ONTARIO JUDICIAL COUNCIL

PROCEDURES DOCUMENT

Updated February 2024

Table of Contents

1. OVERVIEW _____ *5*

Introduction _____ 5

The Procedures that Govern the Complaint Process _____ 6

Membership of the Judicial Council_____ 6

The Complaint and Discipline Process_____ 6

Interim Recommendation of Suspension with Pay or Reassignment to a Different Location ____ 8

Holding a Hearing into a Complaint_____ 8

Privacy and Confidentiality of the Complaint and Discipline Process _____ 9

2. DEFINITIONS _____ *11*

Procedural Rules_____ 11

3. INTERPRETATION _____ *12*

Procedural Rules_____ 12

4. COMPLAINTS – GENERAL _____ *12*

Legislative Provisions _____ 12

Procedural Rules_____ 13

5. COMPLAINTS ABOUT THE CHIEF JUSTICE OR THE ASSOCIATE CHIEF JUSTICE OR THE REGIONAL SENIOR JUSTICE APPOINTED TO THE JUDICIAL COUNCIL _____ *15*

Legislative Provisions _____ 15

6. CONFIDENTIALITY OF THE COMPLAINT PROCESS _____ *16*

Legislative Provisions _____ 16

Procedural Rules re Confidentiality_____ 18

7. Exceptions to the General Requirement of Confidentiality of Documents and Information20

Procedural Rules_____ 20

INVESTIGATIONS _____ *21*

Legislative Provisions _____ 21

8. Investigations by Complaint Subcommittees _____ *21*

Procedural Rules_____ 22

9. Judge's Response to a Complaint _____ *24*

Procedural Rules_____ 24

10. Interim Recommendation of Reassignment or Suspension with Pay _____ *25*

Legislative Provisions 25
Procedural Rules 26
11. Report of the Complaint Subcommittee 27
Legislative Provisions 27
Procedural Rules 28
12. Review Panels 30
Legislative Provisions 30
Procedural Rules 31
13. Review Panel's Decision on the Appropriate Disposition 31
Legislative Provisions 31
Procedural Rules 32
14. Notice of the Decision to the Complainant and to the Judge 34
Legislative Provisions 34
Procedural Rules 34
HEARINGS 35
Legislative Provisions 35
Statutory Powers Procedure Act 35
Translation, Interpretation, and Bilingual Proceeding 35
Legislative Provisions 35
15. Hearing Panels 37
Legislative Provisions 37
Procedural Rules 38
16. Independent Presenting Counsel 38
Legislative Provisions 38
Procedural Rules 39
17. Legal Counsel for the Judge 39
Procedural Rules 39
18. Notice of Hearing 39
Procedural Rules 39
19. Public Information about Hearing Proceedings 40
Legislative Provisions 40

Procedural Rules 41
20. Exceptions to Fully Open Hearing — Criteria *42*
Procedural Rules 42
21. Criteria for Disclosing Identity of the Judge when a Hearing is Private *42*
Procedural Rules 42
22. Pre-Hearing Procedures *43*
Legislative Provisions 43
Procedural Rules 43
Judge's Response to the Notice of Hearing 43
Disclosure 43
Pre-Hearing Conference 44
Pre-Hearing Motions 44
Withdrawal of Allegations Prior to a Hearing 45
Agreed Statement of Facts & Submissions on Disposition 46
The Hearing 46
23. Test for Judicial Misconduct *49*
24. Dispositions by the Hearing Panel *50*
Legislative Provisions 50
Procedural Rules 51
COMPENSATION *52*
25. Recommending Compensation for Judges' Legal Costs *52*
Legislative Provisions 52
Procedural Rules 54
Recommendation for a Removal from Office 55
Compensation – General 56
Compensation – Investigation Only 56
ORDER OF ACCOMMODATION *56*
26. Disability Renders Judge Unable to Perform Essential Duties of Office *56*
Legislative Provisions 56
27. Application for Accommodation of Needs Arising from a Disability *57*
Legislative Provisions 57

Procedural Rules 58

CONTINUATION IN OFFICE *62*

28. Continuation in Office After Age 65 *62*

Legislative Provisions 62

Procedural Rules 63

REPORTS TO THE ATTORNEY GENERAL *64*

29. Reports to the Attorney General *64*

Legislative Provisions 64

MEETINGS *65*

30. Meetings of the Judicial Council *65*

Legislative Provisions 65

Procedural Rules 65

APPENDICES *66*

APPENDIX A - ***Courts of Justice Act*** 67

APPENDIX B – ***Statutory Powers Procedure Act*** 68

APPENDIX C - Protocol Regarding the Use of Electronic Communication Devices in the OJC Hearing Proceedings 69

APPENDIX D – Agreed Statement of Facts 71

1. OVERVIEW

Introduction

There are two primary ways in which judges are held accountable in our justice system. Appellate review holds judges accountable for the quality of their legal reasoning and decisions, but it is equally important to hold judges accountable for their conduct. The conduct of a judge can affect public confidence in the individual judge, in the judiciary in general, and in the justice system itself.

In Ontario, the *Courts of Justice Act*[1] establishes the Ontario Judicial Council as the body to receive and investigate complaints about the conduct of provincially appointed judges. Anyone who has concerns about a judge's conduct and believes that the conduct needs to be investigated and addressed should direct their complaint to the Judicial Council. If an allegation of misconduct about a provincial judge is made to any other judge or to the Attorney General, they are obliged by law to refer the complainant to the Judicial Council.

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

Membership on the Judicial Council includes judges, lawyers and community members, bringing an understanding of the judicial role, the perspective of the legal community that appears before judges, and the views of members of the public to investigations and decisions made during the complaint process.

International precedents have recognized that confidentiality is important to promoting the effectiveness of judicial discipline bodies and the statutory schemes under which they operate. The confidential and private nature of the complaint process required by the *Courts of Justice Act* is intended to achieve a balance between the accountability of judges for their conduct and the constitutionally protected value of judicial independence. The legislation establishes a complaint process that is generally private and confidential in the stages of investigation and determination of the appropriate disposition. If a hearing is ordered, the process becomes public after the Notice of Hearing is served on the judge, unless the Hearing Panel orders that there are exceptional circumstances to warrant a private hearing.

To inform the public of the complaints that are made to the Council, of the process to address them, and of the outcome in each case, the Council provides an Annual Report on its work. The law permits the Council to provide a summary of each case but requires that the identity of the complainant and the judge be kept confidential unless the Council has ordered a hearing into the complaint.

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[1] RSO 1990, c C.43.

When a hearing is ordered, the public receives information about the hearing through the Council's website and a notice published by the Council in the local newspaper.

The Procedures that Govern the Complaint Process

The procedures that govern the Judicial Council come from two main sources. The first is the *Courts of Justice Act*, which sets out the basic structure, membership and responsibilities of the Judicial Council and its subcommittees and panels. The *Courts of Justice Act* also requires the Judicial Council to establish its own public guidelines, criteria, and rules of procedure for many aspects of its work. These Rules of Procedure contain both the most relevant sections of the *Courts of Justice Act* which are set out at the beginning of each section of this document after the heading "*Legislative Provisions*". The rules established by the Judicial Council appear in each section after the heading *"Procedural Rules"*. It is important to read the Rules in conjunction with the decisions of the Judicial Council, which are available on the Judicial Council's website, to see how the Judicial Council has interpreted the Rules and the *Courts of Justice Act* in previous cases.

In exercising its functions, the Judicial Council is also guided by decisions of Ontario courts and the Supreme Court of Canada in cases that relate to judicial discipline and the independence of the judiciary. These cases are equally important to understanding the work of the Judicial Council and its procedures.

The Judicial Council does not have any authority to intervene in court proceedings that relate to a complaint, nor does it have the authority to change any decision by a judge. If a complainant would like to change a judge's decision, he or she must pursue that remedy through the courts.

Membership of the Judicial Council

The members of the Judicial Council include the Chief Justice of Ontario and the Chief Justice of the Ontario Court of Justice (or their designates), other senior judges, members of the Law Society of Upper Canada, and four members of the public appointed by the Lieutenant Governor of Ontario on the recommendation of the Attorney General of Ontario. The public members of the Judicial Council are neither judges nor lawyers.

The Complaint and Discipline Process

The purpose of the judicial discipline process is not to punish a judge for his or her misconduct. Rather, the primary goal of the process is to preserve the integrity of, and public confidence in, the judiciary.[2] Respect for judicial independence is also central to the process and procedures of the Judicial Council.

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[2] *Ruffo v Conseil de la magistrature,* [1995] 4 SCR 267, 1995 CanLII 49 at paragraph 68.

Any member of the public may make a written complaint to the Judicial Council, in English or French, about a provincial judge. The Registrar and other Judicial Council staff screen complaints only to ensure that they may fall within the Judicial Council's jurisdiction. Every complaint that may contain an allegation about conduct is reviewed by a complaint subcommittee composed of two members of the Judicial Council, who serve on complaint subcommittees on a rotating basis. One member of each complaint subcommittee is a judge and the other is a community member. Complaints about persons who are not provincial judges are referred by staff to the appropriate office or body. For example, complaints about federal judges are referred to the Canadian Judicial Council and complaints about lawyers are referred to the Law Society of Ontario. If the Council receives a request for help in relation to legal matters, staff explain the Council's limited jurisdiction to the person making the request.

A complaint subcommittee investigates every complaint in private and may, as part of its investigation, invite the judge to respond to the allegations. At the end of its investigation, the complaint subcommittee may recommend to a four-person review panel that the complaint should be dismissed, referred to the Chief Justice of the Ontario Court of Justice, or referred to a formal hearing into the complaint. In the alternative, mediation may be recommended except where: there is a power imbalance between the complainant and the judge; there is a significant disparity between the complainant's and the judge's accounts of the events; there is an allegation of sexual misconduct, discrimination or harassment; or, the public interest requires a hearing of the complaint. The review panel consists of two other judges, a lawyer, and a community member.

The review panel considers the investigation and report of every complaint subcommittee in private. The review panel is responsible for ensuring that the complaint subcommittee's investigation was satisfactory and it may direct the subcommittee to further investigate the complaint. The review panel determines whether the complaint should be dismissed, referred to the Chief Justice of the Ontario Court of Justice, or ordered to a hearing. In this way, at least six members of the Council, including two community members, review and consider each complaint about judicial conduct.

In the event that a Council member who is assigned to consider a complaint believes they have an actual or potential conflict of interest, for example as a result of a relationship with the subject judge, the complainant, or a witness involved with the complaint, the policies of the Council require the member to immediately advise Council staff so that the complaint may be reassigned forthwith to a different member of the Council for consideration.

The *Statutory Powers Procedure Act*[3] does not apply to the activities of a complaint subcommittee or of a review panel (Appendix B).

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[3] RSO 1990, c S.22.

Interim Recommendation of Suspension with Pay or Reassignment to a Different Location

As the body designated by statute to investigate and dispose of complaints about the conduct of provincial judges, pending the final disposition of a complaint, the Judicial Council has the primary responsibility for considering whether a judge who is the subject of a complaint should be suspended with pay or reassigned to a different location.

During the confidential investigation stage, a complaint subcommittee may recommend to the regional senior judge that the judge under investigation be suspended temporarily or reassigned to another location on an interim basis. The Judicial Council has established the following criteria, which a subcommittee must consider when deciding whether to recommend a temporary suspension or reassignment pending final disposition of the complaint:

a) whether the complaint arises out of a working relationship between the complainant and the judge and if so, whether the complainant and the judge both work at the same court location.

b) whether allowing the judge to continue to preside would likely bring the administration of justice into disrepute.;

c) whether the complaint is of sufficient seriousness that there are reasonable grounds for investigation by law enforcement agencies.

d) whether it is evident that the judge is suffering from a mental or physical impairment that cannot be remedied or reasonably accommodated.

Holding a Hearing into a Complaint

If the review panel believes that the complaint subcommittee's report discloses conduct that has some basis in fact and upon which a hearing panel could make a finding of judicial misconduct, the review panel orders that a formal hearing be held. The *Statutory Powers Procedure Act* applies to the hearing process, with some exceptions.

The Judicial Council retains independent Presenting Counsel to prepare and present the case against the judge at a formal hearing before a hearing panel consisting of members of the Judicial Council. The judge may participate fully in the hearing and retain counsel to respond to the allegations.

Following the hearing, the hearing panel may dismiss the complaint or order a single sanction, or a combination of sanctions, against the judge. For example, for the least serious misconduct, the hearing panel may warn or reprimand the judge; for the most serious, the hearing panel may impose a suspension without pay or recommend to the Attorney General that the judge be removed from office. The Judicial Council does not have the direct authority to remove the judge, but only to recommend removal. The Attorney General then tables the

recommendation in the legislature, and it is the Lieutenant Governor who orders removal of the judge, on the address of the legislature.

Privacy and Confidentiality of the Complaint and Discipline Process

The early stages of the complaint process prior to a hearing are entirely confidential. That confidentiality is required by statute and is intended to balance the accountability of judges for their conduct with their constitutionally protected judicial independence. There are several reasons why confidentiality is important at the pre-hearing stages of a judicial complaint:

a) The disclosure of unsubstantiated complaints risks undermining the judge's authority in carrying out his or her judicial functions.

b) Without the capacity to ensure some form of confidentiality, the ability of the Judicial Council to obtain full and frank disclosures may be compromised, making the investigation process less effective.

c) The judge who is the subject of the complaint may have legitimate privacy concerns.

d) There is an overriding need to protect judicial independence.[4]

Constitutional guarantees of judicial independence include security of tenure and the freedom to speak and deliver judgment free from external pressures and influences of any kind. A system of accountability for judicial conduct must provide for accountability while guarding against the risk of infringing the constitutional guarantees that apply to the judge who is the subject of a complaint.

Based on the statutory framework, the Judicial Council has ordered 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, unless the Council, a review panel, or a hearing panel orders otherwise.

The confidentiality order applies whether the information or documents are in the possession of the Judicial Council, the Attorney General, or any other person. The order of non-disclosure does not apply to information and/or 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 purposes of a mediation, Council meeting, or hearing. The confidentiality order includes documents such as complaint letters, correspondence between the Judicial Council and the complainant or the judge, reports from subcommittees,

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[4] *In the Matter of an Application Brought by the Toronto Star and the Criminal Lawyers' Association* (OJC, 2015).

reports from the Chief Justice, and disposition letters. Nevertheless, the Judicial Council recognizes the right of a complainant to make his or her own complaint public.

The Judicial Council orders a hearing when the investigation of a complaint reveals that the complaint has a basis in fact that could result in a finding of judicial misconduct if the hearing panel were to believe those facts. Once that threshold has been met, the risk of harm to the judicial independence of the individual judge who is the subject of the complaint is outweighed by the need to preserve or restore public confidence in the judiciary in general. For this reason, once the Council has determined that a hearing is warranted, the hearing process is public and the “open courts” principle applies unless there are exceptional circumstances that require that all or part of the hearing be held in private.

If there are exceptional circumstances that justify holding all or part of a hearing in private, ordering a temporary publication ban, or protecting the identity of a complainant, the Hearing Panel may make such an order.

Making the discipline process public only at the hearing stage after a review panel has determined there is some evidence that could support a finding of judicial misconduct strikes the necessary balance between the competing values of transparency, accountability, judicial integrity, and the constitutional guarantee of judicial independence.

After the Notice of Hearing is served on the judge, information will be posted on the website about the hearing. In such circumstances, the policy objectives of the statutory framework of preserving confidence in the judiciary and in the administration of justice are best achieved by disclosing whether, pending the final disposition of the complaint, the judge has been suspended with pay or reassigned to a different location. At that stage, the fact that a judge has been suspended with pay or reassigned to a different location will be posted on the Council’s website.

2. DEFINITIONS

Procedural Rules

2.1 In these Rules of Procedure,

a) "accommodation subcommittee" means a subcommittee established to determine an application made under section 45(1) of the *Courts of Justice Act* and consisting of one judge and one community member of the Judicial Council;

b) "Act" means the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended;

c) "complaint subcommittee" means a subcommittee established to review a complaint pursuant to section 51.4(1) of the *Courts of Justice Act* and consisting of a provincial judge other than the Chief Justice and a person who is neither a judge nor a lawyer;

d) "Hearing Panel" means a panel established to conduct a hearing pursuant to subsection 49(16) of the *Courts of Justice Act.* Half of the members of a Hearing Panel are judges and half are not judges. The members on a panel include the Chief Justice of Ontario or another judge of the Court of Appeal designated by the Chief Justice, and at least one person who is neither a judge nor a lawyer;

e) "judge" means a judge of the Ontario Court of Justice unless otherwise indicated.

f) "Presenting Counsel" means counsel engaged on behalf of the Judicial Council to prepare and present the case against a judge who is the subject of a hearing into a complaint;

g) "provincial judge" means a judge appointed by the Lieutenant Governor in Council pursuant to section 42 of the *Courts of Justice Act*;

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

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

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

3. INTERPRETATION

Procedural Rules

3.1 The *Courts of Justice Act* (Appendix A) sets out the statutory framework that governs the complaint process. Relevant statutory provisions are included at the start of each section of this document, followed by the rules that the Judicial Council has established under Section 51.1(1) of the Act. The Judicial Council's rules are indicated by the heading *"Procedural Rules".*

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

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

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

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

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

4. COMPLAINTS – GENERAL

Legislative Provisions

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

s. 51.3(1)

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

s. 51.2(2)

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

s. 51.3(4)

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.

s. 51.3(2)

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.

s. 51.3(3)

Procedural Rules

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

4.2 The Judicial Council does not have the authority under the Act to investigate anonymous complaints.

4.3 If a complainant indicates in writing that they wish to withdraw their complaint, a complaint subcommittee may:

a) Treat the matter as withdrawn; or

b) Proceed to review the matter on the basis that it warrants further consideration by the Council.

4.4 If a judge is asked to respond to a complaint, the rules of natural justice require that the judge be provided with disclosure of all materials under consideration by the investigating complaint subcommittee, including the letter of complaint.

4.5 If a public hearing into a complaint is ordered by a review panel, the letter of complaint shall be filed by Presenting Counsel as an appendix to the Notice of Hearing at the initial set-date appearance, subject to any order of the hearing panel, and subject to the following:

a) If there are allegations in the letter of complaint that are not part of the alleged conduct ordered by a review panel to a hearing, such allegations shall be redacted in the copy of the letter filed as an appendix to the Notice of Hearing.

b) The Hearing Panel may impose a publication ban in respect of any information in the Notice of Hearing and/or letter of complaint in accordance with s. 51.6(9)-(10) of the *Courts of Justice Act* and/or rule 19.5.

4.6 The Judicial Council does not have the legal authority to change any decision of a judicial officer.

4.7 Where any allegations in a complaint to the Judicial Council relate to an ongoing court, tribunal or other legal proceeding, the Registrar shall advise the complainant that the Judicial Council does not generally consider such complaints until the proceedings, and any appeal or judicial review thereof, have been completed. This approach prevents the Judicial Council's consideration of a complaint from interfering with, or from being perceived as interfering with, any ongoing legal proceedings.

4.8 The Judicial Council does not have jurisdiction over a judge who has ceased to hold office.

4.9 If the Judicial Council loses jurisdiction over a complaint, the Registrar shall inform the complainant that the subject of the complaint is no longer a judge and that the Judicial Council no longer has jurisdiction to continue with the complaint process.

4.10 If it is plain and obvious that a complaint does not contain allegations about the conduct of a provincial judge, the Registrar shall inform the complainant in writing,

a) that the complaint does not appear to make allegations regarding the judge's conduct;

b) that the Judicial Council's jurisdiction is limited to the investigation and review of complaints about judicial conduct;

c) that if the complainant disagrees with the judge's interpretation or application of the law, the complainant should seek an appropriate remedy through the courts, for example, by way of an appeal; and

d) that because the complaint is outside the Judicial Council's jurisdiction, the complaint will not be referred to a complaint subcommittee for investigation, and a complaint file will not be opened.

4.11 If a complaint relates to a participant in the justice system other than a provincial judge, staff of the Office of the Judicial Council shall refer the complainant to the appropriate agency or office where the complainant's concerns may be pursued.

4.12 Complaints about a judge's interpretation or application of section 136 of the *Courts of Justice Act,* which sets out the prohibition against recording in the courtroom, or of the *Protocol Regarding the Use of Electronic Communication Devices in Court Proceedings* (Appendix C) are not, in and of themselves, complaints about conduct.

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

Legislative Provisions

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.

s. 50(1)

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.

s. 50(3)

6. CONFIDENTIALITY OF THE COMPLAINT PROCESS

Legislative Provisions

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

s. 51.3(5)

Complaint Subcommittee Stage

The investigation shall be conducted in private.

s. 51.4(6)

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

s. 51.4 (7)

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.

s. 51.4(16)

Review Panel Stage

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.

s. 51.4(17)

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

s. 51.4(19)

Order of Confidentiality

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.

s. 49(24)

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

s. 49(25)

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.

s. 49(26)

Exemption from *Freedom of Information and Protection of Privacy Act*

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.

Freedom of Information and Protection of Privacy Act,
R.S.O. 1990, c. F.31, *s. 65(5)*

Procedural Rules re Confidentiality

6.1 The investigation stage and the consideration of the complaint by the review panel shall be conducted in private and are confidential. If a review panel has ordered a hearing, after the Notice of Hearing is served on the judge, the hearing becomes public, unless there are exceptional circumstances and a Hearing Panel orders otherwise.

6.2 If any person, other than a judge asking about a complaint in relation to that judge's own conduct, asks whether a particular complaint has been made, the Judicial Council will consider whether it is appropriate in the circumstances to confirm or deny that a complaint has been made to it. The Council shall exercise the discretion to confirm or deny that a complaint has been made on a case-by-case basis having regard to the statutory framework set out in the *Courts of Justice Act* which requires that the complaint process is confidential unless a public hearing into a complaint is ordered. Requests shall be dealt with in writing. If it is determined that a hearing is warranted, the hearing process, by contrast, is public after the Notice of Hearing is

served on the judge, unless a Hearing Panel has ordered that there are exceptional circumstances that require that all or part of the hearing be held in private.

6.3 If a provincial judge asks whether a complaint has been made in relation to that judge's own conduct, the Registrar or his or her delegate shall confirm whether a complaint has been made about the judge and provide the judge with a copy of the Judicial Council's procedures. However, in order to preserve the confidentiality of the investigation required by the Act and ensure the effectiveness of the investigation process, the judge shall not be provided with a copy of the complaint.

6.4 The Judicial Council has ordered that, subject to an order by the Council, a review panel or a Hearing Panel, 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.[5] The order applies whether the information or documents are in the possession of the Judicial Council, the Attorney General, or any other person, but does not apply to information and/or documents,

a) that the *Courts of Justice Act* requires the Judicial Council to disclose; or

b) that have not been treated as confidential and were not prepared exclusively for the purposes of the mediation or Council meeting or hearing.

6.5 Documents reviewed by a complaint subcommittee, review panel, or the Judicial Council, as applicable, including complaint letters, complaint subcommittee reports, judges' responses to complaints, and the Chief Justice's reports to a review panel, are presumed to be confidential and may not be disclosed or made public at any stage of the complaint process unless the document is filed in evidence at a public hearing. Where such documents are filed in evidence at a public hearing, a hearing panel may make an order that certain information or documents remain confidential or are subject to a publication ban in accordance with rule 19.5.

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[5] For more information about the order of confidentiality, see *In the Matter of the Application Brought by the Toronto Star and the Criminal Lawyers' Association* (OJC, 2014) posted on the OJC's website under the link "Confidentiality"

7. Exceptions to the General Requirement of Confidentiality of Documents and Information

Procedural Rules

7.1 The Judicial Council may release letters from a complainant, and/or a disposition letter, and/or any related voicemails,

a) to the local police and/or the Justice Sector Security Office, if the communication itself could constitute a criminal offence and those documents or audio recordings may be relevant to determining whether there is a need for action to prevent harm to a person; or

b) for use in any criminal trial that results from the actions or comments of a complainant that are related to the complaint or the disposition of the complaint.

7.2 If a complainant brings a civil action against the Judicial Council or its staff or brings an application for judicial review, the Judicial Council may release any letters to and from the complainant and/or any disposition letter to a lawyer retained on behalf of the Judicial Council to defend the Judicial Council in the proceeding. So long as it is in accordance with the Judicial Council's instructions, the lawyer retained by the Judicial Council may use the letters in whatever way the lawyer deems advisable in the course of litigation.

7.3 Nothing in these Rules of Procedure shall prevent a complainant from making his or her own complaint letter public. The Judicial Council recognizes a complainant's right to make his or her own complaint public.

7.4 If,

a) a judge has been suspended with pay or reassigned to a different location under s. 51.4 pending final disposition of the complaint; and

b) a hearing has been ordered and the complaint process has become public,

the policy objectives of the statutory framework of preserving confidence in the judiciary and in the administration of justice are best achieved by disclosing that the judge has been suspended with pay or reassigned to a different location. Once the Notice of Hearing has been served on the judge and the complaints process has become public, it shall be disclosed on the Council's website that the judge has been

suspended with pay or reassigned to a different location as a result of an interim recommendation under s. 51.4(8), subject to any order of the hearing panel.

INVESTIGATIONS

Legislative Provisions

8. Investigations by Complaint Subcommittees

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.

s. 51.4(1)

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

s. 51.4(2)

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

s. 51.4(5)

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.

s. 51.4(3)

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

s. 51.4(4)

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

s. 51.4(7)

Procedural Rules

8.1 The members of a complaint subcommittee shall review the file and materials, if any, and discuss same with each other prior to determining the substance of the complaint and prior to deciding what investigatory steps should be taken.

8.2 A complaint subcommittee may consult with a review panel to seek its input and guidance during the investigative stages of the complaint process.

8.3 If the Judicial Council receives a new complaint about a judge who is already the subject of an open complaint file, and the new complaint is similar in nature to an outstanding complaint about that judge, the Registrar may assign the new complaint to the same complaint subcommittee that is investigating the earlier outstanding complaint.

8.4 Every complaint subcommittee shall expeditiously investigate and dispose of the complaint files for which it is responsible.

8.5 Neither member of a complaint subcommittee may take any action in relation to their investigation of a complaint without having obtained the agreement of the other member after a discussion between them of the merits of the action proposed.

8.6 If the members of a complaint subcommittee cannot agree whether a particular action should be taken in relation to its investigation of a complaint, the complaint subcommittee shall refer the matter to a review panel. The review panel assumes carriage of the matter.

8.7 The complaint subcommittee will examine the complaint, as well as such materials as it considers appropriate, which may include transcripts, audio recordings, and documents from the court file. The Registrar or his or her delegate shall, on behalf of a complaint subcommittee obtain such information or materials as the subcommittee determines to be appropriate in the course of its investigation.

8.8 If a transcript is ordered, court reporters shall be instructed by the Registrar or his or her delegate not to submit the transcript to the subject judge for editing.

8.9 If a complaint subcommittee decides to retain independent counsel to provide legal advice and/or to assist in its investigation by interviewing witnesses or obtaining documents, the Registrar shall retain counsel on its behalf and communicate the subcommittee's instructions to counsel.

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

9. Judge's Response to a Complaint

Procedural Rules

9.1 When a complaint subcommittee chooses, as part of its investigation, to invite a response from the subject judge, the Registrar shall, in accordance with the instructions of the complaint subcommittee, communicate that invitation to the subject judge in writing along with any particular concerns that the complaint subcommittee wishes to express.

9.2 As part of any invitation to respond to a complaint, the Registrar shall provide to the judge a copy of the materials under consideration by the subcommittee, including a copy of the complaint and all relevant materials, including transcripts, from the complaint file, and the disposition history of the judge other than dismissed complaints to which the judge was not invited to respond.

9.3 The judge is provided with 30 days from the date of the letter to respond to the complaint. The judge is not obliged to provide a response. If he or she does provide a response, the subcommittee shall review and consider the response in the course of its investigation.

9.4 If a judge requires an extension of time to respond, he or she, or counsel, must make the request in writing through the Registrar, providing brief reasons. The complaint subcommittee may grant such extension as it considers appropriate for the judge's response.

9.5 If the judge's response is not received within 30 days or the extended deadline, if any, the Registrar or his or her delegate shall,

a) advise the complaint subcommittee that the judge has not responded; and

b) send a reminder letter to the judge by registered mail or email.

9.6 If the judge's response is not received within 10 days of the date of the reminder letter, and the complaint subcommittee is satisfied that the judge is aware of the complaint and has received disclosure of the complaint, the complaint subcommittee shall proceed with determining its recommendation to the review panel of the appropriate disposition, notwithstanding that the judge has not responded.

9.7 If a judge provides a response to the complaint, the response shall be considered for any purpose in connection with,

a) the disposition of the complaint under section 51.4(13) by the complaint subcommittee;

b) the disposition of the complaint under section 51.4(18) by the Judicial Council or a review panel thereof; and

c) the disposition of the complaint under section 51.6 by the Judicial Council, following a hearing.

10. Interim Recommendation of Reassignment or Suspension with Pay

Legislative Provisions

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.

s. 51.4(8)

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.

s. 51.4(9)

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

s. 51.4(10)

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.

s. 51.4(11)

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.

s. 51.4(12)

Procedural Rules

10.1 As the body designated by the *Courts of Justice Act* to investigate and determine the appropriate disposition of complaints about the conduct of provincial judges, pending the final disposition of a complaint, the Judicial Council has the primary responsibility for considering whether a judge who is the subject of a complaint should be suspended with pay or reassigned to a different location.

10.2 When deciding whether to recommend the temporary suspension or reassignment of a judge pending the final disposition of a complaint, a complaint subcommittee shall consider,

a) whether the complaint arises out of a working relationship between the complainant and the judge and if so, whether the complainant and the judge both work at the same court location;

b) whether allowing the judge to continue to preside would likely bring the administration of justice into disrepute;

c) whether the complaint is of sufficient seriousness that there are reasonable grounds for investigation by law enforcement agencies;

d) whether it is evident that the judge is suffering from a mental or physical impairment that cannot be remedied or reasonably accommodated.

10.3 If a complaint subcommittee proposes to recommend temporarily suspending or reassigning a judge, it may give the judge an opportunity to be heard on that issue in writing. If the subcommittee invites a response on the question of whether or not it should make an interim recommendation, the Registrar, on behalf of the subcommittee, shall inform the judge of the applicable criterion or criteria in Rule 10.2 on which the subcommittee intends to rely.

10.4 The complaint subcommittee shall deliver its invitation to respond to a proposed temporary suspension or reassignment by courier or email.

10.5 If a judge requires an extension of time to respond, he or she, or counsel, must make the request in writing through the Registrar, providing brief reasons. The complaint subcommittee may grant such extension as it considers appropriate for the judge's response.

10.6 If the judge does not respond within 10 days from the date of mailing or emailing, or the extended deadline, if any, the complaint subcommittee may proceed with its recommendation for a temporary suspension or reassignment.

10.7 If a complaint subcommittee recommends a temporary suspension or reassignment pending the final disposition of the complaint, particulars of the applicable criteria in Rule 10.2 on which the complaint subcommittee's recommendation is based shall be provided contemporaneously to the regional senior judge and the subject judge to assist the regional senior judge in making his or her decision and to provide the subject judge with notice of the complaint subcommittee's recommendation and the reasons therefor.

10.8 If a complaint subcommittee recommends a temporary suspension or reassignment pending the final disposition of the complaint, the complaint subcommittee may provide to the regional senior judge any previous complaint and disposition history that the subject judge has had with the Judicial Council which the complaint subcommittee considers relevant to their recommendation.

11. Report of the Complaint Subcommittee

Legislative Provisions

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.

s. 51.4(13)

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.

s. 51.4(14)

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.

s. 51.4(15)

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.

s. 51.4(16)

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.

s. 50(2)

Procedural Rules

11.1 Although the Act confers on a complaint subcommittee the power to directly dismiss a complaint or refer the complaint to mediation or to the Chief Justice, it is the policy of the Judicial Council that a complaint subcommittee shall refer a complaint to a review panel unless, in the view of the subcommittee, the complaint is clearly outside the Council's jurisdiction, or is frivolous or an abuse of process.

a) A complaint may be considered outside the jurisdiction of the Council if it relates to decisions made by a provincially appointed judge and does not raise an issue of judicial conduct.

b) A complaint may be considered frivolous if it contains allegations that obviously have no merit and/or which, even if proven, do not raise an issue of judicial conduct warranting consideration by the Council.

c) A complaint may be considered an abuse of process in circumstances where the complainant is engaging in an ongoing course of conduct of filing multiple complaints to the Council in relation to issues that the Council previously considered and dismissed as outside the jurisdiction of the Council and/or as frivolous in nature.

d) A complaint subcommittee shall report to the Judicial Council, without identifying the complainant or the judge who is the subject of the complaint, its disposition of any complaint that is dismissed on the basis that it is outside the Council's jurisdiction, or is frivolous or an abuse of process.

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

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

a) referring the complaint to the Chief Justice of the Ontario Court of Justice is a suitable means of informing the judge that the judge's conduct was not appropriate in the circumstances that led to the complaint;

b) the conduct complained of does not warrant another disposition; and

c) there is some merit to the complaint,

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

11.4 If a complaint subcommittee recommends referral of the complaint to the Chief Justice of the Ontario Court of Justice and the complaint subcommittee concludes that there is some course of action or remedial training of which the subject judge could take advantage, the complaint subcommittee shall recommend imposing such conditions on the referral, although the complaint subcommittee may not impose such conditions without the subject judge's consent.

11.5 If, after investigating the complaint, a complaint subcommittee concludes that the complaint alleges judicial misconduct that,

a) has a basis in fact; and

b) could result in a finding of judicial misconduct if such facts are accepted by the Hearing Panel,

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

11.6 A complaint subcommittee must be unanimous in its decision to recommend dismissal of a complaint, referral of the complaint to the Chief Justice of the Ontario

Court of Justice, referral of the complaint to a mediator, or referral of the complaint to a hearing. If the members of a complaint subcommittee cannot agree on the disposition of the complaint, the complaint subcommittee shall refer the matter to a review panel. The review panel assumes carriage of the matter.

11.7 If a complaint subcommittee refers a complaint to a review panel, the complaint subcommittee shall forward to the review panel all documents, transcripts, statements, and other evidence that it considered in reviewing the complaint, including the response of the subject judge, if the judge provided a response.

11.8 If a complaint subcommittee recommends holding a hearing into the complaint, the complaint subcommittee may also recommend that the hearing be held in private. If such recommendation is made, the criteria established by the Judicial Council in Rule 20.1 shall be used.

11.9 If a subcommittee refers a complaint to the review panel, the complainant and the subject judge may be identified to the review panel thereof, regardless of whether the complaint subcommittee recommends holding a hearing.

12. Review Panels

Legislative Provisions

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.

s. 49(14)

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.

s. 49(15)

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.

s. 49(18)

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.

s. 49(19)

Procedural Rules

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

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

13. Review Panel's Decision on the Appropriate Disposition

Legislative Provisions

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.

s. 51.4(17)

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.

s. 51.4(18)

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

s. 51.4(19)

Procedural Rules

13.1 The review panel shall examine,

a) the report of the complaint subcommittee;

b) the complaint letter;

c) materials from the investigation as recommended by the complaint subcommittee; any response from the subject judge; and

d) any other material it considers relevant,

and ensure that the review panel is satisfied that the issues of concern have been identified and addressed by the complaint subcommittee in its investigation of the complaint and in its recommendation or recommendations to the review panel about the disposition of the complaint.

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

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

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

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

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

a) there has been an allegation of judicial misconduct that has a basis in fact; and

b) such allegations, if believed by a Hearing Panel, could result in a finding of judicial misconduct,

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

13.7 If the review panel orders that a hearing of the complaint be held, the review panel may also recommend that the hearing be held in private. If such recommendation is made, the criteria established by the Judicial Council in Rule 20.1 shall be used.

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

a) the complaint falls outside the Judicial Council's jurisdiction;

b) the complaint is frivolous;

c) the complaint is an abuse of process;

d) the complaint is unfounded; or

e) the evidence could not support a finding of judicial misconduct,

the review panel shall dismiss the complaint.

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

a) referring the complaint to the Chief Justice of the Ontario Court of Justice is a suitable means of informing the judge that the judge’s conduct was not appropriate in the circumstances that led to the complaint;

b) the conduct complained of does not warrant another disposition; and

c) there is some merit to the complaint,

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

13.10 If the review panel is considering a referral of the complaint to the Chief Justice, it will inform the subject judge that it is considering the referral. The judge will be asked whether he or she agrees to meet with the Chief Justice and whether he or she agrees to such conditions, if any, that the review panel has determined to be appropriate, such as education or treatment. The judge's willingness to meet with the Chief Justice and to fulfill the proposed conditions are relevant to the review panel's deliberations in considering the dispositions provided for under section 51.4(18), including holding a hearing. If the judge does not agree to meet with the Chief Justice or to the conditions of referring the complaint to the Chief Justice, the complaint remains with the review panel for further consideration and the review panel may decide to hold a hearing in the matter.

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

14. Notice of the Decision to the Complainant and to the Judge

Legislative Provisions

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.

s. 51.4(20)

Procedural Rules

14.1 In accordance with the instructions of the review panel, the Registrar or his or her delegate shall draft a letter to the complainant advising the complainant of the disposition of the complaint. The review panel shall consider and approve the draft letter, which shall then be prepared in final form and sent to the complainant.

14.2 The Registrar or his or her delegate shall provide a copy of the disposition letter to the judge who was the subject of the complaint in circumstances where he or she was asked for a response to the complaint.

14.3 If the complaint is dismissed and a response was not sought from the subject judge, the Judicial Council shall provide a copy of the disposition letter to the judge unless the judge has given instructions to waive such notice.

HEARINGS

Legislative Provisions

Statutory Powers Procedure Act

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

s. 51.6(2)

Contempt proceedings under the *Statutory Powers Procedures Act*

13. (1) Where any person without lawful excuse,
(a) on being duly summoned under section 12 as a witness at a hearing makes default in attending at the hearing; or
(b) being in attendance as a witness at an oral hearing or otherwise participating as a witness at an electronic hearing, refuses to take an oath or to make an affirmation legally required by the tribunal to be taken or made, or to produce any document or thing in his or her power or control legally required by the tribunal to be produced by him or her or to answer any question to which the tribunal may legally require an answer; or
(c) does any other thing that would, if the tribunal had been a court of law having power to commit for contempt, have been contempt of that court,

the tribunal may, of its own motion or on the motion of a party to the proceeding, state a case to the Divisional Court setting out the facts and that court may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of that person and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he or she had been guilty of contempt of the court.

s.13(1)

Translation, Interpretation, and Bilingual Proceeding

Legislative Provisions

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, 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.

s. 51.2(3)

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.

s. 51.2(4)

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.

s. 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) apply with necessary modifications.

s. 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.

s. 51.2(7)

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.

s. 51.2(8)

15. Hearing Panels

Legislative Provisions

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.

s. 49(16)

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).

s. 49(8)

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.

s. 49(17)

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.

s. 49(19)

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.

s. 49(20)

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.

s. 49(18)

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 person, unless all the parties and the persons representing the parties under the authority of the *Law Society Act* receive notice and have an opportunity to participate.

s. 51.6(4)

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.

s. 51.6(5)

Procedural Rules

15.1 These Rules of Procedure shall be liberally construed so as to ensure the just determination of every hearing on its merits.

15.2 The Hearing Panel's mandate is to inquire into the facts to determine whether there has been judicial misconduct, and, where judicial misconduct is found, determine the appropriate disposition or dispositions that will preserve or restore public confidence in the judiciary.

16. Independent Presenting Counsel

Legislative Provisions

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

s. 49(21)

Procedural Rules

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

16.2 A lawyer or law firm that was retained to assist a subcommittee in its investigation of a complaint may not be retained as Presenting Counsel for any hearing of the same complaint.

16.3 During the OJC hearing process, Presenting Counsel is not instructed by the hearing Panel or the Registrar and shall operate independently. Once the hearing process is complete, counsel takes instructions from the Registrar in any court proceedings arising from the hearing.

16.4 All communications between Presenting Counsel and the Hearing Panel shall be made in the presence of counsel for the judge, where the judge has retained counsel, and in the case of written communications, such communications shall be copied to the judge.

16.5 The duty of Presenting Counsel is not to seek a particular disposition but is rather to ensure that the complaint against the judge is evaluated fairly and dispassionately so as to achieve a just result and preserve or restore confidence in the judiciary.

17. Legal Counsel for the Judge

Procedural Rules

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

18. Notice of Hearing

Procedural Rules

18.1 A hearing shall be commenced by a Notice of Hearing, which Presenting Counsel shall prepare for the approval of the review panel that referred the complaint for a hearing.

18.2 The Notice of Hearing shall contain,

a) the particulars of the allegations against the judge;

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

c) 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 judge does not attend at the hearing, the Hearing Panel may proceed in the judge's absence and the judge will not be entitled to any further notice of the proceeding.

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

18.4 If counsel for the judge agrees to accept service by email on behalf of the judge, Presenting Counsel may effect service by emailing an electronic copy of the Notice of Hearing to counsel for the judge.

19. Public Information about Hearing Proceedings

Legislative Provisions

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.

s. 49(11)

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.

s. 51.6(10)

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.

s. 51.6(7)

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.

s. 51.6(8)

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.

s. 51.6(9)

Procedural Rules

19.1 Recognizing the role that the complaint process has in maintaining and restoring public confidence in the judiciary, and that the legislative requirements for maintaining privacy do not apply to formal hearings under section 51.6 of the *Act*, after the judge is served with the Notice of Hearing, the complaint shall become public, subject to any orders by the Hearing Panel.

19.2 Once the complaint has become public, the Registrar shall cause notice of the hearing to be,

a) posted in the prescribed form on the Judicial Council's website, subject to any orders by the Hearing Panel; and

b) published in a local newspaper not less than two weeks prior to the commencement of the hearing.

19.3 The public notice posted and published by the Registrar shall include a brief summary of the allegations of misconduct. If the judge has been suspended with pay or reassigned to a different location under s. 51.4 pending the final disposition of the complaint, the Registrar shall include that information on the Council's website.

19.4 The Hearing Panel may, on such grounds as it deems appropriate, abridge the time for publication of the notice by the Registrar.

19.5 The Hearing Panel may, on motion by any party and at any time during the hearing, order that certain information or documents remain confidential or be subject to a publication ban, including information contained in the allegations in the Notice of Hearing.

19.6 When a party files a motion requesting a publication ban, the Judicial Council shall provide public notice of any motion for a publication ban on its website.

19.7 The onus is on the party bringing a motion for a publication ban to give proper notice of the motion to major media outlets.

19.8 If a party believes that a publication ban ordered by the Hearing Panel may have been violated, the party may file a motion in writing requesting that the Hearing Panel state a case to the Divisional Court, pursuant to section 13 of the *Statutory Powers Procedures Act*, so that the Court may inquire into the facts to determine whether there has been a violation of the publication ban.

20. Exceptions to Fully Open Hearing — Criteria

Procedural Rules

20.1 When deciding whether there are exceptional circumstances that justify maintaining confidentiality and holding all or part of a hearing in private, the Hearing Panel shall consider,

a) whether matters involving public security may be disclosed at the hearing; and

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

21. Criteria for Disclosing Identity of the Judge when a Hearing is Private

Procedural Rules

21.1 After a hearing has been held in private and the Hearing Panel has determined the appropriate disposition of a complaint, the Hearing Panel shall consider the following criteria when deciding whether to order that the name of the judge, the disposition, or any other information be disclosed:

a) the reasons for holding a private hearing;

b) the disposition(s); and

c) whether avoiding disclosure is in the public interest and would preserve or maintain public confidence in the judiciary.

22. Pre-Hearing Procedures

Legislative Provisions

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

s. 51.6(6)

Procedural Rules

Judge's Response to the Notice of Hearing

22.1 The judge may respond to the allegations in the Notice of Hearing, in which case the judge shall file the response with the Council and serve it on Presenting Counsel. The response may contain full particulars of the facts on which the judge relies.

22.2 The judge may, at any time before or during the hearing, prepare an amended response, which shall be served on Presenting Counsel and filed with the Judicial Council.

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

Disclosure

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

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

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

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

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

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

22.6 Presenting Counsel's disclosure obligations under Rules 22.4 and 22.5 apply equally to any documents relevant to the allegations in the Notice of Hearing that are in the possession of Presenting Counsel and that come to his or her attention after pre-hearing disclosure has been completed.

Pre-Hearing Conference

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

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

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

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

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

Pre-Hearing Motions

22.8 Any party to the hearing may, by motion not later than 10 days before a set-date, bring any procedural or other matters to the Hearing Panel as are required to be determined prior to the hearing of the complaint, including, without limiting the generality of the foregoing, a motion for the purposes of,

a) objecting to the Judicial Council's jurisdiction to hear the complaint;

b) resolving any issues with respect to any reasonable apprehension of bias or institutional bias on the part of the Hearing Panel;

c) objecting to the sufficiency of disclosure by Presenting Counsel;

d) determining any point of law for the purposes of expediting the hearing;

e) determining any claim of privilege in respect of the evidence to be presented at the hearing;

f) any matters relating to scheduling;

g) seeking a publication ban or an order that the hearing or part thereof be in the absence of the public, in which case the Judicial Council shall provide public notice of any motion for a publication ban on its website; or

h) determining any other procedural or other matters as required.

22.9 A motion seeking any of the relief enumerated in Rule 22.8 may not be brought during the hearing without leave of the Hearing Panel unless it is based upon the manner in which the hearing has been conducted.

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

22.11 The Hearing Panel shall appoint a time and a place for the hearing of submissions by both sides on any motion brought pursuant to Rule 22.8 as soon as is reasonably possible and shall render a decision thereon as soon as is reasonably possible.

Withdrawal of Allegations Prior to a Hearing

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

22.13 Such a recommendation by Presenting Counsel shall be made in writing and state the reasons that the allegation(s) should be withdrawn. The Hearing Panel shall appoint a time and place for the hearing of the motion as soon as is reasonably possible.

22.14 The Hearing Panel shall order the withdrawal of any allegation(s) of judicial misconduct in the Notice of Hearing if the Hearing Panel finds that the allegation(s) of judicial misconduct no longer have a basis in fact.

22.15 In the absence of an order from the Hearing Panel withdrawing the allegation(s), Presenting Counsel must proceed with all allegations in the Notice of Hearing.

Agreed Statement of Facts & Submissions on Disposition

22.16 The parties may rely upon an Agreed Statement of Facts if the parties file the Agreed Statement of Facts with the Registrar not later than 10 days before the date set for commencement of the hearing. The Hearing Panel may review the Agreed Statement of Facts in advance of the hearing.

22.17 The Agreed Statement of Facts shall be set out in the template provided in Appendix D to these Rules of Procedure.

22.18 The Hearing Panel may abridge the time for filing the Agreed Statement of Facts on such grounds as it deems appropriate.

22.19 The Hearing Panel may choose not to accept an Agreed Statement of Facts if the Agreed Statement of Facts would bring the administration of justice into disrepute or be otherwise contrary to the public interest in judicial discipline.

22.20 If the Hearing Panel is considering not to accept an Agreed Statement of Facts, the Hearing Panel shall provide the parties with notice and an opportunity to make submissions.

22.21 Presenting Counsel may not enter into an agreement to make a joint submission on disposition. The Hearing Panel is not bound by the submissions of either party as to disposition.

The Hearing

22.22 On application at any time, Presenting Counsel, the subject judge or his or her counsel may request that the Registrar or Deputy Registrar issue a summons to compel any person or party to give evidence by oath or affirmation at the hearing and to produce in evidence at the hearing any documents or things which are relevant to the subject matter of the hearing. The Registrar or Deputy Registrar shall either issue the summons or, if he or she believes that there is a question of relevancy that should be determined by the Hearing Panel, inform the party seeking the summons that he or she must bring a motion before the Hearing Panel for a determination as to whether a summons should issue.

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

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

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

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

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

(a) the convenience of the parties;

(b) the cost, efficiency and timeliness of the proceeding in which the hearing is being held;

(c) the avoidance of delay or unnecessary length;

(d) the fairness of the process;

(e) public accessibility to the hearing;

(f) the fulfilment of the Judicial Council's statutory mandate; and

(g) any other matter relevant in order to secure the just and expeditious determination of the subject matter of the hearing or of the proceeding in which the hearing is being held.

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

a) All testimony shall be given under oath, affirmation, or promise.

b) Presenting Counsel shall commence the hearing by an opening statement, and shall proceed to present evidence in support of the allegations in the Notice of Hearing.

c) Counsel for the judge or the judge may make an opening statement, either immediately following Presenting Counsel's opening statement, or immediately following the conclusion of the evidence presented on behalf of Presenting Counsel. After Presenting Counsel has called its evidence, and

after counsel for the judge or the judge has made an opening statement, counsel for the judge or the judge may present evidence.

d) All witnesses may be cross-examined by the opposite party or counsel for the opposite party and re-examined as required.

e) The hearing shall be recorded verbatim and transcribed. Where counsel for the judge or the judge requests, he or she may be provided with a transcript of the hearing within a reasonable time and at no cost.

f) Both Presenting Counsel and counsel for the judge or the judge may submit proposed findings, conclusions, recommendations, or draft orders for the consideration of the Hearing Panel.

g) Presenting Counsel and counsel for the judge or the judge may, at the close of the evidence, make statements summarizing the evidence and any points of law arising out of the evidence. The Hearing Panel shall determine the order in which such statements shall be made.

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

a) where there is a variance between the evidence taken at the hearing and the particulars of the allegations in the notice of hearing; or

b) to correct any deficiencies as to form or substance in the notice of hearing.

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

a) the circumstances of the case;

b) the nature of the amendment sought;

c) whether the judge would be misled or prejudiced by the amendment;

d) any evidence introduced at the hearing; and

e) whether, having regard to the merits of the case, the proposed amendment would achieve a just result that is consistent with preserving or restoring public confidence in the judiciary.

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

a) are outside the ambit of the complaint that is the subject of the hearing; and

b) would constitute an allegation of misconduct against a provincial judge if they were disclosed in a complaint to the Judicial Council,

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

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

23. Test for Judicial Misconduct

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

23.2 (1) If the Hearing Panel finds that

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

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

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

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

a) whether the conduct is inconsistent with the *Principles of Judicial Office* and/or any standards of conduct established by the Chief Justice of the Ontario Court of Justice and approved by the Judicial Council under s. 51.9(1) of the *Courts of Justice Act*;

b) whether the conduct is contrary to the impartiality, integrity, and/or independence of the judiciary;

c) whether the conduct undermines the public's confidence in the judge's ability to perform the duties of office; and

d) whether the conduct undermines the public's confidence in the administration of justice generally.

24. Dispositions by the Hearing Panel

Legislative Provisions

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.

s. 51.6(11)

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

s. 51.6(12)

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.

s. 51.8(1)

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.

s. 51.8(2)

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

s. 51.8(3)

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).

s. 51.8(4)

Procedural Rules

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

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

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

a) whether the misconduct was an isolated incident or evidenced a pattern of misconduct;

b) the nature, extent, and frequency of the misconduct;

c) whether the misconduct occurred in or out of the courtroom;

d) whether the misconduct occurred in the judge's official capacity or in the judge's private life;

e) whether the judge has acknowledged or recognized that the acts occurred;

f) whether the judge has evidenced an effort to change or modify his or her conduct;

g) the judge's length of service on the bench;

h) whether there have been prior findings of judicial misconduct against the judge;

i) the effect of the misconduct on the integrity of, and respect for, the judiciary;

j) the extent to which the judge exploited his or her position to satisfy his or her personal desires; and

k) any other factor that the Hearing Panel considers relevant.

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

COMPENSATION

25. Recommending Compensation for Judges' Legal Costs

Legislative Provisions

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.

s. 49(14)

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.

s. 49(16)

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.

s. 51.7(1)

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

s. 51.7(2)

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.

s. 51.7(3)

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.

s. 51.7(4)

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.

s. 51.7(5)

Exception

(5.1) If the Judicial Council makes a recommendation under clause 51.6 (11) (g) in relation to a complaint made on or after the day section 2 of Schedule 5 to the *Smarter and Stronger Justice Act, 2020* comes into force, subsections (1) to (3) do not apply and compensation shall not be recommended under subsection (4).

s. 51.7(5.1)

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.

s. 51.7(6)

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.

s. 51.7(7)

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

s. 51.7(8)

Procedural Rules

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

25.2 The principal objective of the complaint process is to restore and maintain public confidence in the integrity of the judiciary, not to punish the judicial officer holder. When considering whether a judge should be compensated for legal costs, the Judicial Council shall be guided by the principle that it is generally in the best interest of the administration of justice for judges who are the subject of complaints to have the benefit of legal counsel to ensure a fair, full and complete process[6].

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[6] *Massiah v. Justices of the Peace Review Council*, 2016 ONSC 6191

25.3 Compensation for legal costs is not automatic where there is a finding of judicial misconduct. Except in accordance with section 25.4, when there has been a finding of judicial misconduct, the decision about whether a judge should be compensated for part, none or all of his or her legal costs shall be based upon consideration of the circumstances of the case, viewed in the context of the objectives of the complaint process, including:

a) The nature and seriousness of the misconduct.

b) The connection of the misconduct to the judicial function. Chief among the circumstances will be the nature of the misconduct and its connection to the judicial function. For example, misconduct that is more directly related to the judicial function may be more deserving of a compensation order than conduct that is less directly related.

c) Whether the conduct was such that any person ought to have known it was inappropriate. Conduct that any person ought to have known was inappropriate will be less deserving of a compensation decision than would conduct that is only determined to be inappropriate as a result of the ultimate decision in a particular case.

d) Whether the misconduct consisted of a single instance or multiple instances. Where there are multiple instances, the judge may be less deserving of a compensation recommendation than if there was a single instance of misconduct.

e) Whether there had been prior findings of misconduct. Where there has been a previous finding of misconduct, the judge may be less deserving of a compensation recommendation.

f) The conduct of the hearing. Compensation should not include the costs associated with steps which the decision-maker views as unmeritorious or unnecessary.

Recommendation for a Removal from Office

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

Compensation – General

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

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

Compensation – Investigation Only

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

ORDER OF ACCOMMODATION

26. Disability Renders Judge Unable to Perform Essential Duties of Office

Legislative Provisions

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.

s. 51.6(13)

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).

s. 51.6(14)

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.

s. 51.6(15)

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.

s. 51.6(16)

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

s. 51.6(17)

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).

s. 49(8)

27. Application for Accommodation of Needs Arising from a Disability

Legislative Provisions

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).

s. 45(1)

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.

s. 45(2)

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.

s. 45(3)

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.

s. 45(5)

The order binds the Crown.

s. 45(6)

Procedural Rules

27.1 A judge may not apply to the Judicial Council for an Order for accommodation of needs arising from a disability unless the applicant judge has first pursued the accommodation of needs process offered to judicial officers by the Ministry of the Attorney General.

27.2 A judge who applies to the Judicial Council for an Order for accommodation of needs arising from a disability shall provide to the Judicial Council a copy of all documents, medical evidence, and decisions resulting from the accommodation process offered to judicial officers by the Ministry of the Attorney General.

27.3 An application for an Order for accommodation of needs arising from a disability by a judge shall be in writing and shall include,

a) a description of the disability to be accommodated;

b) a description of the essential duties of the applicant judge's office for which accommodation is required;

c) a description of the item and/or service required to accommodate the applicant judge's disability;

d) a signed letter supporting the applicant judge’s application for accommodation from a qualified doctor, medical specialist, or other health professional.

27.4 Applications for an Order for accommodation and all supporting materials thereto are inadmissible in any investigation or hearing, other than the hearing to consider the question of accommodation, unless the applicant judge consents to their admission.

27.5 The Judicial Council shall not disclose to the public any application for accommodation, or the supporting materials thereto, without the consent of the applicant judge.

27.6 On receipt of an application, the Judicial Council shall convene an accommodation subcommittee composed of one judge and one lay member of the Judicial Council.

27.7 The accommodation subcommittee shall, at its earliest convenience, meet with the applicant judge and with any person against whom the accommodation subcommittee believes an Order to accommodate may be required.

27.8 The accommodation committee shall retain such experts and seek such advice as it may require to formulate an opinion on the application for accommodation.

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

a) whether the judge has needs arising from a disability and whether those needs require accommodation;

b) what item and/or service is necessary to accommodate the judge's needs;

c) the period of time that the item and/or service would be required to accommodate the judge's needs;

d) the approximate cost of the item and/or service required to accommodate the judge's needs, taking into account the estimated length of time that the item and/or service would be required,

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

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

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

a) the definition of “disability”;

b) the content of the duty to accommodate; and

c) the procedures developed in the jurisprudence for the purposes of determining whether an order to accommodate is warranted.

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

27.13 If the Judicial Council,

a) is satisfied that the judge's condition meets the threshold test for qualification as a disability; and

b) is considering making an order to accommodate the judge,

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

27.14 The Judicial Council shall give notice to the Attorney General that the Attorney General may make written submissions regarding whether any Order to accommodate a judge's disability that the Judicial Council is considering would cause undue hardship to the Ministry of the Attorney General or any other person affected by the said order to accommodate.

27.15 The Judicial Council shall request that the Attorney General respond to the notice of application for accommodation within 30 days of the Attorney General receiving such notice.

27.16 The Judicial Council shall stipulate in its notice to the Attorney General that, in the event that the Attorney General does not acknowledge the notice or does not make written submissions, the Judicial Council will proceed with making an Order to accommodate the judge in accordance with the judge's application and the Judicial Council's initial determination of the matter.

27.17 The Attorney General shall, within the 30 days provided for in Rule 27.15, advise the Judicial Council whether or not the Attorney General intends to make written submissions regarding the application for accommodation.

27.18 If the Attorney General intends to make written submissions regarding the application for an Order to accommodate, such submissions shall be made within 60 days of the

Attorney General advising the Judicial Council of an intention to respond as described in Rule 27.17.

27.19 Upon receipt of the Attorney General's written submissions, or upon the expiration of the 30-day time period specified in Rule 27.15, whichever comes first, the Judicial Council shall, at its earliest convenience, meet to determine the Order it shall make to accommodate the applicant judge's disability.

27.20 The Attorney General, or any other person against whom an Order to accommodate may be made, as the case may be, bears the onus of showing that accommodating the applicant will cause undue hardship.

27.21 The Judicial Council shall, before making its determination, consider the judge's application, supporting material, and submissions, if any are made, regarding the question of undue hardship.

27.22 In considering whether accommodation of the applicant will cause undue hardship, the Judicial Council shall generally be guided by human rights jurisprudence relating to the question of whether undue hardship will be caused, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

27.23 The Judicial Council shall not make an Order on an application for accommodation under subsection 45(2) without ensuring that the applicant judge has had an opportunity to participate and make written submissions.

27.24 The Judicial Council may not Order that a judge should be accommodated by assigning the judge to only a portion of the judge’s essential duties.

27.25 While the Judicial Council cannot assume responsibility for the assignment of judicial duties, the Judicial Council can consider whether, despite a disability, a judge is able to perform the essential duties of the office if the judge’s needs are accommodated.

27.26 If the Judicial Council makes an Order to accommodate a judge’s disability, a copy of the order shall be provided to the judge and to any other person affected by the order within 10 days of the date on which the decision was made.

CONTINUATION IN OFFICE

28. Continuation in Office After Age 65

Legislative Provisions

Retirement

47 (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.

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. 1994, c. 12, s. 16; 1996, c. 25, s. 9 (18, 20).

Same

(6) If the Judicial Council does not approve a Chief Justice's or associate chief justice's 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.

Appointment after reaching 65 years

(8) This section applies, with necessary modifications, to a person appointed as a provincial judge, or as a Chief Justice, associate chief justice or regional senior judge, after reaching 65 years of age.

s. 47

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).

s. 49(8)

Procedural Rules

28.1 A judge who has attained retirement age may, subject to the annual approval of the Chief Justice, continue in office as a full-time or part-time judge until he or she attains the age of seventy-five years, unless the judge has become incapacitated or disabled from the due execution of his or her office by reason of:

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

28.2 Decisions by the Judicial Council on an application by a Chief Justice or Associate Chief Justice of the Ontario Court of Justice who has reached the age of 65 shall be made in accordance with criteria set out in Rule 28.1.

REPORTS TO THE ATTORNEY GENERAL

29. Reports to the Attorney General

Legislative Provisions

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.

s. 51(6)

Same, publication

(7) The Judicial Council shall, no earlier than 15 but no later than 30 days after making the report, publish it in English and French on its website. 2019, c. 7, Sched. 15, s. 1.

s. 51(7)

Report after a Hearing

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.

s. 51.6(18)

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.

s. 51.6(19)

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.

s. 51.6(20)

MEETINGS

30. Meetings of the Judicial Council

Legislative Provisions

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

s. 49(10)

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

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

s. 49(13)

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.

s. 49(14)

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

s. 49(21)

Procedural Rules

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

APPENDICES

APPENDIX A - *Courts of Justice Act*

R.S.O. 1990, CHAPTER C.43

For the most recent version of the Act, see E-laws Ontario:
https://www.ontario.ca/laws/statute/90c43

APPENDIX B – *Statutory Powers Procedure Act*

R.S.O. 1990, CHAPTER S.22

For the most recent version of the Act, see E-laws Ontario:

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

APPENDIX C - Protocol Regarding the Use of Electronic Communication Devices in the OJC Hearing Proceedings[7]

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

(1) Application

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

(2) Definitions

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

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

(3) Use of Electronic Communication Devices in Hearings

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

(i) The presiding Hearing Panel orders otherwise.

(ii) Legislation (e.g. the *Courts of Justice Act* or the *Statutory Powers Procedures Act*) or the Hearing Panel restricts public attendance.

(iii) No photos or videos may be taken unless there is a Hearing Panel order otherwise.

(iv) Audio recording of proceedings is permitted by counsel, members of the media, and litigants for note-taking purposes only but the Hearing Panel must be advised before the recording is commenced. These audio recordings cannot be transmitted.

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[7] The Ontario Judicial Council is a body independent of the Ontario Court of Justice with jurisdiction to investigate and dispose of complaints about the conduct of judges of that Court. The Hearing Panel presiding over the hearing notes that the Ontario Court of Justice has established a **Protocol Regarding the Use of Electronic Communication Devices in Court Proceedings** and has decided to adopt the rules of that Protocol as set out above for its hearings.

(v) Talking on electronic communication devices is not permitted while the hearing is in session.

(4) Publication Bans and Other Restrictions

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

(5) Hearing Panel Orders

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

(i) whether the use of electronic communication devices would disrupt the proceedings or interfere with the proper functioning of the electronic equipment being used to make a proper record of the hearing; or

(ii) whether the use of electronic communication devices would interfere with witness testimony, or unreasonably infringe anyone's privacy or security.

APPENDIX D – Agreed Statement of Facts

ONTARIO JUDICIAL COUNCIL

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

The Honourable Justice [name of the judge], and Counsel for His/Her Honour, [name of the lawyer], and Presenting Counsel, [name of Presenting Counsel], agree as provided herein:

A. General Principles

1. The *Principles of Judicial Office for the Judges of the Ontario Court of Justice* state that the judges of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the individuals who have agreed to accept the responsibilities of judicial office.

2. Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. One factor which is capable of undermining public respect and confidence is the conduct of judges, in and out of court, that demonstrates a lack of integrity, independence or impartiality.

3. The public expects that judges must be and must give the appearance of being an example of impartiality, independence and integrity.

B. Background

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

5. The Ontario Judicial Council received a written complaint from ….

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

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

C. FACTS

8. Etc.

9. Etc.

D. ADMISSIONS (APPLICABLE IF JUDICIAL CONDUCT IS ADMITTED)

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

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

The Honourable Justice [name]	Date
Counsel for His/Her Honour	Date
Presenting Counsel	Date