



EIGHTH ANNUAL REPORT

2002 – 2003

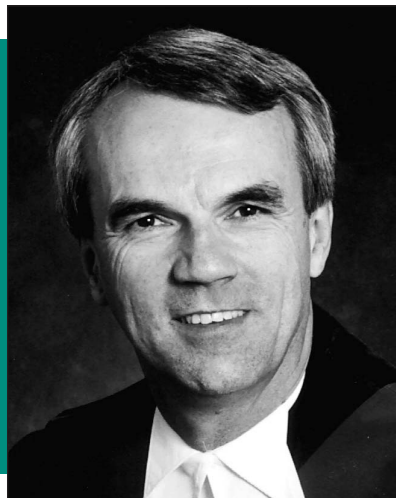
ONTARIO JUDICIAL COUNCIL



The Honourable R. Roy McMurtry

CHIEF JUSTICE OF ONTARIO

Co-Chair, Ontario Judicial Council



The Honourable Brian W. Lennox

CHIEF JUSTICE

ONTARIO COURT OF JUSTICE

Co-Chair, Ontario Judicial Council



ONTARIO JUDICIAL COUNCIL

March 31, 2004

The Honourable Michael Bryant
Attorney General for the Province of Ontario
720 Bay Street, 11th Floor
Toronto, Ontario
M5G 2K1

Dear Minister:

It is our pleasure to submit the Annual Report of the Ontario Judicial Council concerning its eighth year of operation, in accordance with subsection 51(6) of the *Courts of Justice Act*. The period of time covered by this Annual Report is from April 1, 2002 to March 31, 2003.

Respectfully submitted,

R. Roy McMurtry
Chief Justice of Ontario

Brian W. Lennox
Chief Justice
Ontario Court of Justice



INTRODUCTION

The period of time covered by this Annual Report is from April 1, 2002 to March 31, 2003.

The Ontario Judicial Council investigates complaints made by the public against provincially appointed judges and masters. In addition, it approves the education plan for provincial judges on an annual basis and has approved criteria for continuation in office and standards of conduct developed by the Chief Justice of the Ontario Court of Justice. The Judicial Council may make an order to accommodate the needs of a judge who, because of a disability, is unable to perform the duties of judicial office. Such an accommodation order may be made as a result of a complaint (if the disability was a factor in a complaint) or on the application of the judge in question. Although the Judicial Council itself is not directly involved in the appointment of provincial judges to the bench, a member of the Judicial Council serves on the provincial Judicial Appointments Advisory Committee as its representative.

The Ontario Judicial Council had jurisdiction over approximately 260 provincially-appointed judges and masters during the period of time covered by this Annual Report.



EIGHTH OJC ANNUAL REPORT

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1. Composition and Terms of Appointment

The Ontario Judicial Council includes:

- ◆ the Chief Justice of Ontario (or designate from the Court of Appeal)
- ◆ the Chief Justice of the Ontario Court of Justice (or designate from the Ontario Court of Justice)
- ◆ the Associate Chief Justice of the Ontario Court of Justice
- ◆ a Regional Senior Judge of the Ontario Court of Justice appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General
- ◆ two judges of the Ontario Court of Justice appointed by the Chief Justice of the Ontario Court of Justice
- ◆ the Treasurer of The Law Society of Upper Canada or another bencher of the Law Society who is a lawyer, designated by the Treasurer
- ◆ a lawyer who is not a bencher of The Law Society of Upper Canada, appointed by the Law Society
- ◆ four persons, neither judges nor lawyers, who are appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General

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

2. Members - Regular

The membership of the Ontario Judicial Council in its eighth year of operation (April 1, 2002 to March 31, 2003) was as follows:

Judicial Members:

CHIEF JUSTICE OF ONTARIO

R. Roy McMurtry(Toronto)

CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

Brian W. Lennox(Ottawa/Toronto)

ASSOCIATE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

J. David Wake(Toronto)

REGIONAL SENIOR JUSTICE

Raymond P. Taillon(Lindsay)

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

The Honourable Madam Justice Marjoh Agro.....(Milton)

The Honourable Madam Justice Deborah Livingstone
.....(London)

Lawyer Members:

TREASURER OF THE LAW SOCIETY OF UPPER CANADA

Vern P. Krishna, Q.C.(Toronto)

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

Julian Porter, Q.C.(Toronto)

LAWYER DESIGNATED BY THE LAW SOCIETY OF UPPER CANADA

Patricia D. S. Jackson(Toronto)

Community Members:

PAUL HAMMOND(Bracebridge)
President and CEO, Muskoka Transport Ltd.

WILLIAM JAMES(Toronto)
Chair, Inmet Mining

HENRY WETELAINEN(Wabigoon)
Ontario Metis – Aboriginal Association

One Lay Member Position – vacant – (from February 28, 2001)

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 provincial judge of the former Civil Division, the judge member of the complaint subcommittee is replaced by a temporary member appointed by the Chief Justice of the Superior Court of Justice – either a master or a provincial judge who presides in “Small Claims Court”, as the case may be.

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

MASTERS

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

JUDGES

- The Honourable .
Mr. Justice M.D. Godfrey
- The Honourable Madam
Justice Pamela Thomson

Subsection 49(3) of the *Courts of Justice Act* permits the Chief Justice of the Ontario Court of Justice to appoint a provincial judge to be a temporary member of the Ontario Judicial Council to meet the quorum requirements of the legislation with respect to Judicial Council meetings, review panels and hearing panels. The following judge of the Ontario Court of Justice has been appointed by the Chief Justice of the Ontario Court of

Justice to serve as a temporary member of the Ontario Judicial Council when required:

The Honourable Justice Bernard M. Kelly

3. Administrative Information

Separate office space adjacent to the Office of the Chief Justice of the Ontario Court of Justice in downtown Toronto is utilized by both the Ontario Judicial Council and the Justices of the Peace Review Council. The proximity of the Councils’ office to the Office of the Chief Justice permits both Councils to make use of clerical and administrative staff, as needed, and computer systems and support backup without the need of acquiring a large support staff.

Councils’ offices are used primarily for meetings of both Councils and their members. Each Council has a separate phone and fax number and its own stationery. Each has a toll-free number for the use of members of the public across the province of Ontario and a toll-free number for persons using TTY/teletypewriter machines.

In the eighth year of operation, the staff of the Ontario Judicial Council and the Justices of the Peace Review Council consisted of a registrar, an assistant registrar (for part of the year) and a secretary:

VALERIE P. SHARP, LL.B. – Registrar

THOMAS GLASSFORD – Assistant Registrar
(from September 23, 2002 to commencement
of parental leave on February 24, 2003)

ANA BRIGIDO – Acting Assistant Registrar
(from February 24, 2003)

JANICE CHEONG – Secretary

4. Education Plan

The Chief Justice of the Ontario Court of Justice is required, by section 51.10 of the *Courts of Justice Act*, to implement, and make public, a plan for the continuing judicial education of provincial judges and subs. 51.10(1) requires the education plan to be approved by the Judicial Council. During the period of time covered by this Annual Report a continuing education plan was developed by the Chief Justice in conjunction with the

Education Secretariat and the continuing education plan was approved by the Judicial Council. A copy of the continuing education plan for 2002-2003 can be found at Appendix “C”.

5. Communications

The website of the Ontario Judicial Council continues to include information on the Council as well as information about upcoming hearings. Copies of “Reasons for Decision” are posted on the website when released and continue to be available until they can be incorporated into an Annual Report.

The address of the OJC website is: www.ontariocourts.on.ca/.

6. Procedures

Some minor changes were made to the OJC Procedures document in the last reporting year to allow for the speedier processing of complaint files. The new administrative procedures call for the Registrar to make an initial assessment of each complaint file as it is opened and determine whether or not a transcript and/or an audiotape of the court proceedings will be necessary for the complaint subcommittee’s investigation. If the Registrar determines that is the case, the material is ordered at the time the file is opened. This results in a significant savings of time. The Registrar may also recommend that a complaint be dismissed by the complaint subcommittee without further investigation if the Registrar is of the opinion that a complaint is outside the jurisdiction of the OJC or is frivolous, vexatious or an abuse of process as set out in the governing legislation. The Registrar’s assessment of a complaint is subject always to the assessment of the members of the investigating complaint subcommittee and its unanimous decision about a complaint is subject to the review of the members of the review panel

These changes to the OJC’s administrative procedures have had the effect of shortening the average length of time to process a complaint file from about a year to just over three months in cases where a complaint is outside the jurisdiction of the OJC and there is no investigation to be conducted. In these instances, the only “delay” encountered in processing a file is simply the period of time it takes to bring the file before a review panel at one

of the OJC’s regularly scheduled meetings. In instances where investigation is necessary and a transcript and/or audiotape of court proceedings is required, the changes in administrative procedure have resulted in significant time savings and the average length of time to process more complex files has been shortened from a year or longer to six months or less.

A detailed outline of the OJC’s procedures is included in Appendix “B”.

7. Judicial Appointments Advisory Committee

Since proclamation of amendments to the *Courts of Justice Act* in February, 1995, the Judicial Council no longer has any direct involvement in the appointment of provincial judges to the bench. However, a member of the Ontario Judicial Council serves on the provincial Judicial Appointments Advisory Committee (J.A.A.C.) as its representative. The Honourable Madam Justice Marjoh Agro was appointed by the OJC to act as its representative on J.A.A.C.

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 Justice of the Ontario Court of Justice, or a master) and a lay member, examines all complaints made to the Council. The governing legislation empowers the complaint subcommittee to dismiss complaints which are either outside the jurisdiction of the Council (i.e., complaints about federally appointed judges, matters for appeal, etc.) or which, in the opinion of the complaint subcommittee, are frivolous or an abuse of process. All other complaints are investigated further by the complaint subcommittee. A more detailed outline of the Judicial Council’s procedures is included as Appendix “B”.

Once the investigation is completed, the complaint subcommittee may recommend the complaint be dismissed, refer it to the Chief Justice of the Ontario Court of Justice for an informal resolution, refer the complaint to mediation or refer the complaint to the Judicial Council, with or without recommending that it hold a hearing. The decision of the complaint subcommittee must be unani-



mous. If the complaint subcommittee members cannot agree, the complaint subcommittee members refers the complaint to the Council (or a review panel thereof) 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 Justice of the Ontario Court of Justice or a mediator or order that a hearing into the complaint be held. Review panels are composed of two provincial judges (other than the Chief Justice of the Ontario Court of Justice), a lawyer and a lay member. At this stage of the process, only the two complaint subcommittee members are aware of the identity of the complainant or the subject judge.

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

By the end of the investigation and review process, all decisions regarding complaints made to the Judicial Council will have been considered and reviewed by a total of six members of Council – two members of the complaint subcommittee and four members of the review panel.

Provisions for temporary members have been made in order to ensure that a quorum of the Council is able to conduct a hearing into a complaint if a hearing has been ordered. Hearing panels are to be made up of at least two of the remaining six members of Council who have not been involved in the process up to that point. At least one member of a hearing panel is to be a lay member and the

Chief Justice of Ontario, or his designate from the Court of Appeal, is to chair the hearing panel.

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

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

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

The sanctions which can be imposed by the Judicial Council for misconduct 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 is required to 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 49 complaints in its eighth year of operation, as well as carrying forward 31 complaint files from previous years. Of these 80 complaints, 48 files were closed before March 31, 2003, leaving 32 complaints to be carried over into the ninth year of operation. Nearly half of the 32 complaint files carried over into year nine were opened just prior to the end of year eight (i.e., they had been opened in February and March of 2003).

An investigation was conducted in all cases. The complaint subcommittee reviewed the complainant's letter and, where necessary, reviewed the transcript and/or the audiotape of the proceedings that took place in court in order to make its determination about the complaint. In some instances, further investigation was conducted where it was warranted. In all cases, the four members of each review panel agreed with the recommended disposition of the complaint by the complaint subcommittee after the review panel examined the complaint and the investigation which had been conducted.

Forty-five of the 48 complaint files closed were dismissed by the Judicial Council. One complaint was referred to the Chief Justice of the Ontario Court of Justice. Two complaint files (involving the same judge) were referred to a hearing.

Twenty-nine of the 45 complaint files dismissed by the Ontario Judicial Council during the period of time covered by this report were found to be outside the jurisdiction of the Council.

Complaint files that were dismissed because they were found to be outside the jurisdiction of the Council are usually matters that are properly the subject of an 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) and/or are matters where no actual allegation of judicial misconduct had been made but dissatisfaction with a judge's decision was expressed. This was the case with 16 of the 29 complaint files that fell into this category.

FISCAL YEAR:	96/97	97/98	98/99	99/00	00/01	01/02	02/03
Opened During Year	71	66	77	59	55	52	49
Continued from Previous Year	21	41	51	64	57	49	31
Total Files Open During Year	92	107	128	123	112	101	80
Closed During Year	51	56	64	66	63	63	48
Remaining at Year end	41	51	64	57	49	38	32

The remaining 13 of the 29 complaint files that were dismissed because they were found to be outside the jurisdiction of the OJC combined what was determined to be an unfounded allegation of bias, racism, sexism, or “improper actions” with the complaint about an appealable matter.

Fourteen of the 45 complaint files dismissed by the Ontario Judicial Council were determined to be unfounded after investigation. These 14 complaint files involved allegations that a judge had improperly conducted a case or had engaged in improper or illegal activity (e.g., tampering with court records), allegations of improper behaviour on the bench such as a judge being rude, belligerent, etc., or allegations that a judge’s decision was made as a result of his or her alleged lack of impartiality, a conflict of interest or some form of bias.

Of the remaining five of the 48 complaint files closed in the eighth year of operation, two complaints were dismissed as abandoned by the complainant (file nos. 07-015/01 and 07-043/02), two complaint files were referred to a public hearing (file nos. 06-017/00 and 06-024/00) and one complaint file was referred to the Chief Justice of the Ontario Court of Justice, Brian W. Lennox, to speak to the judge in question (file no. 07-024/01).

10. Case Summaries

In all cases that were closed during the year, notice of the Judicial Council’s decision, with the reason(s) therefore, was given to the complainant and to the subject judge, in accordance with the judge’s instructions on notice (please see page B-26 of the O.J.C. Procedures Document, Appendix “B”).

Files are given a two-digit prefix indicating the year of Council’s operation in which they were opened, followed by a sequential three-digit file number and by two digits indicating the calendar year in which the file was opened (i.e., file no. 06-55/01 was the fifty-fifth file opened in the sixth year of operation and was opened in calendar year 2001).

Details of each complaint with identifying information removed, where applicable, follow.





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CASE NOS. 06-017/00 and 06-024/00

Two complaints were received – one from two members of the private defence bar and the other from members of an association of criminal defence lawyers (the Criminal Lawyers Association). The complainants wrote to the Ontario Judicial Council concerning a judge who had chaired “The Joint Committee on Domestic Violence” which was composed of senior government officials and experts on domestic violence. The Joint Committee’s mandate was to advise the Attorney General and the Government of Ontario on how best to implement the recommendations of a previously-held Coroner’s Inquest into the murder of a victim of domestic violence. The report of that Joint Committee was submitted to the Attorney General in August of 1999. The judge, as former Chair of the Joint Committee, wrote to the Attorney General in July of 2000, enclosing a letter from the other four committee members, urging the government to take action to implement the recommendations that had been contained in the Joint Committee’s report. In her letter to the Attorney General, the judge noted that, “I endorse their requests and can add parenthetically, that I have observed no noticeable changes in the manner in which counsel are approaching these difficult cases in the criminal courts in which I preside.” The letter to the Attorney General, together with a copy of the letter from the other committee members, was given to the media by one of the members of the Joint Committee. The letters formed the basis of an article in the Toronto Star which appeared on the front page of its July 19, 2000 edition.

The Criminal Lawyers Association (the CLA) alleged that it was improper for a sitting judge to chair a committee whose recommendations related to the issue of domestic violence. The CLA alleged that “it is inconsistent with the separation of the judicial and executive branches for a sitting judge to be involved in this kind of work. By participating on the Committee as a judge, she risks associating the entire judiciary with a single political view of this social problem”.

The CLA further stated that when members of the judiciary are involved with Commissions of Inquiry or reviews in order to advise the Executive, the judge involved should step down from his/her judicial position for the period that he/she is “working for the government”. The CLA further stated that the judge who was the chair of the joint committee wrote to the Attorney General, a year after the release of the Joint Committee’s Report, to complain about “the lack of implementation of existing recommendations and strategies” from the inquest and the Joint Committee. The CLA was of the view that “the way in which government policy is implemented in response to a real or perceived social problem is a political matter and one on which a judge should not be importuning the Attorney General”. The CLA alleged that the judge continued to “lobby for the implementation of those views” and suggested that the judge “is incapable of maintaining appropriate judicial neutrality on this issue” as a consequence.

Both the CLA and the two members of the private defence bar objected to the observation made in the judge’s letter to the Attorney General that she had observed “no noticeable change in



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the manner in which counsel are approaching these difficult cases in the criminal courts”. Both complainants alleged that expressing such a view was “inconsistent with the neutrality required by a judge” and further that “if she wishes to advocate a particular political perspective, it cannot and should not be done from the Bench.”

The complaint subcommittee asked for and reviewed a response to the complaint from the judge. In her response, the judge made it clear that her remarks about “counsel” was a reference to Crown Counsel only, not defence counsel as incorrectly surmised in the complainant’s letters. The judge also provided a copy of the Joint Committee’s Report with her response. The complaint subcommittee referred the complaint to the members of the review panel who, after reviewing the material gathered by the complaint subcommittee, decided that although there was no problem with a judge acting as a chair or being involved in the work of a committee, such as the one in question, a problem did arise from the “lobbying” letter to the Attorney General after the committee had completed its mandate and submitted its report. It was the view of the complaint subcommittee and the review panel members that advocating a position as a sitting judge is inappropriate judicial conduct and a hearing into the matter should be held.

A Notice of Hearing was issued and a hearing was held on April 2, 2002. As the criteria for a private hearing were not met, the hearing was public.

At the conclusion of the hearing, the hearing panel determined that, although the complaint was not altogether unfounded, a finding of judi-

cial misconduct was not warranted. The full text of the “Reasons for Decision” in this matter may be found at Appendix “E”.

CASE NO. 07-006/01

The following information was provided to the OJC by the complainant. The complainant was accused of impaired driving and attended in court to enter a plea of “not guilty”. The complainant was represented by counsel who made various arguments to the court prior to trial regarding the alleged infringement of the complainant’s *Charter* rights. The *Charter* applications were dismissed by the judge and he ruled that the arrest by the officer of the accused/complainant was justified and the detention of the accused/complainant after the breathalyser test was also justified. The complainant advised that after ruling against him on the *Charter* arguments, the trial judge made the suggestion to the Crown that the Crown should ask for costs against the complainant and the complainant alleged that this exhibited bias against the complainant on the part of the judge. The complainant further alleged that he felt so intimidated by this suggestion of the trial judge regarding costs that he instructed his lawyer to change his plea from “not guilty” to “guilty” because he felt sure he would not get a fair trial in front of someone who had made such a suggestion.

The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence and asked for and reviewed a response to the complaint from the judge. The complaint subcommittee recommended that the complaint be dismissed after its review of this material. The



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complaint subcommittee was of the view that the mere fact that the judge did not agree with the complainant's *Charter* arguments and had made a suggestion to the Crown regarding costs is not judicial misconduct. The complaint subcommittee was also of the view that the judge's decision and his suggestion regarding costs did not amount to intimidation of the complainant as alleged. The complaint subcommittee noted that, in his response, the judge had advised that counsel for the complainant had advanced arguments in support of the *Charter* application that were totally frivolous and lacking in merit and it was this that led him to the conclusion the application would fail, not any lack of impartiality on his part. The complaint subcommittee also noted that in his response, the judge advised that the complainant likely changed his plea from "not guilty" to "guilty" on the advice of his counsel since the unsuccessful *Charter* application was the only defence available to the complainant. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 07-009/01

The complainant advised that she had laid a charge of assault against her husband. The complainant alleged that, after the lunch break, the Crown Attorney approached her and told her that "the judge was rushing him and wanted to do a pre-trial to see if we should have a trial". The complainant stated that when the case was called into court, the judge was not interested in conducting a trial but urged the parties to enter into a peace bond. The complainant advised that

she and her husband each spoke to a lawyer during a court recess and this lawyer explained to each of them what a peace bond was. The complainant further advised that she told the lawyer she spoke to that a peace bond wasn't going to work and it wouldn't make any difference if she signed a piece of paper. The complainant stated that, "By this time I was in such a state I did not know what was actually going on and I just wanted it to be over." The complainant went on to state that she felt "this court was a farce" and "Criminal Court...turned into a Family 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 the complaint be dismissed as it was evident from the transcript of the court proceedings and the response from the judge that the Crown was not in a position to start the trial on the date it was marked for trial and everyone had agreed to a pre-trial hearing. The complaint subcommittee further reported that it was evident in the transcript of the proceedings and in the judge's response that, if the agreement reached during the pre-trial was not to everyone's satisfaction, a trial could have taken place before a different judge at a later date and this had been explained to the parties. The complaint subcommittee noted that everyone willingly participated in the pre-trial and the eventual peace bonds that were entered into and the complaint subcommittee could find no misconduct on the part of the judge in this matter. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.



CASE SUMMARIES

CASE NO. 07-015/01

The complainant, who was self-represented, reported that he had been involved in ongoing litigation in family court since 1999. The complaint subcommittee reported to the review panel that his very lengthy complaint was about an ongoing custody dispute and the complainant alleged that the judge who was the subject of his complaint mismanaged the file, mis-directed himself, was devoid of any understanding of the law and listened only to the lawyer for the mother of the children. The complaint subcommittee recommended that the complaint be dismissed because it had made several requests to the complainant for promised material and documentation which had not been forthcoming. The complaint subcommittee also noted that it appeared to them that the complainant is simply an unhappy litigant who was dissatisfied with the decisions that had been made in his case. The complaint subcommittee further noted that if the complainant was dissatisfied with the judgment of the court or irregularities in procedure, he had the remedy of appealing the decisions that were made and without evidence of judicial misconduct, the matter is outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed subject to the file being re-opened if the complainant provides the further information that had been requested to support his allegations.

CASE NO. 07-023/01

The complainant was a self-represented litigant who attempted to apply for relief in a family law matter through the filing of various motions. In the incident under review, the complainant alleged that the presiding judge was rude and abusive and demonstrated “blatant unfairness” and a “discriminatory stance” regarding the complainant’s court matter. The complainant advised that she was attempting to bring forward three motions that she claimed had not been decided upon by the judge at an earlier court appearance. In attempting to argue these motions, the complainant alleged that the judge’s decisions regarding hearing submissions from the parties were racially biased. The complainant further alleged that the judge remarked, “I don’t care what happen (sic) to your child”.

The complaint subcommittee ordered and reviewed a copy of the transcript of the hearing. The complaint subcommittee recommended that the complaint be dismissed because, in its view, the transcript disclosed no judicial misconduct on the part of the judge. The complaint subcommittee also noted that the remark attributed to the judge by the complainant (“I don’t care what happen (sic) to your child”) was not made. The complaint subcommittee reported that the judge was merely attempting to control the court proceeding and explain the process to the complainant. The complaint subcommittee was of the view that the judge exercised his judicial discretion in dealing with the complainant’s motion requests and, without any indication of judicial misconduct, the exercise of judicial discretion is



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outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 07-024/01

Information was received by the OJC that a judge in a court location had discovered a number of pages of graphic adult sexual material sitting in the paper tray of the shared printer in the office area of the courthouse. The material was turned over to the Court Services Manager at the court location. A review of the computer server printer log revealed that the material had been printed out from a certain judge's computer on the evening previous to its discovery. The complaint subcommittee retained the services of a private investigator who confirmed that someone had logged onto the judge's computer between the hours of 7:20 p.m. and 9:20 p.m. on the evening in question and the courthouse security logs also revealed that the judge whose computer had been used had been in the courthouse during those hours on the evening in question. The judge's laptop computer was made available to the Judicial Council's investigator for inspection. The computer subcommittee reported that an analysis of the computer's hard drive did not reveal any records relating to the evening in question. However, the analysis also revealed that a significant amount of material had been deleted from the computer's hard drive prior to the computer being made available for inspection. The investigator was able to restore some of the deleted files and some of those files were found to contain graphic images of adult sexual material that were downloaded onto the com-

puter from adult sexual websites. The complaint subcommittee asked the judge for a response to this complaint.

In his response, the judge acknowledged that he had printed out a number of sexually explicit adult images on the evening in question and also acknowledged that he had previously stored a number of very graphic depictions of sexual activity on his computer which he had downloaded from various "free" websites. The judge acknowledged that accessing these websites from a government computer in a government office was clearly inappropriate and wrong and he admitted to being deeply embarrassed for having done so. The complaint subcommittee recommended to the review panel that this complaint be referred to the Chief Justice. After discussion of the complaint and the investigator's report, the members of the review panel were satisfied that an appropriate response to this error in judgment would be to have the matter referred to the Chief Justice with certain conditions attached. The review panel was of the view that the judge should have a "Web Filter" installed on his government-issued computer to ensure that he would not be able to access inappropriate websites in future and that he should also apologize to the staff people and other judges who came into contact with the inappropriate material that he had accessed on his computer. The Chief Justice reported to the review panel after his meeting with the judge and advised that he was satisfied that the conditions imposed on the referral of the complaint had been met and the judge had expressed remorse for what he recognized was a serious error in judgment. The review panel expressed their satisfaction with the



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report provided to them by the Chief Justice and indicated that the file could now be closed.

CASE NO. 07-025/01

The complainant was convicted of an assault on his father-in-law that was committed during a domestic disturbance. He complained to the OJC, the Ministry of the Attorney General and the O.P.P. about the conduct of everyone who was involved in the assault case, alleging that the police and the crown were involved in a course of malicious prosecution. In his letters to the OJC, the complainant alleged that the trial judge was biased against him, had been prejudiced in favour of the police and prosecutors and had conducted himself inappropriately throughout the trial. In particular, the complainant alleged that a lawyer he had retained to represent him told him that the judge “had a hard on” for him (the complainant) and “this judge is out to get you”. The complainant also stated that at a lunch break during his trial, the presiding judge came over to the complainant's lawyer, interrupting a private discussion the complainant was having with him, and “intervened - to talk about them all going to lunch - the legal crowd.” The complainant alleged that this was inappropriate and constituted judicial misconduct on the part of the trial judge.

The complaint subcommittee ordered and reviewed a copy of the transcript of the trial and asked for and reviewed a response from the judge. The complaint subcommittee recommended that the complaint be dismissed as it was their view that the transcript revealed no bias or prejudice or inappropriate comments by the trial

judge. The complaint subcommittee noted that the judge exhibited a good deal of patience with the complainant throughout the court proceedings. The complaint subcommittee further noted that the judge cannot be held accountable for comments supposedly made about him by the complainant's lawyer. The complaint subcommittee also reported on the judge's response to that aspect of the complaint concerning his approach to the complainant's lawyer regarding lunch arrangements.

In his response, the judge explained that during the lunch break he observed the complainant's lawyer speaking to the complainant and waited until the lawyer noticed him and briefly stopped his conversation with the complainant before he (the judge) approached them. The judge advised that he was not within earshot of the complainant and his lawyer while they were having their discussion. The judge noted that he approached the complainant's lawyer to let him know where he (the judge) and the court staff would be going for lunch. The judge advised that he did this because court was sitting in a very small community with limited dining options and it is his practice to advise both defence and crown counsel where he and the court staff are eating so that they can go elsewhere if they wish or, if time and circumstance permit, can join the judge and court staff for lunch. The judge advised that lawyers are only permitted to join the judge for lunch if both the crown and defence counsel are together. The judge also noted that having lunch together sometimes permits the court and counsel to discuss general issues regarding satellite court efficiencies, legal aid and other resource needs but that current cases before the court are never discussed and counsel all know that.



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The judge noted that the complainant was present during this conversation about lunch arrangements and if he had a problem with his lawyer joining the judge and the court staff for lunch on the occasion in question, he could have asked his lawyer not to do so. The judge advised that he is aware that such a request has been made in the past by other accused people. The judge further noted that, in his opinion, openly offering professional civility in the unique environment of a satellite court setting is not inappropriate and the complaint subcommittee agreed that this does not amount to judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 07-026/01

The complainant is the father of a person who was convicted of impaired driving. The complainant alleged that the judge exhibited “outright bias towards police” and/or that the judge “subscribes to the mindset (sic) of organizations such as M.A.D.D.” (Mothers Against Drunk Driving) and/or the judge lacked the experience of a “matured” justice in that she lacked the “insight or capacity to believe the [police] officer testified anything but the truth.” The complainant advised that the conviction had been appealed and upheld and that the appeal judge had “failed to observe any errors or bias” in the decision of the trial judge so he felt his “only recourse” was to write to the OJC to make a complaint. The complaint subcommittee recommended that the complaint be dismissed as they reported that a review of the transcript of the trial provided to them by the complainant failed to

reveal any bias or judicial misconduct on the part of the trial judge and the complaint is unfounded. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 07-028/01

The complainant is the father of children who were the subject of an application by a Children's Aid Society to take his children into the temporary custody of the CAS for their protection. The complainant alleged that the judge violated his civil and human rights in making an order against him and awarding the CAS temporary custody of his children.

The complaint subcommittee reviewed the transcript of the hearing and reported that, in its view, there was no judicial misconduct on the part of the judge who heard the application. The complaint subcommittee further indicated that the judge's conduct of the hearing was entirely appropriate and therefore recommended that the complaint be dismissed. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 07-030/01

The complaint subcommittee reported that the complainant was the subject of criminal charges before the courts. The complainant was unhappy with the judge because he refused him bail but the complainant also alleged that the judge “expelled” his lawyer from the courtroom and banned him from ever appearing before him in court again. The complaint subcommittee



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ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended that the complaint be dismissed as the transcript revealed that the judge was justified in dismissing the complainant's lawyer from court as he had misled the court on a material issue and this was stated on the record by the judge. The complaint subcommittee further noted that the complaint that the judge had refused bail was outside the jurisdiction of the OJC as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in refusing bail and that the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge (and the Judicial Council made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 07-036/02

The complainant was dissatisfied with court orders made by a judge which restricted the ability of the Family Responsibility Office to suspend her ex-husband's driver's licence as punishment for not paying the support he owed to her. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in making the rulings that he had made despite the unfortunate financial consequences for the complainant. The complaint subcommittee noted that an appeal of the rulings by the Family Responsibility Office

would be the only appropriate remedy and, without evidence of judicial misconduct, the complaint is outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 07-037/02

The complainant was involved in an on-going dispute in family court and made allegations of misconduct against a number of individuals, including a provincially-appointed judge. The Judicial Council investigated the allegations of misconduct against the provincially-appointed judge only, as the complaints against the other individuals were outside the jurisdiction of the Judicial Council. The specific complaints made against the judge by the complainant were allegations that he'd had an extra-marital affair with the complainant's wife and had fathered a child with her. The complainant further alleged that the judge interfered in the custody and access dispute between the complainant and his estranged wife and that the judge displayed favouritism towards the lawyer who was representing the complainant's estranged wife.

The complaint subcommittee reviewed the complaint materials and the response that was requested from the judge in question. The complaint subcommittee recommended that the allegations of interference in the complainant's family court matters and "favouritism" that the judge allegedly displayed towards the lawyer for the complainant's estranged wife be dismissed as unfounded, as the complaint subcommittee reported that the complainant and his estranged



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wife do not, and have not, appeared before the judge on any matters. The complaint subcommittee also recommended that the complaint concerning the allegation of an extra-marital affair be dismissed, as it was vehemently denied by both parties and, in any event, is outside the jurisdiction of the Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

CASE NO. 07-038/02

The complainant was the plaintiff in a civil action in Small Claims Court. The complainant advised that he enlisted the services of an agent to attend a pre-trial on his behalf because he was unable to appear himself due to another commitment. The complainant alleges that, although his agent was thoroughly briefed to go forward, the judge refused the agent standing and dismissed the claim at the pre-trial with costs ordered against the plaintiff. The complainant also objected to a comment the pre-trial judge allegedly made that his absence at the pre-trial led the judge to conclude that he was not “seriously pursuing” his claim. The complaint subcommittee reviewed the complaint and requested and received a response from the judge. The complaint subcommittee advised that a response from the judge was necessary because pre-trial hearings are not on the record in Small Claims Court and, therefore, no transcript was available. In addition, the complaint subcommittee requested and received an account of the event from the defendant’s solicitor who had attended the pre-trial.

In his response, the judge noted that it was his opinion that the agent for the plaintiff was not

adequately briefed in the facts and applicable law. In addition, by not attending or taking other steps to inform the court of his inability to appear, the judge was left with the impression that the claim was not being seriously pursued by the plaintiff.

The lawyer for the defendant supported the judge’s account that the plaintiff’s agent was unable to display any real knowledge of the case or answer queries from the judge on settlement. In his opinion, the judge’s decision to dismiss the case ended a claim that was an abuse of process and a claim that was not being seriously pursued.

Upon review of this information, the complaint subcommittee recommended that the complaint be dismissed, as in its view there was no judicial misconduct evident in the exercise of the judge’s discretion to dismiss the complainant’s action. If errors in law were committed (and the Judicial Council made no such finding), such errors may be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 07-039/02

The complainant was a victim of a break and enter. The complainant advised that the Crown Attorney withdrew the break and enter charge against the accused on the date that had been set for trial. The complainant advised that she was displeased with this decision, particularly since the person accused of the break and enter is her neighbour and had, in the complainant’s opin-



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ion, a relevant criminal record. The complainant alleged that the judge who accepted the Crown Attorney's request to withdraw the charge was a former law partner of the accused's defence counsel and, as a result, there was misconduct on the part of the judge for "going along" with the Crown Attorney.

The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the judge's decision to accept the Crown's decision to withdraw the charge. The complaint subcommittee noted that the Crown Attorney has the ultimate discretion to determine if a charge should proceed and may, at any stage in a prosecution, ask a court to withdraw a charge. The complaint subcommittee noted that the judge in this instance accepted the Crown's request and the fact that the judge was a former law partner of the accused's defence counsel would be completely irrelevant to the Crown's request. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 07-040/02

The complainant was before the courts in a dispute with his ex-wife regarding custody and access to the children of their marriage. The complainant advised that he was unhappy with decisions which had been made by the case management judge during the course of the proceedings.

The complaint subcommittee recommended that the complaint be dismissed because it was clear that the complainant had no understanding of the case management process where one judge is

assigned to a case from the beginning of the litigation up until the commencement of the trial. The complaint subcommittee further noted that if the complainant is dissatisfied with the judgment of the court with respect to decisions that had been made he has the remedy of appealing the decisions, and without evidence of judicial misconduct, the matter is outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 07-041/02

The complainant appeared in court charged with assault and assault with a weapon. The complainant alleged that the judge was "inhuman" and "barbarous" and had "destroyed" him. The complainant claimed that he is deaf and, because he did not have the aid of a hearing device at the court proceeding, was not able to discuss his case with his lawyer with full understanding of what was going on. He alleged that the judge did not allow for an opportunity for the complainant and his lawyer to speak with one another prior to the beginning of the hearing.

The complaint subcommittee reviewed the complaint material and the transcript of the hearing. The complaint subcommittee reported that the transcript did not support the allegations made by the complainant. The complaint subcommittee further reported that it appeared clear from the transcript that the complainant and his counsel were given the opportunity to speak prior to proceeding. It was also the view of the subcommittee that at no time did the complainant express misunderstanding or hearing difficulties



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when answering questions and the complainant's lawyer did not express any concerns to the court. The review panel agreed with the recommendation by the complaint subcommittee that the complaint be dismissed.

CASE NO. 07-042/02

The complainant is a defence attorney who alleged that the subject judge is "deliberately and actively participating in the pre-trial conferences and subsequently insisted on conducting most of the trials". He alleged that this practice is "totally unfair, biased and objectionable". The complainant cites cases over the past 25 years, in which the judge has "shocked and embarrassed" him by conducting the pre-trial, in which he alleged that sometimes he offered his personal opinions to the parties, and then presided over the trial.

The complaint subcommittee asked for and received a response to the complaint from the judge complaint about. The complaint subcommittee reported that it viewed the judge's response as a complete answer to the complainant's allegations. In addition, the complaint subcommittee reported that it had independently verified that the judge's method and practice of conducting pre-trials was fair and reasonable through contact with members of the local Bar Association and with other members of the judiciary in the area where the judge presides. Further, after reviewing the transcripts provided by the complainant, the complaint subcommittee was of the view that the allegations of misconduct were not supported and therefore recommended that the complaint be dismissed. The review panel

agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 07-043/02

The complainant alleged that a judge in Small Claims Court gave instructions to the Deputy judge who eventually heard his case, and claimed that by doing so, the Small Claims Court judge "discriminated" or was "prejudiced" towards his case before the courts. The complaint subcommittee reported that the specific allegations of "interference" by the judge were not clear from the original complaint and the complaint subcommittee requested further details from the complainant.

The complaint subcommittee reported that there was no response by the complainant to its repeated requests for additional information and recommended that the complaint be dismissed as it was their view that there were insufficient particulars to determine the nature of the judicial misconduct alleged and it was unable to conduct a proper investigation. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed, provided that the complaint file be re-opened in the event that the complainant provides the further information requested.

CASE NO. 07-044/02

The complainant was sentenced after entering a plea to one count of criminal harassment. The complainant advised that the trial judge imposed a conditional discharge with numerous conditions and a term of probation for three years. The complainant alleged the trial judge was unfair,



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and incompetent. The complainant further alleged that the judge accepted lies in evidence from her “incompetent lawyer” and breached the complainant's privacy rights by quoting from a psychiatric assessment.

The complaint subcommittee reviewed a copy of the trial transcript which had been provided to the OJC by the complainant. The complaint subcommittee reported that the complainant was a medical doctor who had been attempting to obtain her licence to practise as a psychiatrist. The complaint subcommittee reported that the College of Physicians and Surgeons had suspended the complainant because she refused to participate in a psychiatric assessment. The complaint subcommittee reported the following facts: the complainant came before the court charged with five counts of criminal harassment, one count of mischief and one count of uttering threats. The victims included numerous doctors and staff at the College of Physicians and Surgeons and elsewhere. The complainant was represented by counsel during the court proceedings. The complaint subcommittee further reported that the complainant had been in custody several months and while detained was ordered to undergo an assessment regarding her fitness to stand trial. The psychiatrist's assessment of the complainant's fitness to stand trial was before the court for consideration. Both the Crown and defence counsel referred to the report in court, in the presence of the complainant and there was no objection by her to this reference to the report on the record. The complainant had entered a plea of guilty to one count of criminal harassment and the facts had been read in on all counts, again apparently without objection from

the complainant and with her counsel's consent. The complaint subcommittee advised that the complaint arose after the sentencing hearing. The complaint subcommittee reported that the judge rejected the Crown's request for a custodial sentence and imposed a conditional discharge on one charge of criminal harassment with numerous conditions being imposed on the complainant. The complaint subcommittee reported that the complainant was asked if she understood the conditions that were being imposed and she responded, “It's clear.”. She was further asked if she understood the consequences of a breach of any of the conditions and she responded, “It won't happen.”.

The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in the matter and the transcript revealed no evidence of impropriety, misconduct or unfairness on the judge's part. The complaint subcommittee also noted that there was no objection on the record by the complainant to the use of the psychiatric assessment report, its contents, the conditions imposed by the judge or the competency of the complainant's counsel. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 07-045/02

The complainant is a retired Metro Police Officer and the father of a woman who was the Crown witness at a criminal trial. The complainant advised that his daughter's ex-husband had breached the conditions of a “peace bond” and had appeared in



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court for trial. The complainant alleged that the presiding judge at the trial was rude and insulting to his daughter regarding her testimony.

The complaint subcommittee reviewed the transcript of the trial, together with the audiotape of the hearing. The complaint subcommittee reported that the judge found the ex-husband “not guilty” as charged, largely because he did not find the testimony of the complainant’s daughter to be credible. In the view of the complaint subcommittee, the presiding judge was not rude or insulting, but merely blunt and specific in outlining the clear inconsistencies in the complainant’s daughter’s testimony that was given to the court. The complaint subcommittee recommended that the complaint be dismissed, as there was no evidence of judicial misconduct on the part of the judge in his assessment of the credibility of the witness. The review panel agreed with the recommendation of the complaint subcommittee.

CASE NO. 07-046/02

The complainant is a paralegal and advised that he appeared in court to represent the plaintiff in an action in the Small Claims Court. The complainant alleged that the judge made numerous decisions against the interests of his client and did so because he felt the judge had “something personal” against the complainant, perhaps because of a previous complaint to the OJC which he had made. The complaint subcommittee examined the material and court documents that had been included with the complainant’s letter of complaint. The complaint subcommittee recommended that the complaint be dismissed

as it was of the view that there was no judicial misconduct evident in the exercise of the judge’s discretion and that the decisions made were within the judge’s jurisdiction. If errors in law were committed by the judge (and the Judicial Council made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 07-049/02

The complainant alleged that his home was “illegally raided” by the police who were searching for drugs. The complainant stated that there was no search warrant provided to him at the time of the raid and a warrant was only produced after he made inquiries to the police and at the court “warrants office”. The complainant alleged that the judge who signed the search warrant was thereby guilty of misconduct. The complainant further advised that he is suing both the judge and the police and there is a pre-trial scheduled on his civil action. After reviewing the material provided by the complainant, the complaint subcommittee recommended that the complaint be dismissed as it was their view that there was no misconduct in a judge exercising his judicial discretion when presented with what he or she views as reasonable grounds to issue a warrant. The complaint subcommittee further stated that the validity of a search warrant is an issue to be raised at trial when both crown and defence counsel can review the information that was submitted to obtain the warrant and argue about



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whether or not it was properly issued at that time. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 07-051/02

The complaint subcommittee reported that this complaint was one of multiple complaints filed by the same complainant against 2 judges and 1 justice of the peace within the context of matrimonial litigation. The complaint subcommittee advised that the complainant alleged that in this complaint the judge's conduct constituted "defamation of [the] character" of the complainant.

The complaint subcommittee ordered and reviewed the transcript and audiotape of the hearing in question. The complaint subcommittee reported that, in their view, there was no judicial misconduct on the part of the judge. The complaint subcommittee advised that, in their opinion, the complainant was dissatisfied with the various orders made by the presiding judge, and the exercise of judicial discretion, without judicial misconduct, is outside the jurisdiction of the Ontario Judicial Council. As a result, the complaint subcommittee recommended that the complaint be dismissed and the review panel agreed with that recommendation.

CASE NO. 07-052/02

The complainant alleged that the judge before whom he appeared in a family court matter was biased against men. The complaint subcommittee reported that there were no facts offered by the complainant to substantiate this claim of

bias. The complaint subcommittee further noted that it would appear that the complainant was not happy with certain support orders that had been made and for costs which had been ordered against him by the judge. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion and that the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge (and the Judicial Council made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 08-001/02

The complainant is a resident of Red Deer, Alberta and had read a newspaper account of a well-publicized instance where a judge in Ontario had excluded a lawyer from appearing in her courtroom because the judge deemed that the apparel worn by the lawyer was inappropriate for a courtroom. The complainant made several other sweeping allegations against judges generally including bias, lack of accountability and lack of independence. The complaint subcommittee recommended that the complaint be dismissed as there was no factual basis for allegations made against judges generally and no judicial misconduct had occurred in the incident reported in the newspaper. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.



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CASE NO. 08-002/02 and CASE NO. 08-003/02

The complainant was the respondent to an application for protective custody of her children which was made by a Children's Aid Society. She objected firstly to the fact that a judge had issued a warrant to apprehend her children and turn them over to the custody of the Children's Aid Society. The complainant maintained that the warrant was issued on the basis of incorrect and biased information supplied to the court by the Children's Aid Society involved. The complainant further alleged that the second judge who presided over the actual hearing where protective custody was given to the Children's Aid Society made the wrong decision and accepted "biased evidence" from the Children's Aid Society witnesses who appeared in court to give testimony.

The complaint subcommittee recommended that the complaint be dismissed as there was no allegation of any judicial impropriety or misconduct in the complaint against either of the two judges. The complaint subcommittee further noted that if the complainant was dissatisfied with the judgment of the court, she had the remedy of appealing the decisions that were made. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 08-004/02

The complainant's spouse had been charged with assaulting her and she advised that the matter was scheduled for trial. The complainant advised that on the date set for trial, the matter was resolved by the accused entering into a Peace Bond. The complainant stated that she should

have been allowed to testify at the hearing but she was not called to give evidence by the Crown Attorney and the judge should not have proceeded without hearing from her. The complaint subcommittee recommended that the complaint be dismissed as there was no allegation of any judicial impropriety in the complaint and no judicial misconduct on the part of the judge complained about. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 08-005/02

The complainant was the respondent on an application in a child protection matter in family court. He alleged that the judge's decision was the result of the judge being manipulated by the applicant and her counsel, despite the judge being advised of this by the complainant. The complainant further advised that he disagreed with the decision of the judge with respect to jurisdiction and to the forum for the hearing of this matter. The complainant also advised that he disagreed with the award of interim custody to the Children's Aid Society. The complaint subcommittee recommended that the complaint be dismissed because if the complainant was dissatisfied with the judgment of the court, he had the remedy of appealing the decisions that were made and without evidence of judicial misconduct, the matter is outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.



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CASE NO. 08-006/02

Four individuals wrote separately to the OJC to complain about the decision of a judge in a court case after reading about it in the news media. The case in question dealt with charges of cruelty to animals and the defendants were convicted after trial. The four individuals felt that the sentence imposed by the judge was inadequate. The complaint subcommittee recommended that the complaint be dismissed as it is outside the jurisdiction of the OJC. The complaint concerned a decision made by a judge and there is no allegation or evidence of judicial misconduct in the exercise of the judge's discretion and it is, therefore, outside the jurisdiction of the OJC. If any of the parties to the court case were dissatisfied with the decision or if there were errors in law committed by the judge, such errors could be remedied on appeal. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 08-007/02

The complaint subcommittee reported that a complaint had been received from a group of 12 courts administration staff alleging misconduct by a judge during the Ontario Public Service Employees Union (OPSEU) strike which had concluded just prior to their complaint being received. The group of employees alleged that the judge had behaved impartially and unprofessionally when he made remarks about strikers interfering with the business of the court and drafted a memo for circulation to courts administration staff with the alleged purpose of "creating an atmosphere of fear and intimidation

within our workplace". The complainants further alleged that the judge, through writing the aforementioned memo, "participated and cooperated with management... in activities specifically calculated to circumvent and/or interfere with the labour relations process".

The complaint subcommittee reviewed the complaint material and requested and received a response to the complaint from the judge in question. After considering all of the material, the complaint subcommittee recommended that the complaint be dismissed, as there was no clear evidence of misconduct by the judge. The complaint subcommittee felt that the content and timing of the judge's memo was unfortunate, but were satisfied that the judge's conduct did not amount to judicial misconduct as it has been defined by the Ontario Judicial Council in previous matters. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 08-009/02

The complainants are two lawyers who advised that they practise primarily family law and who expressed displeasure with the manner in which a presiding judge before whom they appeared administered her court list. Both complainants advised that they appeared in court to present a consent order with a signed statement of facts. The complainants indicated that they made the court clerk aware of the matter in advance. However, notwithstanding the advance notice, the complainants advised that the presiding judge proceeded to deal with a major case on the



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list before dealing with their matter and they'd had to wait five (5) hours.

The complaint subcommittee reviewed the complaint materials submitted and recommended that the complaint be dismissed, as it was of the view that this matter is outside the jurisdiction of the Ontario Judicial Council. The complaint subcommittee noted that judges administer their own court lists and are not directed by the Ontario Judicial Council as to the manner in which it is, or should be, done. The complaint subcommittee was of the view that this complaint may be a matter more appropriately dealt with by the local or regional judicial administration or by the local Bench-and Bar committee in the community in which the complainants practise. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

CASE NO. 08-011/02

The complainant was charged with assault causing bodily harm and advised that he appeared in court intending to enter a plea of "not guilty". The complainant alleged that his lawyer told him that he had spoken to the judge prior to the hearing and asked "hypothetically" how she would rule if she heard the case. The complainant advised that his lawyer told him that the judge had allegedly indicated that she "would view it very seriously". The complainant advised that after hearing this information, he indicated that he felt intimidated by the judge and told his lawyer to request another judge to hear the case. However, in the end, the complainant advised

that he "felt compelled in court to do what the court wanted". The complainant alleged judicial misconduct against the judge in "compelling him" to plead guilty.

The complaint subcommittee reviewed the complaint and requested and reviewed a copy of the transcript of the proceeding. In its view, the transcript did not support the allegations that the complainant was compelled or intimidated to plead guilty by the court and therefore recommended that the complaint be dismissed. The complaint subcommittee also reported that the complainant was represented by counsel who agreed with the description of the assault charge as outlined by the Crown Attorney and who had made a joint submission on sentencing. The complaint subcommittee advised it was their opinion that the complainant had second thoughts about the course of action to which he had agreed and was looking for a way to overturn the conviction, since an appeal was no longer an option due to the passage of time. The review panel agreed with the complaint subcommittee's recommendation to dismiss the complaint.

CASE NO. 08-012/02

This complainant represented himself on a criminal charge and alleged that the judge presiding at his trial violated his "Charter Rights to full answer and defence" and, as a result, he did not have a fair trial. The complainant also claimed that, during the criminal trial, he repeatedly stated, "I have not had the opportunity to prepare my defence to be able to make full answer to the allegations before the court", and alleged



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that the judge continued the proceeding without his participation.

The complaint subcommittee reported to the review panel that, in its view, there was no judicial misconduct on the part of the judge. The complaint subcommittee commented that if the complainant's Charter Rights were indeed violated, that determination is outside the jurisdiction of the Ontario Judicial Council. If errors in law were committed by the judge (and the Judicial Council made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

CASE NO. 08-013/02

The complainant was charged with assault and alleged that the judge presiding over his trial had violated his human rights by not allowing any accommodation in the court schedule for the routine he had to follow in order to treat his diabetes. The complainant claimed that he was required to stay in the courtroom for five hours before a lunch break was allowed and that this caused him to experience "signs of hypoglycaemia" ranging from "confusion, disorientation and irritability" to "extreme thirst, fatigue and weakness". The complainant further claimed that he made everyone aware of his medical condition and the strict routine of food, medication and exercise that he is required to follow to maintain proper blood sugar levels.

The complaint subcommittee reviewed the transcript of the trial and reported that no request for accommodation of the complainant's dietary and/or exercise routines had been made by either the complainant or his legal counsel. In the view of the complaint subcommittee, there was no evidence of judicial misconduct on the part of the trial judge and the complaint was motivated by the complainant's unhappiness with the trial judge's unfavourable finding of credibility which had resulted in a conviction for assault. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

CASE NO. 08-014/02

The complainant is the common-law spouse of the father of two children who were apprehended by a Children's Aid Society (C.A.S.) and taken into protective custody. The complainant advised that, at the hearing into the C.A.S. application for custody, the C.A.S. sought Crown Wardship with no access at all for either of the biological parents. The complainant alleged that the judge granted the C.A.S. application and ruled against her common-law spouse because he is disabled and she weighs 400 pounds.

The complaint subcommittee reviewed the complaint materials and recommended that the complaint be dismissed, as it was of the view that the concerns expressed in the complaint related to the judge's decision and did not contain allegations of judicial misconduct. The complaint subcommittee recommended that if the complainant is unsatisfied with the judge's decision, they may wish to



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appeal the ruling. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

CASE NO. 08-017/02

The complainant advised that he was the plaintiff in an action in Small Claims Court and advised that he and his representative had appeared for a pre-trial. The complainant further advised that neither the defendant nor a representative for the defendant appeared for the pre-trial. The complainant advised that, although notice to appear was provided to the defendant, the judge asked the plaintiff to phone the defendant to request their appearance. When the defendant was unable to be reached, the complainant alleged that the judge called the defendant personally and left a message for them to contact the pre-trial conference room directly. The complainant advised that the defendant finally contacted the pre-trial conference room and the pre-trial proceeded by phone. According to the complainant, the judge's actions in contacting the defendant "prejudged" his case, as he alleged it contradicted court rules, whereby judgment may proceed in a party's absence.

The complaint subcommittee noted that it is the discretion of the pre-trial judge as to how a pre-trial will be conducted and recommended that the complaint be dismissed. It was also the view of the complaint subcommittee that this matter related to the exercise of judicial discretion and is not a matter of judicial misconduct and therefore is outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the rec-

ommendation of the complaint subcommittee that the complaint be dismissed.

CASE NO. 08-018/02

The complainant was a party to proceedings in Family Court. The complainant alleged that the presiding judge was not receptive to his submissions nor the materials that he had filed. The complainant also advised that he was unhappy with the rulings made and alleged that the judge is biased against him and asked the Judicial Council to re-assign his cases to another judge in a different location.

The complaint subcommittee reviewed the correspondence and the material submitted with the complaint. The complaint subcommittee recommended that the complaint be dismissed, as it was of the view that the complaint related to dissatisfaction with the judge's decisions and there was no specific judicial misconduct alleged. The complaint subcommittee further noted that the complainant had the ability to bring an application before the judge requesting that the judge no longer preside over the case if she felt that she could not be objective in matters involving the complainant. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

CASE NO. 08-019/02

The complainant was charged with uttering a forged document, specifically altering the payment amount on a cheque before it was presented for payment. The complainant had



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trouble with and had fired several lawyers. The complainant was self-represented when appearing before the subject judge at the pre-trial. The complainant alleged that the subject judge made some inaccurate comments about the nature of a pre-trial and, in addition, the complainant alleged the judge's conduct towards her was rude.

The complaint subcommittee reviewed the complaint and requested and reviewed a copy of the transcript of the proceeding. In its view, the transcript did not support the allegations made by the complainant and therefore recommended that the complaint be dismissed. The complaint subcommittee further commented that the nature of a criminal pre-trial was explained carefully and accurately to the defendant by the judge on more than one occasion during the proceeding. The complaint subcommittee was of the view that the subject judge tried to be of assistance to the complainant and there was no evidence of rudeness or misconduct of any sort. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

CASE NO. 08-020/02

The complainant was a party to a court proceeding. The complainant alleged that there were omissions in the transcript that he received relating to his court matter. The complainant alleged that the omissions related to the judge's decision to not allow the complainant to submit evidence. The complainant requested that the Ontario Judicial Council investigate the accuracy of the transcripts.

The complaint subcommittee reviewed the correspondence and recommended that the complaint be dismissed, as it was its view that the complaint related to dissatisfaction with the judge's decisions on the admissibility of evidence and not specifically to an allegation of judicial misconduct. The complaint subcommittee also noted that the accuracy or inaccuracy of transcripts are not within the jurisdiction of the Ontario Judicial Council to investigate. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

CASE NO. 08-021/02

The complainant is a respondent in an ongoing child protection proceeding. He advised that he is the paternal grandfather of the child who was the subject of the proceeding and who was apprehended from the grandfather's custody by a Children's Aid Society. The complainant wanted the matter referred to Criminal Court rather than Family Court, due to an allegation made against him of sexual impropriety. The complainant also made allegations against two different judges who are alleged to have been prejudiced in ruling against him.

The complaint subcommittee reviewed the complaint and recommended that it be dismissed as being without foundation. The complaint subcommittee noted that the only "evidence" of prejudice provided by the complainant was the fact that the judges had not ruled in the complainant's favour. The complaint subcommittee was of the view that the complaints were really



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about the decisions made by the judges, which may be appealed, and are outside the jurisdiction of the Ontario Judicial Council without evidence of judicial misconduct. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

CASE NO. 08-022/02

The complainant was a respondent in a dispute over the custody of and access to his child and he alleged the presiding judge suspended access without affording him an opportunity to be heard. In addition, the complainant alleged that the judge refused to allow him to communicate through the interpreter who was present at the proceeding.

The complaint subcommittee reviewed the complaint and reviewed a copy of the transcript of the proceeding. The complaint subcommittee reported that the complainant had a court appointed interpreter present throughout the proceeding and that there was no interference by the judge in the communication between the complainant and the interpreter. In its opinion, the complainant was given the opportunity to make submissions through the interpreter and the allegations made by the complainant were not supported by the transcript. The complaint subcommittee therefore recommended that the complaint be dismissed. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 08-025/02

The complainant is a parent whose children were taken into the care of a Children's Aid Society (CAS). A subsequent child protection hearing was held in the matter. The initial complaint received dealt with the time taken for the hearing and the lateness of the decision. Once the judge's decision was received, a further complaint was filed against the decision with allegations that the presiding judge was prejudiced against the complainant. The complainant further alleged that the presiding judge was in a conflict of interest in hearing the case, because prior to his appointment to the bench, he was a member of a law firm that used to work on Children's Aid Society matters.

The complaint subcommittee reviewed the complaint. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in making the decision that he made. If errors in law were committed by the judge (and the OJC made no such finding), such errors may be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. In addition, the subcommittee was of the view that the fact that the judge's former law firm acted for the CAS does not, in and of itself, support the complainant's allegation of bias. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.



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CASE NO. 08-026/02

The complainant, who was not represented by counsel, appeared in court with an application under the Charter of Rights for a stay of proceedings so that he could be allowed to “assemble, prepare and present his defence” at trial. The complainant alleged that the presiding judge violated his rights under the Charter by disallowing his application.

The complaint subcommittee reviewed the complaint. The complaint subcommittee recommended that the complaint be dismissed as, in its view, this was a matter for appeal, and without evidence of judicial misconduct is outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 08-027/02

The complainant is the applicant in a family estate matter involving the executrix of the will and the passing of accounts of the estate. The complaint subcommittee reported that the complainant had made non-specific references to a number of judges in her letter to the Council, and there were no particulars of any allegations of misconduct.

As a result, the complaint subcommittee recommended that the complaint be dismissed and the review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 08-028/02

The complainant attended Small Claims Court as a plaintiff in a matter where he was trying to garnish somebody’s wages. According to the complainant, the “defendant made a motion for stopping the garnishee” and the presiding judge reserved decision. When the complainant eventually received and reviewed the decision, the complainant cited supposed examples of “unfairness, injustice and partiality” relating to the decision and the conduct of the presiding judge.

The complaint subcommittee was of the view that the complaint was about the decision of the judge and that there were insufficient particulars of judicial misconduct provided by the complainant, other than the statement about the judge’s alleged, “unfairness, injustice and partiality”. As a result, the complaint subcommittee concluded that the complaint was outside the jurisdiction of the Ontario Judicial Council, as the OJC cannot interfere in the decision-making process. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 08-030/02

The complainant advised that he had brought an action against his next-door neighbour in Small Claims Court and was awarded a default judgment including damages and costs. The complainant advised that after the default judgment was awarded, his next-door neighbour retained legal counsel who was able to present a motion, after the appeal date had expired and without new information, to set aside the default judge-



CASE SUMMARIES

ment. The complainant alleged that the success of this motion was based on information that was illegally acquired through the court. The complainant further advised that, on the same day as the motion, he filed a written representation arguing against the hearing of the motion. The complainant advised that the Deputy Judge who heard the motion reserved his decision. The complainant advised that he then received a “Notice of Pre-trial” to appear before a judge of the Small Claims Court without receiving a copy of the decision of the Deputy Judge with respect to the motion to set aside the default judgement. The complainant alleged that this was done under the direction of another Small Claims Court judge who was the case management judge. The complainant alleged that both Small Claims Court judges were involved in what he referred to as “organized judicial crime”. The Small Claims Court judge who case managed the file was alleged to have knowingly collaborated with the Deputy Judge and the defendant’s lawyer in directing it to a pre-trial conference, without the consent of both parties or on a motion by a party in accordance with the complainant’s view of the Rules of Civil Procedure.

The complainant’s allegations against the Small Claims Court judge who conducted the pre-trial were that he previewed the case prior to the pre-trial and, upon reading the material, ordered it set for trial. It is the complainant’s contention that if the pre-trial judge had not been involved in the so-called “organized judicial crime”, he would have dismissed the case rather than allowing it to proceed to trial.

The complaint subcommittee recommended that the complaint be dismissed, as it was of the view that the complaint provided no basis upon which a determination of judicial misconduct could be made. In the complaint subcommittee’s view, there was no evidence of any conspiracy or collusion on the part of the judges involved and the allegations were unsupported by the complainant. The review panel agreed with the complaint subcommittee’s recommendation to dismiss the complaint.



ONTARIO JUDICIAL COUNCIL

2002–2003 ANNUAL REPORT

APPENDICES

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APPENDIX “B” *Procedures Document*

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Respecting the Honourable Madam
Justice Lesley M. Baldwin*

APPENDIX-A

ONTARIO JUDICIAL COUNCIL –
DO YOU HAVE A COMPLAINT?

ONTARIO JUDICIAL COUNCIL – DO YOU HAVE A COMPLAINT?

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

Provincial Judges in Ontario – Who are they?

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

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.

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.

Professional Conduct of Judges

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

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

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

The Role of the Ontario Judicial Council

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

APPENDIX - A

ONTARIO JUDICIAL COUNCIL – DO YOU HAVE A COMPLAINT?

A

Making a Complaint

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

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

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

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.

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.

Written complaints should be mailed or faxed to:

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

Decisions of the Council

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

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

Just a reminder...

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

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



APPENDIX-B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT

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

COMPLAINTS

GENERALLY

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

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

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

subs. 51.3(4)

COMPLAINT SUBCOMMITTEES

COMPOSITION

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

subs. 51.4(1) and (2)

ADMINISTRATIVE PROCEDURES

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

STATUS REPORTS

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

Investigation

GUIDELINES AND RULES OF PROCEDURE

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

subs. 51.1(2)

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

subs. 51.1(3)

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

subs. 51.4(21)

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPLAINT SUBCOMMITTEES

AGREEMENT ON HOW TO PROCEED

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

DISMISSAL OF COMPLAINT

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

subs. 51.4(3)

CONDUCTING INVESTIGATION

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

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

PREVIOUS COMPLAINTS

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

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

INFORMATION TO BE OBTAINED BY REGISTRAR

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

TRANSCRIPTS, ETC.

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

RESPONSE TO COMPLAINT

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

APPENDIX - B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPLAINT SUBCOMMITTEES

complaint and has full particulars of the complaint, they will proceed in the absence of a response. Any response made to the complaint by the subject judge at this stage of the procedure is deemed to have been made without prejudice and may not be used at the hearing.

GENERALLY

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

A complaint subcommittee may invite any party or witness to meet or communicate with it during its investigation.

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

ADVICE AND ASSISTANCE

A complaint subcommittee may direct the Registrar to retain or engage persons, including counsel, to assist it in its investigation of a complaint. The complaint subcommittee may also consult with members of a Review Panel to seek their input and guidance during the investigative stages of the complaint process.

subs. 51.4(5)

MULTIPLE COMPLAINTS

The Registrar will assign any new complaints of a **similar nature** against a judge who already has an open complaint file, or files, to the same complaint subcommittee that is/are investigating the outstanding file(s). This will ensure that the complaint subcommittee members who are investigating a complaint against a particular judge are aware of the fact that there is a similar complaint, whether from the same complainant or another individual, against the same judge.

When a judge is the subject of three complaints from three different complainants within a period of three years, the Registrar will bring that fact to the attention of the Judicial Council, or a review panel thereof, for their assessment of whether or not the

multiple complaints should be the subject of advice to the judge by the Judicial Council or the Associate Chief Justice or Regional Senior Justice member of the Judicial Council.

INTERIM RECOMMENDATION TO SUSPEND OR REASSIGN

The complaint subcommittee may recommend to the appropriate Regional Senior Justice that the subject judge be suspended, with pay, or be reassigned to a different location, until the complaint is finally disposed of. If the subject judge is assigned to the region of the Regional Senior Justice who is a member of the Judicial Council, the complaint subcommittee shall recommend the suspension, with pay, or temporary reassignment to another Regional Senior Justice. The Regional Senior Justice in question may suspend or reassign the judge as the complaint subcommittee recommends. The exercise of the Regional Senior Justice's discretion to accept or reject the complaint subcommittee's recommendation is not subject to the direction and supervision of the Chief Justice of the Ontario Court of Justice.

subs. 51.4(8), (9), (10) and (11)

COMPLAINT AGAINST CHIEF JUSTICE ET AL – INTERIM RECOMMENDATIONS

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

subs. 51.4(12)

CRITERIA FOR INTERIM RECOMMENDATIONS TO SUSPEND OR REASSIGN

The Judicial Council has established the following criteria and rules of procedure under subsection 51.1(1) and they are to be used by a complaint subcommittee in making their decision to recommend to the appropriate Regional Senior Justice the

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temporary suspension or re-assignment of a judge pending the resolution of a complaint:

subs. 51.4(21)

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

INFORMATION RE: INTERIM RECOMMENDATION

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

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

Reports to Review Panels

WHEN INVESTIGATION COMPLETE

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

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

subs. 51.4(13)

GUIDELINES AND RULES OF PROCEDURE

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

subs. 51.1(2)

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

subs. 51.1(3)

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

subs. 51.4(12)

PROCEDURE TO BE FOLLOWED

One member of each complaint subcommittee will be responsible to contact the Assistant Registrar by a specified deadline prior to each scheduled OJC meeting to advise what files, if any, assigned to the complaint

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subcommittee are ready to be reported to a review panel. The members of the complaint subcommittee will also provide a legible, fully completed copy of the appropriate pages of the complaint intake form for each file which is ready to be reported and will advise as to what other file material, besides the complaint, should be copied from the file and provided to the members of the review panel for their consideration.

At least one member of a complaint subcommittee shall be present when the complaint subcommittee's report is made to a review panel. Attendance by a complaint subcommittee or review panel member may be by teleconference when necessary.

NO IDENTIFYING INFORMATION

The complaint subcommittee shall report its disposition of any complaint that is dismissed or referred to the Chief Justice of the Ontario Court of Justice or to a mediator to the Judicial Council without identifying the complainant or the judge who is the subject of the complaint and no information that could identify either the complainant or the judge who is the subject of the complaint will be included in the material provided to the review panel members.

subs. 51.4(16)

DECISION TO BE UNANIMOUS

The decision by a complaint subcommittee to dismiss a complaint, refer the complaint to the Chief Justice of the Ontario Court of Justice or refer the complaint to a mediator must be a unanimous decision on the part of the complaint subcommittee members. If the complaint subcommittee members cannot agree, the complaint must be referred to the Judicial Council.

subs. 51.4(14)

CRITERIA FOR DECISIONS BY COMPLAINT SUBCOMMITTEES

A) TO DISMISS THE COMPLAINT

A complaint subcommittee will dismiss a complaint after reviewing the complaint if, in the complaint subcommittee's opinion, it falls outside the Judicial Council's jurisdiction or is frivolous or an abuse of process. A complaint subcommittee may also recommend that a complaint be dismissed if, after

their investigation, they conclude that the complaint is unfounded.

subs. 51.4(3) and (13)

B) TO REFER TO THE CHIEF JUSTICE

A complaint subcommittee will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the misconduct complained of does not warrant another disposition, there is some merit to the complaint and the disposition is, in the opinion of the complaint subcommittee, a suitable means of informing the judge that his/her course of conduct was not appropriate in the circumstances that led to the complaint. A complaint subcommittee will impose conditions on their referral to the Chief Justice of the Ontario Court of Justice if, in their opinion, there is some course of action or remedial training of which the subject judge could take advantage and there is agreement by the subject judge.

subs. 51.4 (13) and (15)

C) TO REFER TO MEDIATION

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

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

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

subs. 51.4(13) and 51.5

D) TO RECOMMEND A HEARING

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

subs.51.4(13) and (16)

RECOMMENDATION RE: HEARING

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

E) COMPENSATION

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

subs. 51.7(1)

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

REFERRING COMPLAINT TO COUNCIL

As noted above, a complaint subcommittee may also refer the complaint to the Judicial Council, with or without making a recommendation that it hold a hearing into the complaint. Both members of the complaint subcommittee need not agree with this recommendation and the Judicial Council, or a review panel thereof, has the power to require the complaint subcommittee to refer the complaint to it if it does not approve the complaint subcommittee's recommended disposition or if the complaint subcommittee cannot agree on the disposition. If a complaint is referred to the Judicial Council, with or without a recommendation that a hearing be held, the complainant and the subject judge may be identified to the Judicial Council, or a review panel thereof.

subs.51.4(16) and (17)

INFORMATION TO BE INCLUDED

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

REVIEW PANELS

PURPOSE

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

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

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

subs. 49(14)

COMPOSITION

A review panel is made up of two provincially-appointed judges (other than the Chief Justice of the Ontario Court of Justice), a lawyer and a lay member of the OJC and shall not include either of the two members who served on the complaint subcommittee who investigated the complaint and made the recommendation to the review panel. One of the judges, designated by the Council, shall chair the review panel and four members constitute a quorum. The chair of the review panel is entitled to vote and may cast a second deciding vote if there is a tie.

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

WHEN REVIEW PANEL FORMED

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

GUIDELINES AND RULES OF PROCEDURE

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

subs. 51.1(2)

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

subs. 51.4(19)

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

subs. 51.1(3)

The Ontario Judicial Council has established the following guidelines and rules of procedure under subsection 51.1(1) with respect to the consideration

of complaint subcommittee reports made to a review panel or referred to it by a complaint subcommittee and the Judicial Council, or a review panel thereof, shall follow its guidelines and rules of procedure established for this purpose.

subs. 51.4(22)

Review of Complaint Subcommittee's Report

REVIEW IN PRIVATE

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

subs. 51.4(17)

PROCEDURE ON REVIEW

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

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

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

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

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Referral of Complaint to a Review Panel

WHEN REFERRED

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

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

POWER OF A REVIEW PANEL ON REFERRAL

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

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

subs. 51.4(16) and (18)

GUIDELINES AND RULES OF PROCEDURE

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

subs. 51.1(2)

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

subs. 51.4(19)

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

subs. 51.1(3)

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

subs. 51.4(22)

Guidelines re: Dispositions

A) ORDERING A HEARING

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

B) DISMISSING A COMPLAINT

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

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C) REFERRING A COMPLAINT TO THE CHIEF JUSTICE

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

D) REFERRING A COMPLAINT TO MEDIATION

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

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

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

Notice of Decision

DECISION COMMUNICATED

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

subs. 51.4(20)

ADMINISTRATIVE PROCEDURES

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

HEARING PANELS

APPLICABLE LEGISLATION

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

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

subs. 51.1(2)

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

subs. 51.1(3) and 51.6(2)

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

subs. 51.6(3)

COMPOSITION

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

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

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

POWER

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

subs. 49(16)

HEARINGS

COMMUNICATION BY MEMBERS

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

subs. 51.6(4) and (5)

PARTIES TO THE HEARING

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

subs. 51.6(6)

PUBLIC OR PRIVATE/ALL OR PART

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

subs. 49(11) and 51.6(7)

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

subs. 51.6(2)

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

subs. 51.6(9)

OPEN OR CLOSED HEARINGS – CRITERIA

The Judicial Council has established the following criteria under subsection 51.1(1) to assist it in determining whether or not the desirability of holding open hearings is outweighed by the desirability of maintaining confidentiality. If the Judicial Council determines that exceptional circumstances exist in accordance with the following criteria, it may hold all, or part, of the hearing in private.

subs. 51.6(7)

The members of the Judicial Council will consider the following criteria to determine what exceptional circumstances must exist before a decision is made to maintain confidentiality and hold all, or part, of a hearing in private:

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

REVEALING JUDGE'S NAME WHEN HEARING WAS PRIVATE – CRITERIA

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

subs. 51.6(8)

The members of the Judicial Council will consider the following criteria before a decision is made about when it is appropriate to publicly reveal the name of a judge even though the hearing has been held in private:

- a) at the request of the judge, or
- b) in circumstances where it would be in the public interest to do so.

WHEN AN ORDER PROHIBITING PUBLICATION OF JUDGE'S NAME MAY BE MADE, PENDING THE DISPOSITION OF A COMPLAINT – CRITERIA

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

subs. 51.6(10)

The members of the Judicial Council will consider the following criteria to determine when the Judicial Council may make an order prohibiting the publication of information that might identify the judge who is the subject of a complaint, pending the disposition of a complaint:

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

NEW COMPLAINT

If, during the course of the hearing, additional facts are disclosed which, if communicated to a member of the Judicial Council, would constitute an allegation of misconduct against a provincially-appointed judge outside of the ambit of the complaint which is the subject of the hearing, the Registrar shall prepare a summary of the particulars of the complaint and forward

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same to a complaint subcommittee of the Judicial Council to be processed as an original complaint. The Complaint subcommittee shall be composed of members of the Judicial Council other than those who compose the panel hearing the complaint.

PROCEDURAL CODE FOR HEARINGS

PREAMBLE

These Rules of Procedure apply to all hearings of the Judicial Council convened pursuant to section 51.6 of the *Courts of Justice Act* and are established and made public pursuant to paragraph 51.1(1)6 of the *Courts of Justice Act*.

These Rules of Procedure shall be liberally construed so as to ensure the just determination of every hearing on its merits. Where matters are not provided for in these Rules, the practice shall be determined by analogy to them.

INTERPRETATION

1. The words in this code shall, unless the context otherwise indicates, bear the meanings ascribed to them by the *Courts of Justice Act*.

(1) In this code,

(a) “Act” shall mean the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended.

(b) “Panel” means the Panel conducting a hearing and established pursuant to subsection 49(16) of the *Act*.

(c) “Respondent” shall mean a judge in respect of whom an order for a hearing is made pursuant to subsection 51.4(18)(a) of the *Act*.

(d) “Presenting Counsel” means counsel engaged on behalf of the Council to prepare and present the case against a Respondent.

PRESENTATION OF COMPLAINTS

2. The Council shall, on the making of an order for a hearing in respect of a complaint against a

judge, engage Legal Counsel for the purposes of preparing and presenting the case against the Respondent.

3. Legal Counsel engaged by the Council shall operate independently of the Council.

4. The duty of Legal Counsel engaged under this Part shall not be to seek a particular order against a Respondent, but to see that the complaint against the judge is evaluated fairly and dispassionately to the end of achieving a just result.

5. For greater certainty, Presenting Counsel are not to advise the Council on any matters coming before it. All communications between Presenting Counsel and the Council shall, where communications are personal, be made in the presence of counsel for the Respondent, and in the case of written communications, such communications shall be copied to the Respondents.

6. A hearing shall be commenced by a Notice of Hearing in accordance with this Part.

7. Presenting Counsel shall prepare the Notice of Hearing.

(1) The Notice of Hearing shall contain,

(a) particulars of the allegations against the Respondent;

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

(c) a statement of the time and place of the commencement of the hearing;

(d) a statement of the purpose of the hearing;

(e) a statement that if the Respondent does not attend at the hearing, the Panel may proceed in the Respondent’s absence and the Respondent will not be entitled to any further notice of the proceeding; and,

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

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RESPONSE

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

DISCLOSURE

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

PRE-HEARING CONFERENCE

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

THE HEARING

15. For greater certainty, the Respondent has the right to be represented by counsel, or to act on his own behalf in any hearing under this Code.
16. The Panel, on application at any time by Presenting Counsel or by the Respondent, may require any person, including a party, by summons, to give evidence on oath or affirmation at the hearing and to produce in evidence at the hearing any documents or things specified by the Panel which are relevant to the subject matter of the hearing and admissible at the hearing.
 - (1) A summons issued under this section shall be in the form prescribed by subsection 12(2) of the *Statutory Powers Procedure Act*.
17. The hearing shall be conducted by a Panel of members of the Council composed of members who have not participated in a complaint sub-committee investigation of the complaint or in a Panel reviewing a report from such complaint sub-committee.
 - (1) The following guidelines apply to the conduct of the hearing, unless the Panel, on motion by another party, or on consent requires otherwise.
 - (a) All testimony shall be under oath or affirmation or promise.
 - (b) Presenting Counsel shall commence the hearing by an opening statement, and shall proceed to present evidence in support of the allegations in the Notice of Hearing by direct examination of witnesses.
 - (c) Counsel for the Respondent may make an opening statement, either immediately following Presenting Counsel's opening statement, or immediately following the conclusion of the evidence presented on behalf of Presenting Counsel. After Presenting Counsel has called its evidence, and after the Respondent has made an opening statement, the Respondent may present evidence.
 - (d) All witnesses may be cross-examined by counsel for the opposite party and re-examined as required.

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

PRE-HEARING RULINGS

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

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

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

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

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

POST-HEARINGS

Disposition at Hearing

DISPOSITION

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

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

subs. 51.6(11)

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – POST-HEARINGS

COMBINATION OF SANCTIONS

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

subs. 51.6(12)

Report to Attorney General

REPORT

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

subs. 51.6(18)

IDENTITY WITHHELD

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

subs. 51.6(19)

JUDGE NOT TO BE IDENTIFIED

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

subs. 51.6(20)

Order to Accommodate

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

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

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

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

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

Removal from Office

REMOVAL

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

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

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPENSATION

B

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.

subs. 51.8(1)

TABLING OF RECOMMENDATION

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

subs. 51.8(2)

ORDER REMOVING JUDGE

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

subs. 51.8(3)

APPLICATION

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

subs. 51.8(4)

COMPENSATION

AFTER COMPLAINT DISPOSED OF

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

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

subs. 51.7(1) and (2)

PUBLIC OR PRIVATE

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

subs. 51.7(3)

RECOMMENDATION

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

subs. 51.7(4)

WHERE COMPLAINT DISMISSED AFTER A HEARING

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

subs. 51.7(5)

DISCLOSURE OF NAME

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

subs. 51.7(6)

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

AMOUNT AND PAYMENT

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

subs. 51.7(7) and (8)

CONFIDENTIALITY AND PROTECTION OF PRIVACY

INFORMATION TO PUBLIC

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

subs. 51.3(5)

POLICY OF JUDICIAL COUNCIL

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

COMPLAINT SUBCOMMITTEE INVESTIGATION PRIVATE

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

subs. 51.4(6) and (7)

REVIEW PANEL DELIBERATION PRIVATE

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

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

subs. 51.4(17)

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

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

subs. 51.4(18)

WHEN IDENTITY OF JUDGE REVEALED TO REVIEW PANEL

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

subs. 51.4(16) and (17)

HEARINGS MAY BE PRIVATE

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

subs. 51.6(7)

JUDGE'S NAME NOT DISCLOSED

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

subs. 51.6(8)

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

ORDER PROHIBITING PUBLICATION

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

subs. 51.6(10)

CRITERIA ESTABLISHED

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

REPORT TO ATTORNEY GENERAL

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

subs. 51.6(19)

JUDGE NOT TO BE IDENTIFIED

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

subs. 51.6(20)

ORDER NOT TO DISCLOSE

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

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

subs. 49(24) and (25)

EXCEPTION

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

subs. 49(26)

AMENDMENTS TO THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

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

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

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ACCOMMODATION OF DISABILITIES

ACCOMMODATION OF DISABILITIES

APPLICATION FOR ORDER

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

subs. 45.(1)

DUTY OF JUDICIAL COUNCIL

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

subs. 45.(2)

UNDUE HARDSHIP

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

subs. 45.(3)

GUIDELINES AND RULES OF PROCEDURE

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

subs. 45.4(4)

OPPORTUNITY TO PARTICIPATE

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

subs. 45.(5)

ORDER BINDS THE CROWN

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

subs. 45.(6)

CHAIR FOR MEETING

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

subs. 49.(8)

CHAIR ENTITLED TO VOTE

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

subs. 49.(10)

QUORUM FOR MEETING

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

subs. 49.(13)

EXPERT ASSISTANCE

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

subs. 49.(21)

CONFIDENTIAL RECORDS

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

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ACCOMMODATION OF DISABILITIES

requires the Judicial Council to disclose or that have not been treated as confidential and were not prepared exclusively for the purposes of the mediation or Council meeting or hearing.

subs. 49(24)(25) & (26)

The Judicial Council shall establish and make public rules governing its own procedures, including guidelines and rules of procedure for the purpose of the accommodation of disabilities.

subs. 51.1(1)

ACCOMMODATION ORDER AFTER A HEARING

If, after a hearing into a complaint has been held, the Judicial Council finds that the judge who was the subject of the complaint is unable, because of a disability, to perform the essential duties of the office, but would be able to perform them if his or her needs were accommodated, the Council shall order that the judge's needs be accommodated to the extent necessary to enable him or her to perform those duties.

subs. 51.6(13)

RULES OF PROCEDURE AND GUIDELINES

The following are the rules of procedure and guidelines established by the Ontario Judicial Council for the purpose of the accommodation of disabilities.

APPLICATION IN WRITING

An application for accommodation of disability by a judge shall be in writing and shall include the following information: -

- a description of the disability to be accommodated;
- a description of the essential duties of the judge's office for which accommodation is required;
- a description of the item and/or service required to accommodate the judge's disability;
- a signed letter from a qualified doctor or other medical specialist (e.g., chiropractor, physiotherapist, etc.) supporting the judge's application for accommodation;
- the application and supporting materials are inadmissible, without the consent of the appli-

cant, in any investigation or hearing, other than the hearing to consider the question of accommodation;

- disclosure of the application and supporting materials by the Ontario Judicial Council to the public is prohibited without the consent of the applicant.

ACCOMMODATION SUBCOMMITTEE

On receipt of an application, the Council will convene a subcommittee of the Council composed of one judge and one lay member of the Council (an "accommodation subcommittee"). At its earliest convenience the accommodation subcommittee shall meet with the applicant and with any person against whom the accommodation subcommittee believes an order to accommodate may be required, and retain such experts and advice as may be required, to formulate and report an opinion to the Council in relation to the following matters:

- the period of time that the item and/or service would be required to accommodate the judge's disability;
- the approximate cost of the item and/or service required to accommodate the judge's disability for the length of time the item and/or service is estimated to be required (i.e., daily, weekly, monthly, yearly).

REPORT OF ACCOMMODATION SUBCOMMITTEE

The report to the Council shall consist of all of the evidence considered by the accommodation subcommittee in formulating its view as to the costs of accommodating the applicant.

If, after meeting with the applicant, the accommodation subcommittee is of the view that the applicant does not suffer from a disability, it shall communicate this fact to the Council in its report.

INITIAL CONSIDERATION OF APPLICATION AND REPORT

The Judicial Council shall meet, at its earliest convenience, to consider the application and the report of the accommodation subcommittee in order to determine whether or not the application for accommodation gives

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ACCOMMODATION OF DISABILITIES

rise to an obligation under the statute to accommodate the applicant short of undue hardship.

THRESHOLD TEST FOR QUALIFICATION AS DISABILITY

The Judicial Council will be guided generally by Human Rights jurisprudence relating to the definition of “disability” for the purposes of determining whether an order to accommodate is warranted.

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

NOTIFICATION OF MINISTER

If the Judicial Council is satisfied that the condition meets the threshold test for qualification as a disability and if the Judicial Council is considering making an order to accommodate same, then the Judicial Council shall provide a copy of the application for accommodation of disability together with the report of the accommodation subcommittee to the Attorney General, at its earliest convenience. The report of the accommodation subcommittee shall include all of the evidence considered by the accommodation subcommittee in formulating its view as to the costs of accommodating the applicant.

SUBMISSIONS ON UNDUE HARDSHIP

The Judicial Council will invite the Minister to make submissions, in writing, as to whether or not any order that the Council is considering making to accommodate a judge’s disability will cause “undue hardship” to the Ministry of the Attorney General or any other person affected by the said order to accommodate. The Judicial Council will view the Minister, or any other person against whom an order to accommodate may be made, as having the onus of showing that accommodating the applicant will cause undue hardship.

In considering whether accommodation of the applicant will cause undue hardship, the Council will generally be guided by Human Rights jurisprudence relating to

the question whether undue hardship will be caused, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

TIME FRAME FOR RESPONSE

The Judicial Council shall request that the Minister respond to its notice of the judge’s application for accommodation within thirty (30) calendar days of the date of receipt of notification from the Judicial Council. The Minister will, within that time frame, advise the Judicial Council whether or not the Minister intends to make any response to the application for accommodation. If the Minister does intend to respond, such response shall be made within sixty (60) days of the Minister’s acknowledgement of the notice and advice that the Minister intends to respond. The Judicial Council will stipulate in its notice to the Minister that an order to accommodate will be made in accordance with the judge’s application and the Judicial Council’s initial determination in the absence of any submission or acknowledgement from the Minister.

MEETING TO DETERMINE ORDER TO ACCOMMODATE

After receipt of the Minister’s submissions with respect to “undue hardship” or the expiration of the time period specified in its notice to the Minister, whichever comes first, the Ontario Judicial Council shall meet, at its earliest convenience, to determine the order it shall make to accommodate the judge’s disability. The Judicial Council will consider the judge’s application and supporting material and submissions made, if any, regarding the question of “undue hardship”, before making its determination.

COPY OF ORDER

A copy of the order made by the Judicial Council to accommodate a judge’s disability shall be provided to the judge and to any other person affected by the said order within ten (10) calendar days of the date of the decision being made.

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – SPECIAL CONSIDERATIONS

SPECIAL CONSIDERATIONS

FRENCH-SPEAKING COMPLAINANTS/JUDGES

Complaints against provincially-appointed judges may be made in English or French.

subs. 51.2(2)

A hearing into a complaint by the Judicial Council shall be conducted in English, but a complainant or witness who speaks French or a judge who is the subject of a complaint and who speaks French is entitled, on request, to be given before the hearing, French translations of documents that are written in English and are to be considered at the hearing; to be provided with the assistance of an interpreter at the hearing; and to be provided with simultaneous interpretation into French of the English portions of the hearing.

subs. 51.2(3)

This entitlement to translation and interpretation extends to mediation and to the consideration of the question of compensation, if any.

subs. 51.2(4)

The Judicial Council may direct that a hearing or mediation of a complaint where a complainant or witness speaks French, or the complained-of judge speaks French, be conducted bilingually, if the Judicial Council is of the opinion that it can be properly conducted in that manner.

subs. 51.2(5)

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

subs. 51.2(6)

In a bilingual hearing or mediation,

- a) oral evidence and submissions may be given or made in English or French, and shall be recorded in the language in which they are given or made;
- b) documents may be filed in either language;
- c) in the case of a mediation, discussions may take place in either language;

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

subs. 51.2(7)

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

subs. 51.2(8)

COMPLAINTS AGAINST CHIEF JUSTICE ET AL

If the Chief Justice of the Ontario Court of Justice is the subject of a complaint, the Chief Justice of Ontario shall appoint another judge of the Court of Justice to be a member of the Judicial Council instead of the Chief Justice of the Ontario Court of Justice until the complaint is finally disposed of. The Associate Chief Justice appointed to the Judicial Council shall chair meetings and hearings of the Judicial Council instead of the Chief Justice of the Ontario Court of Justice and appoint temporary members of the Judicial Council until the complaint against the Chief Justice of the Ontario Court of Justice is finally disposed of.

subs. 50(1)(a) and (b)

Any reference of the complaint that would otherwise be made to the Chief Justice of the Ontario Court of Justice (by a complaint subcommittee after its investigation, by the Judicial Council or a review panel thereof after its review of a complaint subcommittee's report or referral or by the Judicial Council after mediation), shall be made to the Chief Justice of the Superior Court of Justice instead of the Chief Justice of the Ontario Court of Justice, until the complaint against the Chief Justice of the Ontario Court of Justice is finally disposed of.

subs. 50(1)(c)

If the Chief Justice of the Ontario Court of Justice is suspended pending final disposition of the complaint against him or her, any complaints that would other-

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – SPECIAL CONSIDERATIONS

wise be referred to the Chief Justice of the Ontario Court of Justice shall be referred to the Associate Chief Justice appointed to the Judicial Council until the complaint against the Chief Justice of the Ontario Court of Justice is finally disposed of.

subs. 50(2)(a)

If the Chief Justice of the Ontario Court of Justice is suspended pending final disposition of the complaint against him or her, annual approvals that would otherwise be granted or refused by the Chief Justice of the Ontario Court of Justice shall be granted or refused by the Associate Chief Justice appointed to the Judicial Council until the complaint against the Chief Justice of the Ontario Court of Justice is finally disposed of.

subs. 50(2)(b)

If either the Associate Chief Justice or Regional Senior Justice appointed to the Judicial Council is the subject of a complaint, the Chief Justice of the Ontario Court of Justice shall appoint another judge of the Ontario Court of Justice to be a member of the Judicial Council instead of the Associate Chief Justice or Regional Senior Justice, as the case may be, until the complaint against the Associate Chief Justice, or Regional Senior Justice appointed to the Judicial Council, is finally disposed of.

subs. 50(3)

COMPLAINTS AGAINST SMALL CLAIMS COURT JUDGES

Subsection 87.1(1) of the *Courts of Justice Act* applies to provincially-appointed judges who were assigned to the Provincial Court (Civil Division) immediately before September 1, 1990, with special provisions.

COMPLAINTS

When the Judicial Council deals with a complaint against a provincially-appointed judge who was assigned to the Provincial Court (Civil Division) immediately before September 1, 1990, the following special provisions apply:

1. One of the members of the Judicial Council who is a provincially-appointed judge shall be replaced

by a provincially-appointed judge who was assigned to the Provincial Court (Civil Division) immediately before September 1, 1990. The Chief Justice of the Ontario Court of Justice shall determine which judge is to be replaced and the Chief Justice of the Superior Court of Justice shall designate the judge who is to replace that judge.

2. Complaints shall be referred to the Chief Justice of the Superior Court of Justice, rather than to the Chief Justice of the Ontario Court of Justice.
3. Complaint subcommittee recommendations with respect to interim suspension shall be made to the appropriate Regional Senior Justice of the Superior Court of Justice, to whom subsections 51.4(10) and (11) apply, with necessary modifications.

subs. 87.1(4)

COMPLAINTS AGAINST MASTERS

Subsection 87.(3) of the *Courts of Justice Act* states that sections 44 to 51.12 applies to masters, with necessary modifications, in the same manner as to provincially-appointed judges.

COMPLAINTS

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

1. One of the members of the Judicial Council who is a provincially-appointed judge shall be replaced by a master. The Chief Justice of the Ontario Court of Justice shall determine which judge is to be replaced and the Chief Justice of the Superior Court of Justice shall designate the judge who is to replace that judge.
2. Complaints shall be referred to the Chief Justice of the Superior Court of Justice, rather than to the Chief Justice of the Ontario Court of Justice.
3. Complaint subcommittee recommendations with respect to interim suspension shall be made to the appropriate Regional Senior Justice of the Superior Court of Justice, to whom subsections 51.4(10) and (11) apply, with necessary modifications.

APPENDIX - B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ADMINISTRATIVE MATTERS

ADMINISTRATIVE MATTERS

INTAKE/OPENING COMPLAINT FILES:

- Where a complaint is made orally by a person intending to make a complaint to the Judicial Council or a member acting in their capacity as a member of the Judicial Council thereof, the person making the allegation shall be encouraged to make the complaint in writing. If such person does not within 10 days of making the allegation tender a written complaint to the Council, the Registrar shall, on consultation with legal counsel and the Judicial Council member to whom the allegation was made, set out the particulars of the complaint in writing. Such written summary of the allegation shall be forwarded by registered mail to the person making the allegation, if he or she can be located, along with a statement that the allegation as summarized will become the complaint on the basis of which the conduct of the provincially-appointed judge in question will be evaluated. On the tenth day after the mailing of such summary, and in the absence of any response from the person making the allegation, the written summary shall be deemed to be a complaint alleging misconduct against the provincially-appointed judge in question.
- if the complaint is within the jurisdiction of the OJC (any provincially-appointed judge or master – full-time or part-time) a complaint file is opened and assigned to a two-member complaint subcommittee for review and investigation (complaints that are outside the jurisdiction of the OJC are referred to the appropriate agency)
- the Registrar will review each letter of complaint upon receipt and if it is determined that a file will be opened and assigned, the Registrar will determine whether or not it is necessary to order a transcript and/or audiotape for review by the complaint subcommittee and, if so, will direct the Assistant Registrar to order same.
- the complaint is added to the tracking form, a sequential file number is assigned, a letter of acknowledgement is sent to the complainant within a week of his or her letter being received, page one of the complaint intake form is completed

and a letter to the complaint subcommittee members, together with the Registrar's recommendations regarding the file, if any, is prepared. Copies of all materials are placed in the office copy and each member's copy of the complaint file.

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

COMPLAINT SUBCOMMITTEES:

Complaint subcommittee members endeavour to review the status of all opened files assigned to them on receipt of their status report each month and take whatever steps are necessary to enable them to submit the file to the OJC for review at the earliest possible opportunity.

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

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

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

APPENDIX - B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ADMINISTRATIVE MATTERS

B

If a complaint subcommittee requires a response from the judge, the complaint subcommittee will direct the Registrar to ask the judge to respond to a specific issue or issues raised in the complaint. A copy of the complaint, the transcript (if any) and all of the relevant materials on file will be provided to the judge with the letter requesting the response. A judge is given thirty days from the date of the letter asking for a response, to respond to the complaint. If a response is not received within that time, the complaint subcommittee members are advised and a reminder letter is sent to the judge by registered mail. If no response is received within ten days from the date of the registered letter, and the complaint subcommittee is satisfied that the judge is aware of the complaint and has full particulars of the complaint, they will proceed in the absence of a response. Any response made to the complaint by the subject judge at this stage of the procedure is deemed to have been made without prejudice and may not be used at a hearing.

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

A complaint subcommittee may invite any party or witness to meet or communicate with it during its investigation.

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

A complaint subcommittee may direct the Registrar to retain or engage persons, including counsel, to assist it in its investigation of a complaint.

subs. 51.4(5)

One member of each complaint subcommittee will be responsible to contact the Assistant Registrar by a specified deadline prior to each scheduled OJC meeting to advise what files, if any, assigned to the complaint subcommittee are ready to be reported to a review panel. The complaint subcommittee will also provide a legible, fully completed copy of pages

2 and 3 of the complaint intake form for each file which is ready to be reported and will advise as to what other file material, besides the complaint, should be copied from the file and provided to the members of the review panel for their consideration. No information that could identify either the complainant or the judge who is the subject of the complaint will be included in the material provided to the review panel members.

At least one member of a complaint subcommittee shall be present when the subcommittee's report is made to a review panel. Complaint subcommittee members may also attend by teleconference when necessary.

REVIEW PANELS:

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

MEETING MATERIALS:

All material prepared for meetings of the Ontario Judicial Council are confidential and shall not be disclosed or made public.

When a complaint subcommittee has indicated that it is ready to make a report to a review panel, the Registrar will prepare and circulate a draft case summary and a draft letter to the complainant to the members of the complaint subcommittee making the report and the members of the review panel assigned to hear the complaint subcommittee's report. The draft case summary and draft letter to the complainant will be circulated to the members for their review at least a week prior to the date of the scheduled Judicial Council meeting. Amendments to the draft case summary and the draft letter to the complainant may be made after discussion by the Judicial Council members at the meeting held to consider the complaint subcommittee's recommendation on individual complaint files.

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ADMINISTRATIVE MATTERS

The draft and final case summary and the draft letter to the complainant which is submitted for approval will not contain any information which would identify either the complainant or the subject judge.

A copy of the final case summary is filed in every closed complaint file together with a copy of the final letter to the complainant advising of the disposition of the complaint.

NOTICE OF DECISION – NOTIFICATION OF PARTIES:

After the draft letter to the complainant has been approved, by the investigating complaint subcommittee and the review panel, it is prepared in final form and sent to the complainant.

Complainants, in cases where their complaint is dismissed, are given notice of the decision of the OJC, with reasons, as required by subsection 51.4(2) of the *Courts of Justice Act*.

The OJC has distributed a waiver form for all judges to sign and complete, instructing the OJC of the circumstances in which an individual judge wishes to be advised of complaints made against them, which are dismissed. The OJC has also distributed an address form for all judges to sign and complete, instructing the OJC of the address to which correspondence about complaint matters should be sent.

Judges who had been asked for a response to the complaint, or who, to the knowledge of the OJC are otherwise aware of the complaint, will be contacted by telephone after the complaint has been dealt with and advised of the decision of the OJC. A letter confirming the disposition of the complaint will also be sent to the judge, in accordance with his/her instructions.

CLOSING FILES:

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



APPENDIX-C

ONTARIO COURT OF JUSTICE
CONTINUING EDUCATION PLAN

ONTARIO COURT OF JUSTICE CONTINUING EDUCATION PLAN

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

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

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

EDUCATION SECRETARIAT

The coordination of the planning and presentation of education programs is assured by the Education Secretariat. The composition of the Secretariat is as follows: the Chief Justice as Chair (ex officio), four judges nominated by the Chief Justice and four judges nominated by the Ontario Conference of Judges. The Ontario Court of Justice's research counsel serve as consultants. The Secretariat meets approximately four times per year to discuss matters pertaining to education and reports to the Chief Justice. The mandate and goals of the Education Secretariat are as follows:

The Education Secretariat is committed to the importance of education in enhancing professional excellence.

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

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

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

The goals of the Education Secretariat are:

1. To stimulate continuing professional and personal development;
2. To ensure that education is relevant to the needs and interests of the provincial judiciary;
3. To support and encourage programs that maintain high levels of competence and knowledge in matters of evidence, procedure and substantive law;
4. To increase knowledge and awareness of community and social services structures and resources that may assist and complement educational programs and the work of the courts;
5. To foster the active recruitment and involvement of the judiciary at all stages of program conceptualization, development, planning, delivery and evaluation;
6. To promote an understanding of judicial development;
7. To facilitate the desire for life-long learning and reflective practices;

APPENDIX - C

ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) – CONTINUING EDUCATION PLAN

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 Ontario Court of Justice. In addition, all education program plans are presented to and approved by the Education Secretariat as the Secretariat is responsible for the funding allocation for education programs.

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

1. First Year Education,
2. Continuing Education.

1. FIRST YEAR EDUCATION

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

- *Commentaries on Judicial Conduct*
(Canadian Judicial Council)
- *Martin's Criminal Code*
- *Family Law Statutes of the Ontario Court of Justice*
- *The Conduct of a Trial*
- *Judge's Manual*
- *Family Law Rules*
- *Writing Reasons*
- *Ethical Principles for Judges*
(Canadian Judicial Council)

The Ontario Court of Justice organizes a one-day education program for newly appointed judges shortly after their appointment which deals with practical matters relating to the transition to the bench, including judicial conduct and judicial ethics, courtroom demeanour and behaviour, available resources, etc. This program is presented at the Office of the Chief Justice twice a year.

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

During the first year following appointment, or so soon thereafter as is possible, new judges attend the New Judges' Training Program presented by the Canadian Association of Provincial Court judges (C.A.P.C.J.) at Carling Lake in the Province of Quebec. This intensive one-week program is 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 Ontario Court of Justice (These programs are outlined under the heading "Continuing Education").

Each judge at the time of appointment is invited to participate in a mentoring program which has been developed within the Ontario Court of Justice by the Ontario Conference of Judges. 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 Ontario Court of Justice, including legal texts, case reporting services, the Ontario Court of Justice Research Centre (discussed below), computer courses and courses in *Quicklaw* (a computer law database and research facility).

APPENDIX - C

ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) – CONTINUING EDUCATION PLAN

2. CONTINUING EDUCATION

Continuing education programs presented to judges of the Ontario Court of Justice are of two types;

- 1) Programs presented by the Ontario Conference of Judges usually of particular interest to judges in the fields of criminal or family law respectively;
- 2) Programs presented by the Education Secretariat.

I. PROGRAMS PRESENTED BY THE ONTARIO CONFERENCE OF JUDGES

The programs presented by the Ontario Conference of Judges constitute the **Core Program** of the Ontario Court of Justice education programming. The Ontario Conference of Judges has two Education Committees (criminal and family) composed of a number of judges, one of whom is normally designated as the education chair. These committees meet as required and work throughout the year on the planning, development and presentation of the core education programs.

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

There are also two major criminal law programs presented each year.

- a) A three-day Regional Seminar is organized in October and November of each year at four regional locations. These seminars customarily focus on areas of sentencing and the law of evidence, although a variety of other topics may also be included. Similar programs are presented in each of the four regional locations.

- b) A two and a half day education seminar is presented in the month of May in conjunction with the annual meeting of the Court. All judges presiding in criminal law courts are entitled and encouraged to attend these seminars.

II. SECRETARIAT PROGRAMS

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

1. JUDGMENT WRITING: This two-day seminar is presented to a group of approximately 10 judges at a time as funding permits. Lately two seminars have been presented in February of each year at the Office of the Chief Justice by Professor Edward Berry of the University of Victoria.

In the 1997/98 fiscal year the Education Secretariat contracted with Professor Berry to prepare a text in judgment writing for all judges of the Court. That text has now been prepared and distributed to all judges of the Court and is now in its second edition.

2. PRE-RETIREMENT SEMINARS: Intended to assist judges in their retirement planning (together with their spouses), this two and one-half day program deals with the transition from the bench to retirement and is presented in Toronto whenever numbers warrant.
3. JUDICIAL COMMUNICATION PROGRAM. In March, 1998, the Ontario Court of Justice retained the services of Professor Gordon Zimmerman together with Professor Alayne Casteel of the University of Nevada to present a training program on Judicial Communication. The program involved directed activities and discussion on verbal and non-verbal communications, listening and related problems. Individual judges were videotaped and their communication techniques were critiqued in the course of the program. The program, which was presented to 25 Ontario Court of Justice judges, was intended to serve as a pilot project for future seminars on judicial communication, which will

APPENDIX - C

ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) – CONTINUING EDUCATION PLAN

be presented as funding and scheduling permits. The Secretariat put on the first of these seminars in March, 2000. It was attended by 16 judges of the Ontario Court of Justice and 2 from the Canadian Association of Provincial Court Judges who were invited to observe and participate in order to assess the program for use in other provinces. This program was organized, developed and presented by Professor Neil Gold and his associate Frank Borowicz who adapted the pilot project to the specific role of a trial judge in a Canadian court. The program was presented again in March, 2002 to another 21 judges of the Ontario Court of Justice.

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

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

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

As part of the Court's commitment to social context education, the Ontario Conference of Judges has created an *ad hoc* equality committee to ensure that social context issues are included and addressed on an on-going basis in the education programs of the associations.

5. UNIVERSITY EDUCATION PROGRAM: This program takes place over a five-day period in the spring in a university or similar setting. It provides an opportunity for approximately 30 - 35 judges to deal in depth with criminal law education topics in a more academic context.

III. EXTERNAL EDUCATION PROGRAMS

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

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ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) – CONTINUING EDUCATION PLAN

- Ontario Association for Family Mediation/Mediation Canada
- Canadian Institute for the Administration of Justice
- International Association of Women Judges (Canadian Chapter)
- Ontario Family Court Clinic Conference
- Canadian Institute for Advanced Legal Studies

The process involves an application by a judge to attend such programs, a peer selection committee, and a program appraisal. This program depends upon available funding as determined by the Education Secretariat on an annual basis.

The Education Secretariat has however established a Conference Attendance Committee to consider applications by individual judges for funding to attend conferences/seminars/programs other than those presented by the Ontario Court of Justice. Funding, when provided, is usually less than 100% since it is designed to provide supplementary assistance to judges who are prepared to commit some of their own resources to attend.

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

As the Desktop Computer Implementation (D.C.I.) Project and the Integrated Justice Project were implemented across the justice system in Ontario, starting in the summer of 1998, computer training for judges was significantly increased by the Project in order to ensure appropriate levels of computer literacy for all members of the Court.

4. **NATIONAL JUDICIAL INSTITUTE (N.J.I.):** The Ontario Court of Justice through its Education Secretariat makes a financial contribution to the operation of the National Judicial Institute. The N.J.I., based in Ottawa, sponsors a number of education programs across the country for federally and provincially appointed judges. Individual judges have attended and will continue to attend N.J.I. programs in the future, depending on location and subject matter. The Chief Justice is a member of the Board of the N.J.I.

The Ontario Court of Justice has entered into a joint venture with the N.J.I. which resulted in the hiring of an Education Director for the Ontario Court of Justice who is also responsible for the coordination and development of programs for Provincial judges in other provinces.

In September, 2002 the Ontario Court of Justice and the National Judicial Institute jointly presented a conference on Child Welfare Law which was attended by both federal and provincial judges from across the country.

IV. OTHER EDUCATIONAL RESOURCES

1. **JUDICIAL RESEARCH CENTRE:** Judges of the Ontario Court of Justice have access to the Ontario Court of Justice Research Centre located at Old City Hall in Toronto. The Research Centre, a law library and computer research facility, is staffed by three research counsel together with support staff and is accessible in person, by telephone, E-mail or fax. The 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 Mr. Justice Ian MacDonnell also provides to judges of the Ontario Court of Justice his summary and comments on current criminal law decisions of the Ontario Court of Appeal and of the Supreme Court of Canada in a publication entitled *'Recent Developments'*.

APPENDIX - C

ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) – CONTINUING EDUCATION PLAN

3. SELF-FUNDED LEAVE: In order to provide access to educational opportunities that fall outside the parameters of regular judicial education programs, the Ontario Court of Justice has developed a self-funded leave policy that allows judges to defer income over a period of years in order to take a period of self-funded leave of up to twelve months. Prior approval is required for such leave and a peer review committee reviews the applications in selecting those judges who will be authorized to take such leave.
4. REGIONAL MEETINGS: The current seven regions of the Court have annual regional meetings. While these meetings principally provide an opportunity to deal with regional administrative/management issues, some also have an educational component. Such is the case, for example, with the northern regional meeting in which judges of the Northeast and Northwest Regions meet together and deal with educational issues of special interest to the north, such as judicial isolation, travel and aboriginal justice.
5. In addition to the educational programs outlined above, the fundamental education of judges continues to be self-directed and is effected *inter alia* through continuing peer discussions and individual reading and research.



APPENDIX-D

COURTS OF JUSTICE ACT CHAPTER C.43 ONTARIO JUDICIAL COUNCIL

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

COURTS OF JUSTICE ACT CHAPTER C.43 ONTARIO JUDICIAL COUNCIL

SECTION 49

JUDICIAL COUNCIL

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

COMPOSITION

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

TEMPORARY MEMBERS

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

CRITERIA

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

TERM OF OFFICE

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

Same

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

STAGGERED TERMS

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

CHAIR

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

Same

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

Same

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

OPEN AND CLOSED HEARINGS AND MEETINGS

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

VACANCIES

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

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

QUORUM

- (13) The following quorum rules apply, subject to subsections (15) and (17):
1. Eight members, including the chair, constitute a quorum.
 2. At least half the members present must be judges and at least four must be persons who are not judges.

REVIEW PANELS

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

Same

- (15) The following rules apply to a panel established under subsection (14):
1. The panel shall consist of two provincial judges other than the Chief Justice, a lawyer and a person who is neither a judge nor a lawyer.
 2. One of the judges, as designated by the Judicial Council, shall chair the panel.
 3. Four members constitute a quorum.

HEARING PANELS

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

Same

- (17) The following rules apply to a panel established under subsection (16):
1. Half the members of the panel, including the chair, must be judges, and half must be persons who are not judges.
 2. At least one member must be a person who is neither a judge nor a lawyer.
 3. The Chief Justice of Ontario, or another judge of the Court of Appeal designated by the Chief Justice, shall chair the panel.
 4. Subject to paragraphs 1, 2 and 3, the Judicial Council may determine the size and composition of the panel.

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

CHAIR

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

PARTICIPATION IN STAGES OF PROCESS

- (19) The members of the subcommittee that investigated a complaint shall not,
- (a) deal with the complaint under subsection 51.4 (17) or (18) or subsection 51.5 (8) or (10); or
 - (b) participate in a hearing of the complaint under section 51.6.

Same

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

EXPERT ASSISTANCE

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

SUPPORT SERVICES

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

Same

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

CONFIDENTIAL RECORDS

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

Same

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

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

EXCEPTIONS

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

PERSONAL LIABILITY

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

REMUNERATION

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

SECTION 50

COMPLAINT AGAINST CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

50. (1) If the Chief Justice of the Ontario Court of Justice is the subject of a complaint,
- (a) the Chief Justice of Ontario shall appoint another judge of the Ontario Court of Justice to be a member of the Judicial Council instead of the Chief Justice of the Ontario Court of Justice, until the complaint is finally disposed of;
 - (b) the Associate Chief Justice of the Ontario Court of Justice shall chair meetings and hearings of the Council instead of the Chief Justice of the Ontario Court of Justice, and make appointments under subsection 49 (3) instead of the Chief Justice, until the complaint is finally disposed of; and
 - (c) any reference of the complaint that would otherwise be made to the Chief Justice of the Ontario Court of Justice under clause 51.4 (13) (b) or 51.4 (18) (c), subclause 51.5 (8) (b) (ii) or clause 51.5 (10) (b) shall be made to the Chief Justice of the Superior Court of Justice instead of to the Chief Justice of the Ontario Court of Justice.

SUSPENSION OF CHIEF JUSTICE

(2) If the Chief Justice of the Ontario Court of Justice is suspended under subsection 51.4 (12),

- (a) complaints that would otherwise be referred to the Chief Justice of the Ontario Court of Justice under clauses 51.4 (13) (b) and 51.4 (18) (c), subclause 51.5 (8) (b) (ii) and clause 51.5 (10) (b) shall be referred to the Associate Chief Justice of the Ontario Court of Justice, until the complaint is finally disposed of; and
- (b) annual approvals that would otherwise be granted or refused by the Chief Justice of the Ontario Court of Justice shall be granted or refused by the Associate Chief Justice of the Ontario Court of Justice, until the complaint is finally disposed of.

COMPLAINT AGAINST ASSOCIATE CHIEF JUSTICE OR REGIONAL SENIOR JUDGE

(3) If the Associate Chief Justice of the Ontario Court of Justice or the regional senior judge appointed under clause 49 (2) (c) is the subject of a complaint, the Chief Justice of the Ontario Court of Justice shall appoint another judge of the Ontario Court of Justice to be a member of the Judicial Council instead of the Associate Chief Justice or regional senior judge, as the case may be, until the complaint is finally disposed of.

SECTION 51

PROVISION OF INFORMATION TO PUBLIC

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

Same

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

ASSISTANCE TO PUBLIC

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

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

TELEPHONE ACCESS

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

PERSONS WITH DISABILITIES

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

ANNUAL REPORT

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

TABLING

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

SECTION 51.1

RULES

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

1. Guidelines and rules of procedure for the purpose of section 45.
2. Guidelines and rules of procedure for the purpose of subsection 51.4 (21).
3. Guidelines and rules of procedure for the purpose of subsection 51.4 (22)
4. If applicable, criteria for the purpose of subsection 51.5 (2).
5. If applicable, guidelines and rules of procedure for the purpose of subsection 51.5 (13).

6. Rules of procedure for the purpose of subsection 51.6 (3).
7. Criteria for the purpose of subsection 51.6 (7).
8. Criteria for the purpose of subsection 51.6 (8).
9. Criteria for the purpose of subsection 51.6 (10).

REGULATIONS ACT

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

SECTIONS 28, 29 AND 33 OF SPPA

(3) Sections 28, 29 and 33 of the *Statutory Powers Procedure Act* do not apply to the Judicial Council.

SECTION 51.2

USE OF OFFICIAL LANGUAGES OF COURTS

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

Same

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

Same

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

- (a) to be given, before the hearing, French translations of documents that are written in English and are to be considered at the hearing;
- (b) to be provided with the assistance of an interpreter at the hearing; and
- (c) to be provided with simultaneous interpretation into French of the English portions of the hearing.

Same

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

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

BILINGUAL HEARING OR MEDIATION

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

PART OF HEARING OR MEDIATION

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

Same

(7) In a bilingual hearing or mediation,

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

Same

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

SECTION 51.3

COMPLAINTS

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

Same

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

Same

(3) If an allegation of misconduct against a provincial judge is made to any other judge or to the Attorney General, the other judge, or the Attorney General, as the case may be, shall provide the person making the allegation

with information about the Judicial Council's role in the justice system and about how a complaint may be made, and shall refer the person to the Judicial Council.

CARRIAGE OF MATTER

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

INFORMATION RE COMPLAINT

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

SECTION 51.4

REVIEW BY SUBCOMMITTEE

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

ROTATION OF MEMBERS

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

DISMISSAL

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

INVESTIGATION

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

EXPERT ASSISTANCE

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

INVESTIGATION PRIVATE

(6) The investigation shall be conducted in private.

NON-APPLICATION OF SPPA

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

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INTERIM RECOMMENDATIONS

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

Same

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

POWER OF REGIONAL SENIOR JUDGE

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

DISCRETION

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

EXCEPTION: COMPLAINTS AGAINST CERTAIN JUDGES

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

SUBCOMMITTEE'S DECISION

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

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

Same

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

CONDITIONS, REFERENCE TO CHIEF JUSTICE

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

REPORT

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

POWER OF JUDICIAL COUNCIL

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

Same

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

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

NON-APPLICATION OF SPPA

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

NOTICE TO JUDGE AND COMPLAINANT

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

GUIDELINES AND RULES OF PROCEDURE

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

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Same

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

SECTION 51.5

MEDIATION

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

CRITERIA

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

Same

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

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

LEGAL ADVICE

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

TRAINED MEDIATOR

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

IMPARTIALITY

(6) The mediator shall be impartial.

EXCLUSION

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

REVIEW BY COUNCIL

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

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

REPORT

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

REFERRAL TO COUNCIL

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

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

NON-APPLICATION OF SPPA

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

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NOTICE TO JUDGE AND COMPLAINANT

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

GUIDELINES AND RULES OF PROCEDURE

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

SECTION 51.6

ADJUDICATION BY COUNCIL

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

APPLICATION OF SPPA

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

RULES OF PROCEDURE

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

COMMUNICATION RE SUBJECT-MATTER OF HEARING

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

EXCEPTION

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

PARTIES

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

EXCEPTION, CLOSED HEARING

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

DISCLOSURE IN EXCEPTIONAL CIRCUMSTANCES

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

ORDERS PROHIBITING PUBLICATION

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

PUBLICATION BAN

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

DISPOSITIONS

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

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

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- (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.

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.

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Same

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

DISCLOSURE OF NAME

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

AMOUNT OF COMPENSATION

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

PAYMENT

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

SECTION 51.8

REMOVAL FOR CAUSE

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

- (a) a complaint about the judge has been made to the Judicial Council; and
- (b) the Judicial Council, after a hearing under section 51.6, recommends to the Attorney General that the judge be removed on the ground that he or she has become incapacitated or disabled from the due execution of his or her office by reason of,
 - (i) inability, because of a disability, to perform the essential duties of his or her office (if an order to accommodate the judge's needs would not remedy the inability, or could not be made because it would impose undue hardship on the person responsible for meeting those needs, or was made but did not remedy the inability),
 - (ii) conduct that is incompatible with the due execution of his or her office, or

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

TABLING OF RECOMMENDATION

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

ORDER FOR REMOVAL

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

APPLICATION

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

TRANSITION

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

SECTION 51.9

STANDARDS OF CONDUCT

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

DUTY OF CHIEF JUSTICE

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

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GOALS

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

1. Recognizing the independence of the judiciary.
2. Maintaining the high quality of the justice system and ensuring the efficient administration of justice.
3. Enhancing equality and a sense of inclusiveness in the justice system.
4. Ensuring that judges' conduct is consistent with the respect accorded to them.
5. Emphasizing the need to ensure the professional and personal development of judges and the growth of their social awareness through continuing education.

SECTION 51.10

CONTINUING EDUCATION

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

DUTY OF CHIEF JUSTICE

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

GOALS

- (3) Continuing education of judges has the following goals:
1. Maintaining and developing professional competence.
 2. Maintaining and developing social awareness.
 3. Encouraging personal growth.

SECTION 51.11

PERFORMANCE EVALUATION

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

DUTY OF CHIEF JUSTICE

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

GOALS

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

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

SCOPE OF EVALUATION

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

CONFIDENTIALITY

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

INADMISSIBILITY, EXCEPTION

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

APPLICATION OF SUBSS. (5), (6)

(7) Subsections (5) and (6) apply to everything contained in a judge's performance evaluation and to all information collected in connection with the evaluation.

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SECTION 51.12

CONSULTATION

51.12 In establishing standards of conduct under section 51.9, a plan for continuing education under section 51.10 and a program of performance evaluation under section 51.11, the Chief Justice of the Ontario Court of Justice shall consult with judges of that court and with such other persons as he or she considers appropriate.

SECTION 87

MASTERS

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

JURISDICTION

(2) Every master has the jurisdiction conferred by the rules of court in proceedings in the Superior Court of Justice.

APPLICATION OF SS. 44 TO 51.12

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

EXCEPTION

(4) The power of the Chief Justice of the Ontario Court of Justice referred to in subsections 44(1) and (2) shall be exercised by the Chief Justice of the Superior Court of Justice with respect to masters.

Same

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

Same

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

1. One of the members of the Judicial Council who is a provincial judge shall be replaced by a master. The Chief Justice of the Ontario Court of Justice shall determine which judge is to be replaced and the Chief Justice of the Superior Court of

Justice shall designate the master who is to replace the judge.

2. Complaints shall be referred to the Chief Justice of the Superior Court of Justice rather than to the Chief Justice of the Ontario Court of Justice.
3. Subcommittee recommendations with respect to interim suspension shall be made to the appropriate regional senior judge of the Superior Court of Justice, to whom subsections 51.4 (10) and (11) apply with necessary modifications.

Same

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

COMPENSATION

(8) Masters shall receive the same salaries, pension benefits, other benefits and allowances as provincial judges receive under the framework agreement set out in the Schedule to this *Act*.

SECTION 87.1

SMALL CLAIMS COURT JUDGES

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

FULL AND PART-TIME SERVICE

(2) The power of the Chief Justice of the Ontario Court of Justice referred to in subsections 44(1) and (2) shall be exercised by the Chief Justice of the Superior Court of Justice with respect to provincial judges to whom this section applies.

CONTINUATION IN OFFICE

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

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COMPLAINTS

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

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

APPLICATION OF SS. 51.9, 51.10, 51.11

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

SECTION 45

APPLICATION FOR ORDER THAT NEEDS BE ACCOMMODATED

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

DUTY OF JUDICIAL COUNCIL

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

UNDUE HARDSHIP

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

GUIDELINES AND RULES OF PROCEDURE

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

OPPORTUNITY TO PARTICIPATE

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

CROWN BOUND

(6) The order binds the Crown.

SECTION 47

RETIREMENT

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

Same

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

CONTINUATION OF JUDGES IN OFFICE

(3) A judge who has attained retirement age may, subject to the annual approval of the Chief Justice of the Ontario Court of Justice, continue in office as a full-time or part-time judge until he or she attains the age of seventy-five years.

SAME, REGIONAL SENIOR JUDGES

(4) A regional senior judge of the Ontario Court of Justice who is in office at the time of attaining retirement age may, subject to the annual approval of the Chief Justice, continue in that office until his or her term (including any renewal under subsection 42 (9)) expires, or until he or she attains the age of seventy-five years, whichever comes first.

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SAME, CHIEF JUSTICE AND ASSOCIATE CHIEF JUSTICES

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

Same

(6) If the Judicial Council does not approve a Chief Justice or associate chief justice continuation in that office under subsection (5), his or her continuation in the office of provincial judge is subject to the approval of the Judicial Council and not as set out in subsection (3).

CRITERIA

(7) Decisions under subsections (3), (4), (5) and (6) shall be made in accordance with criteria developed by the Chief Justice and approved by the Judicial Council.

TRANSITION

(8) If the date of retirement under subsections (1) to (5) falls earlier in the calendar year than the day section 16 of the *Courts of Justice Statute Law Amendment Act, 1994* comes into force and the annual approval is outstanding on that day, the judge's continuation in office shall be dealt with in accordance with section 44 of this Act as it read immediately before that day.



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The Ontario Judicial Council (the “Council”), pursuant to sections 51.4(18) and 51.6 of the *Courts of Justice Act*, R.S.O. 1990, c. 43, as amended, conducted a hearing in relation to The Honourable Madam Justice Lesley M. Baldwin on April 3, 2002.

In addition to the evidence and the oral submissions of counsel on that date, written submissions were filed by Presenting Counsel, Mr. Hunt, and Counsel for Madam Justice Baldwin, Mr. Levy.

THE FACTS

An agreed statement of facts was filed at the hearing. Those facts are summarized as follows:

In November of 1998, the Attorney General, on behalf of the Government of Ontario, announced the establishment of a Joint Committee on Domestic Violence (“the Committee”). The Committee was struck in response to the recommendations arising from the Coroner’s Inquest into the murder of Arlene May, a victim of domestic violence, and the suicide of Randy Iles, the perpetrator of that violence.

The Attorney-General Charles Harnick established the following terms of reference for the Committee:

The Joint Committee on the Inquest touching the deaths of Arlene May and Randy Iles is established in accordance with the following terms of reference:

- 1) To review the jury recommendations and advise the Attorney General on their implementation which will include:
 - a) providing advice to the Attorney General on setting priorities relating to the creation of domestic violence services and programs;
 - b) providing advice to the Attorney General on the extent to which existing and planned programs are in keeping with the jury’s recommendations;
 - c) providing advice to the Attorney General on the extent to which existing and planned programs serve to provide a seamless domestic violence program across Ontario;
 - d) providing advice to the Attorney General on mechanisms required to provide ongoing monitoring of the programs and services developed in response to the jury’s recommendations.
- 2) To consult with experts, victims, members of culturally and regionally diverse groups and other stakeholders and service providers as required to fulfill these terms of reference.

In the fall of 1998, Attorney General Harnick contacted then Chief Judge Sidney Linden and specifically requested

that Chief Judge Linden permit Justice Baldwin to serve as Chair of the Committee. After speaking with Justice Baldwin, Chief Judge Linden gave his permission for Justice Baldwin to take a temporary leave of absence as a sitting Judge to Chair the Committee. Justice Baldwin accepted the position.

Former Chief Judge Sidney Linden, former Associate Chief Judge – Coordinator of Justices of the Peace Marietta Roberts and former Regional Senior Judge Anton Zuraw met with Justice Baldwin to discuss the request that she serve as Chair of the Committee. They cautioned her as they would caution any judge in her position that she would have to be careful with respect to what she said as a member and as Chair of the Committee because of her role as a judge.

Justice Baldwin was granted a temporary leave of absence as a sitting judge of the Ontario Court of Justice from January 1999, for a period of approximately six months, and then extended to nine months, in order to serve as Chair of the Committee. Justice Baldwin’s leave of absence commenced on January 8, 1999 and ended in mid-August 1999. During this period the Ministry of the Attorney General provided special funding to the Ontario Court of Justice to support a *per diem* sitting judge to replace Justice Baldwin.

In addition to Justice Baldwin, the Committee was composed of community experts in the field of domestic violence prevention and senior government officials. The community experts on the Committee were Marilyn Struthers, Vivien Green, Dr. Peter Jaffe, and Roz Roach. The Government members of the Joint Committee were Assistant Deputy Ministers from the Ministry of the Attorney General, the Ministry of the Solicitor General, the Ministry of Correctional Services, the Ministry of Community and Social Services, and the Ontario Women’s Directorate.

In fulfilling its terms of reference, the Committee worked with staff of various government ministries, heard about a wide range of domestic violence initiatives that are currently in place, and provided advice on initiatives that were in the process of development or implementation. The Committee consulted with a number of stakeholders and invited various community experts to meetings to share their knowledge and insights regarding specific jury recommendations.

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The Committee's final report (the "Report") was signed and was formally submitted to Attorney General James Flaherty on behalf of the Government of Ontario, on August 12, 1999.

The Report was signed by the members of the Committee including Justice Baldwin. Justice Baldwin signed the report personally above the following "Judge Lesley Baldwin (Chair)".

The Report identified strategies for implementing the 213 recommendations of the jury in the May/1999 inquest, organized under four categories: 1) Essential Common Services; 2) Effective Justice System Response; 3) Achieving Seamlessness; 4) Funding and Planning Priorities.

Subsequent to the submission of the Report, Justice Baldwin returned to her duties as a sitting judge and the Ministry of the Attorney General ceased providing special funding to the Ontario Court of Justice to support Justice Baldwin's replacement.

In or about September 1999, Justice Baldwin sought permission from the Attorney General to refer to the Report at an international conference on domestic violence. The Assistant Deputy Minister of Family Justice Services, Angela Longo, granted permission to Justice Baldwin, on behalf of the Attorney General.

In or about May 2000, Justice Baldwin contacted the Acting Director of the Domestic Violence Work Team at the Ministry of the Attorney General, Linda Spears, seeking an electronic copy of the Report. Justice Baldwin indicated that she understood that funding was going to be sought from the Trillium Foundation for the printing of the Report in an easy to read format.

By letter dated July 5, 2000, four former members of the Committee, Roz Roach, Marilyn Struthers, Vivien Green and Dr. Peter Jaffe, wrote to Justice Baldwin as "... community members of the Joint Committee on Domestic Violence to request immediate action." (the "July 5th Letter").

In the July 5th Letter the former members made the following request:

"We respectfully request that you approach the Minister of the Attorney General as our Chair, in order to ask for two immediate actions:

- 1) *The first initiative relates to a reprinting and re-release of 2,000 copies of the Joint Committee Report. (We would be prepared to undertake this reprinting with a printer in London, who has costed this work.) This action would include:*
 - *reformatting the report to make it easier to read, more user-friendly, with a new cover*

- *reprinting 2,000 copies of the report in the new format*
- *distributing the report to all organizations throughout the province affected by the implementation plan.*

- 2) *Secondly, we would like to explore the possibility of the Attorney General joining as a partner with a*

number of other charitable foundations and private sector companies to host a Summit on Woman Abuse in October/November 2000. Given the extensive research and documentation that has been contemplated in the last few years, yet the ongoing risk/abuse and murder that woman victims and their children continue to experience, the purpose of the Summit is to continue to highlight the issue of abuse and to promote actions and implementation of necessary changes. At this point we are looking at pulling together two representatives (one from the criminal justice system and one from a community service) from each of the 54 court catchments areas. The agenda for this Summit would be to discuss progress and issues related to woman abuse in each community in order to maintain a public focus on the critically important issue.

We are very interested in creating an opportunity for collaborative analysis and planning to take place through a provincial gathering such as the summit and already know of a least one foundation that is very interested in participating.

By letter dated July 7, 2000, on judicial letterhead, Justice Baldwin forwarded the July 5th Letter to the Attorney General for Ontario, The Honourable James M. Flaherty. Justice Baldwin copied the letter to Trinela Cane, Murray Segal, Dr. Peter G. Jaffe, Vivien Green, Marilyn Struthers and Roz Roach. The letter states as follows:

RE: WORK OF THE JOINT COMMITTEE ON DOMESTIC VIOLENCE

Please find attached a letter I received from the community members of the Joint Committee on Domestic Violence.

I endorse their requests and can add parenthetically, that I have observed no noticeable change in the manner in which counsel are approaching these difficult cases in the criminal courts in which I preside.

I am willing to meet with you again to discuss the 5 year plan our committee prepared if this would be of assistance.

By letter stamped July 24, 2002, The Honourable James Flaherty responded to the July 7th Letter of Justice Baldwin.

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His letter states, in part:

“ . . . Thank you again for raising these issues with me. My scheduler, Agnes Vanya, will contact your office directly to arrange a meeting for us. I look forward to discussing the proposals put forward on behalf of the community members of the Joint Committee.”

On or about July 31, 2000, Justice Baldwin and three members of the former Committee, Trinela Cane (ADM Planning and Policy, Solicitor General and Correctional Services and Executive Lead, Victim Strategy), Dr. Peter Jaffe and Vivien Green, met with Attorney General Flaherty and Joanna Kuras, the Executive Lead, Victim Services Division, Ministry of the Attorney General. The purpose of the meeting with to re-brief the Attorney General on the work of the Committee.

THE COMPLAINT

The complaint is that Madam Justice Baldwin acted in a manner which was incompatible with the due execution of the duties of her office, and by such misconduct brought the administration of justice into disrepute.

Specifically, the misconduct is described by Presenting Counsel Mr. Hunt to be the continuing contact with Executive Branch over matters of government policy affecting the area of criminal justice administration beyond the time frame during which permission had been granted for Justice Baldwin to assist the Executive Branch – thereby aligning herself with initiatives or strategies that were being presented by a particular group. Such conduct raised questions with respect to her ability to remain impartial and independent on issues that might come before her.

MISCONDUCT

“Judicial Misconduct” is not defined in the *Courts of Justice Act*.

Presenting Counsel, Mr. Hunt, has submitted, in our view correctly, that a determination of judicial misconduct must be made by way of a legal analysis.

One source for such an analysis would be the *Principles of Judicial Office* – a document prepared under the auspices of the Chief Justice of the Ontario Court of Justice.

This document is not a set of rules. Rather it is a guide to assist judges in addressing ethical and professional dilemmas – as well as in assisting the public to understand the reasonable expectations which the public may have of judges in the performance of judicial duties and in the conduct of their professional lives.

At page 4, under the heading The Judge in the Community, it notes, under 3.2:

Judges must avoid any conflicts of interest or the appearance of any conflict of interest in the performance of their judicial duties.

And the commentary states:

Judges must not participate in any partisan political activity.

Both counsel also referred to Ethical Principles for Judges published by the Canadian Judicial Council.

It, too, is a set of “principles” which addresses ethical issues for judges as they live and work in their communities.

Under the heading Impartiality the “Statement” reads:

Judges must be and should appear to be impartial with respect to their decisions and decision-making.

The third “General Principle” under that heading states:

The appearance of impartiality is to be assessed from the perspective of a reasonable, fair-minded and informed person.

Under the heading *Judicial Independence* the “Statement” is:

An independent judiciary is indispensable to impartial justice under law. Judges should, therefore, uphold and exemplify judicial independence in both its individual and procedural aspects.

Commentary number five under that heading states as follows:

Given the independence accorded judges, they share a collective responsibility to promote high standards of conduct. The rule of law and the independence of the judiciary depend primarily upon public confidence. Lapses and questionable conduct by judges tend to erode that confidence . . . Public acceptance of and support for court decisions depends upon public confidence in the integrity and independence of the bench. This, in turn, depends upon the judiciary upholding high standards of conduct.

Commentary number eight reads:

Judges are asked frequently to serve as inquiry commissioners. In considering such a request, a judge should think carefully about the implications for judicial independence of accepting the appointment. There are exam-

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ples of Judicial Commissioners becoming embroiled in public controversy and being criticized and embarrassed by the very governments which appointed them. The terms of reference and other conditions such as time and resources should be examined carefully so as to assess their compatibility with the judicial function.

In keeping with these principles, and the commentaries, Mr. Hunt submits that the test for misconduct must be a broadly similar test to that which the courts have developed to protect judicial independence – because judicial independence and impartiality are the two cornerstones which underlie statements made by courts, and by judicial regulatory bodies in which the issue of conduct, or misconduct, is discussed.

Section 51.6(11) of the *Courts of Justice Act* authorizes the Council to make a broad range of dispositions if it finds that a judge has been guilty of misconduct.

The Council may:

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

The issue is – what is necessary to constitute misconduct within the meaning of that section.

In two recent cases, *Therrien v. Minister of Justice et al.* (2001), 155 C.C.C. (3d) 1, and *Moreau – Berube v. New Brunswick (Judicial Council)*, 2002 S.C.C. 11, the Supreme Court of Canada considered the requirements for judicial misconduct albeit in the context of statutes in other provinces that did not have the full range of alternative dispositions found in s. 51.6(11). Nonetheless, in our view the test set out by the Supreme Court is applicable to findings of misconduct under the Ontario Statute.

In *Moreau – Berube v. New Brunswick (Judicial Council)*, the Supreme Court discussed the tension between judicial accountability and judicial independence. Judges must be

accountable for their judicial and extra-judicial conduct so that the public have confidence in their capacity to perform the duties of office impartially, independently and with integrity. When public confidence is undermined by a judge's conduct there must be a process for remedying the harm that has been occasioned by that conduct. It is important to recognize, however, that the manner in which complaints of judicial misconduct are addressed can have an inhibiting or chilling effect on judicial action. The process for reviewing allegations of judicial misconduct must therefore provide for accountability without inappropriately curtailing the independence or integrity of judicial thought and decision-making.

The purpose of judicial misconduct proceedings is essentially remedial. The dispositions in s. 51.6(11) should be invoked, when necessary in order to restore a loss of public confidence arising from the judicial conduct in issue.

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

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

HAS THERE BEEN MISCONDUCT HERE?

The complaint relates specifically to the July 7th Letter from Madam Justice Baldwin, on judicial letterhead, to the Attorney-General.

The issue is therefore whether the “sending” of the letter and its contents are so seriously contrary to the impartiality, integrity and independence of the judiciary that they would undermine the public's confidence in the ability of the judge to perform the duties of her office, or the public's confidence, generally, in the administration of justice, and necessitate a disposition under s. 51.6(11) of the Act.

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From the perspective of public confidence – these facts are relevant:

- Madam Justice Baldwin was given permission by her Chief Justice to serve as Chair of the Committee.
- Nothing in the Report submitted by the Committee indicates that specific sentences should be imposed in domestic violence cases.
- Nothing in the Report says that the presumption of innocence or the doctrine of reasonable doubt should be any different with respect to cases alleging domestic abuse.
- Nothing in the Report suggests changes to the rules of evidence to make it easier for the Crown to obtain a conviction.
- The July 7th Letter does not add anything to, or advocate anything different from the contents of the Report in relation to the administration of justice. The comment by Justice Baldwin that “... she has observed no noticeable change in the manner in which counsel are approaching these difficult cases in the criminal courts in which I preside” does not make reference to anything specific – either in relation to the contents of the Report, or to the administration of justice generally.
- Madam Justice Baldwin, through her counsel, has expressed her regret that the July 7th Letter has been interpreted by anyone as an indication that there would be partiality on her part in domestic abuse cases. She has stated to the Council that this was not her intention.

We note as well that Justice Baldwin did not intend that the letter receive public notice. It was not written with a view to bringing public pressure on the government. There is no effort by Justice Baldwin to politically embarrass the government for not acting on the Committee’s report. The fact that the letter did reach the public domain was not the result of Justice Baldwin’s actions. In our view, the writing of the letter was more in the nature of a reaffirmation by Justice Baldwin of the views earlier expressed in the Committee’s report.

Having reviewed the specific details of the complaint from the perspective of the “reasonable, fair-minded, informed member of the public”, in the context of the *Principles of Judicial Office*, and the test set out above, the Council concludes there has been no misconduct.

We note that forwarding the letter from her Committee members on her judicial stationery may not have been the most appropriate way for the Committee to follow-up with the Attorney-General. The Council determines therefore that the complaint was not altogether unfounded, but in our view, neither the use of judicial stationery to attach the Committee members’ requests nor the parenthetical comment by Madam Justice Baldwin is so seriously contrary to the impartiality, integrity and independence of the judiciary that a finding of misconduct is warranted.

The complaint is, therefore, dismissed.

Having regard to section 51.7(5) of the *Courts of Justice Act*, we shall recommend to the Attorney General that Madam Justice Baldwin be compensated for her costs for legal services.

We wish to receive written submissions from counsel on the issue of the amount of compensation, pursuant to section 51.7(7) of the Act. Counsel for Madam Justice Baldwin will present written submissions within seven (7) days of the release of this decision, and the response from Presenting Counsel, if any, will be provided within seven (7) days thereafter.

DATED at the City of Toronto, in the Province of Ontario this 10th day of May, 2002.

The Honourable **DENNIS R. O’CONNOR**
Associate Chief Justice of Ontario

The Honourable Madam Justice **D.K. LIVINGSTONE**
Ontario Court of Justice

MR. HENRY GRANT WETELAINEN

MR. JULIAN PORTER, Q.C.

