OJC

ANNUAL REPORT

1995 – 1996

ONTARIO JUDICIAL COUNCIL

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ONTARIO JUDICIAL COUNCIL

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The Honourable Charles L. Dubin

FORMER CHIEF JUSTICE OF ONTARIO

Co-Chair, Ontario Judicial Council

FEBRUARY 28, 1995 TO FEBRUARY 15, 1996

The Honourable R. Roy McMurtry

CHIEF JUSTICE OF ONTARIO

Co-Chair, Ontario Judicial Council

FEBRUARY 20, 1996 TO PRESENT

The Honourable Sidney B. Linden

CHIEF JUDGE
ONTARIO COURT OF JUSTICE
PROVINCIAL DIVISION

Co-Chair, Ontario Judicial Council

ONTARIO JUDICIAL COUNCIL
CONSEIL DE LA MAGISTRATURE DE L'ONTARIO

The Honourable Charles A. Harnick
Attorney General for the Province of Ontario
720 Bay Street, 11th Floor
Toronto, Ontario M5G 2K1

Dear Minister:

It is our pleasure to submit to you the first Annual Report of the Ontario Judicial Council concerning its first year of operation, in accordance with subsection 51(6) of the *Courts of Justice Act*. The period of time covered by this Annual Report is from February 28, 1995 when the amendments of the *Courts of Justice Act* were proclaimed, to the end of the first year, March 31, 1996.

Respectfully submitted,

Charles L. Dubin
(former Chief Justice of Ontario)

R. Roy McMurtry
Chief Justice of Ontario

Sidney B. Linden
Chief Judge
Ontairo Court of Justice
Provincial Division

INTRODUCTION

The period of time covered by this Annual Report is from February 28, 1995, when the amendments to the *Courts of Justice Act* were proclaimed, to the end of its first fiscal year, March 31, 1996.

The Ontario Judicial Council investigates complaints made by the public against provincially appointed judges and masters. In addition, it approves the education plan for provincial judges and criteria for continuation in office developed by the Chief Judge of the Provincial Division, and may approve standards of conduct and criteria for evaluation of judicial performance, if such programs are initiated by the Chief Judge. The Judicial Council may also make an order to accommodate the needs of a judge who, because of a disability, is unable to perform the duties of judicial office. Such an accommodation order may be made as a result of a complaint (if the disability was a factor in a complaint) or on the application of the judge in question. Although no longer involved in the appointment of provincial judges to the bench, a member of the Ontario Judicial Council serves on the provincial Judicial Appointments Advisory Committee as its representative.

The Ontario Judicial Council had jurisdiction over approximately 260 provincially-appointed judges and masters during the period of time covered by this Annual Report. More than a million criminal charges and more than 140,000 family law cases were dealt with by provincially-appointed judges between February 28, 1995 and March 31, 1996.

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1. Composition and Terms of Appointment

The Ontario Judicial Council includes:

- the Chief Justice of Ontario (or designate from the Court of Appeal)
- the Chief Judge of the Provincial Division (or designate)
- the Associate Chief Judge of the Provincial Division
- a Regional Senior Judge appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General
- two additional provincial judges appointed by the Chief Judge
- the Treasurer of the Law Society of Upper Canada (or designate) and another lawyer appointed by the Law Society
- four persons, neither judges nor lawyers, who are appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General

The Chief Justice chairs all proceedings dealing with complaints against specific judges, except for the review panel meetings which are chaired by a provincial judge designated by the Judicial Council. The Chief Justice also chairs meetings held for the purpose of dealing with applications to accommodate a judge's needs resulting from a disability or meetings held to consider the continuation in office of a Chief Judge or an Associate Chief Judge. The Chief Judge chairs all other meetings of the Judicial Council.

2. Members - Regular

The membership of the Ontario Judicial Council in its first year of operation (February 28, 1995 to March 31, 1996) was as follows:

Judicial Members:

CHIEF JUSTICE OF ONTARIO

Charles Dubin.....*(Toronto)*
(to February 15, 1996)

Roy McMurtry .....*(Toronto)*
(from February 20, 1996)

CHIEF JUDGE OF THE PROVINCIAL DIVISION

Sidney B. Linden.....*(Toronto)*

ASSOCIATE CHIEF JUDGE OF THE PROV. DIV

Brian W. Lennox .....*(Ottawa)*

REGIONAL SENIOR JUDGE

Donald A. Ebbs .....*(Windsor)*

TWO JUDGES APPOINTED BY THE CHIEF JUDGE

Madam Justice Mary F. Dunbar .....*(Kingston)*
(appointed to the General Division on August 1, 1995)

The Honourable Judge Lynn King.....*(Toronto)*

The Honourable Judge Roderick Clarke....*(Thunder Bay)*

Lawyer Members:

TREASURER OF THE LAW SOCIETY OF UPPER CANADA:

Paul Lamek, Q.C.....*(Toronto)*
(to June 23, 1995)

Susan Elliott .....*(Kingston)*
(from June 23, 1995)

LAWYER DESIGNATED BY THE LAW SOCIETY

Mary Anne Sanderson.....*(Toronto)*

Community Members:

DOLORES J. BLONDE
Director of Research, Faculty of Law, University of Windsor (Windsor)

SUSILLA J. MOHAMED
Vice-Principal, Elmbank Middle School, (Etobicoke) (to February 15, 1996)

JUDY REBICK
Broadcaster and Journalist (Toronto)

ISHBEL SOLVASON-WIEBE
Executive Director, Elizabeth Fry Society (Ottawa)

Members - Temporary

Sections 87 and 87.1 of the *Courts of Justice Act* gives the Ontario Judicial Council jurisdiction over complaints made against every person who was a master of the Supreme Court prior to September 1, 1990 and every provincial judge who was assigned to the Provincial Court (Civil Division) prior to September 1, 1990. When the Ontario Judicial Council deals with a complaint against a master or a judge of the former Civil Division (Small Claims Court), the judge member of the complaint subcommittee is replaced by a master or small claims court judge, appointed as a temporary member by the Chief Justice of the General Division.

During the period covered by this report, the following individuals were appointed to serve as temporary members of the Ontario Judicial Council when dealing with complaints against these provincially-appointed judicial officers: -

MASTERS	JUDGES (SMALL CLAIMS COURT)
Master Basil T. Clark, Q.C.	The Honourable Judge Reuben Bromstein
Master R. B. Linton, Q.C.	The Honourable Judge M. D. Godfrey
	The Honourable Judge Pamela Thomson

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

The Honourable Judge Joseph C. M. James

The Honourable Regional Senior Judge Bernard M. Kelly

3. *Administrative Information*

Separate office space adjacent to the Chief Judge's office in downtown Toronto was acquired for the use of the Ontario Judicial Council and was ready for occupancy at the end of September, 1995. The proximity of the Council's office to the Chief Judge's office permits the Council to make use of clerical and administrative staff, as needed, and computer systems and support backup without the need of acquiring a large support staff of its own.

The Judicial Council's offices are used primarily for meetings of the Council and its members. The Council has a separate entrance, mailing address, phone and fax number and its own stationery. It has a 1-800 number for the use of members of the public across the province of Ontario and a 1-800 number for persons using TTY/teletypewriter machines.

In the first year of operation, the staff of the Ontario Judicial Council consisted of a registrar and a secretary. Intake and tracking forms, as well as reporting systems and procedures, were established during the period of this report.

4. Communications Subcommittee

A subcommittee to assist the Council in developing the public outreach material required by the legislation was established during the first year of Council's operation. This subcommittee has developed a brochure which has been publicly distributed and which outlines the mandate of the Council and briefly states its procedures in investigating complaints. A copy of the brochure is included as Appendix "A". This subcommittee also advised on the development of the Council's first Annual Report.

5. Procedures Subcommittee

A subcommittee to establish guidelines, rules of procedures and criteria for the use of complaint subcommittees, review panels and hearing panels was established at the first formal meeting of the Council. This subcommittee has developed a procedures document for the use of complaint subcommittees and review panels. That document is included as Appendix "B". The work of the subcommittee continues in developing rules governing the Council's procedure, as required by the legislation.

6. Chief Judge's Programs

Mandatory Programs: -

CRITERIA FOR CONTINUATION IN OFFICE

The Ontario Judicial Council no longer has a role in the annual continuation of judges past the age of retirement. The Chief Judge has the authority to continue judges who are past retirement age on an annual basis and is required to develop criteria for so doing. The criteria developed by the Chief Judge for continuing judges in office past retirement age are to be approved by the Judicial Council. The Chief Judge has developed draft criteria and circulated them among the judges and this matter is currently being considered by the Ontario Judicial Council.

EDUCATION PLAN

The Chief Judge is required to implement, and make public, a plan for the continuing judicial education of provincial judges. A continuing education plan was developed by the Chief Judge in conjunction with the Education Secretariat of the Provincial Division and the continuing education plan has been approved by the Judicial Council. A copy of the Provincial Division's continuing education plan can be found at Appendix "C".

Optional Programs: -

STANDARDS OF CONDUCT

The Chief Judge may establish, and make public, standards for judicial conduct and these standards are to be approved by the Judicial Council. A draft document, "Principles of Judicial Office" has been drafted by the Judicial Conduct Subcommittee of the Chief Judge's Executive Committee and, when completed, will be submitted to the Ontario Judicial Council for its review and approval.

PERFORMANCE EVALUATION

The Chief Judge may opt to implement a judicial performance evaluation program and if he does so, it is to be approved by the Council before implementation. By the end of Council's first year of operation, the Chief Judge had asked the Judicial Conduct Subcommittee of the Chief Judge's Executive Committee to study the pilot project of performance evaluation which has been established in the Province of Nova Scotia and attempt to develop a similar program for the approval of the judges in Ontario and of the Judicial Council.

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7. Judicial Appointments Advisory Committee

Since proclamation of amendments to the *Courts of Justice Act* in February, 1995, the Judicial Council is no longer directly involved in the appointment of provincial judges to the bench. However, a member of the Ontario Judicial Council serves on the provincial Judicial Appointments Advisory Committee as its representative. The Honourable Judge Lynn King serves as the Judicial Council's representative on the Judicial Appointments Advisory Committee.

8. The Complaints Procedure

A complaint subcommittee of Judicial Council members, comprised always of a provincially-appointed judicial officer (a judge, other than the Chief Judge, or a master) and a lay member, screens all complaints made to the Council. The governing legislation empowers the complaint subcommittee to screen out complaints which are either outside the jurisdiction of the Council (i.e., complaints about federally appointed judges, matters for appeal, etc.) or which, in the opinion of the complaint subcommittee, are frivolous or an abuse of process. All other complaints are investigated further by the complaint subcommittee. A copy of the Judicial Council's procedures document is included as Appendix "B".

Once the investigation is completed, the complaint subcommittee may recommend the complaint be dismissed, refer it to the Chief Judge for an informal resolution or refer the complaint to mediation. The decision of the complaint subcommittee must be unanimous. If the complaint subcommittee members cannot agree, or if none of these possible dispositions is appropriate, the complaint subcommittee will refer the complaint to the Council to determine what action should be taken.

A mediation process may be established by the Council and only complaints which are appropriate (given the nature of the allegations) will be referred to mediation. The Council must develop criteria to determine which complaints are appropriate to refer to mediation.

The Council (or a review panel thereof), will review the recommended disposition of a complaint (if any) made by a complaint subcommittee and may approve the disposition or replace any decision of the complaint subcommittee if the Council (or review panel), decides the decision was not appropriate. If a complaint has been referred to the Council by the complaint subcommittee, the Council (or a review panel thereof), may dismiss the complaint, refer it to the Chief Judge or a mediator or order that a hearing into the complaint be held. Review panels are composed of two provincial judges (other than the Chief Judge), a lawyer and a lay member. At this stage of the process, only the two complaint subcommittee members are aware of the identity of the complainant or the judge complained-of.

Complaint subcommittee members who participated in the screening of the complaint are not to participate in its review by Council or a subsequent hearing. Similarly, review panel members who dealt with a complaint's review or referral will not participate in a hearing of the complaint, if a hearing is ordered.

At the end of the investigation and review process, all complaints made to the Judicial Council have been reviewed by six individuals before a decision is made to dismiss the complaint or order a hearing into it.

Provisions for temporary members have been made in order to ensure that a quorum of the Council is able to conduct a hearing into a complaint if a hearing has been ordered. Hearing panels are to be made up of at least two of the remaining six members of Council who have not been involved in the process, thus far. At least one member of a hearing panel is to be a lay member and the Chief Justice, or his designate from the Court of Appeal, is to chair the hearing panel.

A hearing into a complaint is public unless the Council determines, in accordance with criteria to be established under section 51.1(1) of the *Courts of Justice Act*, that exceptional circumstances exist and the desirability of holding an open hearing is outweighed by the desirability of maintaining confidentiality, in which case the Council may hold all or part of a hearing in private.

Proceedings, other than hearings to consider complaints against specific judges, are not required to be held in public. The identity of a judge, after a closed hearing, will only be disclosed in exceptional circumstances to be determined by the Council. In certain circumstances, the Council will also have the power to prohibit publication of information that would disclose the identity of a complainant or a judge. The *Statutory Powers Procedure Act,* with some exceptions, applies to hearings into complaints.

After a hearing, the hearing panel of the Council may dismiss the complaint (with or without a finding that it is unfounded) or, if it finds that there has been misconduct by the judge, it may impose one, or more sanctions, or may recommend to the Attorney General that a judge be removed from office.

The sanctions which can be imposed by the Judicial Council for misconduct are as follows:

- a warning
- a reprimand
- an order to the judge to apologize to the complainant or to any other person
- an order that the judge take specific measures, such as receiving education or treatment, as a condition of continuing to sit as a judge
- suspension, with pay, for any period
- suspension, without pay, but with benefits, for up to thirty days

  (NB: any combination of the above sanctions may be imposed)
- a recommendation to the Attorney General that the judge be removed from office

  (NB: this last sanction is not to be combined with any other sanction)

The question of compensation of the judge's costs incurred for legal services in the investigation of a complaint and/or hearing into a complaint may be considered by the review panel or by a hearing panel when a hearing into the complaint is held. The Council is empowered to order compensation of costs for legal services (based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services) and the Attorney General shall pay compensation to the judge in accordance with the recommendation.

The legislative provisions of the *Courts of Justice Act* concerning the Ontario Judicial Council are included as Appendix "D" to this Report.

9. *Summary of Complaints*

The Ontario Judicial Council received 54 complaints in its first year of operation. Of these 54 complaints, 33 were closed before March 31, 1996. Twenty-one complaint files from the first year of operation remained open and were carried over into the second year of operation.

- Fifty-eight percent (58%) of complaints disposed of by the Ontario Judicial Council during the period of time covered by this Report (19 complaints) were found to be outside the jurisdiction of the Council, as they actually concerned matters that would be more appropriately dealt with by way of appeal to another court (for example, a complainant did not agree with the sentence a judge handed down or a decision that had been made).
- Twenty-one percent (21%) of complaints disposed of dealt with allegations of bias or undue influence and Council determined that these allegations (7 complaints) were unfounded.
- The remaining twenty-one percent (21%) of complaints that were dealt with:
  - alleged a judge made comments which were demeaning or conflicting but which allegations were not borne out on an examination of the transcript (2 complaints);
  - were made by complainants who did not understand the process in court or who had generalized feelings of dissatisfaction with their exposure to the court system, but who didn't have a complaint dealing with misconduct by any judicial officer (3 complaints);
  - did not proceed any further because the judge had already apologized for what the judge considered inappropriate comments, on the record (1 complaint); and
  - was referred to the Chief Judge in order to speak to the judge in question regarding the inappropriate use of judicial letterhead for personal business. The Chief Judge did so and reported to the Council (1 complaint).

In all cases, the complaint subcommittee reviewed the complainant's letter and, if necessary, reviewed the transcript and/or the audiotape of the proceedings that took place in court in order to make its determination about whether or not the complaint concerned judicial misconduct or was a matter of an unsatisfied litigant complaining of the result in a court proceeding.

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Files which were opened in the first year of operation were given the prefix "01", followed by a three digit number and by two digits indicating the calendar year in which the file was opened (i.e., file no. 01-054/96 was the fifty-fourth file opened in the first year of operation and was opened in calendar year 1996.).

CASE SUMMARIES

CASE NO. 01-001/95

The complainant alleged that the judge had accepted "perjured and improper" evidence. As well, the complainant alleged improper conduct on the part of his wife's lawyer and the trial coordinator. The complaint subcommittee recommended that the complaint be dismissed as there was no judicial misconduct evident in the exercise of the judge's discretion in allowing the evidence. If errors in law were committed by the judge in allowing the evidence, such errors are outside the jurisdiction of the OJC and could be remedied on appeal. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-003/95

The complainant and the judge are involved in a personal civil action. The judge, having been served with a notice of examination for discovery, responded to the special examiner's office with regard to a proposed date for examination for discovery, on judicial letterhead. The complainant stated that he thought it was inappropriate for a judge to write letters involving personal matters on the stationery of the court. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee agreed that the use of judicial letterhead for personal business, in these circumstances, could lead to a perception of impropriety by others and recommended that the matter be referred to the Chief Judge. The review panel agreed with the complaint subcommittee's recommendation that the Chief Judge speak to the judge to advise that the use of judicial letterhead in these circumstances was inappropriate. The Chief Judge did so and reported to the Judicial Council.

CASE SUMMARIES

CASE NO. 01-004/95

The complainant alleged improper conduct on the part of a judge who would not grant an adjournment of trial after the complainant's last minute dismissal of his counsel. The complaint subcommittee recommended that the complaint be dismissed as the decision to proceed involved an exercise of the judge's discretion, which is appealable if wrong in law and is, therefore, outside the jurisdiction of the OJC. The complaint subcommittee also stated that there was no judicial misconduct evident in the exercise of the judge's discretion and no allegation of any judicial impropriety in the complaint. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-005/95

The complainant, who was before the court on an interim support/custody application, alleged that the judge made demeaning and inappropriate comments to her in court. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence and asked for and reviewed a response from the judge. The complaint subcommittee recommended that since the comments made to the complainant by the judge, taken in context, were not evidence of judicial misconduct, the complaint should be dismissed, but that the judge be advised by the OJC that the perception of the complainant was that the comments were derogatory and/or demeaning to her. The review panel agreed with the complaint subcommittee's recommendation and dismissed the complaint.

CASE NO. 01-006/95

The complainant denied the truth of statements made in an affidavit signed by his wife in a divorce action. The complainant alleged that the master before whom he appeared accepted these untrue statements. The complainant was represented by counsel at all times and the parties eventually settled. The complainant asked whether or not the master had a duty to determine the truth of the contents of an affidavit filed in an action. The complaint subcommittee recommended that the complaint be dismissed as there was no judicial misconduct evident in the exercise of the master's judicial discretion in accepting the evidence. If errors in law were made by a judicial officer in determining the admissibility of evidence or the weight to be given to evidence submitted, such errors could be remedied on appeal and are outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-007/95

The complainant was the respondent on a motion to vary support and custody. The judge made a ruling barring the complainant's lawyer from representing him in court due to a conflict of interest and then varied a previous interim order adversely to the complainant. The complaint subcommittee reviewed the transcript of the proceedings and recommended the complaint be dismissed as there was no judicial misconduct evident in the exercise of the judge's discretion and the decisions made were within the judge's jurisdiction. The members of the complaint subcommittee felt that the complaint was more properly the subject matter of an appeal, a variation application or a variation application within a divorce action. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE SUMMARIES

CASE NO. 01-008/95

The complainant alleged judicial misconduct on the part of a judge before whom he appeared on a charge of public mischief. He complained that the judge made inappropriate comments regarding his criminal record which he alleged were evidence of bias on the judge's part and also that the judge misstated the facts about the reasons for the complainant's decision to testify for the Crown at another trial. The complaint subcommittee ordered and reviewed a copy of the transcript of evidence in the case and also requested a response from the judge. The complaint subcommittee recommended to the review panel that the complaint be dismissed as being without foundation after determining that the inappropriate remarks attributed to the judge by the complainant had not been made and his remarks concerning the complainant testifying for the Crown were an attempt by the judge to protect the complainant from further retribution from inmates while in custody. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-009/95

The complainant was the applicant to the court for support and custody of his child. The matter before the courts concluded after a five-day trial when Minutes of Settlement were signed whereby the natural mother of the child (the respondent) was granted sole custody and the applicant (complainant) was granted supervised access. The complainant alleged that the trial judge allowed "improper" evidence to be entered to which the complainant objected, allowed "unlimited" cross-examination of the complainant, "blocked" cross-examination of a witness who testified on behalf of the respondent and violated an exclusion order, among other things. Both the applicant (complainant) and respondent to the custody/support application were represented by counsel throughout the proceeding, which ended on consent of the parties. The complaint subcommittee reviewed the transcripts of evidence and exhibits filed at the hearing and reviewed a response to the complaint from the judge involved. After reviewing all of the material, the complaint subcommittee recommended that the complaint be dismissed as there was no judicial misconduct evident in the exercise of the judge's discretion or in the conduct of the case. The decisions made by the judge with which the complainant disagreed were all appealable and the complainant advised that he had launched an appeal. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-010/95

The complainant was the plaintiff in a civil action in the Small Claims Court. He appeared in court to oppose a motion brought by the defendant to set aside a default judgment. He alleged that the judge hearing the action accepted a bribe or a benefit from an agent acting for the defendant, who told him the judge was "in (his) back pocket". The defendant was successful on the motion and the default judgment was set aside. The complaint subcommittee wrote to the judge and asked for a response to the complaint. The complaint subcommittee also asked the person who had allegedly made the remarks attributed to him by the complainant to come into the OJC offices to be interviewed and he attended, with his counsel. He denied making the remarks attributed to him by the complainant and the members of the complaint subcommittee were satisfied with his statement. The complaint subcommittee advised the judge that no response would be necessary after hearing from the defendant's agent. The complaint subcommittee examined the court file in

detail and reported that there was nothing to indicate that there were any wrong or inappropriate decisions made on the file by the judge in question. The defendant's agent had asked the judge to remain seized with the file and the judge had agreed. The complaint subcommittee found nothing inappropriate with the judge's decision to remain seized with the file as it was a very complicated and lengthy file and the judge had primary carriage and familiarity with the matter to that point. The complaint subcommittee recommended that the complaint be dismissed as being without foundation and the review panel agreed with that recommendation.

CASE NO. 01-011/95

The judge, who was the subject of the complaint, had questioned the status of a suspended lawyer who was appearing as agent for counsel on an indictable offence. The suspended lawyer appearing as agent had not presented himself to the court as counsel of record. The complaint subcommittee recommended that no further action was necessary and the complaint be dismissed as the transcript revealed the judge had acknowledged that the comments were inappropriate and had apologized for them to the agent, on the record. The review panel agreed with the complaint subcommittee's recommendation and dismissed the complaint.

CASE NO. 01-012/95

The complainant was before the court as a witness at the trial of his son who was charged under the Young Offender's Act. The complaint subcommittee recommended that this complaint of professional misconduct, racism and bias be dismissed as there was no evidence to substantiate the allegations and if there were errors committed by the judge in the admission of certain evidence as the complainant also alleged, there was no judicial misconduct evident in the exercise of the judge's discretion in admitting the evidence. If errors were committed by the judge in admitting evidence, such errors were outside the jurisdiction of the OJC and could be remedied on appeal. The review panel agreed with the complaint subcommittee's recommendation and dismissed the complaint.

CASE NO. 01-013/95

The complainant, who had been denied the privilege of possessing firearms for five years because of a previous criminal offence, was an unsuccessful applicant for a Firearms Acquisition Certificate and alleged that the judge who refused his application showed bias in refusing to permit him to bear arms. The complaint subcommittee recommended that this complaint be dismissed as there was no evidence of judicial misconduct in the exercise of the judge's discretion in making the decision not to grant a Firearms Acquisition Certificate. If the decision was wrong in law, it was subject to appeal and was, therefore, outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation and dismissed the complaint.

CASE NO. 01-015/95

The complainant objected to comments made by the judge in the course of sentence, as well as the severity of the sentence imposed and provided a copy of the relevant part of the transcript of evidence. The complaint subcommittee recommended that this complaint be dismissed as they felt there was no judicial misconduct evident in the comments made on sentence by the judge, taken in context. The complaint about the severity of the sentence imposed is a matter that was subject to appeal

and, therefore, was outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation and dismissed the complaint.

CASE NO. 01-016/95

The complainant alleged that the judge before whom he appeared as an accused on a criminal charge was biased in favour of the prosecution and the prosecution witnesses because they were French Canadian, as was the judge (according to the complainant); the complainant also alleged that the judge was blasphemous and accepted perjured evidence. The complaint subcommittee ordered and examined the transcript of evidence in the matter. The complaint subcommittee recommended that the complaint be dismissed as there was no evidence in the transcript to justify the allegations of bias or blasphemy and there was no judicial misconduct evident in the exercise of the judge's discretion in weighing the credibility of witnesses which is an exercise of judicial discretion. If errors in law were committed by the judge in the exercise of judicial discretion, such errors are outside the jurisdiction of the OJC and could be remedied on appeal. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-017/95

The complainant was an accused person before the court who alleged that the trial judge ignored his requests for medical assistance during trial and also complained that the judge entered evidence into the record improperly and without the consent of the accused. The complaint subcommittee reviewed the transcripts provided by the complainant and found that the judge had considered the request for medical assistance and dismissed it as there was no medical evidence of injury or illness provided to the court to support the complainant's request. The complaint subcommittee recommended that the complaint be dismissed in the circumstances and found further that there was no judicial misconduct evident in the exercise of the judge's discretion in determining the admissibility of evidence. If errors in law were committed by the judge in allowing the evidence, such errors are outside the jurisdiction of the OJC and could be remedied on appeal. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-018/95

The complainant alleged that the judge improperly ignored psychiatric letters filed in support of his application for review of a refusal to grant a Firearms Acquisition Certificate. The complainant also alleged that the judge made fun of him in the judge's courtroom conduct. The complaint subcommittee reviewed the relevant transcript of the proceedings. The complaint subcommittee recommended that the complaint be dismissed as the transcript offered no support for the allegations. The complaint subcommittee found that the decision not to grant a Firearms Acquisition Certificate was within the judge's jurisdiction to make and that there was no misconduct by the judge in the exercise of judicial discretion. If errors in law were committed by the judge in the exercise of judicial discretion, such errors are outside the jurisdiction of the OJC and could be remedied on appeal. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE SUMMARIES

CASE NO. 01-020/95

The complainant was the respondent in an application for an order for interim custody and access and complained that the judge had, eight years earlier, acted as a lawyer for the applicant's father in a real estate transaction and was, therefore, in a conflict of interest. The complainant also objected to the fact that the terms of an agreement with respect to interim custody and access were changed slightly by the judge and that the judge had made inappropriate comments and gestures from the bench while her lawyer was speaking and that the judge had interrupted her. As well, she objected to the fact that witnesses to an alleged incident of mistreatment of her son had not been called to testify. The complaint subcommittee reviewed the transcript of the proceedings and the judge was asked for, and gave, a response to the complaint. The complaint subcommittee recommended that the complaint be dismissed as there was no evidence of judicial misconduct on the part of the judge and nothing in the transcript to indicate inappropriate comments or unnecessary interruptions of counsel had been made. Both parties were represented by counsel, who were aware of the potential conflict of interest situation which was discussed with the judge in chambers. Despite the opportunity to do so, neither counsel raised the issue of conflict of interest in open court. The fact that witnesses to an alleged incident of mistreatment of her son were not called was not a decision made by the judge or within the judge's or the Council's jurisdiction. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-021/95

The complainant's husband had been charged with assault on their two grown children. The complainant was not unsatisfied with the result in the criminal case (the charge was dismissed). The complainant was unhappy that the judge did not admonish her husband for engaging in a physical altercation with his children while under the influence of alcohol and because the judge did not reassure her daughters that they were not to blame for their father's behaviour. The complaint subcommittee felt that it would have been inappropriate for the judge to have reprimanded the accused while dismissing the charges and recommended that the complaint be dismissed. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-022/95

The complainant, who was charged with a criminal offence, alleged misconduct by the judge before whom he appeared because the judge did not accept the plea bargain submitted by Crown and defence counsel. The complainant also alleged police harassment and misconduct, negligence on the part of employees of a battered women's shelter, tampering with the transcripts of evidence at his trial and that the Crown had presented false evidence on submissions as to sentence. The complaint subcommittee found that there was no evidence of judicial misconduct in the judge's decision to reject the joint submission made by Crown and defence counsel and recommended that the complaint be dismissed. The review panel agreed with the com-

plaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-023/95

The complainant (a third party) alleged that the judge was incompetent to continue in office due to a decision made which had, according to the complainant, harmful consequences for a class of citizens in Ontario. The decision made by the judge complained-of was appealed. The complaint subcommittee recommended that this complaint be dismissed as there was no evidence of judicial misconduct in the exercise of the judge's discretion. If it was wrong in law, the decision may be overturned on appeal. The OJC has no jurisdiction to intervene in judicial proceedings or direct any judicial officer in the exercise of his or her judicial discretion. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-025/95

The complainant was the applicant in a motion to vary support and access orders and complained that the judge had made conflicting comments regarding joint custody and other arrangements to which the parties had agreed on two separate appearances in court. The complaint subcommittee reviewed the transcripts of the proceedings. The complaint subcommittee recommended that the complaint be dismissed as the complaint about the judge's conflicting remarks was not substantiated upon reviewing the transcripts. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-027/95

The complainant was one of three accused involved in a minor assault at a peewee hockey game and complained that the trial judge chose to reject a portion of a joint submission made and refused to put conditions on the peace bond imposed because, as the complainant reported, the judge stated the conditions couldn't be enforced as there was no one to supervise compliance. The complaint subcommittee recommended that the complaint be dismissed as it is within a judge's discretion to reject a joint submission in whole or in part and there was no evidence of judicial misconduct in the exercise of the judge's discretion in deciding to reject a portion of the joint submission. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-028/95

The complainant was an accused person who complained that the trial judge was rude to his lawyer and unfairly biased towards the Crown, going so far as to advise the Crown on how to obtain a conviction against him. He also alleged that the judge was responsible for a deletion from the transcript of certain evidence and that the judge called him "dishonest". The complaint subcommittee reviewed the transcript of evidence which had been provided to the OJC by the complainant. The complaint subcommittee recommended that the complaint be dismissed as there was no evidence in the transcript to support the allegations of misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE SUMMARIES

CASE NO. 01-029/95

The complainant was a criminally accused person who alleged that the trial judge relied on evidence not before the court in convicting him. The complainant was represented by counsel at trial. The complaint subcommittee recommended that the complaint be dismissed as there was no evidence of judicial misconduct on the part of the judge and if the judge had relied on facts not before the court, as the complainant alleged, it would be a matter for appeal. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-030/95

The complainant was a victim in a domestic assault which occurred six years prior to her making her complaint against the trial judge. She complained about remarks made by the judge on sentence and that the judge had given the accused too lenient a sentence. The complaint subcommittee recommended that the complaint be dismissed as the Crown could have appealed the sentence if it was inappropriate and the OJC has no jurisdiction to intervene in judicial proceedings or direct any judicial officer in the exercise of his or her judicial discretion. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-031/95

The complainant (a third party and friend of the victim in a criminal trial) alleged judicial misconduct because she disagreed with a decision made by the judge to find certain accused not guilty of offences with which they were charged. The complaint subcommittee recommended the complaint be dismissed as there was no misconduct evident in the exercise of the judge's discretion in finding that the Crown had not proved its case. The matter may be appealed by the Crown if the decision made by the judge was wrong in law. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-032/95

The complainant was unsuccessful in an application for custody of her two children and complained that she had been given an unfair trial and that the judge was biased in favour of the Children's Aid Society. She also contended that the evidence at trial was incomplete and inaccurate. She was represented by counsel at trial. The complaint subcommittee recommended that the complaint be dismissed as there was no judicial misconduct evident in the exercise of the judge's discretion and the matter may be appealed if the decision was wrong in law. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-033/95

The complainant was the mother of a victim of a sexual assault. She objected to the fact that the sentence imposed on the accused did not include a term of imprisonment and felt that the judge did not appreciate the impact of the crime on her son. The complaint subcommittee recommended

that the complaint be dismissed as there was no evidence of judicial misconduct in the exercise of the judge's discretion in making the decision regarding sentence. If the sentence imposed was inappropriate in the circumstances, the Crown would have been able to appeal it. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-035/95

The complainant was the accused in a criminal trial on a charge of uttering death threats against his ex-wife. The complainant alleged that the judge was biased against him, having already made a decision before the case started. The complainant alleged that the judge did not permit his lawyer to test his ex-wife's credibility as a witness and would not permit his lawyer to re-examine her. The complainant/accused, who took the stand in his own defence, also objected to the judge questioning him on the stand after he had testified and after the crown had cross-examined him on his evidence. The judge convicted the complainant/accused of the offence, suspended the passing of sentence and placed him on probation for a period of 12 months. The complaint subcommittee examined the transcript of the court proceedings and recommended the complaint be dismissed as they found no judicial misconduct evident in the judge's exercise of discretion in assessing the credibility of the accused and the victim. If errors in law were committed by the judge in assessing credibility, such errors are outside the jurisdiction of the OJC and could be remedied on appeal. They found no evidence to substantiate the complainant's allegations of bias or evidence of the judge's alleged sympathy towards the victim/witness. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-036/95

The complainant was an accused person before the court, charged with assault, and complained that the trial judge prevented him from having a trial by judge and jury. The complaint subcommittee recommended that the complaint be dismissed as their investigation into the complaint revealed that the Crown had elected to proceed summarily and, as a result, the judge could not make an order for a trial by judge and jury, as jury trials can only be held for offences where the Crown elects to proceed by way of indictment. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-037/95

The complainant was the wife of the accused in a criminal trial on a charge of uttering death threats against his ex-wife. The complainant alleged that the judge was biased against her husband, and had made a decision before the case started. The complainant alleged that the judge treated the Crown's witness with sympathy, and complained that the judge took "one person's word against another's". The complainant also alleged that the judge constantly looked over at

the courtroom clock. The complaint subcommittee examined the transcript of the court proceedings and recommended the complaint be dismissed as they found no judicial misconduct evident in the judge's exercise of discretion in assessing the credibility of the accused and the victim. If errors in law were committed by the judge in assessing credibility, such errors are outside the jurisdiction of the OJC and could be remedied on appeal. They found no evidence to substantiate the complainant's allegations of bias or evidence of the judge's alleged sympathy towards the victim/witness. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-039/95

The complainant was the 16 year-old victim of a sexual assault and had many complaints regarding the judicial system and the lack of support and information provided to her by the police and the Crown Attorney's office. She did not understand the necessity of her having to give testimony in court, when the accused did not, nor the burden of proof that is required to be met in criminal law. The members of the complaint subcommittee were of the view that the complaint was about the whole criminal justice experience she had gone through, which she felt to be very disturbing and humiliating. The complainant's letter to the OJC did not allege any misconduct by a judge, but a previous letter to the administrative judge of the court location where the trial occurred, which was provided to the OJC, made reference to the trial judge as "the biggest character in [the] courtroom". The complaint subcommittee recommended that the complaint be dismissed as there was no substantiation of any judicial misconduct and recommended that the OJC letter to the complainant should try to deal with her concerns about her experience as a witness/victim. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 01-040/95

The complainant is the mother of the respondent in an application brought by Child and Family Services, who alleged abuse by the respondent against her children (the complainant's grandchildren). The complainant alleged that the judge was unfair to her daughter in relying on the evidence led by the social service agency and overstepped the boundaries of judicial authority by ordering her daughter to make changes in her home in order to accommodate one of her children, who is physically handicapped. The complaint subcommittee recommended the complaint be dismissed as there was no judicial misconduct in the exercise of the judge's discretion and the judge had not overstepped the bounds of judicial authority in the decision made. If errors in law were committed by the judge in the exercise of judicial discretion, such errors are outside the jurisdiction of the OJC and could be remedied on appeal. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

A

ONTARIO JUDICIAL COUNCIL – DO YOU HAVE A COMPLAINT?

The information in this brochure deals with complaints of misconduct against a Provincial Judge, a Master or a Small Claims Court Judge.

Provincial Judges in Ontario – Who are they?

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

Ontario's Justice System:

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

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

Is a Judge's Decision Final?

The judge's decision can result in many serious consequences. These can range from a fine, probation, a jail term or, in family matters, placement of children with one parent or the other. Often, the decision leaves one party disappointed. If one of the parties involved in a court case thinks that a judge has reached the wrong conclusion, they may request a review or an **appeal** of the judge's decision in a higher court. This higher court is more commonly known as an appeal court. If the appeal court agrees that a mistake was made, the original decision can be changed, or a new hearing can be ordered.

Professional Conduct of Judges

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

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

The Role of the Ontario Judicial Council

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

APPENDIX-A

ONTARIO JUDICIAL COUNCIL – DO YOU HAVE A COMPLAINT?

Making a Complaint

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

How are Complaints Processed?

When the Ontario Judicial Council receives your letter of complaint, the Council will write to you to let you know your letter has been received.

A subcommittee, which includes a judge and a community member, will investigate your complaint and make a recommendation to a larger review panel. This review panel, which includes two judges, a lawyer and another community member, will also carefully review your complaint prior to reaching its decision.

Decisions of the Council

Judicial misconduct is taken seriously. It may result in penalties ranging from issuing a warning to the judge, to recommending that a judge be removed from office.

If the Ontario Judicial Council decides there has been misconduct by a judge, a public hearing may be held and the Council will determine appropriate disciplinary measures.

If after careful consideration, the Council decides there has been no judicial misconduct, your complaint will be dismissed and you will receive a letter outlining the reasons for the dismissal.

In all cases, you will be advised of any decision made by the Council.

For Further Information

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

Written complaints should be mailed or faxed to:

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

416-327-2339 (FAX)

Just a reminder...

The Ontario Judicial Council may only investigate complaints about the **conduct** of provincially-appointed Judges, Masters or Small Claims Court Judges. If you are unhappy with a judge's **decision** in court, please consult with a lawyer to determine your options for appeal.

Any complaint about the **conduct** of a federally-appointed judge should be directed to the Canadian Judicial Council in Ottawa.

ONTARIO JUDICIAL COUNCIL
PROCEDURES

INTAKE/OPENING COMPLAINT FILES:

- a complaint is defined as an allegation of judicial misconduct, made in writing and signed by the complainant
- if the complaint is within the jurisdiction of the OJC (any provincially appointed judge or master - full-time or part-time) a complaint file is opened and assigned to a two-member complaint subcommittee for review and investigation (complaints that are outside the jurisdiction of the OJC are referred to the appropriate agency)
- the complaint is added to the tracking form, a sequential file number is assigned, a letter of acknowledgment is sent to the complainant within a week of his or her letter being received, page one of the complaint intake form is completed and a letter to the complaint subcommittee members, asking for instructions is prepared and placed in the office copy and the members' copy of the complaint file.

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

Status reports on all open complaint files – with identifying information removed - is provided to each member of the OJC at each of its regular meetings.

COMPLAINT SUBCOMMITTEE:

The complaint subcommittee is made up of a judge* and a lay member of the OJC.

A letter advising the complaint subcommittee members that they have had a new case assigned to them is sent to the complaint subcommittee members, for their information, within a week of the file being opened and assigned. The complaint subcommittee members are contacted to determine if they want their copy of the file delivered to them or kept in their locked filing cabinet drawer in the OJC office. If files are delivered, receipt of the file by the member is confirmed. Complaint subcommittee members may attend at the OJC office to examine their files during regular office hours.

Complaint subcommittee members review the file and materials (if any), and discuss same with each other prior to determining the substance of the complaint and prior to deciding what investigatory steps should be taken (ordering transcript, requesting response, etc.). A complaint subcommittee confines its investigation to the complaint before it. The issue of what weight, if any, should be given to previous complaints made against a judge who is the subject of another complaint before the OJC, is under review by the OJC.

Complaint subcommittee members will endeavour to review and discuss their assigned files and determine whether or not a transcript of evidence and/or a response to a complaint is necessary within a month of receipt of the file.

Given the nature of the complaint, the complaint subcommittee may instruct the registrar to order a transcript of evidence, or the tape recording of evidence, as part of their investigation. The complainant is contacted to determine the stage the court proceeding is in before a transcript is ordered. The complaint subcommittee may instruct the registrar to hold the file in abeyance until the matter before the

** The term 'judge' includes a master when a master is the subject of a complaint.*

courts is resolved. If a transcript is ordered, court reporters are instructed not to submit the transcript to the judge complained-of for editing.

If a complaint subcommittee requires a response to the complaint from the judge, the complaint subcommittee will endeavour to direct the registrar to ask the judge to respond to a specific issue or issues raised in the complaint. A judge is given twenty business days from the date of the letter asking for a response, to respond to the complaint. If a response is not received within that time, the complaint subcommittee members are advised and a reminder letter is sent to the judge. As decided by the OJC, all communications received from a judge at this stage of the investigation into a complaint are deemed to have been made without prejudice.

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

A complaint subcommittee may invite any of the parties or witnesses, if any, to meet with or communicate with them in their investigative stage. All communications at this stage of the procedure are deemed to have been made without prejudice (i.e., no communication made before the hearing stage of the process may be used at the hearing).

The OJC secretary transcribes letters of complaint that are handwritten and provides secretarial assistance and support to members of the complaint subcommittee, as required.

A complaint subcommittee may decide to retain someone, including outside legal counsel, to assist in its investigation of a complaint in circumstances where, for example, investigation beyond the normal scope of investigation by a complaint subcommittee is required, there is an allegation of criminal activity, or where the complaint subcommittee feels outside expertise is needed to properly define the parameters of a complaint. The complaint subcommittee may also consult with members of the Procedures Subcommittee to seek their input and guidance during the investigative stages of the complaint process.

Criteria to be used by a complaint subcommittee to recommend to the appropriate Regional Senior Judge the temporary suspension or re-assignment of a judge pending the resolution of a complaint:

- where the complaint arises out of a working relationship between the complainant and the judge and the complainant and the judge both work at the same court location
- where allowing the judge to continue to preside would likely bring the administration of justice into disrepute
- where the complaint is of sufficient seriousness that there are reasonable grounds for investigation by law enforcement agencies
- where it is evident to the complaint subcommittee that a judge is suffering from a mental or physical impairment that cannot be remedied or reasonably accommodated

Complaint subcommittee members are contacted two weeks prior to each regularly scheduled OJC meeting in order to ascertain whether their assigned files are ready to be reported. A complaint subcommittee ensures that at least one copy of the relevant pages of the complaint intake form is completed in full. This complaint subcommittee portion of the complaint intake form is given to the registrar at least one week prior to the review panel hearing and is copied for the members of the review panel. The complaint subcommittee portion of the complaint intake form contains no information that could identify either the complainant or the judge who is the subject of the complaint.

A complaint subcommittee will recommend to a review panel that the Judicial Council hold a hearing into a complaint where there has been an allegation of serious judicial misconduct that the complaint subcommittee believes has a basis in fact and which, if believed by the finder of fact, would result in a finding of judicial misconduct.

REVIEW PANEL:

A review panel is made up of two judges, a lawyer and a lay member of the OJC. A review panel is formed to review the recommendations of complaint subcommittees and dispose of open complaint files at every regularly scheduled meeting of the OJC, if the quorum requirements of the governing legislation can be satisfied.

A review panel established to review the recommendation of a complaint subcommittee appoints one of the judges serving on the review panel to be the chair.

When a complaint subcommittee submits its recommendation to a review panel, the review panel shall approve the subcommittee's recommended disposition or require the subcommittee to refer the complaint to the Council. If it is necessary to hold a vote on whether or not to accept the recommendation of a complaint subcommittee, and there is a tie, the chair will cast a second and deciding vote.

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

The chair of the review panel shall ensure that at least one copy of the relevant page of the complaint intake form is completed and provided to the registrar at the conclusion of the review panel hearing.

MINUTES

When a complaint subcommittee has made a recommendation to dismiss a complaint to a review panel and the review panel has agreed with this recommendation, the registrar prepares a case summary for the draft minutes of the review panel meeting. The case summary does not contain any information which would identify either the complainant or the judge complained about. Each case summary is circulated, for approval, to the complaint subcommittee members and the members who served on the review panel. Once approved, the final form of the minutes of the review panel meeting is prepared and distributed to all members.

The minutes of the business portion of each meeting of the OJC are circulated in draft form to the members present at that portion of the meeting and they are given an opportunity to suggest amendments, make corrections, etc. Once approved in draft form by the members who were present, the final form of the minutes is prepared and distributed to all members of the OJC. The final form of the business portion of the minutes is formally approved at the next regularly scheduled meeting of the OJC.

NOTIFICATION OF PARTIES:

After the minutes of the review panel meeting have been approved, the registrar drafts the letter to the complainant advising him or her of the disposition of the complaint. This draft letter is circulated for the approval of the complaint subcommittee and review panel members who were involved in the investigation and review of the complaint. After the draft letter to the complainant has been approved, it is prepared in final form and sent to the complainant.

Complainants, in cases where their complaint is dismissed, are given notice of the decision of the OJC, with reasons, as required by subsection 51.4(2) of the *Courts of Justice Act*. The OJC has distributed a waiver form for all judges to sign and complete, instructing the OJC of the circumstances in which an individual judge wishes to be advised of complaints made against them, which are dismissed. The OJC has also distributed an address form for all judges to sign and complete, instructing the OJC of the address to which correspondence about complaint matters should be sent.

CLOSING FILES

Once the parties have been notified of the OJC's decision, the original copy of the complaint file is marked "closed" and stored in a locked filing cabinet. Complaint subcommittee members will return their copies of the file to the registrar to be destroyed or advise, in writing, that they have destroyed their copy of the complaint file. If a member's copy of the complaint file, or written notice of the file's destruction, is not received within two weeks after the review panel meeting, OJC staff will contact the complaint subcommittee member, to remind him or her to destroy his or her copy of the complaint file, and provide written notice, or arrange to have the file returned to the OJC, by courier, for shredding.

RECORDS RETENTION:

The Procedures Subcommittee will propose a record retention schedule for closed OJC files after completing its review and consideration of the record retention schedules of other organizations involved in complaint investigation and resolution (eg., the Canadian Judicial Council, the Law Society of Upper Canada, the Institute of Chartered Accountants, the Police Complaints Commission, etc.).

ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION)
CONTINUING EDUCATION PLAN

This document represents the Continuing Education Plan of the Ontario Court of Justice (Provincial Division) as it has been developed to date and approved by the Ontario Judicial Council as required by s.51.10 of the *Courts of Justice Act*. The existing program structure is being reviewed by the Provincial Division Education Secretariat and while it is anticipated that the current level of education programming will be maintained, there may be some changes in program delivery.

The Continuing Education Plan for the Ontario Court of Justice (Provincial Division) has the following goals:

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

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

EDUCATION SECRETARIAT

The coordination of the planning and presentation of education programs is assured by the Education Secretariat. The composition of the Secretariat is as follows: the Chief Judge as Chair (ex officio), four judges nominated by the Chief Judge, two judges nominated by the Ontario Judges Association and two judges nominated by the Ontario Family Law Judges' Association. The Provincial Division's research counsel serve as consultants. The Secretariat meets approximately six times per year to discuss matters pertaining to education and reports to the Chief Judge, and to the Chief Judge's Executive Committee. The mandate and goals of the Education Secretariat are as follows:

- The Education Secretariat is committed to the importance of education in enhancing professional excellence.
- It is the mandate of the Education Secretariat to promote educational experiences that encourage judges to be reflective about their professional practices, to increase their substantive knowledge, and to engage in ongoing, lifelong and self-directed learning.

To meet the needs of an independent judiciary, the Education Secretariat will:

- Promote education as a way to encourage excellence; and
- Support and encourage programs which maintain and enhance social, ethical and cultural sensitivity.

The goals of the Education Secretariat are:

1. To stimulate continuing professional and personal development;
2. To ensure that education is relevant to the needs and interests of the provincial judiciary;
3. To support and encourage programs that maintain high levels of competence and knowledge in matters of evidence, procedure and substantive law;
4. To increase knowledge and awareness of

community and social services structures and resources that may assist and complement educational programs and the work of the courts;

5. To foster the active recruitment and involvement of the judiciary at all stages of program conceptualization, development, planning, delivery and evaluation;
6. To promote an understanding of judicial development;
7. To facilitate the desire for life-long learning and reflective practices;
8. To establish and maintain structures and systems to implement the mandate and goals of the Secretariat; and
9. To evaluate the educational process and programs.

The Education Secretariat provides administrative and logistical support for the education programs presented within the Provincial Division. In addition, all education program plans are presented to and approved by the Education Secretariat as the Secretariat is responsible for the funding allocation for education programs.

The current education plan for judges of the Ontario Court of Justice (Provincial Division) is divided into two parts;

1. First Year Education,
2. Continuing Education.

1. FIRST YEAR EDUCATION

Each judge of the Ontario Court of Justice (Provincial Division) is provided with certain texts and materials upon appointment including:

- Commentaries on Judicial Conduct (Canadian Judicial Council)
- Martin's Criminal Code
- Family Law Statutes of the Ontario Court of Justice (Provincial Division)
- The Conduct of a Trial
- Judge's Manual

The Provincial Division organizes a one-day education program for newly appointed judges shortly after their appointment which deals with practical matters relating to the transition to the bench, including judicial conduct and judicial ethics, courtroom demeanour and behaviour, available resources, etc. This program is usually presented in Toronto on an as required basis as new appointments are made.

Upon appointment, each new judge is assigned by the Chief Judge to one of the eight regions of the Province. The Regional Senior Judge for that region is then responsible for assigning and scheduling the new judge within the region. Depending on the new judge's background and experience at the time of appointment, the Regional Senior Judge will assign the newly appointed judge for a period of time, usually several weeks prior to swearing-in to observe senior, more experienced judges and/or specific courtrooms. During this period, the new judge sits in the courtroom and attends in chambers with experienced judges and has an opportunity to become familiar with their new responsibilities.

During the first year following appointment, or so soon thereafter as is possible, new judges attend the New Judges' Training Program presented by the Canadian Association of Provincial Court Judges (C.A.P.C.J.) at Val Morin in the Province of Quebec. This intensive one-week program is practical in nature and is oriented principally to the area of criminal law with some reference to areas of family law. Judges in the first year of appointment are also encouraged to attend all education programs relating to their field(s) of specialization presented by the Provincial Division which are outlined under the heading "Continuing Education".

Each judge at the time of appointment is invited to participate in a mentoring program which has recently been developed within the Provincial Division by the Ontario Judges Association. New judges also have the opportunity (as do all judges) to discuss matters of concern or interest with their peers at any time.

All judges from the date of their appointment have equal access to a number of resources that impact directly or indirectly upon the work of the Provincial Division, including legal texts, case reporting services, the Provincial Division Research Centre (discussed

below), computer courses and courses in QUICKLAW (a computer law database and research facility).

2. CONTINUING EDUCATION

Continuing education programs presented to judges of the Provincial Division are of two types;

1) Programs presented by the Ontario Judges Association (O.J.A.)(criminal law) or the Ontario Family Law Judges' Association (O.F.L.J.A.)(family and youth law), usually of particular interest to judges in the fields of criminal or family law respectively;

2) Programs presented by the Education Secretariat.

I. ASSOCIATION PROGRAMS

The programs presented by the Judges' Associations constitute the **Core Program** of Provincial Division education programming. Each of the two Judges' Associations has an Education Committee composed of a number of judges, one of whom is the education chair. These committees meet as required and work throughout the year on the planning, development and presentation of the core education programs.

a) ONTARIO FAMILY LAW JUDGES' ASSOCIATION - FAMILY LAW: The Ontario Family Law Judges' Association presents three education programs in the area of family law, one each in January (the Judicial Development Institute), May and September (in conjunction with the O.F.L.J.A. annual meeting). Generally speaking, the principal topics treated include: a) Young Offenders and Youth Court, b) Child Welfare, and c) Family Law (custody, access and support). Additional topics involving skills development, case management, legislative changes, social context and other areas are incorporated as the need arises. Each program is of two to three days duration and all judges presiding in family law courts are entitled and encouraged to attend.

b) ONTARIO JUDGES ASSOCIATION - CRIMINAL LAW: The Ontario Judges Association presents two major criminal law programs each year. a) A three-day Regional Seminar is organized in January and February of each year at four regional locations. These seminars traditionally focus on areas of sentencing and the law of evidence, although a variety of other topics may also be included. Similar programs are presented in each of the four regional locations. b) A two-day education seminar is presented in the week of the Victoria Day holiday in conjunction with the annual meeting of the O.J.A. All judges presiding in criminal law courts are entitled and encouraged to attend these seminars.

II. SECRETARIAT PROGRAMS

The programs that are planned and presented by the Education Secretariat tend to deal with subject matter that is neither predominantly criminal nor family, or that can be presented on more than one occasion to different groups of judges.

1. UNIVERSITY EDUCATION PROGRAM: This program consists of a one-week seminar presented in June of each year. Principally of interest to criminal law judges, it is presented twice in the month of June and repeated over a three year cycle. The current program focuses on federal penitentiaries and conditional release, and is held at Kingston. This program is usually held on a university campus and the judges reside in residence which is conducive to learning and reflection. Over the three year period of course presentation, all judges of the Provincial Division have an opportunity and are encouraged to attend.

2. JUDGES TO JAIL PROGRAM: This is a three-day program relating to provincial corrections and has been held on two occasions to date at the Bell Cairn Institution in Hamilton. Approximately twelve to fifteen judges can be accommodated for each of these programs which are organized approximately once a year.

3. JUDGMENT WRITING: This is a two-day program held for the first time in May of 1996. It was presented initially to a small group of approximately 10 judges and will be repeated at periodic intervals in the future.

4. PRE-RETIREMENT SEMINARS: Intended for judges approaching retirement age (together with their spouses), this three-day program

deals with the transition from the bench to retirement and is presented in Toronto whenever numbers warrant.

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

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

III. EXTERNAL EDUCATION PROGRAMS

1. FRENCH-LANGUAGE COURSES: Judges of the Ontario Court of Justice (Provincial Division) who are proficient in French may attend courses presented by the Office of Federal Judicial Affairs. The frequency and duration of the courses are determined by the judge's level of proficiency. The purpose of the courses is to assure and to maintain the French language proficiency of those judges who are called upon to preside over French language matters in the Provincial Division. There are two levels of courses: (a) Terminology courses for Francophone judges; (b) Terminology courses for Anglophone (bilingual) judges.

2. OTHER EDUCATIONAL PROGRAMS: Judges of the Ontario Court of Justice (Provincial Division) are encouraged to pursue educational interests by attending education programs presented by other organizations and associations including:

- Canadian Association of Provincial Court Judges
- Federation of Law Societies: Criminal (Substantive Law Procedure/Evidence) & Family Law
- International Association of Women Judges (Canadian Chapter)
- Ontario Family Court Clinic Conference
- International Association of Juvenile and Family Court Magistrates
- Canadian Bar Association
- Canadian Institute for Advanced Legal Studies
- Criminal Lawyers' Association
- Advocate's Society Conference
- Ontario Association for Family Mediation/Mediation Canada
- Canadian Institute for the Administration of Justice
- National Judicial Institute

   The Provincial Division has developed an **External Conference Policy** to permit the attendance of some of its judges at outside education programs. The principal features of the policy include a process of application by a judge to attend such programs, a peer selection committee, a process of program appraisal, annual reviews of the policy and an opportunity for individual judges to choose and to attend specific programs of their own choice. This program depends upon available funding as determined by the Education Secretariat on an annual basis.

3. COMPUTER COURSES: The Ontario Court of Justice (Provincial Division), pursuant to a tendered

contract with a training vendor has organized and continues to organize a series of computer training courses for judges of the Provincial Division. These courses are organized according to skill level and geographic location and presented at different times throughout the Province. Judges typically attend at the offices of the training vendor for courses in computer operation, word-processing and data storage and retrieval. Other courses are presented in the use of QUICKLAW (the computer law database and research facility).

4. NATIONAL JUDICIAL INSTITUTE (N.J.I.): The Provincial Division through its Education Secretariat makes a financial contribution to the operation of the National Judicial Institute. The N.J.I., based in Ottawa, sponsors a number of education programs across the country for federally and provincially appointed judges. In 1994 and again in 1995, a number of Provincial Division judges attended a two-week intensive criminal-law program presented in Cornwall by the National Judicial Institute. This program is presently being revised and is expected to be expanded to include an intensive family law program in the near future. Individual Provincial Division judges have attended and will continue to attend N.J.I. programs in the future, depending on location and subject matter. The Chief Judge is a member of the Board of the N.J.I.

IV. OTHER EDUCATIONAL RESOURCES

1. JUDICIAL RESEARCH CENTRE: Judges of the Ontario Court of Justice (Provincial Division) have access to the Provincial Division Research Centre located at Old City Hall in Toronto. The Research Centre, a law library and computer research facility, is staffed by two research counsel together with support staff and is accessible in person, by telephone, E-mail or fax. The Research Centre responds to specific requests from judges for research and, in addition, provides updates with respect to legislation and relevant case law through its regular publication 'Items of Interest'.

2. RECENT DEVELOPMENTS: The Honourable Judge Ian MacDonnell also provides all interested judges of the Provincial Division with his summary and comments on current decisions of the Ontario Court of Appeal and of the Supreme Court of Canada in a publication entitled 'Recent Developments'.

3. SELF-FUNDED LEAVE: In order to provide access to educational opportunities that fall outside the parameters of regular judicial education programs, the Provincial Division has developed a self-funded leave policy that allows judges to defer income over a period of years in order to take a period of self-funded leave of up to twelve months. Prior approval is required for such leave and a peer review committee reviews the applications in selecting those judges who will be authorized to take such leave.

4. REGIONAL MEETINGS: Most of the eight regions of the Court have annual regional meetings. While these meetings principally provide an opportunity to deal with regional administrative/management issues, some also have an educational component. Such is the case, for example, with the northern regional meeting in which judges of the Northeast and Northwest Regions meet together and deal with educational issues of special interest to the north, such as judicial isolation, travel and aboriginal justice.

5. Notwithstanding the educational programs outlined above, the fundamental education of judges continues to be self-directed and is effected inter alia through continuing peer discussions and individual reading and research.

COURTS OF JUSTICE ACT
CHAPTER C.43
ONTARIO JUDICIAL COUNCIL

SECTION 49

JUDICIAL COUNCIL

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

COMPOSITION

(2) The Judicial Council is composed of,

(a) the Chief Justice of Ontario, or another judge of the Court of Appeal designated by the Chief Justice;

(b) the Chief Judge of the Provincial Division, or another judge of that division designated by the Chief Judge, and the Associate Chief Judge of the Provincial Division;

(c) a regional senior judge of the Provincial Division, appointed by the Lieutenant Governor in Council on the Attorney General's recommendation;

(d) two judges of the Provincial Division, appointed by the Chief Judge;

(e) the Treasurer of The Law Society of Upper Canada, or another bencher of the Law Society who is a lawyer, designated by the Treasurer;

(f) a lawyer who is not a bencher of The Law Society of Upper Canada, appointed by the Law Society;

(g) four persons who are neither judges nor lawyers, appointed by the Lieutenant Governor in Council on the Attorney General's recommendation.

TEMPORARY MEMBERS

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

CRITERIA

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

TERM OF OFFICE

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

Same

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

STAGGERED TERMS

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

CHAIR

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

Same

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

Same

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

OPEN AND CLOSED HEARINGS AND MEETINGS

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

VACANCIES

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

QUORUM

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

1. Eight members, including the chair, constitute a quorum.

2. At least half the members present must be judges and at least four must be persons who are not judges.

REVIEW PANELS

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

Same

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

1. The panel shall consist of two provincial judges other than the Chief Judge, a lawyer and a person who is neither a judge nor a lawyer.

2. One of the judges, as designated by the Judicial Council, shall chair the panel.

3. Four members constitute a quorum.

HEARING PANELS

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

Same

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

1. Half the members of the panel, including the chair, must be judges, and half must be persons who are not judges.

2. At least one member must be a person who is neither a judge nor a lawyer.

3. The Chief Justice of Ontario, or another judge of the Court of Appeal designated by the Chief Justice, shall chair the panel.

4. Subject to paragraphs 1, 2 and 3, the Judicial Council may determine the size and composition of the panel.

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

CHAIR

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

PARTICIPATION IN STAGES OF PROCESS

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

(a) deal with the complaint under subsection 51.4 (17) or (18) or subsection 51.5 (8) or (10); or

(b) participate in a hearing of the complaint under section 51.6.

Same

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

EXPERT ASSISTANCE

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

SUPPORT SERVICES

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

Same

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

CONFIDENTIAL RECORDS

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

Same

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

EXCEPTIONS

(26) Subsection (24) does not apply to information and documents,

(a) that this Act requires the Judicial Council to disclose; or

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

PERSONAL LIABILITY

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

REMUNERATION

(28) The members who are appointed under clause (2) (g) are entitled to receive the daily remuneration that is fixed by the Lieutenant Governor in Council. 1994, c. 12, s. 16, *part,* in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 50

COMPLAINT AGAINST CHIEF JUDGE

50. (1) If the Chief Judge is the subject of a complaint,

(a) the Chief Justice of Ontario shall appoint another judge of the Provincial Division to be a member of the Judicial Council instead of the Chief Judge, until the complaint is finally disposed of;

(b) the associate chief judge appointed under clause 49 (2) (b) shall chair meetings and hearings of the Council instead of the Chief Judge, and make appointments under subsection 49 (3) instead of the Chief Judge, until the complaint is finally disposed of; and

(c) any reference of the complaint that would otherwise be made to the Chief Judge 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 Ontario Court instead of to the Chief Judge.

SUSPENSION OF CHIEF JUDGE

(2) If the Chief Judge is suspended under subsection 51.4 (12),

(a) complaints that would otherwise be referred to the Chief Judge 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 judge appointed under clause 49 (2) (b), until the complaint is finally disposed of; and

(b) annual approvals that would otherwise be granted or refused by the Chief Judge shall be granted or refused by that associate chief judge, until the complaint is finally disposed of.

COMPLAINT AGAINST ASSOCIATE CHIEF JUDGE OR REGIONAL SENIOR JUDGE

(3) If the associate chief judge appointed under clause 49 (2) (b) or the regional senior judge appointed under clause 49 (2) (c) is the subject of a complaint, the Chief Judge shall appoint another judge of the Provincial Division to be a member of the Judicial Council instead of the associate chief judge or regional senior judge, as the case may be, until the complaint is finally disposed of. 1994, c. 12, s. 16, *part,* in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 51

PROVISION OF INFORMATION TO PUBLIC

51. (1) The Judicial Council shall provide, in courthouses and elsewhere, information about itself and about the justice system, including information about how members of the public may obtain assistance in making complaints.

Same

(2) In providing information, the Judicial Council shall emphasize the elimination of cultural and linguistic barriers and the accommodation of the needs of persons with disabilities.

ASSISTANCE TO PUBLIC

(3) Where necessary, the Judicial Council shall arrange for the provision of assistance to members of the public in the preparation of documents for making complaints.

TELEPHONE ACCESS

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

PERSONS WITH DISABILITIES

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

ANNUAL REPORT

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

TABLING

(7) The Attorney General shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the Assembly. 1994, c. 12, s. 16, *part,* in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 51.1

RULES

51.1 (1) The Judicial Council shall establish and make public rules governing its own procedures, including the following:

1. Guidelines and rules of procedure for the purpose of section 45.
2. Guidelines and rules of procedure for the purpose of subsection 51.4 (21).
3. Guidelines and rules of procedure for the purpose of subsection 51.4 (22)
4. If applicable, criteria for the purpose of subsection 51.5 (2).
5. If applicable, guidelines and rules of procedure for the purpose of subsection 51.5 (13).
6. Rules of procedure for the purpose of subsection 51.6 (3).
7. Criteria for the purpose of subsection 51.6 (7).
8. Criteria for the purpose of subsection 51.6 (8).
9. Criteria for the purpose of subsection 51.6 (10).

REGULATIONS ACT

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

SECTIONS 28, 29 AND 33 OF *SPPA*

(3) Sections 28, 29 and 33 of the *Statutory Powers Procedure Act* do not apply to the Judicial Council. 1994, c. 12, s. 16, part, in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 51.2

USE OF OFFICIAL LANGUAGES OF COURTS

51.2 (1) The information provided under subsections 51 (1), (3) and (4) and the matters made public under subsection 51.1 (1) shall be made available in English and French.

Same

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

Same

(3) A hearing under section 51.6 shall be conducted in English, but a complainant or witness who speaks French or a judge who is the subject of a complaint and who speaks French is entitled, on request,

(a) to be given, before the hearing, French translations of documents that are written in English and are to be considered at the hearing;

(b) to be provided with the assistance of an interpreter at the hearing; and

(c) to be provided with simultaneous interpretation into French of the English portions of the hearing.

Same

(4) Subsection (3) also applies to mediations conducted under section 51.5 and to the Judicial Council's consideration of the question of compensation under section 51.7, if subsection 51.7 (2) applies.

BILINGUAL HEARING OR MEDIATION

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

PART OF HEARING OR MEDIATION

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

Same

(7) In a bilingual hearing or mediation,

(a) oral evidence and submissions may be given or made in English or French, and shall be recorded in the language in which they are given or made;

(b) documents may be filed in either language;

(c) in the case of a mediation, discussions may take place in either language;

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

Same

(8) In a bilingual hearing or mediation, if the complainant or the judge who is the subject of the complaint does not speak both languages, he or she is entitled, on request, to have simultaneous interpretation of any evidence, submissions or discussions spoken in the other language and translation of any document filed or reasons or report written in the other language. 1994, c. 12, s. 16, *part,* in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 51.3

COMPLAINTS

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

Same

(2) If an allegation of misconduct against a provincial judge is made to a member of the Judicial Council, it shall be treated as a complaint made to the Judicial Council.

Same

(3) If an allegation of misconduct against a provincial judge is made to any other judge or to the Attorney General, the other judge, or the Attorney General, as the case may be, shall provide the person making the allegation with information about the Judicial Council's role in the justice system and about how a complaint may be made, and shall refer the person to the Judicial Council.

CARRIAGE OF MATTER

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

INFORMATION RE COMPLAINT

(5) At any person's request, the Judicial Council may confirm or deny that a particular complaint has been made to it. 1994, c. 12, s. 16, *part,* in force (O. Gaz. 1995 p. 685).

SECTION 51.4

REVIEW BY SUBCOMMITTEE

51.4 (1) A complaint received by the Judicial Council shall be reviewed by a subcommittee of the Council consisting of a provincial judge other than the Chief Judge and a person who is neither a judge nor a lawyer.

Rotation of members

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

DISMISSAL

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

INVESTIGATION

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

EXPERT ASSISTANCE

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

INVESTIGATION PRIVATE

(6) The investigation shall be conducted in private.

NON-APPLICATION OF *SPPA*

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

INTERIM RECOMMENDATIONS

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

Same

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

POWER OF REGIONAL SENIOR JUDGE

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

DISCRETION

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

EXCEPTION: COMPLAINTS AGAINST CERTAIN JUDGES

(12) If the complaint is against the Chief Judge, an associate chief judge 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 Ontario Court, who may suspend or reassign the judge as the subcommittee recommends.

SUBCOMMITTEE'S DECISION

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

(a) dismiss the complaint;

(b) refer the complaint to the Chief Judge;

(c) refer the complaint to a mediator in accordance with section 51.5; or

(d) refer the complaint to the Judicial Council, with or without recommending that it hold a hearing under section 51.6.

Same

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

CONDITIONS, REFERENCE TO CHIEF JUDGE

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

REPORT

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

POWER OF JUDICIAL COUNCIL

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

Same

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

(a) hold a hearing under section 51.6;

(b) dismiss the complaint;

(c) refer the complaint to the Chief Judge, with or without imposing conditions as referred to in subsection (15); or

(d) refer the complaint to a mediator in accordance with section 51.5.

NON-APPLICATION OF *SPPA*

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

NOTICE TO JUDGE AND COMPLAINANT

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

GUIDELINES AND RULES OF PROCEDURE

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

Same

(22) In considering reports and complaints and making decisions under subsections (17) and (18), the Judicial Council shall follow its guidelines and rules of procedure established under subsection 51.1 (1). 1994, c. 12, s. 16, *part,* in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 51.5

MEDIATION

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

CRITERIA

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

Same

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

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

LEGAL ADVICE

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

TRAINED MEDIATOR

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

IMPARTIALITY

(6) The mediator shall be impartial.

EXCLUSION

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

REVIEW BY COUNCIL

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

(a) approve the disposition of the complaint; or

(b) if the mediation does not result in a disposition or if the Council is of the opinion that the disposition is not in the public interest,

(i) dismiss the complaint,

(ii) refer the complaint to the Chief Judge, with or without imposing conditions as referred to in subsection 51.4 (15), or

(iii) hold a hearing under section 51.6.

REPORT

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

REFERRAL TO COUNCIL

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

(a) dismiss the complaint;

(b) refer the complaint to the Chief Judge, with or without imposing conditions as referred to in subsection 51.4 (15); or

(c) hold a hearing under section 51.6.

NON-APPLICATION OF SPPA

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

NOTICE TO JUDGE AND COMPLAINANT

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

GUIDELINES AND RULES OF PROCEDURE

(13) In reviewing reports, considering matters and making decisions under subsections (8) and (10), the Judicial Council shall follow its guidelines and rules of procedure established under subsection 51.1 (1). 1994, c. 12, s. 16, *part*, in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 51.6

ADJUDICATION BY COUNCIL

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

APPLICATION OF *SPPA*

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

RULES OF PROCEDURE

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

COMMUNICATION RE SUBJECT-MATTER OF HEARING

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

EXCEPTION

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

PARTIES

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

EXCEPTION, CLOSED HEARING

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

DISCLOSURE IN EXCEPTIONAL CIRCUMSTANCES

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

ORDERS PROHIBITING PUBLICATION

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

PUBLICATION BAN

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

DISPOSITIONS

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

(a) warn the judge;

(b) reprimand the judge;

(c) order the judge to apologize to the complainant or to any other person;

(d) order that the judge take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a judge;

(e) suspend the judge with pay, for any period;

(f) suspend the judge without pay, but with benefits, for a period up to thirty days; or

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

Same

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

DISABILITY

(13) If the Judicial Council finds that the judge is unable, because of a disability, to perform the essential duties of the office, but would be able to perform them if his or her needs were accommodated, the Council shall order that the judge's needs be accommodated to the extent necessary to enable him or her to perform those duties.

APPLICATION OF SUBS. (13)

(14) Subsection (13) applies if,

(a) the effect of the disability on the judge's performance of the essential duties of the office was a factor in the complaint; and

(b) the Judicial Council dismisses the complaint or makes a disposition under clauses (11) (a) to (f).

UNDUE HARDSHIP

(15) Subsection (13) does not apply if the Judicial Council is satisfied that making an order would impose undue hardship on the person responsible for accommodating the judge's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

OPPORTUNITY TO PARTICIPATE

(16) The Judicial Council shall not make an order under subsection (13) against a person without ensuring that the person has had an opportunity to participate and make submissions.

CROWN BOUND

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

REPORT TO ATTORNEY GENERAL

(18) The Judicial Council may make a report to the Attorney General about the complaint, investigation, hearing and disposition, subject to any order made under subsection 49 (24), and the Attorney General may make the report public if of the opinion that this would be in the public interest.

NON-IDENTIFICATION OF PERSONS

(19) The following persons shall not be identified in the report:

1. A complainant or witness at whose request an order was made under subsection (9).
2. The judge, if the hearing was conducted in private, unless the Judicial Council orders that the judge's name be disclosed.

CONTINUING PUBLICATION BAN

(20) If an order was made under subsection (10) and the Judicial Council dismisses the complaint with a finding that it was unfounded, the judge shall not be identified in the report without his or her consent and the Council shall order that information that relates to the complaint and might identify the judge shall never be made public without his or her consent. 1994, c. 12, s. 16, *part,* in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 51.7

COMPENSATION

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

CONSIDERATION OF QUESTION COMBINED WITH HEARING

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

PUBLIC OR PRIVATE CONSIDERATION OF QUESTION

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

RECOMMENDATION

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

Same

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

DISCLOSURE OF NAME

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

AMOUNT OF COMPENSATION

(7) The amount of compensation recommended under subsection (4) or (5) may relate to all or part of the judge's costs for legal services, and shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services.

PAYMENT

(8) The Attorney General shall pay compensation to the judge in accordance with the recommendation. 1994, c. 12, s. 16, *part*, in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 51.8

REMOVAL FOR CAUSE

51.8 (1) A provincial judge may be removed from office only if,

(a) a complaint about the judge has been made to the Judicial Council; and

(b) the Judicial Council, after a hearing under section 51.6, recommends to the Attorney General that the judge be removed on the ground that he or she has become incapacitated or disabled from the due execution of his or her office by reason of,

(i) inability, because of a disability, to perform the essential duties of his or her office (if an order to accommodate the judge's needs would not remedy the inability, or could not be made because it would impose undue hardship on the person responsible for meeting those needs, or was made but did not remedy the inability),

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

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

TABLING OF RECOMMENDATION

(2) The Attorney General shall table the recommendation in the Assembly if it is in session or, if not, within fifteen days after the commencement of the next session.

ORDER FOR REMOVAL

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

APPLICATION

(4) This section applies to provincial judges who have not yet attained retirement age and to provincial judges whose continuation in office after attaining retirement age has been approved under subsection 47 (3), (4) or (5).

TRANSITION

(5) A complaint against a provincial judge that is made to the Judicial Council before the day section 16 of the *Courts of Justice Statute Law Amendment Act,* 1994 comes into force, and considered at a meeting of the Judicial Council before that day, shall be dealt with by the Judicial Council as it was constituted immediately before that day and in accordance with section 49 of this Act as it read immediately before that day. 1994, c. 12, s. 16, *part*, in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 51.9

STANDARDS OF CONDUCT

51.9 (1) The Chief Judge of the Provincial Division may establish standards of conduct for provincial judges, including a plan for bringing the standards into effect, and may implement the standards and plan when they have been reviewed and approved by the Judicial Council.

DUTY OF CHIEF JUDGE

(2) The Chief Judge shall ensure that the standards of conduct are made available to the public, in English and French, when they have been approved by the Judicial Council.

GOALS

(3) The following are among the goals that the Chief Judge may seek to achieve by implementing standards of conduct for judges:

1. Recognizing the independence of the judiciary.
2. Maintaining the high quality of the justice system and ensuring the efficient administration of justice.
3. Enhancing equality and a sense of inclusiveness in the justice system.
4. Ensuring that judges' conduct is consistent with the respect accorded to them.
5. Emphasizing the need to ensure the professional and personal development of judges and the growth of their social awareness through continuing education. 1994, c. 12, s. 16, *part*, in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 51.10

CONTINUING EDUCATION

51.10 (1) The Chief Judge of the Provincial Division shall establish a plan for the continuing education of provincial judges, and shall implement the plan when it has been reviewed and approved by the Judicial Council.

DUTY OF CHIEF JUDGE

(2) The Chief Judge shall ensure that the plan for continuing education is made available to the public, in English and French, when it has been approved by the Judicial Council.

GOALS

(3) Continuing education of judges has the following goals:

1. Maintaining and developing professional competence.
2. Maintaining and developing social awareness.
3. Encouraging personal growth. 1994, c. 12, s. 16, *part*, in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 51.11

PERFORMANCE EVALUATION

51.11 (1) The Chief Judge of the Provincial Division may establish a program of performance evaluation for provincial judges, and may implement the program when it has been reviewed and approved by the Judicial Council.

DUTY OF CHIEF JUDGE

(2) The Chief Judge shall make the existence of the program of performance evaluation public when it has been approved by the Judicial Council.

GOALS

(3) The following are among the goals that the Chief Judge may seek to achieve by establishing a program of performance evaluation for judges:

1. Enhancing the performance of individual judges and of judges in general.
2. Identifying continuing education needs.
3. Assisting in the assignment of judges.
4. Identifying potential for professional development.

SCOPE OF EVALUATION

(4) In a judge's performance evaluation, a decision made in a particular case shall not be considered.

CONFIDENTIALITY

(5) A judge's performance evaluation is confidential and shall be disclosed only to the judge, his or her regional senior judge, and the person or persons conducting the evaluation.

INADMISSIBILITY, EXCEPTION

(6) A judge's performance evaluation shall not be admitted in evidence before the Judicial Council or any court or other tribunal unless the judge consents.

APPLICATION OF SUBSS. (5), (6)

(7) Subsections (5) and (6) apply to everything contained in a judge's performance evaluation and to all information collected in connection with the evaluation. 1994, c. 12, s. 16, *part*, in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 51.12

CONSULTATION

51.12 In establishing standards of conduct under section 51.9, a plan for continuing education under section 51.10 and a program of performance evaluation under section 51.11, the Chief Judge of the Provincial Division shall consult with judges of that division and with such other persons as he or she considers appropriate. 1994, c. 12, s. 16, *part*, in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 87

MASTERS

87.—(1) Every person who was a master of the Supreme Court before the 1st day of September, 1990 is a master of the Ontario Court (General Division).

APPLICATION OF SS. 44 TO 51.12

(3) Sections 44 to 51.12 apply to masters, with necessary modifications, in the same manner as to provincial judges.

Same

(5) The right of a master to continue in office under subsection 47 (3) is subject to the approval of the Chief Justice of the Ontario Court, who shall make the decision according to criteria developed by himself or herself and approved by the Judicial Council.

Same

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

1. One of the members of the Judicial Council who is a provincial judge shall be replaced by a master. The Chief Judge of the Provincial Division shall determine which judge is to be replaced and the Chief Justice of the Ontario Court shall designate the master who is to replace the judge.
2. Complaints shall be referred to the Chief Justice of the Ontario Court rather than to the Chief Judge of the Provincial Division.
3. Subcommittee recommendations with respect to interim suspension shall be made to the appropriate regional senior judge of the General Division, to whom subsections 51.4 (10) and (11) apply with necessary modifications.

Same

(7) Section 51.9, which deals with standards of conduct for provincial judges, section 51.10, which deals with their continuing education, and section 51.11, which deals with evaluation of their performance, apply to masters only if the Chief Justice of the Ontario Court consents.

SECTION 87.1

SMALL CLAIMS COURT JUDGES

87.1 (1) This section applies to provincial judges who were assigned to the Provincial Court (Civil Division) immediately before September 1, 1990.

CONTINUATION IN OFFICE

(3) The right of a provincial judge to whom this section applies to continue in office under subsection 47 (3) is subject to the approval of the Chief Justice of the Ontario Court, who shall make the decision according to criteria developed by himself or herself and approved by the Judicial Council.

COMPLAINTS

(4) When the Judicial Council deals with a complaint against a provincial judge to whom this section applies, the following special provisions apply:

1. One of the members of the Judicial Council who is a provincial judge shall be replaced by a provincial judge who was assigned to the Provincial Court (Civil Division) immediately before September 1, 1990. The Chief Judge of the Provincial Division shall determine which judge is to be replaced and the Chief Justice of the Ontario Court shall designate the judge who is to replace that judge.
2. Complaints shall be referred to the Chief Justice of the Ontario Court rather than to the Chief Judge of the Provincial Division.
3. Subcommittee recommendations with respect to interim suspension shall be made to the appropriate regional senior judge of the General Division, to whom subsections 51.4 (10) and (11) apply with necessary modifications.

APPLICATION OF SS. 51.9, 51.10, 51.11

(5) Section 51.9, which deals with standards of conduct for provincial judges, section 51.10, which deals with their continuing education, and section 51.11, which deals with evaluation of their performance, apply to

provincial judges to whom this section applies only if the Chief Justice of the Ontario Court consents. 1994, c. 12, s. 35, in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 45

APPLICATION FOR ORDER THAT NEEDS BE ACCOMMODATED

45. (1) A provincial judge who believes that he or she is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated may apply to the Judicial Council for an order under subsection (2).

DUTY OF JUDICIAL COUNCIL

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

UNDUE HARDSHIP

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

GUIDELINES AND RULES OF PROCEDURE

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

OPPORTUNITY TO PARTICIPATE

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

CROWN BOUND

(6) The order binds the Crown. 1994, c. 12, s. 16, *part,* in force February 28, 1995 (O. Gaz. 1995 p. 685).

SECTION 47

RETIREMENT

(1) Every provincial judge shall retire upon attaining the age of sixty-five years.

Same

(2) Despite subsection (1), a judge appointed as a full-time magistrate, judge of a juvenile and family court or master before December 2, 1968 shall retire upon attaining the age of seventy years.

CONTINUATION OF JUDGES IN OFFICE

(3) A judge who has attained retirement age may, subject to the annual approval of the Chief Judge of the Provincial Division, 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 Provincial Division who is in office at the time of attaining retirement age may, subject to the annual approval of the Chief Judge, 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 JUDGE AND ASSOCIATE CHIEF JUDGES

(5) A Chief Judge or associate chief judge of the Provincial Division who is in office at the time of attaining retirement age may, subject to the annual approval of the Judicial Council, continue in that office until his or her term expires, or until he or she attains the age of seventy-five years, whichever comes first.

Same

(6) If the Judicial Council does not approve a Chief Judge's or associate chief judge'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 Judge and approved by the Judicial Council.