trials, including “over 80” trials, in a manner entirely consistent with his oath of office and his many years of distinguished past service.

[39] Before leaving Corbett J.’s reasons, in our view we can do no better in describing the circumstances that have led to this inquiry than to reproduce the first paragraph of his reasons for judgment:

An appeal court does not expect a spirited, even bitter debate from a tribunal that it has overturned. That strange circumstance lies at the heart of this application. What began as a most unfortunate matter of a trial judge going too far in numerous obiter dicta comments in one case is now said to involve matters of the trial judge’s integrity, honesty, his willingness and ability to observe his oath of office, and even whether the trial judge is “beyond redemption” (the trial judge’s words). In the process, the trial judge has become an advocate in his own cause in the forum reserved for the disputes he is to decide impartially in a process of calm and detached deliberation.

[40] In keeping with the practice of Council, Justice Douglas was asked to respond to the complaint of the Criminal Lawyers’ Association. In an eight page response he reviewed the grounds of the complaint and provided an explanation for his conduct. The following is a synopsis of his response contained in the Agreed Statement of Facts:

Not having seen the Moore decision until there were two days left to appeal, I reflexively, and regrettably, engaged in email correspondence with the Crown Law Office. Corresponding directly with Crown counsel concerning an appeal and using the word “assistance”, has understandably caused concern. I acknowledged my mistakes in this regard in open court, in the fall of 2004. I have admitted this mistake, long before any complaint was lodged, during the time of my reflection, coming to grips with, and accepting, what Mr. Justice Langdon had said. The emails should not have been sent, and I will never again engage in such correspondence with the Crown.

Additionally, my digressions on legal issues are not helpful at all, and should not be expressed, and I have been told that by Mr. Justice Langdon and Mr. Justice Corbett. I will not be making these comments again.

Being the subject of this complaint has been exceptionally difficult for me and my family. Media attention, disruption of my daily duties, and resulting stress have given me ample opportunity to reflect upon my comments and actions. I believe that I have learned a great deal.

While I wanted to immediately dispel the basis for any belief that there was an appearance of bias, I clearly failed to do that. I reacted defensively, and regret the appearance that was left.

### V

[41] Judges are sensitive about having their decisions overturned by higher courts. Indeed, there may be nothing more disconcerting to a trial judge than to have his or her decision set aside by an appellate tribunal on the ground that he or she exhibited an apprehension of bias in deciding the case. But this is all part of a trial judge’s job. From time to time, a trial judge’s reasons will be reviewed and found wanting by an appellate court. The job of an appellate court is to correct errors made by trial judges. As they embark on their judicial careers, newly appointed judges are instructed that they will on occasion have a decision overturned by an appellate court, and that when this happens, the judge must, as best he or she can, accept that fact. They are not to take issue in public with the decision of the appellate court, nor in their rulings or reasons for judgment in other cases. Nor should the judge contact the losing party to encourage it to appeal the decision, and to offer to assist in the appeal.

[42] These represent Justice Douglas’ major indiscretions. There is no doubt that he exhibited alarmingly poor judgment. He should not have communicated with the Crown Law Office to encourage it to appeal from Langdon J.’s decision in *R. v. Moore* and to offer to provide assistance in

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preparing appeal materials. He should not have used rulings and reasons for judgment in other cases as vehicles for criticizing Langdon J.'s decision in *Moore* and for justifying his views regarding the defence of "over 80" charges. Nor should he have targeted the toxicologist, Dr. Ward, and placed a cloud over him and his testimony, by suggesting that he was, in effect, a gun for hire by the defence bar, and that he, and by extension, other toxicologists, were the cause of delays in trials of "over 80" charges leading to backlogs in the Ontario Court of Justice, especially in Guelph. As Corbett J. found on the basis of the impugned conduct, a reasonable and informed person would have a reasonable apprehension concerning the ability of Justice Douglas to preside fairly and in an unbiased manner over trials of those charged with the offence of "over 80". In other words, Corbett J. found that Justice Douglas's impartiality had been compromised and, thus, the public would be very concerned about Douglas J.'s impartiality and integrity.

[43] The issue is whether the undisputed evidence amounts to convincing proof that Justice Douglas has engaged in judicial misconduct as that term has been interpreted for the purpose of s. 51.6(11) of the *CJA*. Through his counsel, and in response to the complaint to the Judicial Council, Justice Douglas has acknowledged his errors and has admitted that he conducted himself inappropriately. He has, in effect, conceded that he failed to conduct himself in a manner that the public expects of judges, resulting in a loss of public confidence. Justice Douglas has stated that he has learned a lesson and has affirmed that there will not be repetition of the conduct that resulted in this hearing. As such, he submits that sanctioning him is unnecessary to restore public confidence in his ability to adjudicate impartially and with integrity. He has corrected his errors in judgment which, therefore, should not be found to be judicial misconduct.

[44] A criminal trial is a serious matter, both to the parties and to the public. The presiding judge is expected to act in a manner that inspires public confidence that even handed treatment has been accorded to the parties. When a judge issues reasons for judgment, it is for the purpose of publicly explaining to the parties how he or she reached the result, in addition to explaining how other issues

arising in the case were decided. This is done to ensure transparency of the judicial process. As such, reasons for judgment have a special status. They enable the public to measure how the courts in general, and individual judges in particular, administer justice. Judges must not abuse the special status of reasons for judgment. Although in appropriate cases it will not be improper for the court to recommend legislative changes or question whether a particular decision should be re-examined in the light of changed circumstances, judges should refrain from discussing any matter that is not relevant to any issue in the case. Nor should judges use a ruling or reasons for judgment for the purpose of taking issue with the decision of an appellate court that has been critical of the judge's reasoning, or that has set aside the judge's decision.

[45] No doubt Justice Douglas has learned a lesson from the events leading to this hearing, and from the hearing. From all accounts, it has been a hard lesson. There is nothing that he said or did that we are able to condone. However, considering all of the circumstances, we are not prepared to conclude that he engaged in judicial misconduct, although we are bound to say that his conduct was very close to the line. We have come to this conclusion because we believe that Justice Douglas is sincere in acknowledging his inappropriate conduct. We are satisfied that in the future he will stick to the issues both in presiding over trials and in his rulings and reasons for judgment which will conform scrupulously with their purpose. We feel that our reasons for allowing Justice Douglas to continue to perform his judicial duties, together with the lessons learned from this hearing by Justice Douglas, will help restore the public confidence in his ability to preside impartially and with integrity.

[46] Under s. 51.7(4) of the *CJA*, we would recommend to the Attorney General that Justice Douglas be compensated for his costs incurred for legal services in connection with this hearing. However, to enable us determine whether the compensation should relate to all or part of the judge's costs for legal services, and to enable us to fix the amount of the compensation, as we must do, we require the assistance of counsel. We ask Justice Douglas' counsel to file with the Registrar brief submissions with respect to compensation

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within ten days of the release of these reasons. Presenting counsel will then have ten days to file his responding submissions. In the alternative, counsel may agree on the amount of the compensation and advise the Registrar.

DATED at the City of Toronto, in the Province of Ontario, March 6, 2006.

The Honourable Justice Stephen Borins  
Court of Appeal for Ontario

The Honourable Annemarie E. Bonkalo  
Associate Chief Justice of the Ontario Court of Justice


Mr. J. Bruce Carr-Harris

Ms. Madeleine Aldridge

# APPENDIX – E

## IN THE MATTER OF A COMPLAINT RESPECTING THE HONOURABLE NORMAN DOUGLAS

### APPENDIX “A” TO DECISION – PARTICULARS OF THE COMPLAINT



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February 1, 2005

The Ontario Judicial Council  
P.O. Box 914  
Adelaide Street Postal Station  
31 Adelaide Street East  
Toronto, Ontario  
M5C 2K3

Dear Council Members:

**Re: Mr. Justice Norman Douglas**

I am writing on behalf of the Criminal Lawyers' Association pursuant to the provisions of the *Courts of Justice Act*, and particularly Section 51.3, to complain about the conduct of Mr. Justice Norman Douglas of the Ontario Court of Justice. The conduct complained of is the following:

1. Mr. Justice Douglas communicated with Crown Attorneys and urged an appeal from the summary conviction appeal in *Regina v. Moore*. Doing so leaves the impression that the judge has an interest, instead of being disinterested, as is required, in the result of a particular case or particular offences, and seeks to affect the course of litigation and obtain an appellate ruling consistent with that interest. The email communication of August 19, 2004, from Mr. Justice Douglas to Mr. Perlmutter, with his offer of assistance in the appeal, illustrates a partisan interest in the outcome of the appeal;
2. The expression of opinion by Mr. Justice Douglas about "over 80" cases in *Regina v. Campbell* indicates partiality toward a particular offence and an unwillingness to accept the clear *dicia* of appellate courts regarding legitimate defences that can be raised;
3. The impropriety of the manner of communication chosen. It is our suggestion that communications between jurists and counsel ought not to be made in respect of the conduct of further litigation once the trial has been completed before the Judge concerned, and, further, that any proper communication in respect of a specific case should be made with notice to opposing counsel, and not privately;

OJC - File # 10-028/05  
Copy sent to MR/SC  
Subcommittee Members  
Feb. 11/05

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4. Partiality toward future cases, as evidenced by the email forwarded by Mr. Justice Douglas indicating he would like to tell lawyers appearing with recusal applications that the case is under further appeal;
5. “Entering the fray” as a result of his comments in *Regina v. Musselman* on the summary conviction appeal decision of Langdon, J. in *Regina v. Moore*, raising the concern that he will have his own reputation and integrity, rather than dispassionate adjudication, in mind in deciding cases of “over 80” and in considering the evidence of defence experts in such cases - - see Canadian Judicial Council, Commentaries On Judicial Conduct, page 86, cited by Corbett, J. in *Regina v. Musselman*, paragraph 50; and
6. By commenting negatively on the defence articulated in *Regina v. Grosse* and the rule of law stated in *Regina v. Noble*.

I have attached the following for your reference regarding the complaint:

1. **Email Correspondence**

- From Douglas, J. to John Pearson, August 17, 2004;
  - From John Pearson to Douglas, J., August 17, 2004;
  - From Douglas, J. to John Pearson, August 17, 2004;
  - From John Pearson to Douglas, J., August 17, 2004;
  - From Douglas, J. to Pearson, Brewer, Rupic and McMahon, August 18, 2004;
  - From Pearson to Brewer, Rupic and McMahon, August 18, 2004;
  - From Douglas, J. to Brewer and Rupic, August 18, 2004;
  - From Garson to Douglas, J., August 18, 2004;
  - From Douglas, J. to Perlmutter, August 19, 2004; and
  - From Perlmutter to Douglas, J., August 19, 2004.
2. A letter from Mr. Rupic to Regional Senior Justice Graham, dated August 19, 2004;
  3. Letter from John McMahon to Regional Senior Justice Graham, dated September 17, 2004;
  4. Transcript of Reasons for Judgment of Langdon, J. in *Regina v. Moore*, Guelph SCA #0027/04;
  5. Transcript of Reasons for Judgment in *Regina v. Locke*, July 6, 2004, July 13, 2004, and July 27, 2004 (Douglas, J.) (O.C.J.);
  6. Transcript of questions put to Dr. Ward in *Regina v. McKee*, July 14, 2004, Douglas, J. (O.C.J.);

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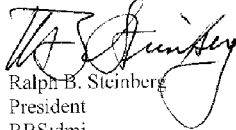
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7. Transcript of Ruling of Douglas, J. in *Regina v. Laird*, September 3, 2004;
8. Transcript of Ruling of Douglas, J. in *Regina v. Musselman*, September 30, 2004; and
9. The decision of Corbett, J. in *Regina v. Musselman*, [2004] O.J. No. 4226 (Ont.S.C.).

Yours very truly,

  
Ralph B. Steinberg  
President  
RBS:dmj