

## ONTARIO JUDICIAL COUNCIL

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

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

**COUNSEL:** Mr. Douglas C. Hunt, Q.C. ]  
Mr. Michael J. Meredith ] Presenting Counsel  
Mr. Donald Park ]  
  
Mr. Brian H. Greenspan ] Counsel for The Honourable  
Mr. Seth P. Weinstein ] Justice Kerry P. Evans

### *REASONS FOR DECISION*

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

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

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

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

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

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

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

¶ 109 If we then look beyond the jurist to whom we assign responsibility for resolving conflicts between parties, judges also play a fundamental role in the eyes of the external observer of the judicial system. The judge is the pillar of our entire justice system, and of the rights and freedoms which that system is designed to promote and protect. Thus, to the public, judges not only swear by taking their oath to serve the ideals of Justice and Truth on which the rule of law in Canada and the foundations of our democracy are built, but they are asked to embody them (Justice Jean Beetz, Introduction of the first

speaker at the conference marking the 10th anniversary of the Canadian Institute for the Administration of Justice, observations collected in *Mélanges Jean Beetz* (1995), at pp. 70-71).

¶ 110 Accordingly, the personal qualities, conduct and image that a judge projects affect those of the judicial system as a whole and, therefore, the confidence that the public places in it. Maintaining confidence on the part of the public in its justice system ensures its effectiveness and proper functioning. But beyond that, public confidence promotes the general welfare and social peace by maintaining the rule of law. In a paper written for its members, the Canadian Judicial Council explains:

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

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

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

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

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

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

The dictates of tradition require the greatest restraint, the greatest propriety and the greatest decorum from the members of our judiciary. We expect our judges to be almost superhuman in wisdom, in propriety, in decorum and in humanity. There must be no other group in society which must fulfil this standard of public expectation and, at the same time, accept numerous constraints. At any rate, there is no question that a certain loss of freedom accompanies the acceptance of an appointment to the judiciary.

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

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

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

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

[6] Hence, there may be instances of judicial misconduct ranging from conduct that is more minor in nature, meriting a warning or a reprimand, to conduct that is so serious that it warrants removal from office. The Supreme Court of Canada described the kind of conduct that would merit the heaviest sanction in *Therrien* at para. 147:

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

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

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

It is now established that:

- (a) The standard is a civil standard rather than the criminal standard of proof beyond a reasonable doubt, even if the misconduct alleged is also a criminal offence: *Camgoz v. College of Physicians and Surgeons (Saskatchewan)* (1989), 74 Sask. R. 73 (C.A.); *Miller v. Saskatchewan Psychiatric Nurse's Association* (1992), 103 Sask. R. 61 (Q.B.); *Bater v. Bater* (1950), 2 All E.R. 458 (C.A.); *Hryciuk v. Ontario (Lieutenant Governor)* (1994), 18 O.R. (3d) 695 (Div. Ct.); *Re Khaliq-Kareemi v. Nova Scotia (Health Services and Insurance Commission)* (1988), 84 N.S.R. (2d) 425 (T.D.), reversed on other grounds (1989), 89 N.S.R. (2<sup>nd</sup>) 388 (C.A.), leave to appeal to S.C.C. refused (1989), 93 N.S.R. (2<sup>nd</sup>) 269 (S.C.C.); and *Glassman v. College of Physicians and Surgeons (Ontario)*, [1966] 2 O.R. 81 (C.A.);

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

The Council accepts and adopts these parameters.

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

[10] Character evidence figured prominently in this inquiry. As stated earlier, fourteen witnesses testified about Justice Evans's reputation in the community for honesty, integrity and decency. All but two of those witnesses performed some function in the legal community such as court clerk, court reporter, police officer, justice of the peace, lawyer, legal instructor, or judge. Each character witness was asked to review a book of testimonials that contained numerous supporting letters from members of the community gathered by Justice Evans or by counsel on his behalf. Although this book did not form part of the evidence, its contents, together with the character witnesses' personal knowledge of Justice Evans, formed the evidentiary basis for their testimony.

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

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

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

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

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

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

[17] We will deal with the allegations of each complainant in turn. Before doing so, we make the following general observations about Justice Evans's notorious habit of coming in close contact and touching the people with whom he communicates. We say at the outset that we recognize this habit as a feature that reflects the many fine qualities that were described about Justice Evans as a warm, caring, compassionate, friendly, approachable, energetic, and even exuberant person. Undoubtedly,

these personality traits have generally served him, and the community, very well. However, as a number of the character witnesses themselves have expressly recognized, it is plain to see how this behaviour can be considered by some as intrusive and offensive.

[18] Much depends on who is at the receiving end. It is one thing to act in this manner with friends, relatives, or colleagues who stand on a more equal footing, but quite another with a subordinate employee. It is unrealistic, and also unfair, to expect that the employee will confidently, without fear of recrimination, stand his or her ground against a person in authority to ensure respect of his or her private space. The gender of the employee, in this case they are all female, adds another dimension to the issue of closeness. Where the employee is of the opposite gender, there is an added risk that the conduct, witting or otherwise, will be perceived by the employee as violative of her sexual integrity. Indeed, any touching to the buttocks, legs or pelvic/genital area that is not immediately acknowledged by an apology would be reasonably construed as an undesired sexual contact.

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

#### **Ms. A**

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

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

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

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

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

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

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

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

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

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

about this conduct. Indeed, that is the real risk of this kind of conduct. It makes it all the more unacceptable.

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

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

### **Ms. B**

[30] Ms. B met Justice Evans in the late 1970's when she worked with him for two summers. She next saw him briefly on one occasion in 1995 or 1996. On September 5, 2000, she attended the swearing-in ceremony of the Barrie Chief of Police with her husband. Following the ceremony, she attended a reception with some 70 to 100 other people. She noticed Justice Evans at the reception. Ms. B testified that she felt uncomfortable in greeting Justice Evans because of what she had been told by her friend Ms. A. She stated however that she felt she would be protected from inappropriate behaviour because of her age, the setting and her relationship with Justice Evans. At one point during the reception, Justice Evans and Ms. B ended up in the same circle and they greeted each other. Ms. B stated that Justice Evans shook her right hand and embraced her at the same time with his left arm; as they came together, Ms. B felt the back of his hand in her pubic area. She stated that she moved back thinking that she'd “been done.”

[31] During the course of her testimony, Ms. B demonstrated how the greeting took place. Justice Evans gave very similar testimony about the incident. He remembered the encounter and the manner in which he had greeted Ms. B, however, he testified that he did not know that his hand had come into contact with Ms. B as she described. Ms. B, quite fairly, could not rule out the possibility

that the touch was accidental. However, she did not believe that it was accidental because she would have expected Justice Evans to apologize or look embarrassed, and he didn't. In response, Justice Evans stated that he would not have cause to apologize since he was unaware of the touching.

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

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

### **Ms. C**

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

[35] On December 3, 2002 Justice Evans and Ms. C were chatting in the Justice's chambers while court was in recess. Their respective versions of the exact content of the conversation differ somewhat, but the gist of it is the following. During discussion of Christmas gifts for Justice Evans's wife, Ms. C suggested that her husband's cousin, a pilot, could provide a helicopter ride. Justice Evans inquired what her cousin looked like. When Ms. C indicated that he was young and good-looking, Justice Evans reacted in jest by demonstrating what he would have to do to the pilot. Ms. C testified that Justice Evans placed his hand on her crotch, over her court gown, and said

words to the effect, “Well, I’d just hold a gun to him right here, then”. In giving his testimony, Justice Evans demonstrated how he pointed his right index in the air and brought his arm down saying words to the effect “we’ll just have to shoot him down” thereby coming accidentally in contact with the front of Ms. C’s gown. On either version, we interpreted the words and actions to mean that Justice Evans, jokingly of course, would put a gun or shoot the helicopter pilot in the genital area.

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

[37] We are not satisfied beyond a reasonable doubt that Justice Evans intended to sexually assault Ms. C by deliberately touching her in the crotch area. However, it is our view, given the proximity of Ms. C to Justice Evans when this demonstrative communication took place, that Justice Evans, at the very least, ought to have known that his hand would likely come in contact with some part of Ms. C’s body. We find that he was reckless in his actions and that he acted without proper regard and respect for Ms. C’s person. In this respect, this incident bears disturbing similarity with the two previous incidents involving Ms. A and Ms. B.

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

[39] Other incidents involving Ms. C, although not particularized in the Notice of Hearing, provide further context and lend support to our conclusion that Justice Evans improperly invaded Ms. C’s private space. Ms. C testified, and we accept, that Justice Evans on one occasion removed the hair from her eyes; on another occasion, he took a jujube from his pocket and put it in her mouth despite her resistance; and in general, she felt that he always stood too close for comfort. Justice

Evans agrees that the incidents with the hair and the candy took place, albeit with a different explanation as to the context. Even on Justice Evans's own account of these incidents, we are of the view that his actions were unwarranted and inappropriate.

**Ms. D**

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

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

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

[43] Ms. D testified that she felt shocked that Justice Evans would walk up to her and "help himself to me as if I was nothing." At the first morning recess she tucked her arms in her gown to avoid further touching. Justice Evans tried to grab her hands but found her sleeve instead. He asked

her what was wrong and she told him “Oh, I’m just cold.” She testified that after that incident she always walked around with her hands inside her gown so that he could not reach them. She did not tell anyone in the courtroom about this incident that day because, as the judge, “he has all the power” and she was afraid that she would not be believed.

[44] Two other judges testified that they observed Ms. D walking with her arms underneath her gown. One stated that she walked like that all the time; even in his court. The other stated that he had observed that often; in particular, he testified that Ms. D did not like the gowns that zipped down the front but she still walked around with her hands underneath. Ms. D’s distinctive walk became a subject of humour among the judges who referred to her as “the Flying Nun”.

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

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

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

[48] In cross-examination Ms. D confirmed that on one occasion she and Justice Evans had an argument in which they both raised their voices. This argument took place right at the time of the opening of the new Collingwood courthouse in August of 2001. She testified that one of her responsibilities was to see that the protocols at the new courthouse were enforced, including a new security measure designed to restrict the flow of people into the area of the judge’s chambers. She had a serious dispute with Justice Evans over the fact that no one was allowed back into his

chambers without prior approval. She reported this matter to her supervisor and was not paired with Justice Evans for some time.

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

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

[51] We have carefully considered Ms. D's testimony in its entirety. Throughout, and particularly in cross-examination, she gave her testimony in a very responsive and spontaneous manner. Her testimony, when considered on its own, was entirely credible. It also stacked up against the other evidence. For example, it is noteworthy that this incident would have happened right before, if not on the very morning of, the opening of the new courthouse in Collingwood. Justice Evans and Ms. D gave consistent accounts of the heated arguments between the two that occurred later in the day. Justice Evans agreed that this appeared uncharacteristic of Ms. D. It also accords with Justice Evans's recollection that Ms. D did not work with him for quite awhile after

that day. Ms. D's conduct is consistent with this incident having happened as she described. Her attitude towards Justice Evans changed dramatically after that day.

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

### **Ms. E**

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

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

[55] Ms. E did not mention the incident until sometime after April 2001 when she started going out with a man to whom she is now married. She mentioned the incident to him. Her husband testified and confirmed that Ms. E had told him that Justice Evans had placed his hand on her

buttock at a Christmas party. He stated that she did not seem unduly alarmed by the incident. He was not sure whether she told him or whether he was simply left with the impression that the touch was fairly momentary, nothing worth complaining about, and that she was not sure whether it was sexual in nature or whether Justice Evans had just been careless and overly tactile.

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

#### **Ms. F**

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

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

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

[60] Ms. F’s situation was canvassed more fully in cross-examination. Ms. F testified that she was relatively new to the job at the beginning of 2001 and that she found it stressful. She stated that she had personal problems at that period of time and that she was often in tears. She agreed that she discussed some of her personal problems with Justice Evans. Justice Evans made arrangements for her to seek professional assistance. She vaguely recalled a conversation about dogs and about wanting a dog; she recalled Justice Evans giving her a stuffed dog and agreed that she was touched by this gesture. It was suggested to her that, because she was touched by this gift, she kissed Justice Evans and the kiss became more than friendly, and she had apologized. She testified that she did not recall that and that, if it had happened, she would recall it.

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

[62] During a third conversation Justice Evans testified that Ms. F told him that she was having difficulty in relationships with men. He testified that she initiated the discussion and told him that she always ended up with the wrong kind of guy. He asked her what kind of man she wanted and they discussed the matter further. Justice Evans agreed that they did have a conversation about Ms. F's "ideal dream man" and what would make her happy, but he testified that it happened at a different time and in a different manner than that testified to by Ms. F. He denied calling her at home in February of 2001 to come to the office to assist with photocopying. Rather he testified that this third conversation occurred in his chambers one day after court. He agreed that during this third conversation he gave her a little stuffed dog so that she would have a dog to talk to. The conversation ended at around 6:00 p.m. and as she was walking out the door she started to cry and laugh a little and she gave him a hug and started to leave his chambers. He further testified that she came back in and kissed him on the mouth, and that he kissed her back, for about five seconds. According to Justice Evans they both jumped away and then apologized to each other. Though denying that he called her at home in February of 2001, Justice Evans did testify that it was possible that he might have called her at home to "check up on her" on other occasions, though he does not recall having done so.

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

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

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

[66] Justice Evans's account of his relationship with Ms. F did not have the same ring of truth. The portrayal that he put forth of three distinct, mostly business-like meetings with Ms. F did not stack up with the highly personal content of the conversations that she had with him. In fact, his account seemed incongruous with the overwhelming evidence about his friendly, caring, compassionate, helpful nature. It also doesn't fit well with him having called her a couple of times at home to see how she was.

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

### **Ms. G**

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

and he could commission it. The witness indicated that that was not true; that was not how it happened. Justice Evans also provided a reference letter for her, then she went off to school until she came back to the same job at the courthouse in Barrie in September 2001.

[69] Ms. G testified that she had personal conversations with Justice Evans mostly related to her career choices. He would assist in giving her advice. In the Fall of 2001, she developed a relationship with a lawyer, Mr. M. Ms. G testified that Justice Evans phoned her at home one evening after dinner, or close to dinnertime. He told her, “I hear that you like a certain lawyer” and she said, “Yes.” He said, “Do you dare me to tell Mr. M that you like him?” She said, “Sure.” Justice Evans asked, “What will you give me if I do? Would you sleep with me? Would you ever sleep with a fat man with a big dick?” He indicated he was having marital difficulties and asked her if she would have an affair with him. She told him she did not engage in sex without involvement. She was shocked and felt that if she spoke up it would mean trouble with her job. She had no security of employment at that time. She told her sister about this incident, also Mr. M, though not the details. Ms. G was not cross-examined on this incident.

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

[71] Ms. G then described an incident that would have happened at Shirley's Bar where, at the end of it all, Justice Evans would have gone up to where she was seated, put his hands on her thighs and kissed her. The gist of the cross-examination on that incident suggested that Justice Evans's friend, Mr. Regan, would have been present throughout the evening. The witness agreed that Mr. Regan was with Justice Evans, but not at that particular point in time. She agreed that she was upset that night. A girlfriend of Mr. M's had shown up and she was upset. In an earlier statement to the police, Ms. G had said that Justice Evans had kissed her on the cheek. She maintained in her testimony that it was a kiss on the lips and that she had made a mistake in her police statement. She stated the police were more interested in the event at the courthouse. Ms. G has commenced a civil action against Justice Evans jointly with Ms. D.

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

[73] Justice Evans acknowledged that he learned of Ms. G's interest in Mr. M. He stated that he was shocked by it as he had not heard of Mr. M's break-up with his wife. Justice Evans testified that Ms. G announced to him "I broke up his marriage." This suggestion was never put to Ms. G in cross-examination.

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

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

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

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

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

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

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

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

**Ms. H**

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

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

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

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

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

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

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

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

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

[91] Justice Evans denies that there were any incidents of the kind with Ms. H. He denies ever engaging in oral sex with Ms. H. He denies ever being in his washroom with her or lowering his pants in front of her. The only physical contact he says occurred between them was on the night of a mock trial that he organized. She thanked him for giving her recognition and then hugged him and he briefly hugged her back. He testified that it was not until the time of disclosure in relation to these complaints that he learned about some of her other personal history.

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

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

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

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

[96] Ms. H was under extreme stress during the relevant period of time for various personal reasons that, again in the interest of her privacy, we do not want to give specific details. However,

we are left with some concern about her ability to recollect the events of August 2002 with accuracy.

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

[98] In many respects, it was improbable that all the incidents happened in the time frame that she described. She testified that they occurred in August and into September of 2002. However, a review of Justice Evans's schedule that month shows that he was only in attendance at the Barrie courthouse on the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> of August. On the days that he did attend the courthouse he made a point of leaving as soon as possible to join his wife and daughter at the side of his father-in-law who was then sick in the hospital. The other days of the month he was either sitting in one of the satellite courts, in Bradford, Collingwood or Parry Sound, or on a two week scheduled vacation or at the funeral of his father-in-law. In September of 2002, Monday the 2<sup>nd</sup> was the Labour Day weekend. On the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> of September Justice Evans was sitting in Barrie.

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

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

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

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

### **Conclusion**

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

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

The Honourable Louise Charron

The Honourable J. David Wake

Jocelyne Côté-O'Hara

Henry G. Wetelainen

## APPENDIX “A”

### PARTICULARS OF THE COMPLAINT

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

#### **Ms. G**

1. Ms. G worked with Justice Evans at the Barrie courthouse. One night during the summer of 1999, Justice Evans called her at her apartment at approximately 11:30 pm. He insisted that, on his way home from the courthouse, he come by and drop off a reference letter that she had requested. Ms. G thought it odd that he insisted on coming by, but provided her address. Justice Evans arrived and stayed for approximately 15 minutes. He was very concerned that Ms. G’s landlord, who also worked at the Barrie courthouse, not be woken up or otherwise know of his visit.
2. In November 2001, upon discovering that Ms. G had a romantic interest in a particular lawyer, Justice Evans phoned her at home and challenged her to dare him to tell the lawyer about her interest. Justice Evans asked Ms. G what he would get from her in return if he followed through on the dare. He then asked her, “Would you sleep with me?” Ms. G tried to dismiss the comment as a joke. Justice Evans then went on to disclose that he was having marital problems and asked if she would consider having an affair with him; he said words to the effect, “Would you ever consider sleeping with a fat guy with a big dick?” Ms. G told him she couldn’t sleep with him, and the conversation ended.
3. In December 2001, Ms. G was in a Barrie bar with a group of her friends. Justice Evans was also there, and upon noticing her with her friends, he approached her. She was sitting on a bar stool and he put his hands on her upper thighs, leaned in and gave her a kiss on the lips.
4. In January 2002, Ms. G having sent Justice Evans a Christmas card inquired if he had received it when she returned to work after the Christmas holidays. He said no, and led her into his chambers, whereupon he gave her a kiss. Ms. G said “No”, and then he kissed her on the lips and put his tongue in her mouth. Ms. G pulled away from him, but he placed himself between

her and the door as she tried to leave. He kissed her again and said, “Say, ‘Kerry, I like kissing you’.” Ms. G hesitated, said “Kerry...” and then said, “I can’t do this. I don’t talk like this at the best of times so I can’t say that.” She then said, “I’ve got to go.” and left his chambers. Later that day, when he was leaving the courthouse parking lot, he waved her over and said, “Thanks, kiddo.”

**Ms. D**

5. Ms. D worked with Justice Evans at the Barrie courthouse. On June 19, 2000, she had been in court listening to a pretrial, and was upset by some of the evidence and had to leave the courtroom. As she was standing in the hallway, regaining her composure, Justice Evans noticed her and took her into his chambers to get a tissue. Once there, he began to tug at her gown, trying to remove it. She resisted, telling him, “No”. He continued to try and remove her gown, and she told him that it was tied in the back and wouldn’t come off. Ms. D’s supervisor walked in at that moment, and he stopped.
6. In or about February or March of 2001, Ms. D and Justice Evans were working at the Collingwood courthouse. As court was about to open, Ms. D went upstairs to Justice Evans’ chambers to get him. While she was waiting for him to finish a phone conversation, she stood in the corridor outside his chambers, with her back towards a wall and briefly lowered her eyes. She heard him hang up the phone and come toward her. He took his hands and intertwined his fingers in hers, put his chest against hers and pinned her to the wall. She recalls him saying something to her, but cannot recall what it was. He moved away from her, and then continued on to the courtroom.
7. In August 2001, two court staff and Ms. D, along with Justice Evans, took a government car up to the Collingwood courthouse. Before arriving at the courthouse, the group stopped to pick up coffee. They returned to the car, and Ms. D was standing at the door, alongside Justice Evans, as they waited for the driver to unlock the doors. As she was getting into the car, Justice Evans grabbed her left buttock.
8. Throughout the months of February, April, June and September of 2002, Ms. D was working with Justice Evans. Whenever Ms. D would open the doors to get to court, she would feel Justice Evans’ arm against her, or his chest or his stomach pressing against her, making her feel

uncomfortable. On at least two occasions during this time, he asked her if she wanted a candy. When she refused, he took advantage of her arms being full of files to try and put the candy in her mouth. Ms. D backed away, removed his hand, and refused the candy.

**Ms. E**

9. Ms. E worked with Justice Evans at the Barrie courthouse. She was standing with a group of friends at the Criminal Lawyers' Association Christmas party in December 2000. The event was held at the offices of a group of Barrie lawyers. She was talking with her friends, and her back was to a corner; Justice Evans was standing beside her. He reached over and touched her buttocks. She was surprised, but continued talking with the group. She believes that she moved away from Justice Evans at that point.

**Ms. F**

10. Ms. F worked with Justice Evans at the Barrie courthouse. In February 2001, Justice Evans phoned Ms. F at home one evening at approximately 7:00 pm, and told her to join him at the court to help photocopy. Justice Evans was in his chambers and she went in. They sat on his couch and he began to ask her about what her ideal dream date would be like, her ideal man, what would make her happy. She asked where the photocopying was, and seeing no work to be done, she said she was leaving. When she stood up to leave, Justice Evans grabbed her and began dancing with her. She tried to leave and when she placed her hand on the doorknob, he leaned in and kissed her. She thinks he may have done it a second time, and recalls him saying, "C'mon, kiss me, kiss me." She said she had to go, and left. Several days later, Justice Evans called Ms. F at home and apologized, but commented to her that, in any event, she had not fought him off.

**Ms. H**

11. Ms. H worked with Justice Evans at the Barrie courthouse. In or about August 2002, Justice Evans called Ms. H into his chambers, and while there, asked her to get a drink out of the fridge located in the closet. She bent over to remove a drink from the fridge; when she attempted to stand up, Justice Evans was in front of her and grabbed her. He began caressing her shoulders,

chest and arms and stroking her breasts, saying, “I know you like this”. Ms. H believes he kissed her. She told him that she had to get back to work.

12. On a separate occasion in or about August 2002, Justice Evans called Ms. H into his chambers and when she sat down, Justice Evans began massaging her shoulders and touching her breasts. Ms. H recalls him constantly talking during the incident, asking, “Do you like this?” repeatedly. Justice Evans then took Ms. H’s underwear down and touched her vagina. Justice Evans talked throughout the incident, telling Ms. H she was enjoying it. Justice Evans also offered Ms. H money to buy lingerie to wear for him.
13. On a separate occasion in or about August 2002, Justice Evans called Ms. H into his chambers. As she stood up to leave, he approached her and manoeuvred her backwards through his change room and into his private washroom. She was wearing a skirt; Justice Evans took down her underwear and performed oral sex on her. He suggested to her that she tell her manager she was sick and leave for the day so that they could meet at a hotel. She refused.
14. On a separate occasion in or about August 2002, Ms. H was in Justice Evans’ chambers at the Barrie courthouse and he manoeuvred her into his washroom. He took her hands and began rubbing them across his crotch and putting her hands in his pants. He pushed her towards the floor and told her to her to perform oral sex on him, which she did.
15. On a separate occasion in or about August or September of 2002, Ms. H was in Justice Evans’s chambers when he came up behind her and began grabbing her breasts through her clothes. Another court employee knocked on the door and walked in, and Justice Evans stopped.

#### **Ms. C**

16. In or about December 2002, Justice Evans and Ms. C were chatting in his chambers while court was in recess. During discussion of Christmas gifts for Justice Evans’s wife, Ms. C suggested that her husband’s cousin, a pilot, could provide a helicopter ride. Justice Evans inquired if the cousin was young and good-looking. When she indicated that she thought so, Justice Evans placed his open hand on her crotch, over her gown, and said words to the effect, “Well, I’d just hold a gun to him right here, then”. When she protested, he patted her on her buttocks, and said, “Ok, come on, let’s go.” and proceeded back to court.

**Ms. A**

17. On a series of occasions throughout 2000, and into early 2001, Justice Evans stood close to Ms. A and would on occasion touch Ms. A while standing close to her. These actions made her feel uncomfortable and she twice asked Justice Evans to step back.
18. On a separate occasion in 2000, Justice Evans telephoned Ms. A at home at approximately 11:00 p.m. There was no real reason for the call and the conversation was casual. Justice Evans asked Ms. A if he had woken her up. She said he had. He replied with words to the effect, “Well, now that you’re awake, you can have sex with your partner.” Ms. A made no comment in reply.
19. On a separate occasion in 2000, Ms. A was alone with Justice Evans in his chambers in Collingwood. She commented about a gentleman who was giving her some difficulty. Justice Evans rose from his desk and stood in front of Ms. A. He said she should have grabbed the gentleman who was giving her difficulty, and put his hand toward her groin and touched her there. Ms. A was given the impression that Justice Evans was trying to portray grabbing someone by the penis.
20. On a subsequent occasion, Justice Evans called Ms. A into his chambers and asked whether she had told anyone that he had sexually harassed her. She indicated she had. Justice Evans replied that there was a possibility of an investigation. He asked Ms. A what she would say if she was asked about the allegation of sexual harassment. She stated she would “tell the truth”. Justice Evans then said, “I’d prefer it if you said it was unfounded.” Justice Evans then went on to say that he could only recall being told once by Ms. A not to stand too close to him. Ms. A indicated she had told him twice.

**Ms. B**

21. On September 5, 2000, Ms. B attended the swearing-in ceremony of the Barrie Chief of Police. Ms. B had known Justice Evans professionally for many years. As guests were socializing amongst themselves after the ceremony, Justice Evans and Ms. B greeted one another. Justice Evans reached out his hand in what she thought was a greeting, and touched Ms. B in her pubic area.