



NINTH ANNUAL REPORT

2003 – 2004

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, 2005

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 ninth 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, 2003 to March 31, 2004.

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, 2003 to March 31, 2004.

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 the 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.



NINTH OJC ANNUAL REPORT

2003 – 2004

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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 ninth year of operation (April 1, 2003 to March 31, 2004) 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. (to June 26, 2003)(Toronto)

Frank Marrocco, Q.C. (from June 26, 2003).....(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

JOCELYNE COTÉ-O'HARA (from May 28, 2003) .(Toronto)
President, CORA Group

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

Subsection 49(3) of the *Courts of Justice Act* permits the Chief Justice of the Ontario Court of Justice to appoint a provincial judge to be a temporary member of the Ontario Judicial Council to meet the quorum requirements of the legislation with respect to Judicial Council meetings, review panels and hearing panels. The following 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 ninth 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
(on parental leave to May 5, 2003)

ANA BRIGIDO – Acting Assistant Registrar
(to May 5, 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 2003–2004 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. 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.

7. The Complaints Procedure

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

Once the investigation is completed, the complaint subcommittee may recommend the complaint be dismissed, refer it to the Chief Justice of the Ontario Court of Justice for an informal resolution, refer the complaint to mediation or refer the complaint to the Judicial Council, with or without recommending that it hold a hearing. The decision of the complaint subcommittee must be unanimous. If the complaint subcommittee members cannot agree, the complaint subcommittee shall refer the complaint to the Council to determine what action should be taken.

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

The Council (or a review panel thereof), will review 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.

8. Summary of Complaints

The Ontario Judicial Council received 55 complaints in its ninth year of operation, as well as carrying forward 34 complaint files from previous years. Of these 89 complaints, 54 files were closed before March 31, 2004, leaving 35 complaints to be carried over into the tenth year of operation.

Five of the 35 complaint files that were carried over into year 10, involved a referral of the complaint to the Chief Justice of the Ontario Court of Justice, Brian W. Lennox, or to the Chief Justice of the Superior Court of Justice, Heather Smith. The time required for the Chief Justice involved to meet with the judge and to make his or her report to the Review Panel extended beyond March 31st, 2004. Seven of the complaint files were carried over due to unavoidable delays caused by added steps taken in the investigative process (for example, some complainants took a long time to respond to requests for further information). There was also insufficient time before the last meeting of Council in Year 9 to complete the investigation in the 19 files opened near the end of Year 9. The final 2 files that were carried over to Year 10 were two

files which had been opened in Year 8, carried over into Year 9 and further carried over into Year 10. Both files had been ordered to a public hearing and hearing dates could not be arranged in Year 9. Both of those complaint files will be reported in Year 10.

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.

Fifty of the 54 complaint files closed were dismissed by the Judicial Council.

Seventeen of the 50 complaint files dismissed by the Ontario Judicial Council during the period of time covered by this report were found to be outside the jurisdiction of the Council. These files typically involved a complainant who expressed dissatisfaction with the result of a trial or with a judge's decision, but who made no allegation of misconduct. While the decisions made by the trial judge in these cases could be appealed, the absence of any alleged misconduct meant that the complaints were outside the jurisdiction of the Judicial Council.

The remaining 33 of the 50 complaint files that were dismissed by the OJC contained allegations of judicial misconduct including allegations of improper behaviour (rudeness, belligerence, etc.), lack of impartiality, conflict of interest or some other form of bias. The allegations contained in each of these files were investigated by a complaint subcommittee and determined to be unfounded.

The remaining four complaint files that were closed in the ninth year of operation, had been referred to the Chief Justice of the Ontario Court of Justice, Brian W. Lennox, to speak to the judge in question (file nos. 07-027/01, 07-035/02, 07-047/02 and 07-048/02).

9. Case Summaries

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

Files are given a two-digit prefix indicating the year of Council's operation in which they were opened, followed by a sequential file number and by two digits indicating the calendar year in which the file was opened (i.e., file no. 09-014/03 was the fourteenth file opened in the ninth year of operation and was opened in calendar year 2003.).

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

FISCAL YEAR:	99/00	00/01	01/02	02/03	03/04
Opened During Year	59	55	52	49	55
Continued from Previous Year	59	52	44	33	34
Total Files Open During Year	118	107	96	82	89
Closed During Year	66	63	63	48	54
Remaining at Year End	52	44	33	34	35



CASE SUMMARIES

CASE NO. 06–054/00

The complainant attended court as an agent for the defendant in a Small Claims Court matter. The complainant alleged she was the subject of abusive behaviour by the presiding judge. The complainant stated that the judge shouted at her and she felt humiliated because of her accent. The complainant stated that she had attended court for similar matters in the past as part of her occupation and is “accustomed to the way certain judges may get impatient with different parties”. However, the complainant advised that this was not a typical experience and she was “shocked and disheartened by the way [the judge]...humiliated me in front of the other people attending”.

The complaint subcommittee reviewed the transcript and the audiotape of the proceedings and asked the judge for a response. The judge’s response indicated that, because the court proceedings took place almost two years previous to the request for a response, the judge was unable to recall the case and was not able to offer any comment. However, the complaint subcommittee reported that the judge indicated it was not the court’s intention to intimidate, demean or humiliate any party appearing in court and if that had been the impression created, the judge sincerely apologized.

The complaint subcommittee reported that it was of the view that this complaint should be dismissed because there was no evidence supporting the complainant’s allegations that she was humiliated regarding her accent. The complaint subcommittee also reported that, although the judge did sometimes speak in a loud voice, and the tone of voice did reflect the judge’s

displeasure on occasion, the judge’s conduct fell short of misconduct and that aspect of the complaint should also be dismissed. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 07–027/01

The complainant is a lawyer who stated that he had appeared numerous times before the judge complained about and alleged that “it is not at all unusual for [the judge] to be intemperate and discourteous to counsel, staff, accused, police, and witnesses.” The complainant indicated in his complaint that counsel always have “the fear of prejudicing the case of the client appearing before the judge on that date and also fear of ramifications in the future”.

The complainant stated that the judge’s conduct “poisons the sanctity of the court room. It destroys the appearance of justice. It shakes the public faith in our system of law”. The complainant provided copies of numerous transcripts to the Council for their review and was joined by another lawyer in support who also sent in several transcripts as examples of the conduct complained about.

The complaint subcommittee reviewed all the material provided and asked the judge for his response to the complaints. The judge’s counsel acknowledged that, on occasion, the judge’s remarks may have been insensitive and his tone of voice may have been intemperate, and somewhat acerbic. The judge’s counsel also acknowledged that the judge sometimes used colorful language but he did not intend to disparage or do harm



CASE SUMMARIES

and he regretted making certain of the comments that were brought to his attention.

After reviewing all of the material before them, together with the judge's response, the complaint subcommittee recommended that this matter, in conjunction with two other similar complaints received (File Nos. 07-047/02 & 07-048/02), be referred to the Chief Justice of the Ontario Court of Justice, Brian W. Lennox. The review panel agreed with the complaint subcommittee's recommendation. The Chief Justice met with the judge for the purpose of addressing the concerns expressed by the complainants and reported back to the review panel. In his report, the Chief Justice indicated that he was satisfied that the judge acknowledged that his remarks and conduct were inappropriate and unacceptable and that the judge expressed sincere regret. The Chief Justice recommended that the matter be closed. The members of the review panel indicated their satisfaction with the report of the Chief Justice and agreed with the recommendation that this matter be closed.

CASE NO. 07-034/01

The complainant advised the OJC that he had appeared in court sometime in 1998, and reported that he was refused a Firearms Acquisition Certificate (FAC) by the presiding judge. The complainant alleged that the judge "biased" his case by not allowing him to present himself "as a person with the education of a Conservation Officer", which the complainant felt was an important point. Since the appearance in 1998, the complainant advised that he had written to the Governor General, the Justice

Minister, the Prime Minister and the Queen regarding his complaint. The complainant was asked, both verbally and in writing, to provide the Ontario Judicial Council with the specific court date, time and location of his court appearance so that a transcript of the hearing could be obtained. The complaint subcommittee reported that the requested information was not provided and no further investigation could be conducted. The review panel agreed with the complaint subcommittee that the complaint be dismissed, subject to it being re-opened if the complainant provided the requested information. The complaint subcommittee subsequently reported that they had been given the information sought and were able to order and review a transcript of the hearing. The complaint subcommittee reported that the complainant was not represented by counsel at the hearing and as a result, the judge allowed him leeway in his examination and cross-examination of witnesses and assisted him in presenting evidence. The complaint subcommittee was of the view that the complaint should be dismissed as the hearing was fair and the complainant was given time and opportunity to present his case. The complaint subcommittee reported that there was no judicial misconduct on the judge's part in making the decisions she did in this case and, as a result, the complaint is outside the jurisdiction of the Ontario Judicial Council. The complaint subcommittee further reported that the complainant has since written to the Ontario Judicial Council asking that his complaint be withdrawn. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.



CASE SUMMARIES

CASE NO. 07-035/02

The complainant was the respondent on an application for increased support payments which had been brought by his wife. The complainant alleged that the judge who heard the application favoured his spouse because of the judge's preconceptions in relation to the complainant's employment and the fact that he made comments in the courtroom regarding the complainant's employment that were "unprofessional" and "very rude".

The complaint subcommittee ordered and reviewed the transcript of the court proceedings and as a result asked the judge in question to respond to the complainant's concerns regarding the comments that he had made in court in relation to the complainant's employment. The judge in question responded to the complaint and clearly apologized for making the inappropriate comments in court and acknowledged that his language was "unacceptable". The complaint subcommittee recommended that the complaint be referred to the Chief Justice of the Ontario Court of Justice, Brian W. Lennox to speak to the judge regarding it. The review panel agreed with the complaint subcommittee's recommendation. The Chief Justice met with the judge for the purpose of addressing these concerns and reported back to the review panel.

In his report, the Chief Justice indicated he was satisfied that the judge acknowledged that his remarks were inappropriate and that the judge clearly regretted them. At the request of the Chief Justice, the judge wrote a letter of apology, which was forwarded to the review panel for its consideration. The members of the review panel were

satisfied with the report of the Chief Justice and agreed with his recommendation that this matter be closed.

CASE NO. 07-047/02 & 07-048/02

This case involved a Young Offender who appeared in court on a charge of theft. There are two separate complaints (one from the father of one of the accused and the other from a friend of the family who attended court with the father). Both complainants alleged that the trial judge made rude, belittling and demeaning comments about the Young Offender's parents during the court proceedings.

The complaint subcommittee ordered and reviewed the transcript of the court proceedings and reported that the judge did make the comments outlined in the letters of complaint. The complaint subcommittee noted that the judge apologized in court for referring to the Young Offender's parents as "drunks" when the Young Offender's lawyer objected to his use of that term. The complaint subcommittee also noted that the Young Offender's lawyer brought a pre-sentence report to the judge's attention. The complaint subcommittee noted that the pre-sentence report stated that the parents of the accused Young Offender had been sober for ten years. The complaint subcommittee recommended that these complaints, together with the complaints contained in OJC File 07-027/01 be referred to the Chief Justice of the Ontario Court of Justice, Brian W. Lennox to speak to the judge about them. The review panel agreed with the complaint subcommittee's recommendation.



CASE SUMMARIES

The Chief Justice met with the judge for the purpose of addressing these concerns and reported back to the review panel. In his report, the Chief Justice indicated that he was satisfied that the judge acknowledged that his remarks and conduct were inappropriate and unacceptable and that the judge expressed sincere regret for them. The Chief Justice recommended that the matter be closed. The members of the review panel were satisfied with the report of the Chief Justice and agreed with the recommendation that this matter be closed.

CASE NO. 07-050/02

The complainant appeared, without counsel, before the subject judge in Family Court. The complainant alleged that the subject judge shouted at him and was rude to him during the hearing. The complainant was in court to respond to an application for a restraining order that had been brought by his wife.

The complaint subcommittee reviewed the complaint and requested and received a copy of the transcript and audiotape of the proceeding. In addition, the subcommittee requested a response from the judge to address the allegations contained in the letter of complaint. The judge advised that he did not recall the particular incident or the complainant and referred the subcommittee to the transcript for an account of the proceeding. The complaint subcommittee listened to the audiotape and read the transcript and reported to the review panel that the judge did raise his voice when speaking to the complainant, but in their view it was justified in order for the judge to be heard above the yelling

of the complainant. The complaint subcommittee recommended that, although the judge did sometimes speak in a loud voice, the judge's conduct fell short of misconduct and the complaint should be dismissed. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 08-008/02

The complainant appeared in court with an agent for the purpose of bringing forward certain motions in a Small Claims Court action. When the complainant's legal representative was unable to respond to the judge's questions in relation to one of the motions, the complainant advised that she replied on her agent's behalf. The complainant alleged that, when she responded, the judge "flew into an unreasonable rage" and became rude and abusive towards her. The complainant also alleged that the judge threatened to call security if the complainant did not leave the court. The complainant asked the Judicial Council to "do justice" to prevent the judge engaging in such actions again, in addition to seeking the Council's advice on whether the judge in question can be sued for discrimination, embarrassment and suffering resulting from the judge's behaviour.

The complaint subcommittee ordered and reviewed the transcript and audiotape of the hearing. In the view of the complaint subcommittee, the presiding judge was assertive at times, but the conduct was not inappropriate and did not equate to judicial misconduct. The review panel asked the subcommittee to do further investigation into this complaint.



CASE SUMMARIES

The complaint subcommittee asked the judge to respond to the allegations made. In the response to the complaint subcommittee the judge advised that the only recollection of the complainant the judge had was that of a ‘very upset and aggressive woman who interrupted and was very loud’ and who came back into the courtroom later in the day and screamed at the judge from the back of the courtroom. The complaint subcommittee again recommended that this complaint be dismissed because in its view the conduct of the judge was not inappropriate and did not amount to judicial misconduct. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 08–010/02

The complainant alleged that the judge who presided over his Family Court proceeding was biased and prejudiced because he relied on the advice of a Family Responsibility Office (F.R.O.) lawyer. The complainant further alleged that the judge refused to permit him to speak in court because he was not represented by a lawyer.

The complaint subcommittee reviewed the complaint and requested and received a copy of the transcript of the proceeding. The complaint subcommittee reported that the lawyer acting for the F.R.O. reviewed the background and nature of the proceedings for the court before evidence was called. The complaint subcommittee advised that this was done to assist both the judge and the complainant, so everyone could be clear what the hearing was about.

The complaint subcommittee further advised that the only time the F.R.O. lawyer offered what might be termed “advice” was at the conclusion of the hearing when the judge was drafting a repayment scheme for the arrears and the F.R.O. lawyer assisted the court in understanding what orders were already in place. The complaint subcommittee noted that the judge explained to the complainant that this advice was helpful to him so the complainant would not be incarcerated in perpetuity if arrears were not paid.

The complaint subcommittee also reported that the transcript revealed that the judge allowed the complainant to give evidence, and to explain his responses to the questions in cross-examination, even though the responses were often wordy and irrelevant. The complaint subcommittee advised that the judge explained to the complainant the issues he should address in his final argument, allowed him to present a final position, only interjected to help the complainant focus his argument, and then gave the complainant an opportunity to respond.

It was the view of the complaint subcommittee that the judge was patient and helpful to the complainant and the transcript did not support the allegations that the complainant was not permitted to speak. The complaint subcommittee further reported that the transcript did not demonstrate any bias or prejudice by the judge in question. The complaint subcommittee recommended that this complaint be dismissed. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.



CASE SUMMARIES

CASE NO. 08–015/02

The complainant is an agent who appeared on behalf of his client in a Small Claims Court matter. The complainant alleged that the judge told him to sit down in a condescending manner and further commented that, “in twenty-one years [the judge had] not encountered anyone as incompetent as himself”. The complainant said that the judge was not impartial when delivering the ruling and the judge was “yelling, screaming and defamatory in all instances”. The complainant advised that his client’s case was prejudiced by the judge’s alleged animosity towards him.

The complaint subcommittee ordered and reviewed the transcript and audiotape of the proceedings. The complaint subcommittee reported that the comments attributed to the judge by the complainant had not been made. The complaint subcommittee also noted that the judge’s voice was raised on occasion but, in their view, there was no judicial misconduct. As a result, the complaint subcommittee recommended that this complaint be dismissed. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 08–023/02

The complainant was before the court charged with a criminal offence and reported that at her trial in August of 1995 she was not allowed to speak up in her own defence. The complainant also advised that “the deceased’s family were very noisy during the trial” and she got a “harsh sentence”. The complainant further reported that her incarceration was unpleasant and she was subjected to humiliating treatment while in jail.

The complaint subcommittee reviewed the complaint and requested the transcripts of the proceeding. Court Services advised that, due to the passage of time since the trial (seven years), the records were no longer available and therefore no transcript could be obtained. The complainant was advised that no transcript was available and was asked for further information regarding her complaint. The complaint subcommittee waited six months for a response to this request for further information before making their report to the review panel.

The complaint subcommittee recommended that the complaint be dismissed as no objective evidence could be found to corroborate the allegations that the complainant was not allowed to speak up at her trial. The complaint subcommittee noted from the complainant’s letter that she had legal representation at her trial. The complaint subcommittee were of the view that the “harshness” of the sentencing is properly the subject matter of an appeal and not within the jurisdiction of the OJC. Similarly, the complaint subcommittee reported that the unpleasantness of the complainant’s incarceration is not within the Ontario Judicial Council’s jurisdiction to review. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 08–029/02

The complainant is the maternal grandfather of a nine year old boy and was in court to seek increased access to his grandson. The complainant’s daughter (the mother of the child) suffers from a psychotic disorder and is unable to take care of her



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son. The father of the child, who was originally granted custody of the boy when the parents separated, suffered a debilitating stroke and was unable to take care of his son. As a result, his brother, the child's uncle, was awarded custody. The complaint subcommittee advised that it is evident from the complainant's letters that he despises this man. The complainant's application for increased, unsupervised access to his grandson took the form of a trial which lasted 19 days over the course of almost three years and the complainant's application was ultimately unsuccessful. The complainant alleged that the judge who heard his application was rude, discourteous, refused to listen to tapes submitted into evidence by the complainant and removed evidence from the court file.

The complainant provided copies of the pleadings, and excerpts of the evidence from his application for increased access. The complaint subcommittee ordered and reviewed the transcript of the court proceedings. The complaint subcommittee reported that, in its view, all the material illustrated that the complainant's real issues were not with the judge but with all that has happened in his relationships with his family. The complaint subcommittee reported that the judge in question was patient, courteous and compassionate towards the complainant and that he not only listened to, but considered all the evidence, and did not remove evidence from the court file as the complainant alleged. Further, the complaint subcommittee reported that although the complainant represented himself at times during the lengthy trial, the material confirmed the judge was flexible and fair to the complainant throughout the proceedings.

The complaint subcommittee was of the view that the complainant was simply unhappy with the judge's decision on access. The complaint subcommittee recommended that the complaint be dismissed because in its view there was no evidence of judicial misconduct by the judge. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 08-032/02

The complainant wrote to the OJC to advise that he was charged with indecent assault and tried and convicted for a crime that he did not commit. The complainant reported that he was "convicted by the actions of a judge, a crown attorney and my own lawyer who conducted a trial on falsified evidence and also on falsified evidence by omission." The complainant went on to make multiple allegations against his lawyer, the crown attorney, the police and the trial judge with regard to an assault peace officer conviction and other unrelated matters that occurred several years previously. The complainant alleged that the judge improperly convicted him of indecent assault, in violation of the Charter of Rights.

After reviewing the complaint and accompanying supporting materials, the complaint subcommittee recommended that the complaint be dismissed as there was no allegation of any judicial impropriety in the complaint other than the complainant's expressed dissatisfaction with the judge's decision. The complaint subcommittee was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in considering the facts and evidence before him and



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that the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 08-033/02

The complainant was in court because she had been charged with assaulting her common law spouse, whom she alleged had also assaulted her. The complainant was not represented by a lawyer at her trial. She complained that her "now ex common law spouse" testified against her and her "assault charge was stayed in the court, even though I wasn't guilty and he [her common law spouse] was found innocent." The complainant alleged that she didn't get a fair trial and was discriminated against because of her gender.

The complaint subcommittee reviewed the complaint and was of the view that there was no judicial misconduct in the exercise of the judge's discretion in staying the complainant's criminal charge. 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 to dismiss the complaint. Subsequent to the complainant being advised that her complaint was dismissed by the Judicial

Council, she wrote to advise that she now thought the judge's decision to stay her assault charge was "a good decision on the judge's part because it doesn't show up on my CPIC" (Canadian Police Information Centre).

CASE NO. 08-034/02

The complainant was the respondent in an ongoing Family Court custody and access dispute with her ex-husband. The complainant advised that she had found employment several hundred kilometers from the location where she and her ex-husband lived. The complainant advised that her ex-husband applied for interim custody of their ten-year-old daughter in Family Court as well as an order that the complainant not take the child with her when she moved. The complainant felt that the judge who heard the case made decisions that were detrimental to her family and the decisions were based on "all kinds of accusations against [her], based only on hearsay" which were made by her ex-husband. The complainant advised that she was "allowed to respond and refuted and explained the circumstances" but the judge, who had a "very biased opinion" against her granted the father's application for custody on an interim basis and set a future date to hear further representations from the parties and the Children's Lawyer.

The complaint subcommittee was of the view that this matter is outside the jurisdiction of the Ontario Judicial Council as it concerns a decision made by the judge with which the complainant was not happy and there is no basis for an allegation of judicial misconduct. The complaint subcommittee recommended that the complaint be dismissed as



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it was of the view that there was no judicial misconduct in the exercise of the judge's discretion in making the decisions made with respect to custody and/or access. If errors in law were committed by the judge (and the Ontario Judicial Council makes no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 08–035/03

The complainant is a respondent in a child protection application brought by the Children's Aid Society. The complainant's letter outlined a list of grievances, all of which concerned decisions made by the judge in court. The complainant felt that her rights were "severely violated" because she felt that her case should be dealt with according to the "family law rules". The complainant also wanted the case transferred to the municipality where she and her daughter live.

The complaint subcommittee reported that the complaint included no allegation of judicial misconduct but related to the judge's decisions. The complaint subcommittee recommended that this complaint be dismissed as it was of the view that there was no judicial misconduct in the exercise of the judge's discretion in making the decisions she made with respect to the application of the Children's Aid Society. If errors in law were committed by the judge (and the Ontario Judicial Council makes 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 complaint subcommittee also noted that the OJC has no power or authority to act on the complainant's request to have the matter transferred from one jurisdiction to another and the complainant was so advised in the letter acknowledging her complaint. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 08–036/03

The complainant was a party in two Family Court proceedings and an accused in a criminal proceeding in which he was charged with mischief and harassment. The first family proceeding was in December of 2000, the criminal proceeding was in March of 2002 and the second family proceeding was in November of 2002. The complainant advised that the same judge presided at each of the three hearings. The complainant was unhappy that a judge who was involved in his former Family Court matter sat on criminal charges and allegedly used "information gained in the family court matter" against him. The complainant was of the view that the sentence imposed in the criminal proceeding in March of 2002 was excessive and the presiding judge made comments or asked questions that indicated to the complainant that he was influenced by events that happened at the family case conference in December of 2000. Further, the complainant advised that at the second family case conference in November of 2002, an affidavit was produced that included the Probation Order made in March of 2002 after the criminal proceeding. It was the complainant's view that, because the judge was aware of the Probation Order, he pre-determined the family issues and denied the complainant access visits with his child.



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The complaint subcommittee reviewed the complaint and requested and reviewed the transcripts of the criminal proceedings. The complaint subcommittee reported that there were no questions asked, nor any comments made, by the presiding judge at the criminal proceeding that would indicate that the presiding judge had any recollection of this complainant appearing before him in a December 2000 family case conference. In the opinion of the complaint subcommittee, the criminal case was dealt with on the facts provided by the complainant's lawyer on a plea of guilty and submissions made by both the complainant's lawyer and the Crown as to the appropriate disposition. It was noted by the complaint subcommittee that the sentence imposed was within the range suggested by both Crown and defence counsel.

The complaint respecting the November 2002 family case conference having reference to the Probation Order and the allegation that the presiding judge pre-determined the decision made after that conference was, in the opinion of the complaint subcommittee, without foundation. In the complaint subcommittee's view, the essence of the complaint is that the complainant is dissatisfied with the sentence imposed in the criminal proceeding and the denial of access to his child in the subsequent family case conference. The subcommittee noted that documents referred to in the family case conference are public documents and would be known to the presiding justice whether or not he or she had been the presiding justice at the criminal case. It was further noted by the complaint subcommittee that it is not unusual in smaller communities, such as the one in which the complainant

resides, for the same judge to preside in both Criminal and Family Courts and, as such may, from time to time, see the same parties in both courts. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no evidence of judicial misconduct on the part of the judge to substantiate the complainant's allegations. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 08-037/03

The complainant was a party in a Family Court proceeding. The complainant advised that her 12 year old daughter, who had special needs and whom the complainant had raised alone, was taken from her by court order based on "trumped up charges of neglect" brought by the child's father. The complainant also alleged that she had been denied access to her daughter for the past two years despite her applications to the court. The complainant also stated that her daughter was not receiving the medical services she required while in her father's care and that he continued to "defy the law...with the consent of the judge". The complainant further alleged that the judge was an "avid participant in the ring of abuse being perpetrated (sic)" on her daughter by "not effecting (sic) justice".

The complaint subcommittee reviewed the complaint and requested and reviewed the transcripts and audiotapes with respect to the court proceedings. It was the view of the complaint subcommittee that the presiding judge was sympathetic to the application of the complainant,



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who was not represented by counsel, and provided assistance to her. In the complaint subcommittee's opinion, this complainant is dissatisfied with the judge's decisions. 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 is making no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 08-039/03

The complainant was a party to a Family Court proceeding concerning the amount of support payable to his spouse and children. At the conclusion of the hearing the presiding judge made an order for child support based on guidelines and an order for spousal support. The complainant advised that he had provided information to the judge about his spouse's financial circumstances. The complainant alleged that the judge did not take this evidence into account in making her decision with respect to the amount of spousal support ordered.

The complaint subcommittee reported that the complaint concerned the judge's decision with respect to the issue of the amount of spousal support payable by the complainant and the complaint contained no allegation of judicial

misconduct and related only to the judge's decision. The complaint subcommittee recommended that this complaint be dismissed as it was of the view that there was no judicial misconduct in the exercise of the judge's discretion in making the decision she made with respect to the spousal support that was payable. If errors in law were committed by the judge (and the Ontario Judicial Council makes no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 08-040/03

A judge imposed a conditional sentence, which involved a period of house arrest and a period of probation, on a man who was convicted of one count of possession of child pornography and several counts of distribution of child pornography. Many members of the public were outraged with the judge's decision and sent in letters of complaint about the judge stating, among other things, that he was unfit to hold judicial office, he didn't take the case seriously and didn't pay attention to the victim impact statements that were submitted by the Crown Attorney.

The subcommittee reported that the only remedy for the dissatisfaction that had been expressed about the judge's sentence was for the Crown to appeal the sentence and, apparently, that had been done. The complaint subcommittee further reported that the complaints disclosed no judicial



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misconduct and that the complaints related to the judge's decision. The complaint subcommittee recommended that these complaints be dismissed as it was of the view that there was no judicial misconduct in the exercise of the judge's discretion in making the decisions he made. If errors in law were committed by the judge (and the Ontario Judicial Council makes 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 complaint subcommittee further noted that the judge's sentence had, in fact, been appealed by the Crown and the appeal had been dismissed by a panel of judges of the Court of Appeal which ruled that the trial judge did not err in imposing the sentence he had imposed. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaints.

CASE NO. 08-041/03

The complainant was a party in a proceeding in Family Court dealing with custody, access and support of his child. The complainant disagreed with the decisions made by the presiding judge as to the manner in which the case would proceed. For example, the complainant advised that his motion for change of venue was not successful and his evidence on his ability to pay child support was not accepted. The complainant further stated that he did not want the particular judge to have anything further to do with his Family Court case.

The complaint subcommittee reported that this complaint is about decisions made by the judge and that these decisions could be appealed if the

judge was incorrect. The complaint subcommittee reported that, in its view, the complaint should be dismissed because it is outside the jurisdiction of the Ontario Judicial Council, there is no basis for any allegation of judicial misconduct and the complainant's letter did not contain any allegations of judicial misconduct. The complaint subcommittee noted that if errors in law were committed by the judge (and the Ontario Judicial Council makes no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 08-042/03

The complainant was charged with three counts of sexual assault and careless storage of a firearm. The complainant alleged that the judge made a comment at an adjournment proceeding that the complainant had "agreed too (sic) many things". The complainant further alleged that the judge had also stated that he "didn't like the way I was handling my case". The complainant also alleged that the judge had conducted a pre-trial of the charges before the court and had then presided at the trial, which was in clear contravention of "the rules".

After reviewing the complaint, the complaint subcommittee ordered and reviewed the transcript of the adjournment proceeding where the statements had allegedly been made. The complaint subcommittee recommended that the complaint be dismissed as the transcript offered no support to the allegations made by the complainant. The



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complaint subcommittee further commented that the judge was courteous and respectful of the complainant and had expressed concern that the complainant's new counsel would be available for the trial date. Additionally, the complaint subcommittee noted there were no grounds for a conflict regarding the judge presiding on the trial, as previous appearances were not pre-trials but merely part of the set date procedure. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

CASE NO. 08-043/03

The complainant was the respondent in a Family Court custody and access dispute. An order as to interim custody of the couple's daughter was granted to the complainant's ex-wife when she brought an *ex-parte* motion before the court. The complainant was advised that the order was amended some weeks later to allow him to have access to his daughter and the parties subsequently settled their custody issues. However, the complainant felt that the judge ought not to have made the *ex-parte* order because it was, in the view of the complainant, based upon materials which contained non-truths and half-truths. As a result, the complainant felt that because the judge made the order based upon such information, the judge was biased against the complainant. The complainant also alleged that the *ex-parte* order resulted in him being at a disadvantage in subsequent proceedings.

The complaint subcommittee was of the view that the matter complained of should be dismissed because it was outside the jurisdiction of the

Ontario Judicial Council as it concerned a decision made by the judge and there was no basis for an allegation of judicial misconduct. The complaint subcommittee further reported that the complainant did not appear to understand what an *ex-parte* order is in a Family Court proceeding, how such an order is applied for and how or why such an order is granted. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

CASE NO. 08-044/03

The complainant is the mother of a 52 year old man who was convicted of domestic assault and mischief and who attended in court with her son when he was sentenced. The complainant alleged that the judge did nothing but yell at her son, did not let him or his lawyer speak and made illegal orders for a Criminal Court (the complainant alleged that the judge ordered child support payments, amongst other things).

The complaint subcommittee reviewed the complaint and the transcript and also listened to an audiotape of the court proceeding. The complaint subcommittee recommended that the complaint be dismissed as being without foundation after an examination of the transcript and audiotape failed to support the allegations made against the judge by the complainant. The complaint subcommittee noted that the judge did not yell, and in fact was courteous to the accused and to both Crown and defence counsel. The complaint subcommittee commented that if the sentence imposed is the reason for the complaint, an appeal of the sentence is the proper



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remedy. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 08–045/03

The complainant was the victim of a domestic assault who had testified at the trial. She stated that the judge who conducted the trial should not be assigned to preside over domestic violence cases because he had described the assault on her as “too trivial” to warrant any period of incarceration and gave her ex-husband an absolute discharge. The complainant stated that she was traumatized by the allegedly dismissive attitude of the trial judge.

The complaint subcommittee reviewed the complaint and the transcript of the trial and sentencing proceedings. After review of the transcripts, the complaint subcommittee reported that it was of the view that there was no judicial misconduct on the part of the trial judge. The complaint subcommittee commented that the judge assessed the credibility of all of the witnesses and made appropriate findings. The complaint subcommittee further noted that the judge did find that there had been an assault, which consisted of a non-consensual touching, but the facts were that it was a very minor assault. The complaint subcommittee commented that the description the judge used was “trivial in nature”, which was a finding entirely consistent with the evidence at the trial in the view of the complaint subcommittee. The complaint subcommittee also viewed the sentence imposed as entirely consistent with the offence which had been committed.

The complaint subcommittee went on to report that the judge explained why he had imposed a discharge and also why he had ordered a peace bond, and that he gave his explanation in a polite and informative manner. The complaint subcommittee recommended that the complaint be dismissed as there was no misconduct on the part of the judge. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 08–046/03

The complainant is an agent who attended court on behalf of her clients on a Small Claims Court matter. The complainant’s clients had proceedings against a “waterproofing” company who performed work on their home and the work could not be guaranteed because the company allegedly was not licensed by the City of Toronto. The complainant advised that before attending court, she had investigated the company in question and obtained a letter from the Manager of Municipal Licensing stating that “all waterproofers are required by law to be licensed”. The complainant alleged that she attempted to present this as evidence to the judge but the judge refused to admit the letter as evidence.

The complaint subcommittee recommended that the complaint be dismissed because it is properly the subject matter of an appeal and, without evidence of judicial misconduct, is outside the jurisdiction the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.



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CASE NO. 08-047/03

The complainant was a party in a Family Court proceeding dealing with issues of interim and permanent custody and interim and permanent support for the children of his former marriage. The complainant advised that the matter was before the courts on a number of occasions and a trial of the matter was ultimately held. The complainant advised that the decisions made by the judge, which dealt with the issues of credibility, stability and capability of paying support, were unfavourable to him. The complainant alleged the judge was biased against him in his decision-making.

The complaint subcommittee reviewed the complaint and commented that there was no basis for an allegation of any judicial impropriety in the complaint. The complaint subcommittee was of the view that the complainant merely disagreed with the decisions reached 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 is making no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

CASE NO. 08-048/03

The complainant was the parent of the plaintiff in a Small Claims Court proceeding in which the

defendant failed to appear. The complainant alleged that the judge at the pre-trial was not interested in seeing the plaintiff's documents and told the plaintiff to "shut up and not to speak".

The complaint subcommittee reported that the pre-trial was conducted in the judge's chambers and was not on the record. The complaint subcommittee requested and reviewed a response to the complaint from the judge. In the response, the judge denied that the alleged remarks were made and noted that the ordering of costs against the defendant who did not appear demonstrated the judge's assistance in the matter. Because no objective evidence could be found to verify the complainant's allegations, the complaint subcommittee recommended that the complaint be dismissed. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 08-049/03

The complainant was a defendant in a Criminal Court proceeding, who advised that he, despite having a legal aid certificate, was having difficulty retaining the services of legal counsel. The complainant appeared in court on a number of occasions and alleged that the presiding justice did not listen to his explanations as to why he had not retained counsel. The complainant also alleged that on one occasion when he appeared in court, any attempt on his part to speak was countered by a statement from the judge, "Don't go there". The complainant further alleged that at the end of one court appearance to set a date for trial, the judge "made an order to have me held until I had a court telephone to place a call to the prospective attorney".



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The complaint subcommittee reviewed the complaint and requested and received the transcripts of all of the appearances by the complainant before the judge complained against. The complaint subcommittee reviewed the transcripts received with respect to the ten (10) appearances and adjournments before the trial date was set. In reviewing those transcripts the complaint subcommittee noted that the complainant had two lawyers go on and off the record and a third lawyer go on the record who remained on the record to assist him at trial. The complaint subcommittee was of the view that the judge, at all times, acted properly and was supportive and concerned about the complainant's difficulty with retaining legal counsel. In the subcommittee's opinion, the presiding judge was also concerned that the matter move forward and that the complainant not be inconvenienced by having to re-attend court unnecessarily. The complaint subcommittee advised that there was nothing in the transcripts that supported the complainant's allegation of comments made by the judge ("Don't go there") nor is there anything in the transcripts to suggest that the judge "made an order to have him held until he had used a court telephone to place a call to a prospective attorney". The complaint subcommittee recommended the complaint be dismissed as there was no basis for an allegation of judicial misconduct. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 09-001/03

The complainant's sons were taken from her custody and placed in a foster home by the

Children's Aid Society. At the end of a hearing in Family Court, the complainant asked for an order for costs and her request was denied by the judge. The complainant is of the view that the order denying costs is "unfair and evil" and the judge had "no logical reasons" to deny her request. The complainant further stated that because she had been denied costs, she and her sons have no money for medication and food and she has suffered financial and emotional distress.

The complaint subcommittee reviewed the complaint and noted that the complaint arose from the exercise of the judge's discretion as to whether to award costs. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no allegation or evidence of any judicial misconduct 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 is making no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

CASE NO. 09-004/03

The complainant was in Family Court as the respondent on a motion brought by her former husband to rescind her access to the couple's children. The complainant alleged that the judge who heard the motion improperly presided over the trial after dealing with case conferences and other motions contrary to the Rules of Civil



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Procedure. The complainant also alleged that the judge improperly allowed allegations of assault to be used in a civil proceeding contrary to the Charter of Rights. The complainant disagreed with the findings made by the Family Court judge that resulted in the order which had been sought by her former husband.

The complaint subcommittee reviewed the complaint and requested and reviewed the entire court record, including the affidavit materials, in this Family Court matter. The transcript of the final court proceeding was also requested and reviewed by the complaint subcommittee. The complaint subcommittee noted that the Rules of Civil Procedure do not apply to matters in the Ontario Court of Justice, Family Division, but that the Family Law Rules govern Family Court proceedings. 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 to consider the motions and affidavit material and issue the orders being sought by the applicant. The complaint subcommittee noted that a judge on a case conference may make an order on a temporary or final basis, providing proper notice was given, and that there is no requirement to put the matter over to another judge for trial. The complaint subcommittee further noted that it is not a breach of any Charter rights for evidence of assault allegations to be received and considered by the presiding judge. If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal and are 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. 09-005/03

The complainant, who described himself as a "Mediator, not a lawyer", advised that he had appeared before the judge on two occasions as a self-represented litigant in Small Claims Court. The complainant alleged that after one of his court appearances, he had requested to meet with the judge in Chambers and during their conversation discovered that a former next-door neighbour of the complainant's, who was a judge in another jurisdiction, was also an acquaintance of the judge. The complainant advised that he recently attended at the court to meet again with the judge thinking that the judge would be able to assist his sister, who is a lawyer and who was relocating to Ontario, find a position in the legal field. The complainant allegedly asked the court clerk to meet with the judge in chambers on a personal matter. The complainant stated in his letter to the Council that when he went back into chambers, the judge "went into a tantrum much like my ten year old son, embarrassing everyone in the vicinity".

The complaint subcommittee reviewed the complaint and requested and reviewed a response from the Trial Scheduling Clerk, who was the individual the complainant spoke to on the date in question, as well as two responses from the judge; one of which also included statements from other members of the court staff. In her response, the Trial Scheduling Clerk indicated that the complainant identified himself to her as a friend and neighbour of someone the judge knew.



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As she was not aware of the fact that he had previously been a litigant before the judge, she had no reason to doubt him and therefore allowed the complainant in to meet with the judge. The clerk indicated in her letter, that the judge, upon seeing the complainant, immediately and repeatedly asked him to leave, which he eventually did.

Court staff from the same court location also provided statements that, over the years, the complainant has appeared at their court location and asked court staff to do typing for him, misled staff about his relationships with people in the court office, misrepresented himself as an employee of the Ministry of the Attorney General who “oversees” courts and misrepresented himself as a lawyer. The complaint subcommittee reported that various court staff members described the complainant as having a “soft yet threatening manner” and someone who is “not easily daunted”. The complaint subcommittee recommended that the complaint be dismissed as being without foundation after reviewing statements of the judge and the court staff regarding their experiences with the complainant over the years and with regard to this most recent incident. The review panel agreed with the complaint subcommittee’s recommendation to dismiss the complaint.

CASE NO. 09–006/03

The complainant represented himself on a charge of breach of probation. The complainant was acquitted at the end of the trial. The complainant alleged that the judge’s comments while giving his “Reasons for Judgement” were “unacceptable, rude, hurtful, degrading, childish and juvenile”.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcript of the court proceeding. It was the view of the complaint subcommittee that the presiding judge was patient and allowed the complainant every opportunity to tell his story. The complaint subcommittee noted that the judge, in their opinion very fairly, gave reasons to explain to the complainant that he is “his own worst enemy” and in their view was not rude or demeaning. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 09–007/03

The complainant, who was not represented by legal counsel, was charged with multiple offences including two charges of committing perjury with intent to mislead, two charges of assault police and one charge of resisting a peace officer. The complainant had appeared before the trial judge for pre-trial motions and various trial management conferences and had made a number of allegations to the judge about his inability to prepare his defence without a lawyer and while in custody. The complainant alleged that, while in segregation at a local detention center, his copy of the Criminal Code (allegedly provided to him by another judge) was taken from him as well as the disclosure material that had been provided to him by the Crown’s office. The judge who is the subject of this complaint ordered that the complainant be provided with photocopies of pages of the Criminal Code relevant to his charges and sought



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information from the complainant as to the names and addresses of witnesses he wanted to be subpoenaed so that court staff could prepare the subpoenas on his behalf and the police directed to serve them. The complainant alleges that the judge “assisted” him with his defence against his will and provided unsolicited legal advice.

The complaint subcommittee ordered and reviewed a copy of the transcript and audiotape of some of the various court proceedings. 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 attempts to ensure that the complainant had the tools he required to make a full answer and defence to the charges he was facing, given that the complainant refused to have a lawyer assist him. The complaint subcommittee noted that the judge went to great pains to explain the process to the complainant and was eminently patient and fair in all the circumstances. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

CASE NO. 09–008/03

The complainant is a respondent in a child protection application made by the Children’s Aid Society. The complainant alleged that the judge made a statement in court that he had seen information on a computer that the complainant was calling the police on a daily basis. The complainant further alleged that the judge had said that the complainant would harm the child who is the subject of the proceeding and that the child was in need of protection. The complainant was

not in court when these statements were allegedly made by the judge but had been advised of them by his girlfriend, the mother of the child in need of protection, who was in attendance.

The complaint subcommittee reviewed the complaint and requested the transcript of the proceeding. Court Services confirmed that the proceeding referred to by the complainant was a “trial management conference” and was not on the record and therefore no transcript was available. The complaint subcommittee requested and reviewed a response to the complaint from the subject judge. In his response, the judge denied having looked at a computer to determine how many times the complainant had called the police and advised that he would not have had access to such information in any case. The complaint subcommittee noted that the fact that the child needed protection from the complainant was the basic premise of the proceedings and the Children’s Aid Society’s position in the case. The complaint subcommittee also noted that the complainant was not in attendance at the proceeding and was filing the complaint based on information related to him by his girlfriend, the mother the child, whose mental health was a factor in the proceeding. The complaint subcommittee recommended to the review panel that the complaint be dismissed as being without foundation. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 09–009/03

The complainant was a respondent in a child protection application made by the Children’s



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Aid Society. The complainant reported that he had been advised by others who were present in the courtroom that the judge in question said things about him that were untrue. The complainant advised that the judge had allegedly said that the complainant was a “criminal” and a “violent person and dangerous”. The complainant also alleged that the judge said that he was not the child’s biological father and that he’d raped the child’s mother and a restraining order against the complainant was required to protect the child’s mother. The complainant further alleged that the judge was trying to “frame him”.

The complaint subcommittee reviewed the complaint and requested and reviewed a transcript of the court proceeding. The complaint subcommittee recommended to the review panel that the complaint be dismissed as the transcript did not contain the remarks attributed to the judge. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 09–011/03

The complainant was an accused in a criminal proceeding wherein he was charged with two counts of possession under \$5000.00. After the trial, which took two days, the complainant was convicted and subsequently sentenced. The complainant wrote to the Judicial Council and alleged that members of the local police force collaborated with members of the local Crown Attorney’s office to prosecute him with prejudice and malice and they had “taken control over the judge’s decision and, the court, itself.”

The complainant also alleged that disclosure of the Crown’s case and evidence against him had been delayed. The complainant advised that he had filed a complaint with the Ontario Police Commission and the matter had been outstanding for approximately two years. The complainant further stated that the judge in question convicted him solely on circumstantial evidence and that the conviction was appealed. The complainant alleged that the judge in question allowed the Police and/or Crown, to influence his judgment instead of the evidence or lack of evidence presented to him in court.

The complaint subcommittee ordered and reviewed a copy of the trial transcript and 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 considering and weighing the evidence and that the decisions made were within the judge’s jurisdiction. If errors in law were committed by the judge (and the Judicial Council makes 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. 09–012/03

The complainant, who was not a party to the proceedings but rather the mother of one of the parties who was involved in a Family Court matter dealing with the custody of and access to a child, complained that the process took entirely too



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long and there were a number of days when she attended court with her son, the father of the child in issue, where little was accomplished. The matter was set for trial and during the trial the judge advised the lawyers for the parties that joint custody was an unlikely outcome and they should attempt to resolve the matter. The complainant advised that the parties ultimately did resolve the matter, to her dissatisfaction. The complainant felt that the judge should have allowed the trial to continue and made a decision after hearing all of the evidence.

The complaint subcommittee reviewed the complaint and was of the view that the complainant was dissatisfied with the preliminary opinion given by the judge in a Family Court proceeding and also dissatisfied with the role of the judge during the proceedings. The complaint subcommittee was of the view that the judge was exercising her role as a judge in Family Court in an appropriate manner by expressing her assessment of the evidence heard thus far and expressing her opinion on the likely success of the positions being put forward.

The Council noted that the parties, with the benefit of their counsel, entered into Minutes of Settlement and the matter was resolved. 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 judicial discretion in providing her preliminary opinion of the evidence before her. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 09-013/03

The complainant was a defendant in a Criminal Court proceeding where she was charged with leaving the scene of an accident under the Criminal Code. After the trial before the Ontario Court of Justice, she was convicted of the offence. The complainant maintained that the Court should have accepted her explanation and acquitted her.

The complaint subcommittee recommended that the complaint be dismissed as the complaint was about the decision made by the judge and is outside the jurisdiction of the Judicial Council. The complaint subcommittee was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in convicting the complainant and no allegations of misconduct were contained in the letter of complaint. If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09-014/03

The complainant and his spouse are parties to a Family Court proceeding involving the Children's Aid Society (the C.A.S.). The complainant is apparently unhappy with the decision reached by the trial judge. The complainant reported that the lawyer for the C.A.S. accused him of calling his wife a "nut bar" (which the complainant denied). The complainant alleged



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that the judge seemed to think it was true because of the decision he made at the end of the trial and the complainant is concerned that his wife's health will deteriorate and he will somehow be blamed for causing it.

The complaint subcommittee reviewed the complaint and recommended that the complaint be dismissed. The complaint subcommittee is of the view that the complaint concerns a judge's decision and lacks a basis for an allegation of judicial misconduct. If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

CASE NO. 09-015/03

The complainant advised that his problems with the criminal justice system began when his wife became romantically involved with someone who had been an employee. The complainant and his (now ex-) wife owned a mining company for which the employee had worked. The complainant reported that during an incident when all three were in the ex-employee's home, the complainant was assaulted by the ex-employee, who was charged with assault causing bodily harm. At the trial in 1993, the accused (ex-employee) pleaded guilty to the lesser offence of assault and the presiding judge accepted a joint submission for a suspended sentence and probation. The complainant was not in court on the day of the plea, and was not, apparently,

invited to provide a Victim Impact Statement. The complainant advised that he felt the Crown was thereby negligent and that the presiding judge condoned the Crown's improprieties.

The complainant divorced his wife and was convicted in another city and by another judge, of offences involving stalking his ex-spouse. The complainant reported that part of the sentence imposed on him were conditions to stay away from his ex-wife and her residence, which by this time, was also the residence of the ex-employee. The complainant advised that he breached this term of his probation order in 1997 and, as a consequence, the ex-employee was charged with a weapons offence when he brandished a rifle in an attempt to get the complainant off his property. The complainant reported that the ex-employee appeared before the same judge before whom he'd appeared in 1993 and pleaded guilty to careless use of a firearm. The Crown Attorney and defence counsel presented the judge with a joint submission for a suspended sentence and that joint submission was accepted by the judge. The complainant alleged that the court did not act properly and he complained that both the judge and the Crown Attorney were biased in favour of the accused, and against him.

The complainant expressed his displeasure with the way proceedings against the former employee ended and with the sentences imposed by the judge in question. The complainant was facing more criminal charges in the same jurisdiction and wanted his case moved to another city, to avoid the judge, whom he claimed is



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biased against him. The complainant provided transcripts of his various court appearances and had also sent them to other bodies, like the Ombudsman and the Attorney General, to whom he had also complained.

The complaint subcommittee reviewed the complaint material and the transcripts. The complaint subcommittee noted that the Ontario Judicial Council has no jurisdiction to intervene in moving a court matter from one city to another. The complaint subcommittee recommended to the review panel that the complaint be dismissed as being without foundation after an examination of the transcripts of record did not support the allegations of bias made by the complainant. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 09–016/03

The complainant was the plaintiff in Small Claims court, where he was seeking financial restitution from a major electronics manufacturer / retailer for the loss of use of his newly purchased computer. The complainant was suing the manufacturer / retailer because he claimed it had installed allegedly defective software which rendered his new computer useless. The trial judge did not agree with the plaintiff's contentions and dismissed his claim. The judge also ordered the complainant to pay the costs of the defendant. The complainant alleged that "the judge's conduct and decision is a breach of the law, scientific facts, and the rules of ethics, common sense and decency".

The complaint subcommittee reviewed the complaint and recommended that the complaint be dismissed. In its view, there was no judicial misconduct evident in the exercise of the judge's discretion in considering and weighing the merits of the case and the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09–017/03

The complainant was the unsuccessful party in an application made to the court for custody of her daughter. She alleged that the trial judge made an order without her having counsel and that the trial judge had also presided over the settlement conference.

The complaint subcommittee reviewed the complaint and recommended that the complaint be dismissed. The complaint subcommittee noted that a party need not be represented by counsel in a domestic proceeding and there is no obligation on the court to provide counsel. The complaint subcommittee noted that in Family Court, the same judge is involved in all pre-trial and case management conferences and there is nothing improper in the judge's involvement prior to the trial. In the complaint subcommittee's view, any decisions on the merits or on procedural issues made by the judge are matters for appeal.



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If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09–018/03

The complainant was the unsuccessful plaintiff in a Small Claims Court law suit. The complainant was seeking damages from a College in Ontario for misrepresentation and negligence. The complainant alleged that the trial judge, who dismissed his lawsuit, was biased as “evidenced” by his obvious “rapport” with the opposing lawyer who appeared on behalf of the defendant / college. The complainant advised that this “rapport” was evident because whenever the opposing lawyer asked for “date changes for court dates, this was granted quickly and easily and also to the detriment of [the complainant’s] case”.

The complaint subcommittee reviewed the complaint and requested a copy of the transcript of the proceeding. Court Services advised the Council that no court reporter was present at the hearing and therefore no transcript could be obtained. The complaint subcommittee recommended that the complaint be dismissed, as the complainant's allegation that the judge was biased in favour of the defendant's counsel was not substantiated simply because an adjournment request was granted. The complaint subcommittee was of the view that the allegation about the judge's “rapport” with defence counsel

was too vague in and of itself to identify and support allegations of bias and misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09–019/03

The complainant was an accused before the courts who requested that his trial be held in French. The complainant alleged that the trial judge could not speak French well enough to allow him to present his defence. The complainant also complained that disclosure of evidence from the Crown was provided to him only in English.

The complaint subcommittee (both of whose members are bilingual) reviewed the complaint and requested and reviewed the audiotape of the proceedings. The complaint subcommittee noted that the proceeding was conducted in French, and, in their opinion, the judge's linguistic abilities in French were excellent. In the complaint subcommittee's view, the audiotape attested to repeated efforts of the judge to provide the complainant, who was self-represented, with opportunities to question witnesses and present his defence and to understand the judicial process. The complaint subcommittee also noted that the complainant failed to indicate any misunderstanding or miscomprehension during the trial. The complaint subcommittee recommended that the complaint be dismissed as being without foundation after an examination of the audiotape offered no support to the allegations made by the complainant. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.



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CASE NO. 09–020/03

The complainant was before the criminal courts and convicted of two counts of assault. He alleged that the trial judge showed prejudice by his comment on sentencing that the complainant was not to be believed and was “a liar”.

The complaint subcommittee reviewed the complaint and the transcript of the court proceeding. The complaint subcommittee recommended to the review panel that the complaint be dismissed as being without foundation after an examination of the transcript of record revealed that the remarks attributed to the judge by the complainant had not been made. The complaint subcommittee noted that the trial judge is entitled to make a credibility finding and did so in the proper manner and that no inappropriate language was used. The review panel agreed with the complaint subcommittee’s recommendation that the complaint be dismissed.

CASE NO. 09–021/03

The complainant advised that her husband went to Family Court to gain more access to his son from a previous marriage. The complainant’s husband also wanted to change the pick-up arrangement so that his son could be picked up from school instead of his mother’s home in order to avoid confrontations with his ex-wife that were resulting in stress for all parties. The complainant alleged that at a pre-trial proceeding, the presiding judge indicated he would be inclined to grant this variance in access but was unable to do so because the ex-wife’s lawyer declared they had not had proper notice of the motion to vary the previous access order. The

complainant alleged that the presiding judge stated that if proper notice were afforded to the ex-wife, he would be inclined to grant the variance at the next court appearance. The complainant advised that at the next appearance, several months later, the motion to vary the access was before the courts and proper notice had been provided to the ex-wife and her lawyer. The complainant advised that, after hearing the motion and argument from the child’s mother, the judge dismissed the motion and awarded costs against the father. The complainant asserts that the motion was only brought before the court because the judge had given them “legal advice” to bring the motion.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcripts of both proceedings. The complaint subcommittee noted that the transcripts indicated extensive discussion of the facts and that the proceedings were made complex and confusing by both party’s counsel. 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 considering the facts, weighing the submissions and in making the decision to dismiss the motion. The complaint subcommittee further noted that the judge made his ruling after full examination and consideration of the materials and information submitted by both sides. If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal and are outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.



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CASE NO. 09–022/03

The complainant's son was sentenced by the judge in Youth Court. The complainant advised that her son had no involvement with the courts nor any record for juvenile delinquency in his past yet was incarcerated for a year for a first offence. The complainant stated that she felt this sentence was "Harsh and Cruel for a first offender" and the judge must have been "incompetent to pass such a harsh sentence".

The complaint subcommittee reviewed the complaint and recommended to the review panel that the complaint be dismissed. The complaint subcommittee was of the view that the complaint concerned the decision of the judge to impose the sentence he did, which is a matter for appeal. If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

CASE NO. 09–024/03

The complainant is the maternal grandmother of two children who were given up by their mother to the care of the Children's Aid Society. The complainant was concerned that her daughter, the mother of the children, would not get a fair trial when issues of child protection, custody and access (supervised or unsupervised) were determined. The complainant stated that she and her daughter believed that the judge had already made up his mind because of comments

he allegedly made during a trial management conference the daughter attended.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcript of the trial management conference. The complaint subcommittee noted that all parties involved in the proceeding were represented by legal counsel, with the exception of the biological father. In the opinion of the complaint subcommittee, the presiding judge was acting in the capacity of a trial management judge and was directing counsel as to the materials required at trial to support their various positions. The complaint subcommittee advised that the judge expressed the opinion that the Children's Aid Society had a very strong case and that the mother would need to establish an equally strong case to support her position. The complaint subcommittee noted that the judge made suggestions as to how the matter might be resolved in the best interests of the children and the mother and insisted that the parties identify the issues that could be settled prior to trial. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was nothing to support an allegation of judicial misconduct and the transcript did not support the allegations made against the judge and specific comments that the judge was purported to have made. The review panel agreed with the complaint subcommittee's recommendation to dismiss the complaint.

CASE NO. 09–028/03

The complainant is the grandmother of children involved in an on-going custody and access dispute. The complainant alleged that the judge hearing



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the case made bad decisions, so the judge should not be involved in continuing litigation.

The complaint subcommittee reviewed the complaint and transcript provided by the complainant. 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 decisions that he made. If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The complaint subcommittee noted that the fact that one of the judge's decisions were appealed and that the Appeal Court indicated some errors in law were made, is not the same as a finding of judicial misconduct. The complaint subcommittee also noted that continuing litigation may involve the same trial judge, but that the judge cannot be precluded from hearing the case. The review panel agreed with the complaint subcommittee's recommendation to dismiss the complaint. The review panel expressed concern for the safety of the children involved in this case due to allegations contained in the complainant's letters and felt a statutory obligation pursuant to the *Child and Family Services Act* to send copies of the complaint letters to the Children's Aid Society for the region in which the complainant resided.

CASE NO. 09-032/03

The complainant advised that he was a party in a Family Court proceeding. The complainant also

advised that he was charged with impaired operation of a motor vehicle and his driving privileges were suspended for three months commencing on December 30th, 2002. The complainant further advised that he was required to attend a Family Court proceeding in February, 2003 to deal with a review of the amount of support he was paying as well as a review of the custody and access arrangements regarding his two children. The complainant advised that he was unable to attend court because of transportation difficulties. The complainant advised that the matter was adjourned to May, 2003 at which time an order was made, again in his absence, varying his access to his children. The complainant advised that he disagreed with the judge's decision and wished to have the matter re-heard.

Some time after the completion of the Family Court matter in May, 2003, the complainant was in Criminal Court to plead guilty to the impaired driving charge. The complainant advised that the judge who dealt with his Family Court matter was also the judge in Criminal Court. The complainant advised that he was given eighteen months probation and was restricted in his consumption of alcohol during the period of probation. The complainant stated that the sentence was "unreasonably harsh...and unfair" and also interfered with his access to his children. The complainant stated that the judge should have disqualified herself from the Criminal Court matter due to the fact that she had been the judge to make decisions on his Family Court matters some months before.

The complaint subcommittee reviewed the complaint and recommended that it be dismissed.



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The members of the complaint subcommittee were of the view that there was no judicial misconduct in the judge presiding over both the family and criminal matters or in making the decisions she made. The complaint subcommittee also noted that the complainant hadn't attended in court during the course of the Family Court action and it was unlikely the judge made any connection between the two court matters in any event. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 09-033/03

The complainant was the respondent in a Family Court proceeding dealing with the issue of responsibility for and obligation to pay maintenance for his daughter. The complainant was of the view that since his daughter is 20 years of age, he should have no obligations to pay support for her benefit. An interim order was made for the support of the child, which in the complainant's view, was made without consideration of his income and the fact that he had spousal support obligations and child support obligations for two other children who reside with him. In addition, the complainant re-attended before the judge at a trial management conference hearing at which time a further order was made, stating that if the outstanding child support was not paid the trial would proceed on an uncontested basis.

The members of the complaint subcommittee reviewed the complaint and reported it was of the opinion that the complainant was dissatisfied with the judge's decisions to award support to his 20 year old daughter and also disagreed with the

quantum of support ordered and the possibility of the matter proceeding to trial on an uncontested basis. 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 orders that he made. If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

CASE NO. 09-035/03

The complainant, who was being sued for libel in Small Claims Court, alleged that when the matter was originally heard and reviewed, the presiding judge (who is not the subject of this complaint) indicated to the applicant that his application was frivolous and that the judge would be dismissing the case. In response, the applicant indicated that he was simply following the advice of his legal counsel in filing the application. The judge adjourned the matter, rather than dismissing it, in order to hear submissions from the applicant's lawyer, who was not in attendance at that appearance.

When the matter returned, the original judge was ill and the replacement judge did not dismiss the case but allowed the applicant to proceed to trial. The complainant advised that the applicant was also suing another person for libel and that respondent filed a counter-suit. The complainant

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further advised that, although the applicant in both libel suits never paid the court fees to bring the matter to trial, the counter-suit brought all the cases before the court. The complainant alleged that the presiding judge on that trial date (who is the subject of the complaint) improperly consolidated the cases and forced the complainant to obtain a transcript for a trial that he did not attend, in order to hear previous evidence given in the libel case against him.

The complaint subcommittee reviewed the complaint and recommended that the complaint be dismissed as it was of the view that the complaint related to procedural issues and there had been no judicial misconduct. If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

subcommittee was of the view that the trial judge made findings of fact and an assessment of credibility based on all of the evidence before him. 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 weighing the evidence before him and in making the decisions he made. If errors in law were committed by the judge (and the Judicial Council is making no such finding), such errors could be remedied on appeal by the Crown's office and are outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation to dismiss the complaint.



CASE NO. 09-037/03

The complainant was the father of an alleged victim of an assault by a teacher at his school. The teacher, who was charged with assaulting the complainant's son, was acquitted after trial. The complainant alleged that the judge who heard the trial was prejudiced and biased and the trial result was wrong.

The complaint subcommittee reviewed the complaint and requested and reviewed the transcript of the Reasons for Judgment in the criminal trial. After reviewing the transcript, the complaint

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

APPENDIX – B

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT

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APPENDIX – B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT

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

COMPLAINTS

GENERALLY

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

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

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

subs. 51.3(4)

COMPLAINT SUBCOMMITTEES

COMPOSITION

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

subs. 51.4(1) and (2)

ADMINISTRATIVE PROCEDURES

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

STATUS REPORTS

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

Investigation

GUIDELINES AND RULES OF PROCEDURE

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

subs. 51.1(2)

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

subs. 51.1(3)

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

subs. 51.4(21)

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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

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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 reassignment, of the reasons therefor, and of the judge's right to tender a response. If no response from the judge is received after 10 days from the date of mailing, the recommendation of an interim suspension or reassignment may proceed.

Reports to Review Panels

WHEN INVESTIGATION COMPLETE

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

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

subs. 51.4(13)

GUIDELINES AND RULES OF PROCEDURE

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

subs. 51.1(2)

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

subs. 51.1(3)

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

subs. 51.4(12)

PROCEDURE TO BE FOLLOWED

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

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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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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – REVIEW PANELS

C) REFERRING A COMPLAINT TO THE CHIEF JUSTICE

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

D) REFERRING A COMPLAINT TO MEDIATION

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

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

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

Notice of Decision

DECISION COMMUNICATED

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

subs. 51.4(20)

ADMINISTRATIVE PROCEDURES

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

HEARING PANELS

APPLICABLE LEGISLATION

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

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

subs. 51.1(2)

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

subs. 51.1(3) and 51.6(2)

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – HEARINGS

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

subs. 51.6(3)

COMPOSITION

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

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

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

POWER

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

subs. 49(16)

HEARINGS

COMMUNICATION BY MEMBERS

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

subs. 51.6(4) and (5)

PARTIES TO THE HEARING

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

subs. 51.6(6)

PUBLIC OR PRIVATE/ALL OR PART

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

subs. 49(11) and 51.6(7)

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

subs. 51.6(2)

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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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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – PROCEDURAL CODE FOR HEARINGS

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.

NOTICE OF HEARING

6. A hearing shall be commenced by a Notice of Hearing in accordance with this Part.
7. Presenting Counsel shall prepare the Notice of Hearing.
 - (1) The Notice of Hearing shall contain,
 - (a) particulars of the allegations against the Respondent;
 - (b) a reference to the statutory authority under which the hearing will be held;
 - (c) a statement of the time and place of the commencement of the hearing;
 - (d) a statement of the purpose of the hearing;
 - (e) a statement that if the Respondent does not attend at the hearing, the Panel may proceed in the Respondent’s absence and the Respondent will not be entitled to any further notice of the proceeding; and,
8. Presenting Counsel shall cause the Notice of Hearing to be served upon the Respondent by personal service or, upon motion to the Panel hearing the complaint, an alternative to personal service and shall file proof of service with the Council.

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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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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.

APPENDIX – B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ACCOMMODATION OF DISABILITIES

ACCOMMODATION OF DISABILITIES

APPLICATION FOR ORDER

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

subs. 45.(1)

DUTY OF JUDICIAL COUNCIL

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

subs. 45.(2)

UNDUE HARDSHIP

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

subs. 45.(3)

GUIDELINES AND RULES OF PROCEDURE

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

subs. 45.4(4)

OPPORTUNITY TO PARTICIPATE

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

subs. 45.(5)

ORDER BINDS THE CROWN

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

subs. 45.(6)

CHAIR FOR MEETING

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

subs. 49.(8)

CHAIR ENTITLED TO VOTE

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

subs. 49.(10)

QUORUM FOR MEETING

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

subs. 49.(13)

EXPERT ASSISTANCE

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

subs. 49.(21)

CONFIDENTIAL RECORDS

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

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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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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.

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ADMINISTRATIVE MATTERS

ADMINISTRATIVE MATTERS

INTAKE/OPENING COMPLAINT FILES:

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

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

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

COMPLAINT SUBCOMMITTEES:

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

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

Complaint subcommittee members will endeavour to review and discuss their assigned files within a month of receipt of the file. All material (transcripts, 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, 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

APPENDIX – C

ONTARIO COURT OF JUSTICE CONTINUING EDUCATION PLAN

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

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

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

EDUCATION SECRETARIAT

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

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

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

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

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

The goals of the Education Secretariat are:

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

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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).

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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. The chair of each committee is nominated by the Ontario Conference of Judges to be on the Education Secretariat. These committees meet as required and work throughout the year on the planning, development and presentation of the core education programs.

The Ontario Conference of Judges presents 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, Youth Criminal Justice and the law of evidence, although a variety of other topics may also be included. Similar programs are presented in each of the four regional locations.

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

II. SECRETARIAT PROGRAMS

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

1. JUDGMENT WRITING: 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 be presented

APPENDIX – C

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

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.

From June 2 to June 4, 2003 the Court in Partnership with the National Judicial Institute developed a Courtroom Communications Workshop presented at Stratford. The focus of the seminar was on communications skills in the courtroom. Judges learned and practiced specific techniques in realistic exercises designed to simulate difficult courtroom situations. They had an opportunity to learn about their own communications style and how to improve it, with coaches from the theatre and other communication professionals. Twelve judges from the Court were selected to attend the program together with an equal number of federally-appointed judges.

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

The Court undertook its second major social context program, presented to all of its judges, in May 1996. The program, entitled *The Court in an Inclusive Society*, was intended to provide

information about the changing nature of our society, to determine the impact of the changes and to equip the Court to respond better to those changes. A variety of pedagogical techniques including large and small group sessions were used in the course of the program. A group of judge facilitators were specifically trained for this program which was presented following significant community consultation.

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

At the Court's Annual Meeting in 2003, the theme of the education program was "Access to Justice". The vehicle of a play followed by a panel discussion was used to describe issues of literacy, race, poverty, neglect, abuse and violence in the home affecting access to justice. Another session used lectures, videos, panel discussions and small group work to explore the issue of literacy and the courts in a meaningful way.

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. The same program, with some modification, is presented each year over a three year period to enable a larger number of judges to receive the same benefits of the program.

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

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

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

The 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 was implemented across the justice system in Ontario, starting in the summer of 1998, computer training for judges was significantly increased by the Project in order to ensure appropriate levels of computer literacy for all members of the Court.

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

The Ontario Court of Justice has entered into a joint venture with the N.J.I. which resulted in the hiring of an Education Director for the Ontario Court of Justice who is also responsible for the

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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*
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.

.....
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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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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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,
- the effect of the disability on the judge's performance of the essential duties of the office was a factor in the complaint; and
 - 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:

- A complainant or witness at whose request an order was made under subsection (9).
- 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.

