

OJC



THIRTEENTH ANNUAL REPORT

2007 – 2008

ONTARIO JUDICIAL COUNCIL



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The Honourable Warren K. Winkler

CHIEF JUSTICE OF ONTARIO

Co-Chair, Ontario Judicial Council



The Honourable Annemarie E. Bonkalo

CHIEF JUSTICE

ONTARIO COURT OF JUSTICE

Co-Chair, Ontario Judicial Council



ONTARIO JUDICIAL COUNCIL

March 31, 2009

The Honourable Chris Bentley
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 thirteenth 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, 2007 to March 31, 2008.

Respectfully submitted,

Warren K. Winkler
Chief Justice of Ontario

Annemarie E. Bonkalo
Chief Justice
Ontario Court of Justice



INTRODUCTION

The period of time covered by this Annual Report is from April 1, 2007 to March 31, 2008.

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

The Ontario Judicial Council had jurisdiction over approximately 328 provincially-appointed judges and masters during the period of time covered by this Annual Report.



ONTARIO JUDICIAL COUNCIL THIRTEENTH ANNUAL REPORT

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1. Composition and Terms of Appointment

The Ontario Judicial Council includes:

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

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

2. Members - Regular

The membership of the Ontario Judicial Council in its thirteenth year of operation (April 1, 2007 to March 31, 2008) was as follows:

Judicial Members:

CHIEF JUSTICE OF ONTARIO

R. Roy McMurtry..... (Toronto)
(until May 31, 2007)

CHIEF JUSTICE OF ONTARIO

Warren K. Winkler (Toronto)
(effective June 1, 2007)

CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

Brian W. Lennox..... (Ottawa/Toronto)
(until May 3, 2007))

CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

Annemarie E. Bonkalo..... (Toronto)
(effective May 4, 2007; previously a Council member in her capacity as Associate Chief Justice of the Ontario Court of Justice)

ASSOCIATE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

Peter D. Griffiths (Ottawa/Toronto)
(effective July 25, 2007)

REGIONAL SENIOR JUSTICE

Alexander M. Graham (London)
(until August 30, 2007)

REGIONAL SENIOR JUSTICE

Robert G. Bigelow (Toronto)
(effective September 1, 2007)

Two judges appointed by the Chief Justice of the Ontario Court of Justice:

THE HONOURABLE MADAM JUSTICE

Lucy C. Glenn.....(Chatham)

THE HONOURABLE MADAM JUSTICE

Judith C. Beaman.....(Ottawa)
(until December 31, 2007)

THE HONOURABLE JUSTICE

Timothy R. Lipson.....(Toronto)
(effective January 1, 2008)

Lawyer Members:

TREASURER OF THE LAW SOCIETY OF UPPER CANADA

Gavin Mackenzie.....(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

J. Bruce Carr-Harris.....(Ottawa)

Community Members:

Madeleine Aldridge.....(Toronto)
*Teacher, Toronto Catholic District School
Board, Retired*

William Blake.....(Ottawa)
*Retired Police Officer, Ottawa Police Service
(effective June 13, 2007)*

Gloria Connolly.....(Barrie)
*Section Manager, Bell Canada;
Teacher, Georgian College, Retired*

Jocelyne Côté-O'Hara.....(Toronto)
*President, The Cora Group
(until May 28, 2007)*

Mila Velshi.....(Toronto)
Independent Associate – Able Travel

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 to deal with any complaints against these provincially-appointed judges and masters:

MASTERS

- Master Basil T. Clark, Q.C. (until November 30, 2007)
- 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 judges of the Ontario Court of Justice have been appointed by the Chief Justice to serve as temporary members of the Ontario Judicial Council when required:

The Honourable Justice Bernard M. Kelly
The Honourable Justice Claude H. Paris

3. Administrative Information

Separate office space adjacent to the Office of the Chief 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 thirteenth year of operation, the staff of the Ontario Judicial Council and the Justices of the Peace Review Council consisted of a registrar, two assistant registrars and a secretary:

TARA DIER, LL.B. - Acting Registrar
(from January 15 to November 18, 2007)

MARILYN KING, LL.B. - Acting Registrar
(effective January 2, 2008)

THOMAS GLASSFORD – Assistant Registrar
(Acting Registrar from November 19 to December 31, 2007)

ANA BRIGIDO – Acting Assistant Registrar

MELISSA JOHNSTON – Acting Secretary
(until August 17, 2007)

JACQUELINE OKUMU – Acting Secretary
(effective August 13, 2007)

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 the education plan must be approved by the Judicial Council, as required by subsection 51.10(1). 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. On January 25, 2008, the continuing education plan was approved by the Judicial Council. A copy of the continuing education plan for 2007-2008 can be found at Appendix "C".

5. Communications

The website of the Ontario Judicial Council continues to include information regarding the Council as well as information about any upcoming hearings. Copies of "Reasons for Decision" for public hearings are posted on the website when released and all of the publicly available Annual Reports are included in their entirety.

The address of the Judicial Council's 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. During the period covered by this Annual Report, the Honourable Justice Lucy Glenn was appointed by the Judicial Council 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) and a community member, is assigned to examine each complaint made to the Council. Subsection 51.4(3) of the *Courts of Justice Act* 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 in this Annual Report as Appendix "B".

Once the investigation is completed, under subsection 51.4(13) of the *Act*, the complaint subcommittee may recommend the complaint be dismissed, refer it to the Chief Justice of the Ontario Court of Justice for discussion with the judge about his/her course of conduct, 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 must 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. Under subsection 51.5(2) of the *Courts of Justice Act*, complaints of conduct may not be referred for mediation in the following circumstances:

- ◆ 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;
- ◆ 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

- ◆ where the public interest requires a hearing of the complaint.

The Council (or a review panel thereof) will review all recommendations for disposition of a complaint (if any) made by a complaint subcommittee and may approve the proposed disposition or replace any decision of the complaint subcommittee if the Council (or review panel), decides that a different disposition would be appropriate. If a complaint has been referred to the Council by the complaint subcommittee, under subsection 51.4(17) 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 community member. At this stage of the process, only the two complaint subcommittee members are aware of the identity of the complainant and the judge who is the subject of the complaint.

Complaint subcommittee members who participated in the investigation of the complaint are not to participate in its review by Council or in 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 available to conduct a hearing into a complaint if a hearing has been ordered. Hearing panels are 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 a community member. The Chief Justice of Ontario, or his designate from the Court of Appeal, chairs 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, under subsection 51.6(11) 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 under section 51.6 by the Judicial Council for misconduct, either singly or in combination, 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

A recommendation by the Council to the Attorney General that the judge be removed from office cannot be combined with any other sanction.

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

8. Compensation for legal costs incurred

When the Judicial Council has dealt with a complaint, section 51.7 of the *Courts of Justice Act* makes provision for a judge to request compensation for costs of legal services incurred in connection with the investigation and/or mediation and/or hearing under sections 51.4, 51.5 and 51.6 of the *Act* respectively. Such a request would generally be submitted to the Council after the complaints process has been completed, along with a copy of the statement of account of legal services to support the request.

The Judicial Council must make a recommendation to the Attorney General that a judge be compensated, indicating the amount of compensation. Pursuant to section 51.7(7) of the *Act*, the Council’s order for compensation may relate to all or part of the judge’s costs for legal services and must 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 is required to pay compensation to the judge if such a recommendation is made.

9. Summary of Complaints

The Ontario Judicial Council received 45 complaints in its thirteenth year of operation, as well as carrying forward 23 complaint files from previous years. Of these 68 complaints, 31 files were closed before March 31, 2008. Seventeen of the files closed were from the twelfth year (2006-2007) and 13 were from the thirteenth year. One file that had continued from the eleventh year was ordered to a hearing and was subsequently closed during the thirteenth year.

An investigation was conducted in all cases by a complaint subcommittee of Council, which was made up



of a provincial judge and a community member. In each case 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 a fully informed decision about a complaint. In some instances, further investigation was conducted where warranted. At the conclusion of its investigation, the complaint subcommittee made a recommendation as to the disposition of the complaint. This recommendation was reviewed by a four member committee of Council members, called a review panel. The review panel had representation from the community, the bench and the bar. None of its members had any prior knowledge of the complaint or were told the names of those involved. A review panel may agree with and approve the disposition recommended by a complaint subcommittee or it may disagree and make its own disposition. In the thirteenth year, the review panels agreed with the recommendations of the complaint subcommittees in all cases, and in one case, after reading the subcommittee's report and the transcript, requested further information in the form of a response from the judge before determining that the complaint should be dismissed without the need for further action.

Three of the 31 complaint files closed by the Ontario Judicial Council during the period of time covered by this report were **dismissed** on the basis that they were found to be **outside of the jurisdiction of the Council**. This occurred if a complainant expressed dissatisfaction with the result of a trial or with a judge's decision, but the complaint contained 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 of the jurisdiction of the Judicial Council.

Twenty-six of the 31 files closed were **dismissed** by the Council on the basis that they contained allegations of misconduct that were **unfounded or that did not amount to judicial misconduct**. The complaints included 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 reviewed and investigated in each case by a complaint subcommittee before a decision was made.

In one case, the complaint subcommittee and the review panel agreed that the issues raised by the complaint should be **referred to the Chief Justice of the Ontario Court of Justice**. Following her meeting with the judge, the Chief Justice provided a written report to the review panel. After reviewing the Chief Justice's report, the review panel was satisfied that the matter had been appropriately addressed and the file was closed. Pursuant to subsection 51.4(18) of the *Courts of Justice Act*, a review panel will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where a majority of the review panel are of the opinion that the conduct complained of does not warrant another disposition and that there is some merit to the complaint. A majority of the members of the review panel must also hold the opinion that a referral to the Chief Justice is a suitable means of informing the judge that his or her course of conduct was not appropriate in the circumstances that led to the complaint. A review panel may recommend imposing conditions on their referral to the Chief Justice where a majority of the members of the review panel agree that there is some course of action or remedial training of which the judge could take advantage and the judge agrees. The Chief Justice of the Ontario Court of Justice provides a written report afterwards to the Council.

Case summaries follow for 30 of the 31 cases that were closed in year 13.

In one case, the review panel ordered a **hearing** under section 51.6 of the *Courts of Justice Act*. A hearing will be ordered 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. In the one case that proceeded to a hearing during the period covered by this Report, the Council found that on the basis of the evidence, and taking into account both a public and written apology by the judge, a warning under s. 51.6(11)(a) was the appropriate disposition in the circumstances of the

particular case to serve the interests of preserving public confidence in and respect for the judiciary, and public confidence in the judge's integrity and ability to carry out his duties. The Reasons for Decision are included in Appendix E to this Report.

Of the 31 files that were closed during the period covered by this Report, 10 arose from family court proceedings, 17 arose from proceedings under the *Criminal Code*, 3 arose from matters in Small Claims Court, and one related to the conduct of a judge outside of court.

Thirty-seven complaints remained open to be carried over into the fourteenth year of operation. Of those 37 files, 5 files were from year twelve and 32 were from year thirteen.

10. Case Summaries

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

Files are given a two-digit prefix indicating the year of the 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. 13-009/07 was the ninth file opened in the thirteenth year of operation and was opened in calendar year 2007).

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

FISCAL YEAR:	03/04	04/05	05/06	06/07	07/08
Opened During Year	55	36	23	32	45
Continued from Previous Year	34	35	19	21	23
Total Files Open During Year	89	71	42	54	68
Closed During Year	54	52	21	30	31
Remaining at Year End	35	19	21	23	37

CASE SUMMARIES

CASE NO. 12-011/06

The complainant was a self-represented accused who was charged with mischief and appeared before the judge. The complainant alleged that the judge treated her unfairly, and in a racist manner, and had told her to “shut up”.

The complaint subcommittee ordered and reviewed the transcripts of the proceedings. They reported that the judge was very considerate to the complainant and had determined that the complainant needed to be assessed by a doctor to determine whether she would be fit to stand trial. The complainant was found to be fit and criminally responsible for her actions by the doctor. The complaint subcommittee reported that the complainant was placed on probation for 12 months with the requirement that she receive counselling. They noted that the judge was respectful, kind and courteous to the complainant throughout the whole proceeding.

The complaint subcommittee determined that there was no judicial misconduct on the part of the judge and recommended to the review panel that this complaint be dismissed. The review panel agreed with their recommendation.

CASE NO. 12-012/06

The complainant/father made a complaint against a judge who granted an ex parte order on a motion made by the mother of the complainant’s child. The motion dealt with custody, access, mobility and a restraining order. The complainant claimed that the judge knew the mother, and had worked with her prior to hearing the mother’s interim ex parte motion. The complainant claimed that the

judge was biased in favour of the mother. He also claimed there was “possibly collusion” against the complainant, and that it was possible that the judge had advised the mother on how to proceed in the court case.

As part of their deliberations, the complaint subcommittee reviewed the complainant’s letters, the transcripts, court documents and other relevant material. The subcommittee carefully considered the complainant’s allegation that the judge had a prior acquaintance with the mother of the child.

The complaint subcommittee noted that on the return of the matter before the judge, the complainant made his position clear that the judge was in a conflict position because of the judge’s association with the mother, and asked that the judge not make any further decisions regarding the complainant’s matter. The complaint subcommittee advised that the judge told the complainant that he believed that he had been the only judge sitting in the courthouse on the date when he had heard the ex parte motion.

The complaint subcommittee noted that the Affidavit filed by the mother had indicated that the complainant’s seven year old son was at risk of imminent harm, and as a consequence, the matter had to be addressed on an emergency basis. This factor was given considerable weight in the judge’s decision to grant the motion. The order was made on a “without prejudice” basis.

The complaint subcommittee also advised that, on the return date of the motion, the judge heeded the complainant’s request to recuse



CASE SUMMARIES

himself from the proceeding, and adjourned the case to the next available date in front of another judge.

Under the circumstances, the complaint subcommittee did not consider that the judge's conduct was judicial misconduct and recommended to the review panel that this complaint be dismissed. The review panel requested that the judge be sent a letter requesting a response to the allegations made by the complainant. The review panel considered the judge's response and were satisfied that there was no evidence that he colluded with or advised the mother regarding the court proceeding. They agreed with the subcommittee's opinion that there was no judicial misconduct and with their recommendation to dismiss the complaint.

CASE NO. 12-013/06

The complainant was an alleged victim in a criminal law proceeding against her husband. The complainant indicated that the judge made unnecessary and subjective comments about her and totally disregarded her cultural background.

The complaint subcommittee reviewed the complainant's correspondence and numerous transcripts including those of the trial, the judge's reasons, and the proceedings at sentencing. The subcommittee noted that much of the complainant's letter dealt with possible misinterpretation of the judge's role and comments about the evidence. The subcommittee observed that the complainant was disappointed with the results of the trial. They advised that the complainant's

husband did not testify; therefore, much of the information about the alleged offences came from the complainant. The subcommittee noted that the complainant briefly referred to her cultural background during the course of her testimony. They also noted that the judge made findings of credibility based on the evidence, the submissions on the evidence, and had to comment on the complainant's testimony. The complaint subcommittee determined in their investigation that the complainant misunderstood the judge's role and they found no evidence of judicial misconduct on the part of the judge.

The complaint subcommittee recommended to the review panel that this complaint be dismissed. The review panel agreed with their recommendation.

CASE NO. 12-014/06

The complainant was a party in a Small Claims Court matter. The complainant alleged that the judge told him to "bug off" during a settlement conference. The complainant also alleged that the judge was biased against him, assisted the defendant in the proceeding and rushed through the process.

The complaint subcommittee ordered a transcript and audiotape of the settlement conference. They were advised by court staff that settlement conferences were not recorded by a court reporter. The complaint subcommittee provided the judge with a copy of the complaint and asked for a response. The judge denied using the specified phrase, and noted that both parties consented to the dismissal. After careful consideration of

CASE SUMMARIES

all of the complainant's concerns and the judge's response, the complaint subcommittee was not able to confirm whether or not the judge told the complainant to "bug off" or was disrespectful to the complainant in any way, given that no transcript was available.

After reading and considering all of the complainant's letters, the complaint subcommittee advised the review panel that it appeared that the complainant did not appear to be familiar with the judge's role in this type of hearing. They advised that a judge presiding over a settlement hearing is allowed to express his views appropriately and can direct anyone who is not represented by a lawyer through the proceeding.

For the reasons mentioned above, the complaint subcommittee recommended to the review panel that this complaint be dismissed. The review panel agreed with their recommendation.

CASE NO. 12-016/06

The complainant was a victim of an alleged robbery and assault. The complainant indicated that the fact that he had been "in a gay bar prior to being assaulted and robbed weighed heavily in [the judge's] decision (in favour of the defendant) and in her treatment of me (the complainant)." The complainant also alleged that the judge was angry at him from the onset and was "visibly angry, and yelled at me (the complainant)". The complainant also said that the judge yelled, "Don't tell me how to run my courtroom", lost her ability to reason and allowed her ego to take over. The complainant said that the judge did not object when defence

counsel suggested that the complainant was drunk and, had allowed defence counsel to point a finger at him.

As part of their investigation, the complaint subcommittee ordered a transcript and audio tapes of the proceeding. The complaint subcommittee read the transcript and listened to the audio tapes and determined that the judge did not raise her voice. They advised that the only mention of a gay bar was made by the complainant. The complaint subcommittee concluded that there was no judicial misconduct by the judge and that the other matters raised by the complainant did not constitute misconduct. The complaint subcommittee recommended to the review panel that this complaint be dismissed. The review panel agreed with their recommendation.

CASE NO. 12-018/07

The complainant was an accused in a criminal law proceeding who represented herself before the judge. The complainant alleged that the judge showed bias because the complainant was a woman representing herself, and also that her trial was unfair due to the fact that the judge did not allow her to produce proper documentation.

The complaint subcommittee ordered the transcript of the proceeding. After their review of the transcript, the subcommittee determined that the judge was very patient throughout the trial and demonstrated no bias against the complainant. They informed that, due to the fact that the complainant was unrepresented, the judge assisted her during the trial. The complaint subcommittee advised that the complainant did not produce

CASE SUMMARIES

“proper documentation”, and was given ample opportunity to describe the background to the incident that brought the police to her home. They found no judicial misconduct by the judge and recommended to the review panel that this complaint should be dismissed. The review panel agreed with their recommendation.

CASE NO. 12-020/07

The complainant was the mother of an accused who was convicted by the judge of sexual assault. Information about the accused was put on the Sex Offender Registry. The complainant alleged that the judge was “biased and prejudiced” in the sentencing of her son.

The complaint subcommittee ordered and reviewed a transcript of the proceedings. The complaint subcommittee determined that the judge carefully considered the evidence and gave reasons for his conclusions. They noted that the judge found that the Crown witnesses were credible and that the defendant was not. They also noted that the judge considered the evidence offered on behalf of the accused and held that he could place little weight on it. The complaint subcommittee reported that the judge demonstrated no prejudice toward the accused and that there was no basis for an allegation of judicial misconduct. The complaint subcommittee recommended to the review panel that this complaint be dismissed. The review panel agreed with their recommendation.

CASE NO. 12-022/07

The complainant was a trial lawyer who had formerly practised in the court presided over by the

judge. His complaints against this judge to the Regional Senior Justice for the jurisdiction had previously resulted in him being excused from having to appear before this judge.

The complainant did not allege misconduct on the part of the judge. Rather, he alleged a pattern of poor decisions on the part of the judge, many of which were successfully appealed.

The complaint subcommittee noted that examples such as the ones provided to Council have not historically formed the basis for a complaint to the Judicial Council. They have been found to be properly the subject of an appeal. The complainant conceded that this complaint related more to a question of standards of competence, rather than misconduct. Nonetheless, they noted that the complainant had maintained that the level of decision-making by the judge was so poor that it constituted a pattern, requiring repeated appeals of the judge’s decisions.

The complaint subcommittee and the review panel agreed that the issues raised by the complainant should be addressed by the Chief Justice. The Council wrote to the Chief Justice and requested that she speak to the judge pursuant to subsection 51.4(18) (c) of the *Courts of Justice Act*, and asked that she provide the Council with a written report on the disposition of this complaint.

The Chief Justice reported to the Council that she had met with the judge pursuant to the *Act* and had discussed the subcommittee’s concerns with him. After reviewing the Chief Justice’s report, the review panel was satisfied that the

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matter had been appropriately addressed, and the file was closed.

CASE NO. 12-023/07

The complainant, the mother in a child protection proceeding, complained that judge was biased because he had, before being appointed to the bench, acted for the child's father on two assault charges in circumstances where the mother and one of the children were the victims.

The complaint subcommittee reviewed transcripts of the court appearances before the judge in this case.

The complaint subcommittee felt that there was no misconduct on the part of the judge at the first appearance of the case before him. The complainant should have been aware of her concerns regarding the judge at the first hearing of the matter before the judge. The proper way to raise the issue was to bring a formal motion along with affidavit evidence regarding the conflict, on notice to the other parties. This was not done. On the second date, she raised her concern in open court during the course of a failed attempt by her lawyer's agent to get an adjournment. Had the judge recalled having acted for the father, his actions might be subject to question; however, the subcommittee noted that he had appeared to have no recollection of having done so. Further, the order that he did make was 'without prejudice' to her right to file a response to the motion and argue the matter at a later date.

On the third appearance, the judge recused himself immediately upon being presented with

the formal motion of the mother regarding the alleged conflict.

Under all of these circumstances, the subcommittee recommended to the review panel that the complaint be dismissed. The review panel agreed with their recommendation.

CASE NO. 12-025/07

The complainant was a party in a criminal proceeding before the judge. The complainant alleged that the judge was a "hostile judge", was "racist", "uttered racial slurs" and was biased against her. The complainant also alleged that the judge had a conflict of interest, refused to hear her testimony and suppressed evidence during the trial. The complainant commented that the judge should have dismissed all the charges against her.

The complaint subcommittee ordered audiotapes and transcripts for all appearances by the complainant before the judge. The complaint subcommittee determined that the judge was very patient throughout the whole trial, did not appear hostile, and did not utter any racial slurs or imply or say anything that was race-related. No conflict of interest was apparent, and there was no indication of bias. The complaint subcommittee felt that the trial was conducted in a very professional, very courteous manner and advised that most of the complaints made by the complainant referred mostly to parties other than the judge.

The complaint subcommittee found no judicial misconduct on the part of the judge and recommended to the review panel that this complaint

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be dismissed. The review panel agreed with their recommendation.

CASE NO. 12-026/07

The complainant was a party in criminal proceeding. The complainant alleged that “the Justice reviewed the background and facts secretly and modified the transcript after the fact.”

The complaint subcommittee ordered a transcript and audio tape of the proceedings before the judge. The complaint subcommittee advised that the transcript matched the audiotape word for word and was not altered by the judge in any way.

The complaint subcommittee also advised that the transcript revealed that any discussions that took place prior to court did not involve the judge. The complaint subcommittee noted that the complainant was upset with the judge’s decision but determined there was no basis for judicial misconduct. The complaint subcommittee recommended to the review panel that this complaint be dismissed. The review panel agreed with their recommendation.

CASE NO. 12-027/07

The complainant was the mother of a young person, who was the alleged victim in a sexual assault trial in youth court. The complainant said that the trial judge did not believe her son’s evidence and had failed to allow the Crown to make submissions. The complainant also said that the judge thought the assault was “just a game...and not a sexual assault”. She also felt

that she should have been called as a witness in the trial.

The complaint subcommittee, as part of their investigation, ordered a transcript and an audio-tape of the proceedings.

The complaint subcommittee determined that the judge did not refer to the alleged sexual assault as a “game”. Rather, he accepted, as true, the evidence of the accused youth that he had fabricated committing the assault on his friend, as a kind of joke to “get him going”. They advised that it was within the judge’s discretion to reject the complainant’s testimony as lacking in credibility. They recommended to the review panel that this complaint be dismissed. The review panel agreed with their recommendation.

CASE NO. 12-028/07

The complainant was a paralegal who was representing a client on a s.11 (b) Charter motion in a criminal matter. He alleged that he was openly criticized in court by the presiding judge for his use of the word “squash” instead of “quash” in his application. The complainant alleges that because of this the judge ordered him removed as incompetent. He was also seeking an apology from the judge, \$10,000 in lost legal fees and the quashing of the conviction against his client.

The complaint subcommittee ordered a transcript of the proceedings and copies of materials filed by the complainant. The complaint subcommittee determined that, as was appropriate, the judge held a hearing to determine the competence of the complainant to represent an accused. They

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noted that the judge's questioning revealed that there were a number of significant gaps in the complainant's understanding of basic criminal law. The complaint subcommittee also noted that the judge did not criticize the complainant in any way. The complaint subcommittee felt that the judge merely attempted to explain to the complainant that the word "squash" was not normally used in a court of law. The complaint subcommittee found no judicial misconduct and recommended to the review panel that this complaint be dismissed. The review panel agreed with their recommendation.

CASE NO. 12-029/07

The complainant acted as an agent on behalf of a defendant in a Small Claims Court proceeding before the judge. The complainant alleged that, although the parties conducted themselves "properly and professionally", the judge did not want to hear what one person said to another, as the judge wished to finish the case in one day; the judge conveyed exasperation and frustration to the extent that it "created unnecessary tension and misapprehension" in the minds of the parties; and, the judge told the complainant to "shut up".

The complaint subcommittee ordered and reviewed the transcript and the audio tape of the proceedings. They determined that the judge was abrasive and impolite and they confirmed that the judge did tell the complainant to "shut up".

The complaint subcommittee was of the opinion that, although this was not judicial misconduct,

the complaint should be referred to a review panel for decision.

After reading the subcommittee's report and the transcript, the review panel requested that a letter be written to the judge asking her to respond to the allegations made by the complainant. In her response to Council, the judge conveyed her regret for her actions and indicated that she meant no disrespect to the complainant or any of the other parties involved in the proceeding. Taking into account all of the circumstances and the response, the review panel felt that the judge's letter was very sincere and therefore determined that this complaint should be dismissed.

CASE NO. 12-030/07

The complainant in this matter was the accused in a criminal proceeding involving counts of assault with a weapon, threatening, and being unlawfully in a dwelling house. The trial proceeded over approximately four days. The accused was found guilty on all counts. He alleged misconduct on the part of both the judge and the Crown who prosecuted him.

The subcommittee advised that most of the allegations involved issues that should properly have been placed before an appeal court, and were, therefore, outside of the Council's mandate.

However, the complaint subcommittee was of the view that other matters were properly the subject of complaint to the Council, and they addressed them. They commented only on those matters that, in their opinion, were properly within the Council's jurisdiction.

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The complaint subcommittee ordered transcripts and audiotapes of the proceedings, and investigated the following allegations made by the complainant:

1. *The judge asked the Crown where he was going for lunch in open court at the lunch break during the trial on August 30th.*

The complaint subcommittee determined that there was nothing on the audiotape or in the transcript that would support the complainant's allegation that the judge inquired as to where the Crown was having his lunch.

2. *In the judge's reasons for his decision, he made factual errors in the evidence related to the police statements, which the complainant alleged did not accord with the evidence. This gave the impression that the judge only adverted to the case for the Crown, not to the whole of the evidence before him.*

From a review of the transcripts and reasons for judgment, it appeared to the complaint subcommittee that the judge's reasons were faithful to the evidence before him. As is the practice, the police statements were not filed with the court, so the judge was not privy to their contents. Even if the judge had, in fact, misstated the evidence (and Council made no such finding), this would have been a matter for the appeal court.

3. *The judge failed to control Crown counsel, who was screaming until he was red in the face at the witnesses, including his own.*

The complaint subcommittee reported that a review of the audiotape did not support this allegation. The subcommittee was of the opinion that the Crown was, at times, forceful in his questioning, but never to the point of aggression or badgering of the witnesses.

4. *The judge reprimanded the complainant for failing to sit up straight in court, notwithstanding his knowledge of the complainant's back problems. In contrast, he allowed the Crown to lounge in his chair with his legs out and chew on a pen.*

The complaint subcommittee advised that the transcript did not support the allegation that the judge admonished the complainant for his posture. Based on their review, they reported that the judge was very patient and polite with the complainant and witnesses and did not use any improper language.

5. *Throughout the trial, the judge "appeared to be lost in space or more interested in his laptop".*

The complaint subcommittee determined that the judge used his laptop to transcribe the evidence as it was being heard. They advised that when a laptop is used to transcribe evidence at trial, many decision-makers find it necessary to look down to ensure that what is being typed is accurate. Others, who may not need to look down, appear lost in thought as they concentrate on the words as they are being typed. Unfortunately, this habit could leave the impression that the typist is so absorbed in the exercise that he or she is not listening. A review of the audiotape

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and transcript by the committee revealed that the judge was very much tuned in to what was being said in the courtroom, and his decision reflected this fact.

6. *The judge made a joke about the court not having a CD player to listen to the 911 recording. He stated that he should go outside to listen to it in his car.*

The complaint subcommittee reported that after several unsuccessful attempts to find a CD player or laptop to play the CD containing the 911 call to the police, counsel for the defence suggested jokingly that the judge use his own laptop to play and listen to the CD. They also noted that later the judge said: “If worse comes to worse, I understand the government car has a CD player”. The complaint subcommittee advised that it was not clear from the record as to whose government car the judge was referring to. They advised that Ontario Court of Justice judges are not issued such vehicles and that no-one had objected to this suggestion. The subcommittee noted that ultimately a laptop was located and the CD played.

7. *Before the Crown called M.L. as a witness, he told the judge she was 15 or 16 years old. The judge said that he would allow her to testify as long as she was at least 15 years old. When she took the stand, she testified that her age was, in fact, 13. Nevertheless, the Crown was permitted to question her.*

The transcript revealed to the complaint subcommittee that, in fact, before M.L. took the stand, the Crown informed the court that she was 13 years of

age. They reported that the judge made no statement about his willingness to permit her to testify only if she was at least 15 years of age and the judge inquired of defence counsel as to whether there were any concerns about her capacity to be affirmed, as he is required to do under s. 16 of the *Canada Evidence Act*. The complaint subcommittee noted that defence counsel appeared to misunderstand the nature of this inquiry and his burden of establishing her lack of capacity. They advised that the judge was required to inform him of the correct procedure. The committee determined that the defendant withdrew his objection and the witness was sworn.

8. *The judge failed to require 13 year old M.L. to answer questions put to her by defence counsel.*

The complaint subcommittee noted that on one occasion only, the defence counsel embarked on a line of questioning that appeared to relate to the witness’ past as an abused child. This caused her to break down, and the judge granted a recess to allow her to collect herself. They also noted that while the child was out of the courtroom, the judge ruled that the line of questioning was not relevant to the matter before the court, and requested counsel to confine his cross-examination to matters that were relevant. They reported that the defence counsel accepted the judge’s direction, and no further issue with this witness arose.

9. *The judge already had his reasons for decision typed and printed by the last day of trial, even though there were one defence witness and submissions yet to be heard. This gave the impression to the complainant that the case had*

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been predetermined before the full defence was presented to the court.

The complaint subcommittee reported that following submissions from defence and Crown counsel, the judge stated: “We will take a ten minute recess and I’ll come back in and hopefully be in a position to give a decision when I refer to my notes.” The complaint subcommittee noted that the audiotape revealed that it appeared that the judge was not merely reading from his notes but rather from an already prepared decision, which he read out virtually without hesitation. They noted that it was a thorough, lengthy (20 page) decision which took a considerable amount of time to read and the judge did, in fact, refer to the testimony of the witness who had appeared before him that day. The complaint subcommittee noted that the proceedings ended quite late in the day. They suggested that while it might have been preferable for the judge to have adjourned the case and delivered his decision on another day, it was obvious to them that the delay in concluding the trial (some 18 months) was a consideration for the judge and it was apparent to them that the judge’s decision was well supported by the evidence.

For the reasons noted above, the complaint subcommittee recommended to the review panel that this complaint should be dismissed. The review panel agreed with their recommendation.

CASE NO. 12-031/07

The complainant was charged with refusal to give a breath sample into an approved screening device. The complainant alleged that the judge

at the trial handled the matter “in an undusted (sic) and with discrimination throughout the whole case.”

After reviewing the audio tapes and transcripts of the entire proceeding, the complaint subcommittee found no evidence that the complainant had been treated in the manner alleged by her. The complaint subcommittee noted that the judge was polite and respectful to the complainant and to her counsel throughout the whole proceeding. As the complaint subcommittee found no judicial misconduct on the part of the judge, they recommended to the review panel that this complaint be dismissed.

The review panel agreed with their recommendation.

CASE NO. 12-032/07

The complainants were defendants in a Small Claims Court dispute over the payment of legal fees. They alleged that the judge created an unfair advantage to the plaintiff by ordering a settlement conference twenty three days after reviewing the file and only one week after the plaintiff filed a defence to the defendants’ counter-claim.

After considering the letter of complaint, the complaint subcommittee determined that there was no need for further investigation into the matter, as no allegation of judicial misconduct was made by the complainants. They also noted that this case was ordered to a settlement conference by the judge. The settlement conference was presided over by a mediator, not the judge.

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The complaint subcommittee advised that this matter was outside of the jurisdiction of the Ontario Judicial Council as it related to a decision made by a judge which could only be remedied by appeal. The complaint subcommittee recommended to the review panel that this complaint should be dismissed. The review panel agreed with their recommendation.

CASE NO. 13-001/07

The complainant was a paralegal who was retained to act in a criminal matter involving a charge under s. 253(a) of the *Criminal Code*. He was disqualified as incompetent by the trial judge. The complainant alleged that the trial judge was “prejudiced.”

The complaint subcommittee ordered the transcript from the proceeding and determined that the judge, as was his duty, questioned the complainant to ascertain his competence to represent the accused, and ruled the agent incompetent to deal with the matter in question. Their review also showed that the judge was polite and very professional in his dealings with the complainant. The complaint subcommittee advised that the allegation related to the judge’s ruling on incompetence was a matter of law that was outside of the Council’s mandate and within the authority of an appeal court to consider whether an error was made.

The complaint subcommittee recommended to the review panel that this complaint be dismissed. The review panel agreed with their recommendation.

CASE NO. 13-002/07

The complainants were parties in a child protection proceeding in which the Children’s Aid Society (CAS) apprehended their newborn child. The Society filed an application for a court order that the baby be placed in the care of the CAS.

The complainants stated that, at the court proceeding, the judge made a “without prejudice” order keeping the child in the temporary care of the Society and he then transferred the proceeding to the jurisdiction where the parents were living. The complainants requested that the Ontario Judicial Council charge the judge with a long list of criminal charges, including kidnapping and hostage taking.

The complaint subcommittee ordered and reviewed the transcript of the proceeding. They noted that the judge appeared to be polite, compassionate, helpful, and appropriate in his dealings with the complainants. The complaint subcommittee found no basis for the allegation of criminal wrong-doing on the part of the judge and found no evidence of judicial misconduct. The complaint subcommittee recommended to the review panel that this complaint be dismissed. The review panel agreed with their recommendation.

CASE NO. 13-003/07

The complainant, an experienced paralegal, alleged that the judge in question:

1. Upon entering the courtroom, was seen to “purse his lips and blow a kiss in the direction of the court reporter”;

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2. *Angrily told the complainant that paralegals were not permitted in his courtroom, threatened to cite him for contempt, said loudly to the clerk, "Clear the court!", and told the court reporter to follow him into his Chambers; and,*
3. *Later, told the complainant's client in court that he should demand a refund of the fee he had paid to the complainant.*

The complaint subcommittee reviewed the transcript and listened to the audiotape of the proceedings. In relation to complaint #1, they retained an independent legal firm to investigate this allegation.

The complaint subcommittee advised that legal counsel had interviewed the court reporter in question. The investigation indicated that the court reporter had no recollection of witnessing such an intimate gesture toward her on the part of the judge on this date. Nor did she recall the judge becoming angry, ordering the clerk to clear the courtroom, or telling her to follow him into his Chambers. She had no recollection of an exchange between the complainant and the judge in which the complainant stated he was going to report the judge. Further, she denied observing any other inappropriate conduct on this judge's part toward her on any other occasion.

The complaint subcommittee further advised that legal counsel carrying out the investigation had contacted the complainant to obtain the name of the female lawyer who was present in the courtroom, and was said to have witnessed

the blown "kiss" and commented upon it to the complainant. That female lawyer was interviewed by counsel. She had no recollection of the specific gesture, of speaking to the complainant about it, or of any part of the entire exchange complained of by the paralegal.

The complaint subcommittee was satisfied that there was no evidence to support the allegations in relation to this complaint. No judicial misconduct was found on the part of the judge.

In relation to complaint #2, the complaint subcommittee reviewed the transcript and audiotape. They confirmed that there had been an exchange between the complainant and the judge. It was noted by the complaint subcommittee that the judge had stated in an aggravated tone of voice that he did not allow agents to appear in his courtroom. It appeared that this position was not related solely to the complainant but was a blanket prohibition against all paralegals appearing before the judge. The complaint subcommittee noted that before denying the complainant the right to appear in his court, the judge did not conduct a "*Romanowicz* hearing" into the complainant's competence and his client's understanding of the complainant's limitations.

The complaint subcommittee informed that the failure on the part of the judge to conduct a *Romanowicz* hearing would be a question of law that could be the subject matter of an appeal, and was outside of the jurisdiction of this Council. No judicial misconduct was found on the part of the judge.

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The complaint subcommittee noted that, in response to the complainant's remark that he did not like the fact that he had been arbitrarily excluded from this judge's courtroom many times, the judge threatened to cite him for contempt. In response, the complainant threatened to file a complaint. They also noted that it would appear that this last remark led the judge to rise and, as he did so, he ordered a transcript of the proceeding. The complaint subcommittee advised that the alleged order, "Clear the court!" did not appear on the transcript or audiotape, nor did any direction to the reporter to follow him into his Chambers. The complaint subcommittee also advised that the record did not support the allegation of certain other exchanges and remarks made by the complainant and the judge.

In relation to complaint #3, the allegation that the judge had suggested to the complainant's client that he demand a refund of his fee was discovered during the complainant's discussion with the independent counsel during the investigation of the first complaint, and became the subject matter of a second complaint to the Ontario Judicial Council. The complaint subcommittee noted that this exchange between the judge and the client was, in fact, contained in the transcript of the proceedings. They stated that the complainant advised in his letter that his client had followed the judge's suggestion and demanded a refund from the complainant. They noted that the request for a refund was refused by the complainant on the basis of the amount of work invested in obtaining a resolution of the file.

It was the subcommittee's view that the judge's remarks, while unfortunate, did not amount to judicial misconduct.

For reasons noted above, the complaint subcommittee recommended to the review panel that this complaint should be dismissed. The review panel agreed with their recommendation.

CASE NO. 13-005/07

The complainant/mother, who was a party in a family law proceeding, made several complaints against the judge arising out of an interim motion for spousal support and the father's cross-motion for interim access of their young child.

The mother was upset that, in his reasons for judgment, the judge found that the parties had consented to a withdrawal of the mother's interim claim for special expenses (relating to child support) and to an interim order that the child's residence and school not be changed. The mother claimed that she had not consented to these orders.

She further complained that the judge considered affidavit evidence filed by the father – some of it which she felt was inflammatory - that went beyond the limits that the judge had earlier set out regarding the scope of the information to be included in the affidavits. She also stated that the judge did not properly consider her own affidavit evidence that was filed on these motions.

Specifically, the mother was alarmed that the judge did not accept her allegations about the

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father's alcohol abuse and domestic violence. She was particularly concerned that the judge accepted the father's evidence that she spent her daytime hours watching television. She complained that the father could not have any valid source of information for this statement, but that the judge had accepted this piece of evidence.

The complaint subcommittee reviewed transcripts of the proceedings as part of their investigation and determined that both parties were represented by counsel and both had an opportunity to file affidavit material on the motions. They advised that, in their view, the judge had familiarized himself with all the materials the parties had filed.

The complaint subcommittee also advised that they found no indication of bias or judicial misconduct on the part of the judge.

The complaint subcommittee commented that the fact that the complainant did not agree with the judge's assessment of the evidence did not mean that the judge was biased or that there was judicial misconduct. The subcommittee stated that if the complainant felt that the judge misapprehended the evidence (and they made no such finding), the appropriate remedy is by way of appeal.

Given that the complaint subcommittee found no indication of judicial misconduct by the judge, they recommended to the review panel that this complaint should be dismissed. The review panel agreed with their recommendation.

CASE NO. 13-006/07

The complainant complained about the conduct of the judge in a child protection proceeding. Although no specific dates were provided, the complainant alleged that the judge was biased because of the following:

1. *the judge had stated that "no case of mine will be overturned in a higher court";*
2. *the judge permitted the Children's Aid Society to lie and twist the facts; and*
3. *in order to insult the complainant, the judge made the statement, staring directly at him, that "the father assaulted the daughter".*

In investigating this complaint, the complaint subcommittee reviewed the transcripts for all of the complainant's court appearances.

After reviewing each of the transcripts, the subcommittee concluded that the transcripts did not substantiate that the judge was biased, or that he made the comment about an appeal. Further, rather than supporting the allegation that the judge permitted the Children's Aid Society to lie and twist the facts, the transcript showed that the judge fulfilled his responsibility to listen to the evidence of all parties and make findings of fact. The subcommittee also found that the transcripts did not support the claim that the judge insulted the complainant by saying that the complainant had assaulted his daughter; rather, the transcript showed that the judge was careful in his findings and did not use the phrase "assault".

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Given these conclusions, the complaint subcommittee found that there was no basis for an allegation of judicial misconduct, and, therefore, recommended to the review panel that this complaint be dismissed. The review panel agreed with their recommendation.

CASE NO. 13-011/07

The complainant was a lay person who represented his wife for part of her criminal trial. The complainant claimed that the judge was unfit to hear any proceeding and asked Council to confirm or deny this, as this would undermine the public's confidence in the ability of this judge to carry out his duties. The complainant alleged that other judges were aware of this situation and were "sitting in silence". The complaint subcommittee investigated this allegation and determined that there was no substance to it.

In particular, the complainant was critical of the judge's performance and behaviour at the close of his wife's trial. He also claimed that the judge was biased. The complainant stated that because of this and due to the fact that the judge was unfit to preside, the judge should have stepped down or recused himself.

The complaint subcommittee reviewed the transcripts and the audio tapes of the trial, along with the judge's reasons for judgment which were delivered orally. The complaint subcommittee advised that the judge was in complete control of the proceeding. They also advised that the judge's decision, along with his conduct of the trial, was at all times measured and rational.

The complaint subcommittee commented that although the judge found the complainant's wife guilty, the determination was made after a weighing of the evidence.

The complaint subcommittee noted that there was no indication that the judge was biased and found no evidence of judicial misconduct. For the reasons noted above, they recommended to the review panel that this complaint should be dismissed. The review panel agreed with their recommendation.

CASE NO. 13-013/07

The complainant was an accused in a drinking and driving case that was decided by the judge five years before the complaint was made to the Council. The complainant alleged that the judge showed bias and dislike for him and convicted him without sufficient evidence.

The complaint subcommittee ordered and reviewed the transcripts of the proceedings before the judge.

The complaint subcommittee determined that the judge was not biased toward the complainant. In fact, they found that the judge was appropriately strict with the complainant, given that at that time the case was three years old, and that the four trial dates during that period had all been adjourned at the request of the defence. They also noted that it would have been in the judge's discretion to require the complainant to proceed on the fourth trial date without his counsel. However, to the complainant's benefit, the judge chose to grant the fourth adjournment.

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The complaint subcommittee observed that no complaint was made by the complainant in six appearances following the meeting in chambers. The first complaint was made after five years. In all of the circumstances, the complaint subcommittee did not find this complaint credible.

The complaint subcommittee noted that the complainant's concern about the judge having insufficient evidence to convict him was a matter of law outside of the jurisdiction of the Ontario Judicial Council and within the authority of an appeal court to consider.

For the reasons noted above, the complaint subcommittee recommended to the review panel that this complaint be dismissed. The review panel agreed with their recommendation.

CASE NO. 13-014/07

The complainant purchased a watch from a judge on EBay. The complainant alleged that the watch was faulty and had demanded that the judge cover the cost of repair. The judge declined to do so.

After reading the complainant's letter and supporting documents, the complaint subcommittee noted that there was no indication that the judge used his office in any way to assist in the transaction.

The complaint subcommittee said that, in their view, a disagreement over a purchase and sale is not considered judicial misconduct and recommended to the review panel that this complaint

be dismissed. The review panel agreed with their recommendation.

CASE NO. 13-016/07

The complainant was a party in a family law matter involving the Children's Aid Society (CAS). The complainant alleged that the judge had presided on her matter while having a conflict of interest, due to the fact that the judge had represented the complainant's spouse prior to her appointment to the bench. The complainant informed that when this was brought to the judge's attention, the judge recused herself and adjourned the matter before another judge.

In the same court case, the complainant then had an application for disclosure which again came before the judge against whom the complaint was made. On that date, the CAS applied to move the hearing date to ensure that the particular judge did not hear it. The judge moved the hearing to another date and informed the complainant that she would have to bring her application for disclosure before another judge.

The complainant also alleges that the change in date did not allow her enough time to hire a lawyer and that her daughter's need for a lawyer could not be accommodated in that time.

After reading the complainant's letter, the complaint subcommittee determined that the judge acted professionally on both occasions on which the complainant appeared before her. The complaint subcommittee found no judicial misconduct and recommended to the review panel

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that this complaint should be dismissed. The review panel agreed with their recommendation.

CASE NO. 13-019/07

The complainant was a represented party in a family court proceeding. She alleged that the judge was impatient, angry and had showed disrespect for the matter before him. The complainant also alleged that the judge inappropriately made reference to the fact that the complainant had filed a complaint against a lawyer with the Law Society of Upper Canada.

The complaint subcommittee ordered and reviewed the transcript of the proceeding. They advised that the transcript showed that the judge was impartial and patient with the complainant, and meticulous in reviewing the particulars of the motion before him. The complaint subcommittee noted that there was no reference in the transcript by the judge or by anyone else to any complaint made to the Law Society.

The complaint subcommittee found no judicial misconduct on the part of the judge and recommended to the review panel that this complaint be dismissed. The review panel agreed with their recommendation.

CASE NO. 13-020/07

The complainant was an unrepresented party in a family law matter. He made an application to vary his support payments before the judge. The complainant alleged the following:

1. *That the judge was arrogant and “uncivilized” with him;*
2. *That the judge made an “unhealthy remark” about his wife; and,*
3. *That the judge was “involved in irregular activity”.*

The complaint subcommittee ordered the transcript and the audiotape of the proceedings. The complaint subcommittee advised that the judge had used layperson’s language to make the process more accessible. They also advised that the judge adjourned the application on a prior occasion to give the complainant an opportunity to gather better evidence regarding the change of financial circumstances that was alleged by the complainant. They noted that on several occasions the judge spoke to the complainant in a loud and forceful voice to get him focused on the issues. The complaint subcommittee also noted that they did not find the judge to be arrogant, discourteous or “uncivilized” in his conduct or manner.

The complaint subcommittee observed that after the judge dismissed the application and gave his reasons, his comments, while unfortunate, reflected his intention to speak to the complainant “man to man” to convince him of the moral imperative of supporting his children, in addition to his legal obligation to do so.

The complaint subcommittee said that the complainant had also complained that the judge was engaged in an “irregular activity which is self explanatory”. The subcommittee informed that

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this complaint was too vague to support a finding of judicial misconduct.

For the reasons noted above, the complaint subcommittee found no judicial misconduct on behalf of the judge and recommended to the review panel that this complaint should be dismissed. The review panel agreed with their recommendation.

CASE NO. 13-021/07

The complainant was a party to a family law matter in which a case conference was scheduled before the judge. The complainant indicated that on that date her daughter was in the hospital, and that she had rented a hotel room for privacy and advised both the court and her spouse's counsel of the phone number where she could be reached to participate in the case conference. She alleges that she never received a phone call, and later learned that her motion had been marked to proceed without a case conference and that costs had been awarded against her.

The complainants specific complaints were that the judge:

1. *Did not ensure that court staff were trained to carry out the teleconference;*
2. *Did not have court staff call her to advise that the teleconference had been cancelled;*
3. *Cancelled the teleconference without her permission or knowledge; and,*
4. *Assessed costs against her.*

The complaint subcommittee ordered and reviewed the transcript of the proceedings. They advised that the information received by the judge was that the complainant's daughter was in the hospital, and that the complainant wished to participate in the case conference by telephone from the hospital room. The transcript indicated that the judge was of the view that this was not appropriate and he refused to do so. The complaint subcommittee noted that the judge then heard submissions from counsel for the complainant's spouse, reviewed the record, and noted that the complainant had not been present on a number of occasions and had not filed a case conference brief. It appeared to the subcommittee that the judge was concerned about the delays in the proceedings. Costs had been ordered against the complainant.

The complaint subcommittee determined that there was no judicial misconduct on the part of the judge and that the complaint should be dismissed for the following reasons:

- 1) It is not the responsibility of a trial judge to oversee training of staff.
- 2) The judge requested that counsel advise the complainant's friend of what had occurred and received counsel's undertaking to do so.
- 3) Based on the information available to the judge, he made a determination that it was appropriate to order the matter to proceed without a case conference, a matter within his discretion and outside of the jurisdiction of the Ontario Judicial Council.



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- 4) The judge's order to award costs against the complaint was within his discretion and outside of the jurisdiction of the Ontario Judicial Council. If an error were made in law, although the Council made no such finding, it would be a matter for an appeal court to consider.

The review panel agreed with the complaint subcommittee's recommendation to dismiss this complaint.

CASE NO. 13-027/07

The complainants, a paralegal, and his client, in their complaint of September 2007, alleged that the judge edited the transcript of a proceeding that occurred in September 1998 in which the client appeared before that judge. The paralegal complainant stated that his co-complainant 'recalls several changes that have been made to the transcript'. He commented that there are also many 'inaccuracies' and 'unwarranted omissions'. He asserted that a statement made by the judge, about how lucky his co-complainant was not to be arrested, did not appear on the transcript.

The complaint subcommittee ordered the transcript, as well as an audiotape of the proceedings. The complaint subcommittee listened to the audiotape and determined that the record was not altered in any way, and that the judge did not make the statements that were alleged. They found no substantiation for the allegation of judicial misconduct. The complaint subcommittee recommended to the review panel that this complaint be dismissed. The review panel agreed with their recommendation.

APPENDIX-A

ONTARIO JUDICIAL COUNCIL – DO YOU HAVE A COMPLAINT?

NOTE: This version reflects the brochure distributed during the period covered by this Report. For the current brochure on the complaints process, issued jointly by the Ontario Judicial Council and the Justices of the Peace Review Council, see the Judicial Council website at <http://www.ontariocourts.on.ca/ojc/en/information.htm>

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.

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.

If after careful consideration, the Council decides there has been no judicial misconduct,

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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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPLAINT SUBCOMMITTEES

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)

APPENDIX – B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPLAINT SUBCOMMITTEES

AGREEMENT ON HOW TO PROCEED

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

DISMISSAL OF COMPLAINT

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

subs. 51.4(3)

CONDUCTING INVESTIGATION

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

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

PREVIOUS COMPLAINTS

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

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

INFORMATION TO BE OBTAINED BY REGISTRAR

Complaint subcommittee members will endeavour to review and discuss their assigned files and determine whether or not a transcript of evidence and/or a response to a complaint is necessary within a month of receipt of the file. All material (transcripts, audiotapes, court files, etc.) which a complaint subcommittee wishes to examine in relation to a complaint will be obtained on their behalf by the Registrar, 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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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPLAINT SUBCOMMITTEES

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

GENERALLY

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

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

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

ADVICE AND ASSISTANCE

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

subs. 51.4(5)

MULTIPLE COMPLAINTS

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

When a judge is the subject of three complaints from three different complainants within a period of three years, the Registrar will bring that fact to the attention of the Judicial Council, or a review panel

thereof, for their assessment of whether or not the multiple complaints should be the subject of advice to the judge by the Judicial Council or the Associate Chief Justice or Regional Senior Justice member of the Judicial Council.

INTERIM RECOMMENDATION TO SUSPEND OR REASSIGN

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

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

COMPLAINT AGAINST CHIEF JUSTICE ET AL – INTERIM RECOMMENDATIONS

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

subs. 51.4(12)

CRITERIA FOR INTERIM RECOMMENDATIONS TO SUSPEND OR REASSIGN

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

APPENDIX – B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPLAINT SUBCOMMITTEES

to the appropriate Regional Senior Justice the 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

APPENDIX – B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPLAINT SUBCOMMITTEES

complaint 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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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – REVIEW PANELS

B

- (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

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subcommittee, and there is a tie, the chair will cast a second and deciding vote.

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,

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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.

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 provi-

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sions 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)

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

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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 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,

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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.

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

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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.
- (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;

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- 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)

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:

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- 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 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

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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)

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)

APPENDIX – B

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

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)

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.

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ACCOMMODATION OF DISABILITIES

(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.

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)

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ACCOMMODATION OF DISABILITIES

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* 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 applicant, 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

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ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – ACCOMMODATION OF DISABILITIES

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 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

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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.

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

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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 otherwise 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

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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.

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 audio-tape 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

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

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

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,

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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.

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

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. Research counsel of the Ontario Court of Justice 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, the diversity of the population 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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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:

- ◆ First Year Education
- ◆ Continuing Education

I. FIRST YEAR EDUCATION

Each judge of the Ontario Court of Justice is provided with certain texts in print or electronic format and materials upon appointment including:

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

The Ontario Court of Justice organizes a one-day orientation 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 ethics, courtroom demeanour, and administrative procedures. This program is presented 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.

In April of their first year, new judges are encouraged to attend the New Judges' Education Program presented by the Canadian Association of Provincial Court Judges (CAPCJ) at Carling Lake in the Province of Quebec. This intensive one-week program is largely substantive in nature and is oriented principally to the area of criminal law, with some reference to areas of family law.

The Ontario Court of Justice and the National Judicial Institute jointly present a five-day intensive program focusing on judicial skill training in November of each year at Niagara-on-the-Lake. The program includes sessions on the delivery of judgments (both written and oral), communication skills and the effective conduct of a judicial pre-trial. The program has been very successful in the past and was presented in November 2007 when 15 newly-appointed judges from the Ontario Court of Justice joined 18 other judges from across Canada.

Judges in their 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

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developed within the Ontario Court of Justice by the Ontario Conference of Judges and funded through the Education Secretariat. New judges also have the opportunity (as do all judges) to discuss matters of concern or of interest with their peers at any time.

A Library Committee of the Court develops a list of texts and reporting services from which each judge is permitted to select materials of a value of up to \$2,600 for their chamber's library.

II. CONTINUING EDUCATION

Continuing education programs presented to judges of the Ontario Court of Justice are of two types, either internal or external:

- A) Programs developed and presented internally by the Ontario Conference of Judges with the oversight of the Education Secretariat; and
- B) Programs presented by external organizations, such as the National Judicial Institute, the Canadian Association of Provincial Court Judges and the International Association of Women Judges.

(A) PROGRAMS OVERSEEN BY THE EDUCATION SECRETARIAT

The programs presented by the Education Secretariat and the Ontario Conference of Judges constitute the Core Program of the Ontario Court of Justice education curriculum. The Ontario Conference of Judges has an Education Committee for each of Family Law and Criminal Law to advise and assist in the development and delivery of programming. The chair of each committee is nominated by the Ontario Conference of Judges to be on the Education Secretariat. Part of the core programming is annual in occurrence and part of it is presented “as needed”.

1) Annual Core Programs

Seven family and criminal programs are presented each year with a changing curriculum to reflect the educational needs of the Court. These courses are open to every criminal and family judge in accordance with their area of practice. They are more particularly described below:

The Ontario Conference of Judges presents two education programs dedicated to family law issues—the Judicial Development Institute in January and the Annual Family Law Program in the fall. Generally speaking, the principal topics are devoted to child welfare and 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.

A family law education component is also included in the Annual General Meeting of the Ontario Court of Justice held in May.

There are five major criminal law education conferences presented each year.

- a) At four regional locations, a three-day Regional Seminar is organized in October and November of each year. These seminars cover a wide range of topics in the area of criminal law. Four separate agendas are developed each year to be responsive to the issues found in each region.
- b) A two and a half day education seminar is presented annually in May in conjunction with the Annual General Meeting of the Ontario Court of Justice.

All judges are entitled and encouraged to attend these seminars.

2) “As Needed” Recurring Programs

These are programs presented annually or biannually with limited enrolment. They fulfill a variety of education needs including for example development of judicial skills and leadership, social context training, and education delivery. Particulars of the programs offered in 2007 are set out below.

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a) JUDGMENT WRITING/ORAL JUDGMENTS:

This three-day seminar was presented to a group of approximately ten judges in February 2007. Professor Emeritus Edward Berry and faculty from the Ontario Court of Justice and the National Judicial Institute presented an intensive course to assist judges in developing the skills required to deliver oral judgments and to write effective judgments.

b) PRE-RETIREMENT SEMINARS: Intended to assist judges and their domestic partners in their retirement planning, this one and one-half day program deals with the social and financial issues that arise in the transition from the bench to retirement. This seminar was presented in March 2007 to 15 judges and eight spouses/partners.

c) JUDICIAL COMMUNICATION PROGRAM: The Court, in partnership with the National Judicial Institute, developed a Communication Skills in the Courtroom seminar presented annually for one week in Stratford. Judges learn and practice techniques to improve both their verbal and non-verbal communication skills. The faculty includes judges and Stratford performers who coach judges to improve their ability to communicate effectively.

d) FAMILY LAW PRIMER: A number of judges who preside primarily in the criminal courts throughout the province expressed an interest in presiding in family court. As well, in a number of jurisdictions judges preside in both family and criminal courts. A Family Law Primer program was developed with the assistance of the National Judicial Institute, and, in September 2006, 28 judges participated in an intensive week-long family law seminar. Judges who preside primarily in family courts across the province provided a comprehensive overview in the following areas of family law:

- Child Protection and Adoption
- Introduction to Domestic Proceedings
- Custody and the *Children's Law Reform Act*
- Enforcement: *Family Responsibility and Support Arrears Enforcement Act*

This in-depth Family Law Primer will be held again in April 2008 and, for the first time, will be jointly developed and delivered by and for the judges of the Ontario Court of Justice and the Superior Court of Justice.

e) 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 twelve 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 judicial facilitators were specifically trained for this program which was presented following significant community consultation.

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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 poverty issues and issues related to aboriginal justice.

At the Court's Annual General Meeting in 2003, the theme of the education program was "Access to Justice". 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 addition to these special programs, social context education is integrated as a part of most education programming presented by the Education Secretariat.

- f) **UNIVERSITY EDUCATION PROGRAM:** This program takes place annually over a five-day period in the spring and makes extensive use of academics. It provides an opportunity for approximately 30 judges to deal in depth with criminal law education topics in a more academic context. The program, with some modification, remains largely unchanged over a three-year period to enable a larger number of judges to receive the benefits of the program. In June 2007, the latest cycle of this program is entitled "Judges to Jails". It is a week-long education initiative held in Gananoque to permit the judges to visit federal and provincial correctional institutions in the Kingston area and to participate in related seminar work. The Judges to Jails program will be repeated in 2008.
- g) **JUDICIAL ADMINISTRATION CONFERENCE:** This is a biannual conference to be held over two days in February 2008. It brings together about 75 local administrative judges and judges of the Ontario Court of Justice who have shown an interest in judicial administration. The conference will

address issues of leadership and human resource management in a judicial environment. It will also address the changing landscape of judicial administration and provide an overview of the tools available to assist judges to make the courts more accessible and effective.

(B) EXTERNAL EDUCATION PROGRAMS

- 1) **FRENCH-LANGUAGE COURSES:** Judges of the Ontario Court of Justice who are proficient in French may attend courses presented by the Office of the Commissioner for Federal Judicial Affairs. The frequency and duration of the courses are determined by the judge's level of proficiency. The purpose of the courses is to assure and to maintain the French language proficiency of those judges who are called upon to preside over French language matters in the Ontario Court of Justice. There are two levels of French-language courses: Terminology courses for francophone judges and 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
 - The Advocates' Society
 - Ontario Association for Family Mediation/Mediation Canada

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- 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 Education Secretariat has 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 will usually cover registration fees only. But judges are able to claim travel and accommodation expenses over and above this subsidy against a judicial allowance received by each judge in the amount of \$2,500.

- 3) **COMPUTER COURSES:** In 2006, a position of Education Librarian Consultant to the Ontario Court of Justice and the Superior Court of Justice was established as a joint initiative of the two Courts. The consultant provided the judges of both Courts with a dedicated resource to provide enhanced training and support on electronic legal resources. The consultant's time was made available to train judges on a one-on-one basis and, if appropriate, in group sessions in court locations around the province. This position was continued until mid-2007 when the contract expired. Other less structured formats are now used to deliver computer training. Most Regional Seminars and the Annual General Meeting contain a module dedicated to providing computer training.

In 2007, the Ontario Court of Justice IT Committee was established, and its mandate includes promoting opportunities for computer training. In addition, two internet-based legal research resources—a new version of QuickLaw and Criminal Spectrum—were introduced to the judges with corresponding training offered on an individual and group basis.

- 4) **NATIONAL JUDICIAL INSTITUTE (NJI):** The Ontario Court of Justice, through its Education Secretariat, makes a financial contribution to the operation of the National Judicial Institute. Based in Ottawa, the NJI is a world leader in the development and delivery of judicial education programs. Since 2002 the Ontario Court of Justice has made a significant financial contribution to the NJI in return for receiving dedicated education assistance from a senior NJI advisor. This relationship has given many judges of the Ontario Court of Justice the opportunity to work on the development of innovative programming and to serve as faculty for the delivery of that programming across the country. They are then able to bring their expertise back to the Court to the benefit of all aspects of the education portfolio.

- 5) Judges have access to remote learning computer-based courses prepared and hosted by the NJI covering substantive law issues such as unlawful detention, mental health, and evidence. These programs, offered usually twice per year, are available at no cost to the judges of the Ontario Court of Justice.

OTHER EDUCATIONAL RESOURCES

1. **CENTRE FOR JUDICIAL RESEARCH AND EDUCATION:** The Centre is a law library and computer research facility located in Toronto and staffed by five research lawyers and three assistants. It is accessible in person, by telephone, e-mail or fax. The Centre responds to specific requests from the judiciary for research and provides bi-weekly updates with respect to legislation and relevant case law through its electronic publication *Items of Interest*. In 2007, the Centre added two new lawyers to its research staff.
2. **RECENT DEVELOPMENTS:** The Honourable Justice Ian MacDonnell provides judges of the Ontario Court of Justice with a cogent summary and commentary of current criminal law decisions of the Ontario Court of Appeal and of the Supreme Court of Canada in a publication

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entitled Recent Developments that is distributed electronically to the entire Court.

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. In addition to the educational programs outlined above, the fundamental education of judges continues to be self-directed and is effected in large part through continuing peer discussions and individual reading and research.

C

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.

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

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.

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VACANCIES

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

QUORUM

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

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

REVIEW PANELS

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

Same

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

1. The panel shall consist of two provincial judges other than the Chief 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

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mediation or a Council meeting or hearing that was not held in public are confidential and shall not be disclosed or made public.

Same

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

EXCEPTIONS

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

PERSONAL LIABILITY

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

REMUNERATION

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

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.

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Same

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

ASSISTANCE TO PUBLIC

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

TELEPHONE ACCESS

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

PERSONS WITH DISABILITIES

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

ANNUAL REPORT

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

TABLING

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

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

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

Same

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

BILINGUAL HEARING OR MEDIATION

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

PART OF HEARING OR MEDIATION

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

Same

(7) In a bilingual hearing or mediation,

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

Same

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

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.

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INVESTIGATION PRIVATE

- (6) The investigation shall be conducted in private.

NON-APPLICATION OF SPPA

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

INTERIM RECOMMENDATIONS

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

Same

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

POWER OF REGIONAL SENIOR JUDGE

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

DISCRETION

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

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judge and the complainant, giving brief reasons in the case of a dismissal.

GUIDELINES AND RULES OF PROCEDURE

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

Same

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

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

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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).

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;

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

Same

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

DISABILITY

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

APPLICATION OF SUBS. (13)

- (14) Subsection (13) applies if,
- (a) the effect of the disability on the judge's performance of the essential duties of the office was a factor in the complaint; and
 - (b) the Judicial Council dismisses the complaint or makes a disposition under clauses (11) (a) to (f).

UNDUE HARDSHIP

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

OPPORTUNITY TO PARTICIPATE

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

CROWN BOUND

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

REPORT TO ATTORNEY GENERAL

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

NON-IDENTIFICATION OF PERSONS

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

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

CONTINUING PUBLICATION BAN

(20) If an order was made under subsection (10) and the Judicial Council dismisses the complaint with a finding that it was unfounded, the judge shall not be identified in the report without his or her consent and the Council shall order that information that relates to the complaint and might identify the judge shall never be made public without his or her consent.

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.

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PUBLIC OR PRIVATE CONSIDERATION OF QUESTION

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

RECOMMENDATION

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

Same

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

DISCLOSURE OF NAME

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

AMOUNT OF COMPENSATION

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

PAYMENT

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

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

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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.

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.

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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.

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.

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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.

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.

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SAME, REGIONAL SENIOR JUDGES

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

SAME, CHIEF JUSTICE AND ASSOCIATE CHIEF JUSTICES

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

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.



APPENDIX-E

REASONS FOR DECISION
RESPECTING THE HONOURABLE
JUSTICE MARVIN A. ZUKER

APPENDIX – E

IN THE MATTER OF A COMPLAINT RESPECTING THE HONOURABLE JUSTICE MARVIN A. ZUKER

ONTARIO JUDICIAL COUNCIL

IN THE MATTER OF a complaint respecting the Honourable Justice Marvin A. Zuker

BEFORE	The Honourable Robert A. Blair, Chair Court of Appeal for Ontario
	The Honourable Justice Deborah Livingstone
	Mr. Mark Sandler
	Ms Jocelyne Côté-O'Hara
COUNSEL	Douglas Hunt, Q.C. and Andrew D. Burns, Presenting Counsel
	Philip M. Epstein, Q.C. and Sheila Gibb, Counsel to Justice Zuker

REASONS FOR DECISION

On September 29, 2006, the Ontario Judicial Council referred a complaint regarding the conduct or actions of the Honourable Justice Marvin A. Zuker to the Council for a hearing, pursuant to ss.51.4(18) and 51.6 of the *Courts of Justice Act*. The complaint was laid at the instance by Mr. Harry Kopyto.

It was alleged that Justice Zuker had conducted himself in a manner that is incompatible with the due execution of the duties of his office. Particulars of the complaint are set out in Appendix “A” to the Notice of Hearing, marked as Exhibit 1 on this Hearing.

The matter has proceeded by way of an Agreed Statement of Facts, marked as Exhibit 2 and made an Appendix to this decision.

Justice Zuker admits that his conduct as described in the Agreed Statement of Facts constitutes judicial misconduct pursuant to the *Courts of Justice Act*. In essence, the misconduct is that Justice Zuker made

deletions and additions to the transcript of a child protection application Hearing before him on July 29, 2005 at which the mother of the children sought permission to have Mr. Kopyto act as her agent and represent her in the proceedings. Justice Zuker dismissed that request, exercising his discretion under Rule 4(1)(c) of the Family Law Rules, as he was entitled to do.

In some instances, the deletions and additions marked by Justice Zuker that were incorporated into the final released transcript went beyond mere corrections of grammar, spelling and typographical errors. In particular, from the complainant’s perspective, he removed reference to Mr. Kopyto being adversarial. Justice Zuker has acknowledged that such changes were inappropriate.

There is a wealth of evidence before us that Justice Zuker has served the public with great distinction as a member of the community as a judge for almost

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IN THE MATTER OF A COMPLAINT RESPECTING THE HONOURABLE JUSTICE MARVIN A. ZUKER

29 years. He is well respected by his fellow judges and counsel who appear before him for his legal scholarship, patience, objectivity and wisdom. In particular he has shown a continuing concern for the best interests of children in his capacity as a Family Court judge.

In his statement today he has apologized publicly for his conduct and is prepared to do so in writing to Mr. Kopyto and the affected litigant following this Hearing. No further order is therefore needed in that regard.

It is evident that this matter has already taken a significant toll on Justice Zuker, in part because of its public nature and in large measure because of Mr. Kopyto's continuing efforts to have him charged criminally. The transcript changes were not done surreptitiously and the changes would have been apparent to anyone attending the hearing.

We are persuaded in all the circumstances that this kind of misconduct will not re-occur, and we accept that Justice Zuker did not make the alterations for any ulterior motives.

Accordingly, we find that the misconduct – which, given the admissions we are bound to find—is not of the type to attract the more serious sanctions permitted under s. 51.6(11) of the *Courts of Justice Act*.

As we have noted, there is no need to order an apology, as Justice Zuker has done so publicly here today and has indicated his willingness to issue a written apology immediately following this hearing. In our view, in all of the circumstances, a warning under s. 51.6(11)(a) is sufficient to serve the interests of preserving public confidence in and respect for the judiciary, and that the public can continue to have full confidence in Justice Zuker's integrity and ability to carry out his duties as a judge, notwithstanding what his counsel acknowledges was a temporary “slip from grace”.

DATED at the City of Toronto, in the Province of Ontario, May 23, 2007.

The Honourable Justice Robert A. Blair

The Honourable Justice Deborah Livingstone

Mr. Mark Sandler

Ms Jocelyne Côté-O'Hara