FOURTEENTH ANNUAL REPORT

2008 – 2009

ONTARIO JUDICIAL COUNCIL

ISSN 1206–467X

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

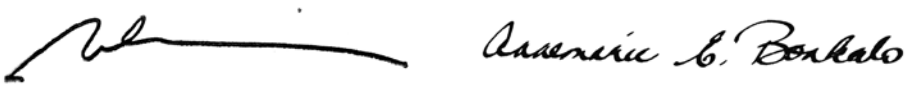
March 31, 2010

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 fourteenth 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, 2008 to March 31, 2009.

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, 2008 to March 31, 2009.

The Ontario Judicial Council investigates complaints made by the public against provincially-appointed judges and masters. In addition, it approves the continuing education plan for provincial judges on an annual basis. The Council 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 336 provincially-appointed judges, including full-time and *per diem* judges, and two masters during the period of time covered by this Annual Report.

ONTARIO JUDICIAL COUNCIL
FOURTEENTH ANNUAL REPORT

2008 – 2009

TABLE OF CONTENTS

Transmission Letter to The Honourable Chris Bentley

Introduction

1) Composition and Terms of Appointment 1

2) Members 1 – 2

3) Administrative Information 3

4) Functions of the Judicial Council 3

5) Education Plan 3

6) Communications 3 – 4

7) Principles of Judicial Office 4

8) Judicial Appointments Advisory Committee 4

9) Complaints Procedure 4 – 7

10) Notification of Disposition 7

11) Legislation 7

12) Compensation for Legal Costs Incurred 7

13) Summary of Complaints 7 – 8

14) Case Summaries 9 – 62

Appendix "A": Brochure A-1 – A-3

Appendix "B": Procedures Document B-1 – B-32

Appendix "C": Continuing Education Plan C-1 – C-7

Appendix "D": Principles of Judicial Office D-1 – D-2

Appendix "E": Relevant Legislation E-1 – E-14

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 or another judge of the Court of Appeal designated by the Chief Justice chairs all proceedings dealing with complaints against particular judges that deal with applications to accommodate a judge's needs resulting from a disability or requests for continuation in office by a Chief Justice or an Associate Chief Justice. The Chief Justice of the Ontario Court of Justice, or another judge of that Court designated by the Chief Justice, chairs all other meetings including review panel meetings.

2. Members Regular

The membership of the Ontario Judicial Council in its fourteenth year of operation (April 1, 2008 to March 31, 2009) was as follows:

Judicial Members:

CHIEF JUSTICE OF ONTARIO

The Honourable Warren K. Winkler ..... (Toronto)
Co-Chair

CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

The Honourable Annemarie E. Bonkalo ..... (Toronto)
Co-Chair

ASSOCIATE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

The Honourable Peter D. Griffiths..... (Ottawa/Toronto)

REGIONAL SENIOR JUSTICE

The Honourable Robert G. Bigelow ..... (Toronto)

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

The Honourable
Justice Lucy C. Glenn..... (Chatham)

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

Lawyer Members:

TREASURER OF THE LAW SOCIETY OF UPPER CANADA

W. A. Derry Millar ..... (Toronto)
(effective August 12, 2008)

TREASURER OF THE LAW SOCIETY OF UPPER CANADA

Gavin Mackenzie..... (Toronto)
(until June 25, 2008)

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

Julian Porter, Q.C..... (Toronto)
(until August 11, 2008)

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
(until Oct. 14, 2008)

William Blake.....(Ottawa)
Retired Police Office, Ottawa Police Service

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

Ravinder (Ray) Sharma.....(Richmond Hill)
Founding Partner at Extreme Venture Partners ; Chairman at Xtreme Labs
(effective February 25, 2009)

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

Members - Temporary

Sections 87 and 87.1 of the *Courts of Justice Act* give 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 R. B. Linton, Q.C. (Superior Court of Justice)
(Until August 25, 2008)
- Master R. B. Peterson (Superior Court of Justice)

JUDGES

- The Honourable Justice M. D. Godfrey (Superior Court of Justice)
- The Honourable Justice Pamela Thomson (Superior Court of Justice)

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. During the period covered by this report, the following judges of the Ontario Court of Justice were appointed by the Chief Justice to serve as temporary members of the Ontario Judicial Council when required:

The Honourable Justice Jeff Casey..... (Toronto)
(effective March 3, 2009)

The Honourable Justice Alexander Graham..... (London)
(effective March 3, 2009)

The Honourable Justice Bernard M. Kelly .....(Toronto)
(until February 25, 2009)

The Honourable Justice Claude H. Paris ..... (Toronto)

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 fourteenth 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:

Marilyn E. King, LL.B. – Registrar
Thomas Glassford – Assistant Registrar
Ana Brigido – Assistant Registrar
Jacqueline Okumu – Acting Secretary

4. Functions of the Judicial Council

The *Courts of Justice Act* provides that the functions of the Judicial Council are:

- to consider applications under section 45 for the accommodation of needs;
- to establish complaint subcommittees from amongst its members to receive and investigate complaints against judges, and report to the Judicial Council;
- to establish review panels to consider every complaint referred by the complaint subcommittees and decide upon dispositions under section 51.4(18);
- to hold hearings under section 51.6 when hearings are ordered by review panels pursuant to section 51.4(18)to review and approve standards of conduct;
- to consider continuing education plans; and,
- to consider requests by the Chief Justice or the Associate Chief Justices to continue in office beyond age sixty-five.

The Judicial Council does not have the power to interfere with or change a decision made by a judge. If a person believes that a judge made an error in assessing evidence or in making a decision, the proper way to proceed is through other legal remedies, such as an appeal.

5. 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 February 13, 2009, the continuing education plan was approved by the Judicial Council. A copy of the continuing education plan for 2008-2009 can be found at Appendix "C".

6. 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.

In May of 2008, in collaboration with the Justices of the Peace Review Council, the Judicial Council developed a new joint brochure about the complaint process for

members of the public. A copy of the brochure, "*Do you have a complaint?*" is included at Appendix "A". The brochure is also posted on the website.

The address of the Judicial Council's website is: www.ontariocourts.on.ca/.

7. Principles of Judicial Office

The Chief Justice of the Ontario Court of Justice was empowered to establish "standards of conduct for provincial judges" by section 51.9 of the *Courts of Justice Act*. A document entitled, "Principles of Judicial Office" was prepared by the Judicial Conduct Subcommittee of the Chief Judge's Executive Committee in consultation with the Judges' Association and the judges of the court. The document was then submitted to the Ontario Judicial Council for its review and approval in the second year of Council's operation, as required by subs. 51.9(1) of the *Courts of Justice Act*. "Principles of Judicial Office" is a guide to assist judges in addressing ethical and professional dilemmas. It may also serve in assisting the public to understand the reasonable expectations which the public may have of judges in the performance of judicial duties and in the conduct of judges' personal lives. A copy of the Principles of Judicial Office is attached as Appendix "D".

8. Judicial Appointments Advisory Committee

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.

9. The Complaints Procedure

Any person may make a complaint to the Judicial Council about the conduct of a judge. Complaints must be made in writing and signed by the complainant. The governing legislation and the principles of natural justice do not provide for the Judicial Council to act on anonymous complaints or to initiate inquiries into the conduct of a judicial officer. Rather, an investigation conducted by the Judicial Council must be in response to specific allegations submitted by a complainant. All correspondence is reviewed to determine whether or not the complaint is within the jurisdiction of the Judicial Council. If an individual is complaining about his/her lawyer, a Crown Attorney or another office, the complainant is referred to the appropriate office of authorities to make the complaints.

In cases where the complaint is within the jurisdiction of the Judicial Council to consider, a complaint file is opened and a letter of acknowledgement is sent to the complainant, usually within a week of his or her letter being received by the Council. If the complainant expresses dissatisfaction with a decision that has been made by a judge, the letter of acknowledgment advises the complainant that the Judicial Council has no power to change a decision made by a judge. In such cases, the complainant is advised that he or she may wish to consult with legal counsel to determine what, if any, legal remedies may be available.

A brief outline of the complaints process follows below. A more detailed outline of the Judicial Council's procedures is included in this Annual Report as Appendix "B".

(A) Investigation and Review of Complaints

The complaint is assigned to a complaint subcommittee for review and investigation. A complaint subcommittee of Judicial Council members, comprised of a provincially-appointed judicial officer (a judge, other than the Chief Justice of the Ontario Court of Justice, or a Master if the complaint relates to conduct of a Master) and a community member is assigned to examine each complaint made to the Council. Complaints are generally not assigned to members from the same region where the judge who is the subject of the complaint presides. This avoids any risk of or perception of bias or conflict of interest between a member of the Council and the judge.

Subsection 51.4(6) of the *Courts of Justice Act* states that the investigation must be conducted in private.

Subsection 51.4(3) empowers the complaint subcommittee to dismiss complaints which are either outside of the jurisdiction of the Council (e.g., it is a complaint about how a judge exercises his or her discretion, such as findings of credibility, or disagreement with the decision of a judge) 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.

Frequently, the subcommittee orders and reviews the transcript of the proceedings. When necessary, the subcommittee may also order and listen to the audio recording. In some cases, the subcommittee may decide to conduct further investigation, such as interviewing witnesses. Under section 51.4(5), the subcommittee may retain external persons, including counsel, to assist it in the investigation.

The subcommittee may decide to request a response to the complaint from the judge. If a response is requested, a copy of the complaint, the transcript (if any), and the relevant materials considered by the subcommittee will be provided to the judge, together with the letter from the Judicial Council inviting a response. The judge may seek independent legal advice to provide him or her with assistance in responding to the Council.

Once the investigation is completed, under subsection 51.4(13) of the *Act*, the complaint subcommittee will report to a review panel of the Judicial Council. The subcommittee may recommend that the complaint be dismissed, that it be referred to the Chief Justice for discussion with the judge about his/her conduct, that it be referred for mediation, or that a hearing be held under section 51.6.

(B) Dispositions of Review Panels

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. The Council (or a review panel thereof) will review the complaint, the report of the investigating complaint subcommittee and all materials that are recommended by the subcommittee. 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 do not sit on the review panel 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.

Under subsection 51.4(18) the Council (or a review panel thereof) may decide upon the following dispositions:

- dismiss the complaint;
- refer it to the Chief Justice of the Ontario Court of Justice;
- refer it to a mediator; or
- order that a hearing into the complaint be held.

A complaint may be dismissed where, in the opinion of the review panel:

- it is frivolous or an abuse of process;
- it falls outside of the Judicial Council's jurisdiction because it is a complaint about how a judge exercises his or her judicial discretion (the proper way to proceed in such cases is through other legal remedies);
- it does not include an allegation of judicial misconduct;
- the allegation is not proven; or,
- the misconduct does not rise to the level of misconduct that requires further action on the part of the Review Council.

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(3) 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.

Provisions for temporary members have been made in order to ensure that a quorum of the Council is available to fulfill the requirements of the complaints process, including conducting a hearing into a complaint if a hearing has been ordered.

Proceedings, other than hearings to consider complaints against specific judges, are not required to be held in public.

(C) Hearings Under Section 51.6

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 subsection 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. In certain circumstances, for example, where a complaint involves allegations of sexual misconduct or sexual harassment, the Council also has the power to prohibit publication of information that would disclose the identity of a complainant or a witness.

The *Statutory Powers Procedure Act*, with some exceptions, applies to hearings into complaints.

The Judicial Council engages legal counsel for the purposes of preparing and presenting the case against the judge. The legal counsel operates independently of the Judicial Council. The duty of legal counsel retained under this part is not to seek a particular order against a judge, but to see that the complaint against the judge is evaluation fairly and dispassionately to the end of achieving a just result.

The judge has the right to be represented by counsel, or to act on his or her own behalf during the proceeding.

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

The hearing panel may also recommend to the Attorney General that the judge should be removed from office. A recommendation by the Council to the Attorney General that the judge be removed from office cannot be combined with any other sanction.

(D) Removal From Office

A judge may be removed from office only if a hearing panel of the Judicial Council, after a hearing under section 51.6, recommends to the Attorney General that the judge should 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:

- inability, because of a disability, to perform the essential duties of his or her office (if an order to accommodate the judge's needs would not remedy the inability, or could not be made because it would impose undue hardship on the person responsible for meeting those needs, or was made but did not remedy the inability);
- conduct that is incompatible with the due execution of his or her office; or,
- failure to perform the duties of his or her office.

Only the Lieutenant Governor in Council may act upon the recommendation and remove the judge from office.

10. Notification of Disposition

The Judicial Council communicates its decision to the person who made the complaint and to the judge. A judge may waive notice of the complaint if it is being dismissed and no response was requested from the judge by the Council. In accordance with the Procedures of the Judicial Council, if the Council decides to dismiss the complaint, brief reasons will be provided.

11. Legislation

The applicable provisions of the *Courts of Justice Act* concerning the Ontario Judicial Council are included as Appendix "E" to this report.

12. 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.

13. Summary of Complaints

The Ontario Judicial Council received 47 complaints in its fourteenth year of operation, as well as carrying forward 37 complaint files from previous years. Of these 84 complaints, 54 files were closed before March 31, 2008. Five files closed were from the twelfth year (2006-2007). Twenty-nine of the files closed were from the thirteenth year (2007-2008) and 20 were from the fourteenth year (2008-2009).

Of the 54 files that were closed during the period covered by this Report, 21 arose from family court proceedings, 24 arose from proceedings under the *Criminal Code*, 4 arose from matters in Small Claims Court, 4 related to the conduct of a judge outside of court and one related to a *Provincial Offences Act* appeal.

Twelve of the 54 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.

Thirty-three of the 54 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 such as improper behaviour (e.g., 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.

The review panel **referred five judges arising from nine complaints to the Chief Justice of the Ontario Court of Justice**. In some instances, more than one complaint related to the same court proceeding. 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. Following her meetings with each judge in these five instances, the Chief Justice provided a written report to the review panel. After reviewing the Chief Justice's reports, the review panel was satisfied that the matters had been appropriately addressed and the files were closed.

Case summaries follow for the 54 cases that were closed in year fourteen.

Thirty complaints remained open to be carried over into the fifteenth year of operation. Of those 30 files, 3 files were from Year 13 (2007-2008) and 27 were from Year 14 (2008-2009).

14. Case Summaries

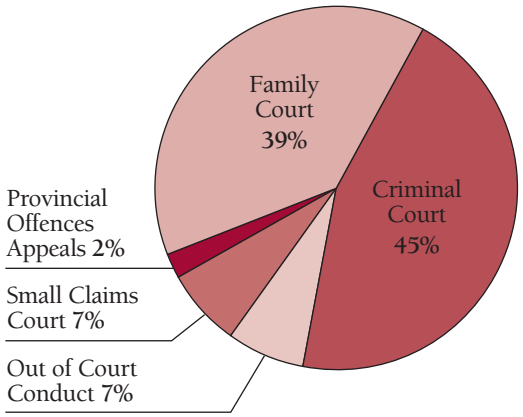
In all cases that were closed during the year, notice of the Judicial Council's decision, with the reason(s) therefore, was given to the complainant and to the subject judge. In accordance with the Procedures of the Judicial Council, a judge had the option of waiving notice of the complaint if no response was requested by the Council during the complaints process.

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. 14-001/08 was the first file opened in the fourteenth year of operation and was opened in calendar year 2008).

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

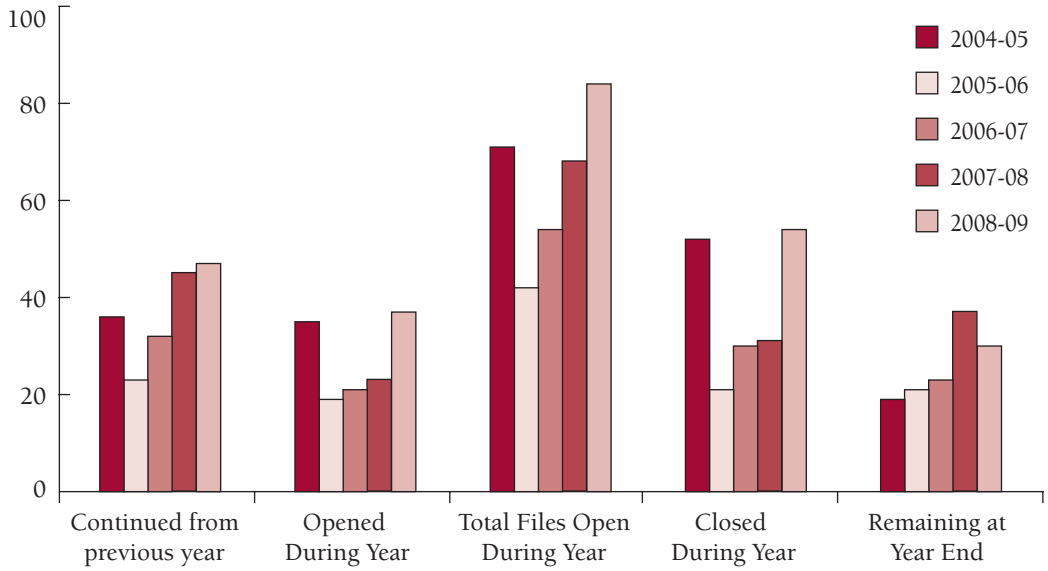
Types of Cases Closed in 2008

Types of Cases	
Family Court	21
Criminal Court	24
Provincial Offences Appeal	1
Small Claims Court	4
Other – Outside of Court	4
TOTAL	54



Caseload in Fiscal Years

Fiscal Year	04/05	05/06	06/07	07/08	08/09
Opened during year	36	23	32	45	47
Continued from previous year	35	19	21	23	37
Total Files Open During Year	71	42	54	68	84
Closed During Year	52	21	30	31	54
Remaining at Year End	19	21	23	37	30



CASE NO. 12-010/06

The complainant was a party in a highly contested custody trial between the complainant/mother and the father regarding their son. The judge ordered that the father would have custody. The complainant made the following allegations:

1. In her first letter, the complainant alleged that the judge was guilty of misconduct in that the order that the judge made would "kill" her son. She also included copies of a Notice of Appeal relating to the decision that alleged that the judge was biased or displayed a reasonable apprehension of bias.
2. In her second letter, she alleged that the judge showed discrimination and that the Judicial Council had not done anything to help her.

Although there was a delay in obtaining all of the materials before the investigating complaint subcommittee could proceed, the subcommittee read the letters of complaint, along with the enclosures, and the transcripts of proceedings that took place on seven court appearances. The subcommittee also read the Reasons for Judgment relating to custody of and access to the child, the Reasons for Judgment regarding financial issues and the Reasons at Contempt Hearing related to the matter.

Following their investigation, the complaint subcommittee submitted a report to a review panel.

The subcommittee noted that in her decision, the judge recognized that although the child wanted to live with his mother, this was contrary to his needs. They also noted that the final disposition of the judge was that the child be placed in the custody of the father with a requirement that the father immediately bring an application to have the child placed in secure treatment under the *Child and Family Services Act*. The judge's order restricted the mother's access to the child.

The subcommittee also reported that the judge found the mother to be in contempt because the mother continued to allow the child to live with her, contrary to the judge's decision. The transcripts showed that the judge provided the mother with the opportunity over several months to purge her contempt and only then, when the mother was still not complying with the order, the judge sentenced her to ten days in jail.

The review panel reviewed the complaint, the transcripts and the report from the subcommittee. With respect to the allegation of discrimination, the review panel found no basis upon which to conclude that the judge was biased or that she had displayed a reasonable apprehension of bias. On the contrary, they noted that when the judge determined that the complainant was acting in contempt of the court order, the judge allowed a significant period of time for her to comply. They noted that the judge acted in a firm but professional manner throughout the proceedings.

The review panel observed that although the outcome was significantly contrary to the wishes of the complainant, it did not mean the judge was biased against her. If the judge made any errors in assessing the evidence or determining any of the issues (and the review did not suggest that

she did), the proper way for the complainant to proceed would have been through an appeal.

In regards to the allegation that the judge's order would "kill" the complainant's son, the review panel found that the purpose of the custody order was to find her son the help and safety that the judge had concluded that he needed.

Accordingly the review panel dismissed these complaints as unfounded.

CASE NO. 12-015/06

The complainant was charged with impaired operation of a motor vehicle and having over 80 mg. of alcohol in his system. The matter was adjourned several times, with the first scheduled trial date vacated because he changed counsel. A new trial date was set and cancelled. Eventually a third trial date was set and reached before the subject judge. The trial itself took eight days to complete over the course of a year. The judge's decision was issued four months after the date when submissions on the trial were made. The complainant was found guilty of driving while impaired and not guilty of the second charge. He was fined $1,200 and prohibited from driving for a one year period. He indicated that from the end of the trial, he had to return to court seven times to receive the judgment.

The Judicial Council does not have jurisdiction over matters that relate to the decision of a judge. Such matters would be matters that would be the subject of an appeal.

On matters that were within the jurisdiction of the Council, the complainant made the following allegations:

1. The judge took a prosecutorial role in court and edited the transcript to remove unflattering material.
2. The judge demonstrated impatience in the courtroom.
3. The judge improperly discussed the case with an associate of the complainant.
4. The judge improperly gleaned information about the complainant from sources outside of the courtroom.
5. The judge delayed reasons for decision for an unconscionably long time, and was untruthful as to the reasons for delay.

The complaint subcommittee ordered and reviewed transcripts and audiotapes from the proceedings. They also requested information from the complainant's lawyer about his recollections of the events. A response to the allegations from the judge was also requested. The complaint subcommittee conducted their investigation and submitted a report to a review panel.

After careful consideration, the review panel made the following observations with respect to the allegations:

1. The judge took a prosecutorial role in court and edited the transcript to remove unflattering material.

The complainant alleged in particular that during his testimony when he was describing the investigating officer's unnecessary show of force, the judge jumped up abruptly and shouted, "Is anyone going to stop this?" He alleged that she then called for a break and "stomped" out of the courtroom. Having reviewed the transcript and finding that this language was not there, the complainant alleged that some "heavy editing" of it had taken place.

The transcript, audiotape and reporter's notes showed that although the judge did interject in the complainant's testimony, she did not use the words alleged. Rather, in a reasonably even voice, she asked defence counsel to confine his questions to ones that would elicit "evidence".

The review panel reviewed the letter that the subcommittee wrote to defence counsel to obtain his recollection of the events and his response. They noted that although he had not read the transcript at the time of his written reply to the Council, defence counsel recalled being "taken aback" by the judge's reaction to this evidence, and described her as being "somewhat irate". Defence counsel listened to the audiotape of the trial in order that he might compare the audiotape with the transcript of the proceedings, in order to satisfy himself that no tampering had taken place. Subsequently, the Council received no correspondence from him and understood that to be an indication that he had no further concerns in this regard.

Having reviewed the subcommittee's report and the transcript, it appeared to the review panel that the complainant's recollection of the event was not accurate. The judge did not use the language complained of, nor did she shout out her remarks in court. There was no evidence of tampering with the audiotape, or editing of the transcript. In the review panel's opinion, the reaction on the part of the judge to this evidence, without objection from the Crown, did not demonstrate the assumption of a prosecutorial role. Even if the words had been uttered in the fashion alleged, a ruling by a judge as to what evidence is or is not relevant is properly within his/her determination. No formal objection needed to be made for a judge to do so.

2. The judge demonstrated impatience in the courtroom.

The complainant referred to an incident in which the judge asked the complainant if a particular return date would meet with his schedule. He claimed to have politely responded, "Yes, Your Honour, I am in your hands". He alleged that she responded in an "unwarranted admonishing voice", saying, "You are not in my hands, you are in your lawyer's hands, not mine!" He said that she gave him a "cold authoritative stare, meaning I am dispensed with you, leave."

The review panel noted that the complainant's statement, "I am in your hands, Your Honour" appeared in the transcript after completion of the trial but before the decision was rendered. The review panel also noted that rather than commenting as the complainant had alleged, the judge stated in a not unpleasant voice, "Well, obviously if you want counsel here, that's the most important thing for you, you should have counsel here." Although the complainant had

not said that he wanted counsel there, his counsel had expressed a preference to be there.

Notwithstanding that there was no evidence to substantiate his complaint, the complainant remained convinced that the judge had made the remarks. He alleged that, after receiving the transcripts, his lawyer had advised the court reporter that the judge's admonishment of his client did not appear in the transcripts. The complainant stated that the court reporter could not explain the omission, other than that it was not on the audio recording. He claimed that this raised "ominous concerns".

The complainant's defence counsel was asked by the investigating complaint subcommittee to comment on this allegation. He replied that he had never received a copy of the transcripts himself, so could not independently confirm his client's version of events. He denied ever having had a conversation with the reporter as claimed. He suggested that his client may have been "confused", and that possibly his appeal counsel had made that call to the reporter. The review panel advised that there was no evidence that substantiated the allegation that the audiotapes or transcripts were altered.

3. The judge improperly discussed the case with an associate of the complainant.

The complainant indicated that he was unable to call a business associate as a witness at the trial who had been with the complainant on the evening when he was charged, to attest to his sobriety that night, because some later time, while the trial was on-going, the judge had met this individual at another social function, and had mentioned to him that his name had come up in court during his trial (presumably as a potential witness). The complainant wrote that he had not yet told his associate about his charges, and was humiliated that the judge did so before he could.

The complainant's counsel was asked by the investigating complaint subcommittee to comment upon this information. He provided a different version of the events. Defence counsel replied that the complainant, "from day one of his retaining us advised us that (Mr.X), his business partner, was aware of the charges and that he wished to avoid calling him if possible as a witness".

4. The judge improperly gleaned information about the complainant from sources outside of the courtroom.

In her reasons for sentence, the judge referred to the complainant's past employment. The complainant alleged that this fact was true, but that it was never indicated in the evidence at trial. He claimed that she must have "searched into my past affairs other than taking a personal interest in my case on matters that had nothing to do with the information before her." A review of the transcripts did not disclose any reference to this information, apart from the judge's comment.

It appeared to the review panel that the complainant and the judge moved in the same social circles. According to the complainant, they had a number of acquaintances in common. He stated that he had seen her attend many of the same functions to which he had also been invited.

The review panel noted that it is not unusual for information about a litigant to come to a judge's attention from sources outside the courtroom. This may occur without the judge having to actively seek out this information. In this particular case, the complainant appeared to be well known, at least within his community. They noted that the complainant prided himself on his many political connections, which he acknowledged were formed to advance his business. The review panel was of the view that this reference to his previous career was inadvertent on her part and that there was no evidence to support the fact that the judge actually sought out this information about the complainant from those who knew him.

Contrary to the complainant's assertion, the review panel observed that the judge did not find this behaviour to be aggravating on sentence. Rather, she treated these business/political connections as mitigating.

5. The judge delayed reasons for decision for an unconscionably long time, and was untruthful as to the reasons for delay.

The complainant indicated that there was "extreme, intentional and frivolous delay in rendering judgment" and that the judge was not truthful and forthright when giving reasons for not giving judgment.

The complainant alleged that the delay endured in awaiting decision in this matter caused him to suffer "unwarranted stress and anguish". Also, in anticipation of the imminent receipt of written reasons for decision, the complainant, who planned to appeal the decision, advised that he did not apply for a stay of the order. The review panel noted that the complainant indicated that, as a consequence, he would not have been able to drive his car, given the outstanding driving prohibition rendered. He also mentioned that he suffered additional financial costs as a consequence of the delay. However, the panel noted, these would not have included legal costs, as his lawyer advised that he did not charge his client for the numerous post-trial appearances.

In a separate letter of complaint, the complainant's wife attributed the miscarriage of their unborn child to the anxiety suffered during the period of waiting. While the review panel understood that the complainant's experience was upsetting to his wife, they noted that responsibility for her miscarriage could not be ascribed to the judge.

The review panel advised that they understood that the reasons for decision in the case were reasonably complex, and likely required a considerable period of time to prepare. They noted that they believed that the judge was well motivated in her desire to get her reasons out to the parties within a short period of time. However, the panel was concerned with a period of six months to await the reasons for decision in one's criminal proceeding. They noted that emotional reaction on the part of the complainant and his wife was understandable.

The review panel also considered the aspect of the allegations that the judge was not frank as to the reasons for the delay. The investigating complaint subcommittee had requested a response from the judge to the concerns raised in the complainant's letters.

The review panel observed that the judge did appear to understand how stressful the experience had been for the complainant and his wife. As well, they advised that the judge understood that in future a similar situation should not occur.

The review panel referred this complaint to the Chief Justice pursuant to section 51.4(18)(c) of the *Courts of Justice Act*.

The Chief Justice met with the judge and reported to the review panel on the meeting. The Chief Justice informed that the judge truly regretted how she handled this case and that she appeared committed to take the necessary steps to provide judgments within a reasonable time in the future. The Chief Justice noted that the judge fully understood her obligation to uphold the highest standards of honesty and integrity. After considering the report from the Chief Justice, the review panel determined that no further action was required and the file was closed.

CASE NO. 12-019/07

The complainants, a father and paternal grandfather, were involved in a lengthy child custody battle against the mother relating to their son/grandson that extended over several years. In the complainants' first letter, they alleged that the judge treated them with hostility, apprehension of bias and prejudice during a contempt hearing related to the mother's refusal to allow the father to exercise access to the child. In their second letter to Council, they raised further concerns about the same judge relating to another interim proceeding that occurred two and a half years later in the same case which dealt with the father's motion to vary interim access to the child. The father and grandfather stated that on this occasion, the judge was in a bad mood and he screamed at them. They also alleged that he not only gave the mother what she wanted, but that he surrendered his decision-making to other authorities.

The complaint subcommittee ordered and reviewed numerous transcripts, and listened to the audiotapes of the proceedings before the subject judge. They conducted their investigation and submitted a report to a review panel.

After reviewing the record, the letters of complaint and the subcommittee's report, the panel did not agree that the judge was biased or prejudiced in his decisions against the father or that he favoured the mother or any other parties. The review panel noted that the judge provided reasons for his decision and that it was clear that his focus was on the best interest and safety of the child. The panel indicated that the judge had made every effort to offer the parties a very early date to argue the contempt motion that would clarify the proper interim arrangement. The record showed that the judge was also clearly motivated to order supervised access on a short term basis as a way to re-establish contact between the child and his father, which had at that point been stopped for about three months. It appeared to the review panel that the judge was trying to accommodate concerns for the safety of the child, and the child's and father's needs to maintain a relationship until the motions could be argued. Further, the review panel further noted that there was no

indication in the transcripts that the judge was hostile towards any of the litigants.

With respect to the allegations in the second letter, the review panel also noted that while the complainants alleged that the judge gave into the mother and gave her what she wanted, reasons were given by the judge for his decisions. If he made errors in assessing the evidence or determining any of the issues (and the review panel did not suggest that he did), the proper way to proceed would have been to appeal. Such matters are outside of the jurisdiction of the Council.

They found no indication in the transcript that the judge had surrendered his decision-making to other authorities or that he was biased. Further, there was nothing to support the allegations that the judge was in a bad mood or that he screamed at the complainants. The review panel observed that there were two occurrences where the judge verbally took steps to control the proceeding and in one of those instances the father/complainant tried to speak out of turn. However, on both occasions, the judge was firm but polite while regaining control and did not raise his voice or scream as alleged.

For the reasons indicated, the review panel found no basis for the complaints and dismissed this complaint.

CASE NO. 12-021/07

The complainant was a party in a child custody matter before the subject judge. The complainant and his wife applied unsuccessfully for custody of his wife's two daughters who had previously been in the custody of her parents.

The complainant made the following allegations about the subject judge:

1. The judge demonstrated bias against the disabled and made inappropriate comments during the proceedings.
2. The judge stated that the complainant's wife was "retarded" without having any evidence to support this claim.
3. The judge pre-judged the case before hearing all the evidence.
4. The judge took 18 months to give his judgment.
5. The judge said that if he had asked the children where they wanted to stay, they would have said with their grandparents.
6. The defendants lied under oath and the subject judge did nothing to prevent this.
7. The judge had already made up his mind and didn't take the closing arguments into account when he rendered his decision.

The complaint subcommittee ordered and reviewed all the transcripts relating to the proceedings, conducted their investigation and submitted a report to a review panel.

Following their review of the subcommittee's report, the transcripts and the letter of complaint, the review panel observed in relation to the first allegation that there was no evidence to support the complainant's allegation that the judge demonstrated bias against the disabled or made inappropriate comments during the proceedings.

The review panel noted that the allegation that the judge stated that the complainant's wife was "retarded" was unfounded. Rather, the transcript showed that the judge was quoting information contained in a doctor's assessment which was undertaken to give the court some guidance in regards to the complainant's wife in relation to a child protection matter. The quotation was not intended by the judge as a derogatory remark towards the complainant's wife.

Regarding the third allegation, that the judge pre-judged the case before hearing all of the evidence, the review panel noted that, after having presided at four previous trial days in this case, the judge had heard from all of the parties involved and had become very familiar with the facts of the case. Taken in the context of all that had gone before, the review panel saw the judge's comment to the complainant and his wife that "you can't be encouraging the idea that custody will change" as advice, not as a pre-judgment of the situation. Rather, this reflected an effort on the judge's part to keep expectations reasonable and encourage the parties to settle the case after they indicated that they would be discussing a resolution of the matter.

The review panel reported that the complainant was incorrect in his statement to Council, which was the fourth allegation, that the judge took eighteen months to give his judgment. They noted that the final court proceeding took place five months after the final court proceeding, which, in their view, was an acceptable time frame for the case.

The review panel noted that the judge speculated about the wishes of the children in his decision, as stated by the complainant in allegation five. However, they also noted that after hearing evidence at trial, a judge was at liberty to draw his own conclusions on this kind of question. As this related to the judge's decision, it is a matter outside of the jurisdiction of the Judicial Council.

In relation to the complainant's comments in allegation six that the defendants lied under oath and the judge did nothing to prevent this, the review panel advised that it is the judge's function during a proceeding to draw his own conclusions about the credibility of a witness. They noted that this complaint was not substantiated and should be dismissed.

The review panel advised that there was nothing in the transcripts to substantiate allegation seven that the judge had already made up his mind and didn't take the closing arguments into account when he rendered his decision.

The review panel noted that the judge was very sympathetic to the applicants (the complainant was one of the applicants) throughout and tried to guide them through court procedures and took the time to ensure all the participants were comfortable in the courtroom.

For all of the above reasons, the review panel dismissed this complaint.

CASE NO. 12-024/07

The complainant was a visually-impaired, self-represented accused who was convicted of assault by the judge. The complainant alleged that the

judge acted belligerently towards him and did not permit him to testify on his own behalf. He further alleged that that he was not allowed to record the proceedings and that the judge denied his request for a free copy of the transcript so that he could appeal his conviction.

The complaint subcommittee ordered and reviewed the transcripts of the entire proceeding before the judge and conducted their investigation. The subcommittee observed that the judge explained to the complainant on a number of occasions that he could give his side of the story when he testified. They also noted that, because the complainant had difficulty with his eyesight, the judge provided such assistance as advising him of a step to be negotiated upon entering the witness box and by explaining photographs filed as exhibits. The subcommittee submitted a report to a review panel.

The review panel reviewed the complaint, the transcripts and the subcommittee's report. They determined that the judge was patient and attempted to assist the complainant on a number of occasions when the complainant cross-examined the witnesses. The review panel further noted that the complainant was given ample opportunity to present his case, and that in response to cross-examination he was able to present more evidence, as he was given the opportunity of re-examination of a witness. The review panel found that the complaints were not substantiated by the review of the transcripts.

In relation to the complainant's allegation that he was not allowed to record the proceedings or to have a free copy of the transcript, the review panel determined that those matters concerned decisions of a judge and are outside of the jurisdiction of the Ontario Judicial Council.

For the reasons stated, the review panel found that there was no basis for an allegation of judicial misconduct and dismissed this complaint.

CASE NO. 13-004/07

The complainant in this matter was a party/father in a family law proceeding that began as a child protection matter but was ultimately dealt with as a custody matter. The trial went for twenty-three days and subsequently involved four additional days of motions.

The complaint subcommittee reviewed transcripts of the proceedings near the beginning and the end of the matter. The subcommittee reported on their findings to the review panel. The review panel reviewed the complaint, the transcripts and the report of the subcommittee. The Council addressed the allegations made about the trial as follows:

1. With respect to allegations by the complainant that at the start and conclusion of the trial the judge said in court that "a man who represents himself in court is a fool," the complaint subcommittee ordered and reviewed the transcripts for the first two days of trial and the last day of trial and did not find the statements as alleged by the complainant. There was reference to a comment, "If you'd broken your arm, would you set your own arm?" on one date. However, the review panel advised that in

the circumstances, this was not inappropriate. The review panel reported that the judge had shown patience and guidance to the complainant/father who was self-represented throughout the proceedings. The panel found no substantiation for the allegation of judicial misconduct.

2. With respect to the complainant's allegation that the judge made inappropriate verbal comments by saying that the matter looked like a custody issue and not a child protection case, the subcommittee advised that in the transcripts reviewed such comments were not found during the trial but were referenced in the judgment. The review panel noted that it is appropriate for a judge to determine what the issue is during a trial and advised that if the complainant was unhappy with his decision, the proper remedy would be to pursue an appeal. (The review panel did not comment on the merits of an appeal.)

3. With respect to the allegation that the judge accepted "questionable evidence" of a witness from the Children's Aid Society (CAS), the review panel advised that a judge must listen to each party's witnesses in order to assess their credibility. The fact that the children were interviewed in the absence of the parents (or in the absence of parental consent) during the course of a child protection proceeding was not unusual and the reports of those interviews are frequently provided in evidence at the time of a trial. The review panel noted that even though the complainant did not agree with this procedure or with the weight given to this evidence, it did not mean that there was judicial misconduct by the judge.

4. With respect to the allegation that the judge ignored a blatant attempt by the CAS to deceive the complainant by ruling in favour of the CAS' claim of solicitor-client confidentiality, the subcommittee did not find any reference to this concern in the transcripts that were reviewed. In any event, the review panel advised that if this issue were ruled on by the judge during the course of this lengthy trial and the complainant was not happy with the outcome, that concern would be a matter outside of the jurisdiction of the Council and the proper remedy would be an appeal.

5. With respect to the allegation that the judge accepted a particular witness' evidence, the review panel noted, as above, that this was an instance of a judge listening to witnesses and assessing evidence, and even though the complainant did not agree with the weight given to this evidence, it did not mean that there was judicial misconduct by the judge.

6. The complainant alleged that the judge did not complete the trial as quickly as he had said that he would because he allowed the addition of a third party to the proceedings. The review panel advised that the judge's decision to order that the custody claim of the respondents be tried together with the child protection proceeding was not unusual, as both types of claims were before the court. The review panel understood that the judge was undoubtedly attempting to avoid the waste of time involved in having two different trials that would deal with

many of the same issues. The approach did not raise concerns about judicial misconduct. As well, the review panel reported that the judge did not promise a timeframe for having the decision completed, and that it was, in fact, completed within a timeframe consistent with good practice.

7. Although the complainant alleged that the judge granted custody to persons who had not provided a safe home for his children, the review panel reported that the record showed that after hearing all the evidence, the judge provided detailed reasons for deciding that the children should be placed in the custody of the aunt and uncle. The review panel observed that the fact that the complainant did not agree with the judge's conclusions did not mean that there was misconduct on the part of the judge.

With respect to the allegations made by the complainant about motions that followed the judgment, the review panel found as follows:

8. The complainant alleged that the judge, in changing the terms of the complainant's access to the children, lacked sound judgment and that he "couldn't care less about my employment situation or financial hardship." Following their review of the transcript of this proceeding, the review panel advised that it was evident that the judge considered the representations of the various parties, including the complainant, and that he clarified the terms of access after considering all of the possibilities. There was no indication of judicial misconduct.

9. The complainant complained that the judge had no time to deal with issues relating to the mother's access (that being the complainant's ex-wife) to the children despite the fact that he took the time to grant a restraining order against her. The complaint subcommittee reported that the judgment at trial had not resolved a claim brought by the aunt and the uncle (who were given custody of the children) for a restraining order against the mother. Following a motion for directions by the CAS, the judge made the order requested. The review panel advised that there was nothing improper in this. The panel noted that the motion for directions was also brought by the CAS to clarify how access in favour of the father would be implemented. They further advised that it appeared that the terms of access had been agreed to prior to the trial starting, that the mother did not participate in the trial in a meaningful way, she had not signed the Statement of Agreed Facts that resolved the issues of access to the children, she did not attend the proceeding, and there was no motion before the court to address the issue of her access to the children. Given that the issue of her access was not before the court, the review panel determined that it was not surprising that the judge wouldn't consider the topic at that time. The review panel found no judicial misconduct relating to the judge.

For the reasons noted above, the review panel found no judicial misconduct on the part of the judge and the complaint was dismissed.

CASE NO. 13-008/07 AND 14-008/08

There were two complaints before the Judicial Council with respect to the subject judge. The first complaint was Case No. 13-008/07. Before the complaints process regarding that file was completed, a second related complaint, Case No. 14-008/08, was received.

Case No. 13-008/07

The two co-complainants were court staff in the courthouse where the subject judge presided. In their capacity as union stewards, they filed a complaint against the subject judge on behalf of a union member who was employed at the same courthouse. The complaint related to two incidents in which it was alleged that the judge loudly and angrily berated the union member in front of her colleagues. They alleged that the judge was unhappy about having been scheduled to sit in a courtroom where he experienced difficulty hearing the proceedings. The complainants also alleged that the judge accused the staff person of lying. They also indicated that shortly afterwards, in the judge's office, the subject judge loudly confronted the staff person again, and that the judge made rude and intemperate remarks about the staff person and her supervisor. The union member/staff person was reassigned to another position within the courthouse as she felt threatened and bullied and did not feel that she could continue to work in a an environment that she perceived to be hostile and poisoned.

The complaint subcommittee retained independent counsel to assist in the investigation of this complaint. The subcommittee also requested and reviewed a response from the judge. The subcommittee completed its investigation and reported to a review panel.

After carefully considering the complaint and the materials received with it, the report from the external investigator, the response from the judge and the subcommittee's report, the review panel noted that the investigation confirmed that the allegations made by the complainants were substantially correct. They also noted that the judge had apologized to both of the staff persons involved in the incident in writing prior to the complaint being filed. The review panel observed that the conduct of the judge giving rise to the complaint fell below the appropriate standard for judges in their relationships with court staff. Pursuant to subsection 51.4(18)(c) of the *Act*, the matter was referred to the Chief Justice by the review panel.

The Chief Justice met with the judge and reported back to the Council. Following their review of the report, the review panel noted that the judge had apologized to the court staff, and had expressed his apology to the Chief Justice. He had acknowledged that he should never have spoken to the court staff as he did. The judge agreed that the behaviour was inappropriate and expressed his disappointment with his behaviour. He regretted the conduct and indicated that he would be more careful in future.

Before the file was completed, a second complaint was received. As the second complaint

related to the first complaint, the outstanding file remained under consideration by the Council and was further addressed with the complaint received under Case No. 14 008/08.

Case No. 14-008/08

The complainant, a court reporter, was a co-complainant in Case No. 13-008/07. In this second complaint, she indicated that on a date after the first complaint was filed, she was scheduled to be the court reporter in the subject judge's courtroom. When the judge entered and saw her in the courtroom at 10 a.m., he looked at her, and she smiled and said "Good morning, Your Honour". She alleged that the judge immediately stood up and walked out of the courtroom. She further alleged that when her supervisor went to investigate what the issue was, the judge said that he would not sit in a court where the complainant was present. Another court reporter was brought into the courtroom so the proceedings could resume. The complainant agreed to work in another courtroom. The start of court was held up until 10:45 a.m. The complainant expressed the concern that the judge's behaviour had made her look bad publicly, and that lawyers and staff would have assumed that she had done something wrong when, in fact, she had not.

The complainant also alleged that there was a management policy in place at the courthouse of not acceding to requests from the bench that certain staff not be scheduled with them. Also, she alleged that when management approached two other judges about the incident, those judges fully supported the judge and that they had "closed ranks around one of their own" in circumstances where she felt that the judge was retaliating against her for filing the first complaint. Separate complaint files were opened with respect to the other two judges. For information on those matters, see the Case Summaries for Case No. 14-009-08 and Case No. 14-010/08 in this Annual Report.

Following the receipt of the second complaint, the complaint subcommittee considered whether the subject judge should be temporarily reassigned to another courthouse location pending the resolution of the complaint. Under subsection 51.1(1) of the *Act*, the Judicial Council has established criteria and rules of procedure to be used by a subcommittee in making a decision on whether to recommend the re-assignment of a judge pending the resolution of a complaint. One basis for such a recommendation is that "the complaint arises out a working relationship between the complainant and the judge and the judge and the complainant and the judge both work at the same court location". The subcommittee noted that the subject judge was still presiding in the same courthouse where the complainant and the staff person involved in the first complaint in Case No. 13 008/07 were working.

The subcommittee requested a response from the judge on the issue of whether there should be an interim recommendation that he be re-assigned to a different location pending the resolution of the complaint. The subcommittee also retained an independent lawyer to assist in the investigation of the complaint. A response from the judge to the allegations in the complaint was also requested.

After reviewing the response from the judge on the issue of re-assignment, and taking into account the procedures of the Council and the circumstances of the complaints, the subcommittee recommended pursuant to subsection 51.4(8) of the *Act* to the Chief Justice that the judge should be re-assigned to a different court location pending the resolution of the complaint. The Chief Justice spoke to the judge and advised the Council that the judge was willing to be re-assigned to a different location on an interim basis. He was then assigned to preside at a different court location. Following their investigation, the subcommittee submitted a report to a review panel.

After carefully considering the complaints, the investigator's report, and the responses of the judge, and the complaint subcommittee's report, the review panel noted that the allegations about the judge's response in the courtroom were substantiated. With respect to the allegation that there was a management policy in place at the courthouse of not acceding to requests by judges that certain staff not be scheduled with them, the review panel found that there was no written management policy with respect to this issue, and that there appeared to be some difference in understanding among court staff on the matter.

Pursuant to subsection 51.4(18)(c) of the *Act*, the matter was referred to the Chief Justice by the review panel for a meeting with the judge to discuss the concerns about his conduct.

The Chief Justice met with the judge and reported back to the Council. After reviewing the Chief Justice's report, the review panel advised that although the judge had made a rash and spontaneous decision to leave the courtroom when he saw the complainant assigned as the court reporter, upon reflection, the judge realized that his conduct gave rise to perceptions that he had intended to have attention focus on the complainant and had wanted to demean her. The review panel noted that the judge had explained that it was not his intention to either embarrass or humiliate the complainant. Rather, he had felt uncomfortable, knowing of the outstanding complaint, and had reacted spontaneously when he left the courtroom. He was now aware that his conduct fell below the appropriate standard for judges in their relationships with court staff, and that he should respond more appropriately in the future if a similar instance should arise.

The Chief Justice advised that the judge would continue to preside in the location where he was assigned after these complaints were filed, which was a location other than the one where the court staff worked who were involved in the two complaints.

For the reasons above, the review panel decided that no further action was required, and the complaint files were closed.

CASE NO. 13-010/07

The complainant was an unrepresented accused in criminal harassment proceedings. He appeared before the judge during a set-date appearance. The complainant alleged that the judge erred in

interpreting section 345 of the *Criminal Code*, which establishes the offence of Stopping Mail with Intent, as being a civil matter. He also alleged that the judge displayed bias in his response to the complainant regarding his legal position by suggesting that he required a lawyer to prove that section 345 of the *Criminal Code* was not a civil issue.

The complaint subcommittee ordered and reviewed the transcript of the proceedings before the judge, conducted their investigation and reported to a review panel.

The review panel reviewed the subcommittee's report, the transcript and the complainant's letter. With respect to the allegation that the judge erred in interpreting section 345 of the *Criminal Code* as being a civil matter, the review panel noted that the transcript indicated that the judge did not interpret or attempt to interpret section 345. They noted that, even if he had done so, that would be a question of interpretation of the law, rather than a question of any misconduct, and would be a matter outside of the jurisdiction of the Ontario Judicial Council.

They also noted that the transcript did not substantiate the allegation of bias. On the contrary, they advised that the transcript showed that the judge did not say that complainant required a lawyer to prove that section 345 of the *Criminal Code* was not a civil issue. Further, the transcript indicated that the judge correctly advised the complainant that the judge had no power to do anything about his concern and suggested to the complainant that he may wish to consider a bail review in Superior Court. As well, the transcript showed that the judge demonstrated the utmost patience with the self-represented complainant, and was courteous, polite and helpful. The review panel further noted that the judge listened carefully and went to considerable effort to explain to the complainant his possible legal options.

The review panel found no evidence of bias or judicial misconduct on the part of the judge and dismissed this complaint.

CASE NO. 13-012/07

The complainant was a self-represented grandparent involved in a child-protection matter before the subject judge.

The complainant alleged that he was not told to complete a Trial Management Conference brief, was prohibited from calling witnesses, and the judge wouldn't look at his documents regarding the 'lies' that were being told by the Children's Aid Society. The complainant also wrote to the Queen to tell her about how his case was being mishandled, that he had a million dollar law suit against the Society and that he intended to complain to the Judicial Council.

The complaint subcommittee ordered and reviewed transcripts of the proceedings, conducted their investigation and submitted a report to the review panel.

The review panel reviewed the subcommittee's report, the transcripts and the complainant's letter. They determined that the judge told the

complainant on three different occasions that he would have to complete a Trial Management Conference Brief. When the complainant arrived at the Trial Management Conference, the judge held the complainant's matter down so that the complainant could get a blank Trial Management Conference Brief form to fill out. The judge gave him an opportunity to come back when it was completed. The review panel noted that the complainant told the court that he did not have to comply with the rules. He did not return to the courtroom for the Trial Management Conference. The review panel also noted that the judge allowed the complainant to give evidence and ordered that any further witness called by the complainant would only be with the leave of the trial judge. They also determined that the judge properly declined accepting or looking at documents from the complainant, as they related to a complaint the complainant had filed with the Judicial Council regarding another judge who had also been involved in the proceeding.

For the reasons noted above, the review panel found no grounds for judicial misconduct and dismissed this complaint.

CASE NO. 13-015/07

The complainant brought an application before the judge to file an appeal against a sentence imposed after his conviction for violation of a municipal by-law.

The complainant alleged that the judge had a conflict of interest because he had represented him on a similar matter eighteen years prior and should have recused himself from hearing the complainant's appeal.

The complaint subcommittee ordered and reviewed the transcripts, as well as other documents relating to the proceedings before the judge. The subcommittee requested a response from the judge regarding the allegation made in the complainant's letter, conducted their investigation and submitted a report to a review panel.

The review panel reviewed the subcommittee's report, the transcripts and related documents and the judge's response to the complaint. The review panel was satisfied with the judge's response that he had not recalled the matter eighteen years prior, and that he would have recused himself if he had recalled it. The review panel noted, with concern, that the complainant failed to raise the issue of a conflict at the time of the hearing of the application.

The review panel found no substantiation for an allegation of judicial misconduct and dismissed this complaint.

CASE NO. 13-017/07

The complainant/mother was a party in a family law proceeding in which she was seeking child support for her daughter from the child's father. She alleged in her complaint that the judge showed bias and prejudice against herself and/or her adult disabled daughter. She alleged that the judge set a trial date (in front of a different judge) in spite of the fact that her daughter was too ill to testify. She alleged that the judge improperly

expected the daughter to testify, and that the judge set the trial date in spite of many doctors' letters that had been provided to him.

The complainant also alleged that when the matter came up for trial, she was forced to withdraw her claim because her daughter was too ill to testify and that as a result of the withdrawal, the issue of costs was referred back to be dealt with by the judge who was the subject of the complaint. The complainant claimed that the judge made an unfair order for costs because he didn't take proper account of her daughter's illness and because she could not afford a lawyer.

The complaint subcommittee ordered and reviewed the transcript of the proceedings, the order made by the trial judge and the judge's ruling on costs. The subcommittee reported that their review showed that on that date neither the complainant or her counsel asked for a delay in setting a trial date on the basis that the complainant's daughter was too ill to testify at a trial. Rather, the complainant's lawyer agreed that the matter should be tried "earlier rather than later". While the judge did not address the issue of whether or not the complainant's daughter would be asked to testify at trial, he did strongly urge the parties to settle the case, not only to avoid running up legal costs but also to spare the complainant's daughter the trauma of trial. The complaint subcommittee reported that on the date that was set for trial, the complainant appeared without a lawyer and withdrew her claim. The issue of costs was adjourned back to the judge for determination. In his ruling, the subject judge reviewed the history of the litigation and the applicable law. The subcommittee completed its investigation and reported to the review panel.

After reviewing the complaint, the transcript and the report from the subcommittee, the review panel was of the view that the judge did not show any prejudice or bias towards the complainant or her daughter. The review panel saw no indication of prejudice or bias on the part of the judge against the complainant or regarding her daughter's health. The panel advised that if the complainant was of the view that the judge made an error in the determination of the issue of costs, there were other legal remedies that the complainant should pursue. The review panel advised that there were no grounds to support a claim of judicial misconduct. The complaint was dismissed.

CASE NO. 13-018/07

The complainant was a self-represented accused in a criminal proceeding before the judge. The complainant made the following allegations:

1. That he was denied the right to legal aid.
2. The charges against him should have been dismissed on a prior occasion because the Crown witnesses were late for court.
3. There was no proof of his guilt beyond a reasonable doubt.
4. He was not heard by the judge at the trial because the judge rejected his testimony.

The complaint subcommittee ordered and reviewed the transcript of the proceedings, conducted their investigation and submitted a report to a review panel.

The review panel reviewed the subcommittee's report, the transcript and the complaint letter. The review panel noted that, in their opinion, the judge was helpful, patient and courteous and fair to the complainant. They also noted that:

1. The complainant's complaint that he was denied legal aid was outside of the jurisdiction of the Judicial Council.
2. The subject judge did not deal with this case on the prior occasion that the complainant had alleged. It was another judge.
3. This complaint was outside of the jurisdiction of the Council as it relates to the judge's decision. If the complainant disagreed with the decision, the proper remedy would be an appeal.
4. The trial judge gave reasons for his judgment that make it clear that he heard the testimony of the complainant and rejected it. This was a matter of weighing evidence and making findings of fact, not an indication of bias or misconduct. If the judge disagreed with how the judge assessed the evidence, the proper way to proceed was through other legal remedies.

For these reasons, the review panel found no judicial misconduct on the part of the judge this complaint was dismissed.

CASE NO. 13-022/07

The complainant was a party who was represented by counsel in family law proceedings before the judge. The complainant was unsuccessful in his application for custody. The complainant made the following allegations relating to the judge:

1. The judge improperly set aside an earlier order made under the Hague Convention on the basis of an unsworn affidavit from the foreign court.
2. Documents of the other party were 'not authentic, forged, and contrived'; nevertheless, the judge accepted all foreign documents at their face value and thereby put the court's convenience ahead of the child's best interest.
3. The judge abused the rights of others.
4. The judge's decision on a motion was motivated 'by the parties involved ability to pay for a lengthy trial' and not the best interests of the child.
5. The complainant also alleged that correspondence between the respondent's counsel and the judge was 'appalling and unfair'.
6. The complainant indicated that an affidavit was lost that would have been important to the case.

The complaint subcommittee ordered and reviewed the transcript of the proceedings. The members reported that both parties were represented by counsel who thoroughly and competently made submissions on complex issues of law. The subcommittee also reported that the judge reserved his decision at the end of the day. They noted that there was no allegation made during the proceedings by either counsel that the judge was considering documents that were not properly before the court. As well, they

advised that the record showed that the judge was courteous and professional throughout the proceedings. The subcommittee reported to the review panel.

The review panel reviewed the complaint, the transcripts and the report of the subcommittee. Following their review, the panel found that the record did not show any misconduct. Rather, the members advised that the allegations regarding the admissibility of evidence and the decision of the judge were matters related to the decision of the judge and outside of the jurisdiction of the Ontario Judicial Council. The review panel also reported that the allegations regarding the "abuse of rights of others" and the allegations relating to the correspondence between the judge and the respondent's counsel were vague and not substantiated by the investigation and review. The panel advised that the lost affidavit was not the responsibility of the judge and did not reflect judicial misconduct.

For the reasons noted, the review panel dismissed this complaint.

CASE NO. 13-023/07

The complainant was an agent who describes herself as an 'advocate and auditor' of the courts. The complaint involved the handling of a child welfare matter which commenced with the Children's Aid Society entering into a temporary care agreement with the child's mother without consultation with the father. Prior to the expiration of that agreement, the father brought an application for custody of the child. At the hearing of the application the judge expressed concern with respect to the wording of section 29 of the *Child and Family Services Act*, which does not explicitly require consent of both parents to a temporary care agreement, and indicated that the application by the father was novel.

The complainant made the following allegations:

1. The judge ignored the evidence of the father at a court appearance four years earlier.
2. The judge was biased because he encouraged the Children's Aid Society to bring a child protection application when he stated to the Children's Aid Society representative after adjourning the matter to another date, "I would strongly suggest that the Society have an application before the court at that time."
3. The judge ordered the child to remain in Children's Aid Society care without a temporary care and custody hearing, contrary to the *Child and Family Services Act*.
4. The judge failed to ensure that the mother had been served with Notice of a hearing.
5. The judge terminated access to the child with consent of the lawyers but "without the position of the parties' mother and grandmother being put before the court."
6. The judge failed to recuse himself as soon as a potential conflict was raised.

The complaint subcommittee ordered and reviewed the transcripts of the proceedings before the subject judge, conducted their investigation and submitted a report to a review panel.

The review panel reviewed the complaint, the transcripts and the report of the subcommittee. The panel noted the following in relation to the allegations made above:

1. The judge received affidavit evidence and ordered that it be sealed due to the nature of some of the allegations contained in it. The judge also heard oral evidence from the mother who testified that at the time that she signed the temporary care agreement, the father had moved out and she had concerns about her physical safety as a result of his behaviour. She also alleged inappropriate disciplining of the child by the father. The review panel noted that there was nothing on the record to support an allegation that the judge did not consider all of the evidence before him.

2. At the hearing, the Children's Aid Society had indicated that it intended to file a protection application with respect to the child. The judge adjourned the Children's Aid Society from a Thursday until the following Monday which was the day the Temporary Care Agreement was to expire. The review panel noted that the judge, rather than encouraging the Children's Aid Society, was warning them that they had to comply with the rules if they wanted their application heard. The panel also noted that this did not show any bias against the father.

3. The transcript showed that the parents, the child's counsel and the Children's Aid Society consented to the child remaining in the interim care of the Children's Aid Society until a parenting assessment could be carried out and further information could be put before the court. There was no basis for an allegation of judicial misconduct.

4. The transcript also showed that the mother did not file an Answer as required by the Family Court Rules and accordingly, pursuant to Rule 10(5), the judge had authority to note her in default. The judge was also advised that the mother had left the jurisdiction and was unlikely to return. The review panel found no basis for an allegation of judicial misconduct.

5. The mother had been previously noted in default. With respect to the grandmother, the transcript revealed that the judge was advised by counsel that the grandmother had consented in writing to an order of Crown wardship without access. The review panel found no basis for an allegation of judicial misconduct.

6. The review panel noted that although the file did indicate that the issue of a potential conflict was raised before another judge who noted it in the file, there was nothing to suggest that the judge whom the complainant complained about knew anything about it prior to the date when it was brought to his attention on the record and he recused himself. They found no basis for an allegation of judicial misconduct.

For the above reasons, the review panel advised that their review of the record revealed nothing to substantiate any of the allegations made and dismissed this complaint.

CASE NO. 13-024/07

The complainant submitted a complaint on behalf of one of her employees who had represented an accused in a criminal proceeding on a charge of assault in which the facts indicated that the accused may have been suicidal. She alleged that during sentencing, the judge made inappropriate comments that were counselling the accused to commit suicide. Counsel for the accused had been very upset by the words used. In her letter to the Council, the complainant suggested that the judge should not be allowed to deal with individuals with mental illnesses.

The complaint subcommittee ordered and reviewed the transcript and audiotape of the proceeding and asked the judge to respond to the concerns raised by the allegation. Following their investigation, the subcommittee reported to the review panel.

The review panel reviewed the letter of complaint, the transcript, the response from the judge and the subcommittee's report. They noted that in his response, the judge explained that he had used blunt language with the objective of communicating with the offender at his own level and in a meaningful way. The judge regretted any emotional impact that may have resulted to counsel for the accused as a result of his comments. The review panel observed that the conduct of the judge giving rise to the complaint fell below the appropriate standard for judges. Pursuant to subsection 51.4(18)(c) of the *Act*, the matter was referred to the Chief Justice by the review panel.

The Chief Justice reported to the review panel on her meeting with the judge. She informed the members that the judge acknowledged that his comments were inappropriate and that he regretted the words he had used. He showed an appreciation of the concerns about the comments, and provided reassurance that in the future he would not speak without weighing the consequences of his words and that he would be more careful when addressing accused persons who appear before him. For those reasons, the review panel determined that no further action was required and the file was closed.

CASE NO. 13-025/07

The complainant, counsel for an accused, took issue with several aspects of the judge's conduct during his client's pre-trial.

The complainant alleged that the judge ordering three pre-trials was an "abuse of power" because the judge failed to consider the inconvenience and expense that attendance at the pre-trials would cause both the counsel and his client, due to their lengthy commute from their city to the city where the court was located.

The complainant further alleged that at the first pre-trial, the judge tried to coerce his client into admitting details surrounding the charge, and the judge read a synopsis submitted by the Crown, with no input from the defence.

The complainant also alleged that the judge commented, on a judicial pre-trial form, that he, the counsel, had "had attitude from the moment he walked in", and that this comment was reviewed by another judge who conducted the third pre-trial.

The complaint subcommittee ordered a transcript and audiotape for all three pre-trials but was advised by Court Services that pre-trials are not normally done on the record, as they are held "in chambers". The complaint subcommittee then wrote to the judge seeking a response to the complainant's allegations. Following their investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed the complaint, the response from the judge and the report from the subcommittee. The panel noted that the judge responded in detail, referencing his actions in relation to Pre-Trial Protocol and Rule 27 of the *Rules of the Ontario Court of Justice in Criminal Proceedings*. They observed that in his response, the judge stated that counsel appeared to be unfamiliar with the Rules and with local Pre-Trial Protocol. The judge apologized that he had not spent time explaining them to counsel.

The review panel also noted that the complainant sent an agent to second pre-trial, in violation of Rule 27.01 of the *Rules of the Ontario Court of Justice in Criminal Proceedings* which requires that "unless otherwise ordered by a judge…counsel of record…shall be present." The judge, while concerned that counsel, by his non-attendance, was in breach of the *Rules* and the Pre-Trial Protocol, out of concern for the accused and to expedite the matter, attempted to proceed. However, as things progressed the judge considered that the agent, was not sufficiently instructed to represent the accused, and thus had ordered a third pre-trial to be presided over by the Local Administrative Justice.

The review panel further noted that in response to the complainant's allegation that the judge attempted to coerce the accused into admitting some basic facts, in his response the judge referred again to the *Rules* and Pre-Trial Protocols which he admitted do, in effect, "seek to force both Crown and Defence to face the reality of their respective cases and schedule court time in accordance with that reality." The review panel found that the judge had acted in accordance with rules and local protocols of the court.

In relation to the complainant's allegation that the judge read a synopsis of the case submitted by the Crown, in his response the judge explained that receipt of the synopsis was preparatory and to ensure that the judge could expeditiously come up to speed in terms of what the allegations were and what the issues might be.

With respect to the issue of the comment that the judge wrote on the pre-trial form, which was read by another judge of the third pre-trial, the review panel reported that the judge indicated that the problem of the form not providing space for privileged judicial comments was a matter up for discussion when the existing Pre-Trial Protocols would be reviewed. The judge responded that the form provided no special place for privileged notes to be kept other than in the commentary section. The judge further stated that he would in future ensure that his personal judicial notes are somehow kept apart from the material that may be viewed by a trial judge.

For the reasons noted above, the review panel found no substantiation for an allegation of judicial misconduct and dismissed this complaint.

CASE NO. 13-026/07

The complainant was a party in a custody and access proceeding. The complainant raised three allegations in his letters of complaint to the Council:

1. The trial judge made errors in law and judgment that amounted to judicial misconduct.
2. The judge deliberately sought to delay his trial as she set a date for continuation of the trial on a day when other matters were scheduled, and his matter did not proceed.
3. The judge screamed at him during his submissions.

The complaint subcommittee ordered and reviewed the transcripts and audiotapes relating to this proceeding. They concluded their investigation and reported to the review panel.

The review panel reviewed the complaint, the transcripts and the report of the subcommittee. The panel noted that:

1. With respect to the first allegation, the judge's reasons for judgment showed that the judge was thoughtful, judicious and measured. The record did not show any indication of bias. As well, they advised that the allegations of errors in the judge's decision (the review panel made no findings on this issue) related to a matter that was outside of the jurisdiction of the Council and the appropriate remedy would be an appeal.
2. Regarding the second allegation, the transcript revealed that the matter was not set for continuation on the date complained of. Rather, that date was for the return of a motion filed by the complainant on the day before, seeking early dates for the continuation of trial. The panel noted that the motion was dealt with and earlier dates were granted.
3. With respect to the allegation that on one of the dates the judge screamed at the complainant, the subcommittee and the panel had reviewed the transcript. The subcommittee had also listened to the audiotapes. After their review, they advised the panel that the judge never raised her voice throughout the proceeding. The review panel determined that this complaint was unfounded.

For the reasons noted above, the review panel found that this complaint should be dismissed.

CASE NO. 13-028/07

The complainant, who was the head of a paralegal firm, complained on behalf of one of her employees that he was not given the opportunity to argue an appeal before the judge on the basis that the Notice of Appeal indicated "Grounds to Follow" even though an Affidavit filed in support of the Appeal set out the factual grounds and basis for the Appeal.

The complainant also alleged that the manner and tone in which the paralegal was told to leave the court by the judge were unsatisfactory and warranted corrective action or recommendations to prevent this from happening again in the future.

The complaint subcommittee ordered and reviewed a transcript and an audiotape of the proceeding before the judge. They conducted their investigation and submitted a report to a review panel. The complaint subcommittee listened to the audiotape and included their findings in the report to the review panel.

Following the review panel's review of the complaint subcommittee report, the transcript and the letter of complaint, the panel found that the judge did not order the paralegal to "Leave", as had been alleged by the complainant. The review panel noted that the judge's tone was appropriately judicial throughout. The panel also noted that the complaint that the judge would not give the paralegal the opportunity to argue the appeal cause of improperly filed documents amounted to a disagreement by the paralegal with the Rules of Practice. This was not a matter of conduct of the specific judge who enforced the rules. The review panel found no judicial misconduct and dismissed this complaint.

CASE NO. 13-029/07

The complainant was a self-represented accused charged with sexual assault in a criminal proceeding. The complainant alleged that:

1. The judge did not allow him to cross-examine the complainant.
2. The judge was biased because he found him guilty when there was no independent witness.
3. The judge must have made up his mind before the trial was over, since he gave his decision immediately after the conclusion of the evidence.
4. The judge imposed a custodial sentence without giving him a chance to prepare submissions.

The complaint subcommittee ordered and reviewed transcripts of the entire proceeding before the judge, conducted their investigation and submitted a report to a review panel.

The review panel reviewed the letter of complaint, the transcripts and the subcommittee's report. The review panel advised that subsection 486.3(4) of the *Criminal Code* prohibits an accused from personally cross-examining a complainant in a sexual assault trial and authorizes the court to appoint counsel to do so. The review panel noted that, under the law, no independent witness is required for corroboration in sexual assault cases.

On the allegation that the judge gave his decision immediately, and must have therefore have made his mind up before the evidence was concluded, the review panel found that the review of the transcript did not support the complainant's allegation of bias. Rather, the transcript showed that there were few witnesses and that the case was not complex. If the complainant had a concern that the judge did not comment adequately on the credibility of the complainant, the proper way to proceed would be through other legal remedies. This was not a matter of misconduct.

Regarding the allegation that the judge imposed a custodial sentence without giving him a chance to prepare submissions, the review panel advised

that the transcript indicated that the judge did invite submissions on sentence from the complainant/accused. However, the complainant chose not to make submissions. That allegation of judicial misconduct was not substantiated.

The review panel found no basis for an allegation of judicial misconduct and dismissed this complaint.

CASE NO. 13-030/08 AND 13-032/08

The Judicial Council received separate complaints from two complainants arising from comments made by the judge during a criminal trial when a police officer, who was wearing a poppy in court, testified for the first time before this judge. The witness had completed his testimony concerning the subject-matter of the charge before the court when the judge made remarks about the officer wearing a poppy in court and advised him that he probably should not wear anything like that in court.

The complaint subcommittee carefully reviewed and considered the complaint letters and the transcript of the proceedings in question. They also requested and reviewed a response from the judge to the complaints. The subcommittee completed its investigation and reported to the review panel.

The review panel reviewed the letters of complaint, the transcript, the response of the judge and the report from the subcommittee. The panel noted that courts in Canada do not sit on Remembrance Day in order to honour the special place that our fallen soldiers occupy in our history and national consciousness. They remarked that the symbolism of a poppy is not comparable to ribbons, buttons or wristbands that promote political or social causes, and observed that a witness has the right to wear a poppy in court.

The review panel members advised that there may have been a lack of appreciation on the part of the judge that the comments would be unacceptable and offensive to the vast majority of fair minded and reasonable members of the community. As well, the panel was concerned that the judge may order a witness to remove his or her poppy in the future. The panel also noted that the judge's comments may have resulted in the impression that a judge has a role in training police officers, and could have been perceived as giving rise to bias on the part of a judge.

The panel decided that, pursuant to section 51.4(18)(b) of the *Courts of Justice Act*, the judge should be referred to the Chief Justice to discuss the concerns further.

Following her meeting with the judge, the Chief Justice reported back to the Council. Her Honour advised that in the discussion, it was clear that since the date of the incident, the judge had reflected upon and reconsidered her view, and that she agreed that it is appropriate to wear a poppy in court. The judge appreciated that, because the poppy is a widely accepted honoured and encouraged symbol of respect for Canadians who sacrificed their lives fighting for their country in wars, the wearing of a poppy does not constitute a distraction with respect to the proceedings in court. Regarding the concern of the

Council about how others might view the judge's comments in relation to a judge having any role in training police officers, the judge regretted her comments and undertook to be aware of the need to avoid such remarks in the future.

The Chief Justice advised that she was confident that the judge fully understood the concerns and that she had learned from the experience. After considering the report from the Chief Justice, the review panel determined that no further action was required and the file was closed.

CASE NO. 13-031/08, 13-033/08 AND 13-038/08

The Ontario Judicial Council received three complaints against the judge arising from his conduct and comments during a criminal trial before him on a charge of sexual assault.

The complaints arise from the conduct and comments of the judge following a statement by a Crown witness during examination-in-chief that he had Hepatitis C and was HIV positive. The judge indicated that he would not continue the trial unless the witness was masked, and/or the matter was moved to another courtroom. An application for a mistrial was denied.

When the matter resumed on a later date, the Crown produced an Affidavit from the Supervisor of Court Operations indicating that Court Services had no policy concerning witnesses who are HIV positive or who have contracted Hepatitis C. The Crown also produced an Affidavit from a medical doctor and consultant with a well-known infectious disease control facility. The judge reviewed the Affidavits and without waiting to hear submissions from either counsel rejected the evidence of the doctor. He indicated that the court would have to be reconfigured to have the particular witness sit further from the judge. When the Crown attempted to make submissions related to the issue of transmission of the disease on her application for a mistrial, the judge indicated that the matter was closed and he would not hear any further submissions on the issue. Subsequently, the Crown brought an application to stay the proceedings pending an application for an order of prohibition.

Case No. 13-031/08

A complaint was jointly submitted to Council by two HIV/AIDS organizations, alleging that the judge's conduct appeared to depart significantly from the professional, ethical standards that are required and that this was a particularly extreme example of unacceptable behaviour by a judicial officer. The complaint also suggested that the Council not only needed to address the conduct of the subject judge but also to consider a broader response to this manifestation of HIV stigmatization and discrimination.

Case No. 13-033/08

A complaint was also received from a lawyers' association alleging that the judge did not bring a judicial temperament to the trial proceedings and that, on the basis of a personal characteristic, he treated a witness differently than any other witness.

Case No. 13-038/08

The third complaint was received from a therapist who has worked with sexual offenders, indicating

that the conduct of the judge was highly offensive and prejudiced, and that he needed additional education in the area of HIV.

The members of the investigating complaint subcommittee reviewed the complaints, transcripts of the proceedings and a transcript from an application for an order for a writ of prohibition that arose from the trial. The subcommittee also requested and received a response from the judge to the allegations. All of the materials were very carefully considered by the subcommittee. At the conclusion of their investigation, they submitted a report to a review panel.

Following their review of the subcommittee's report, the transcripts, the Order for a writ of prohibition, the judge's response to Council and the letters of complaint, the review panel noted the following:

- In the particular case, based on his own beliefs with respect to safety issues, the judge treated a witness differently. The review panel noted that judges should not be influenced by stereotypes, myths or prejudices.
- When one of the parties provided evidence to the court challenging those beliefs, the judge dismissed them without allowing submissions to be made. The review panel observed that a judge has a responsibility to refrain from prejudgment, and to accord every party the full right to be heard according to the law. This requires hearing submissions courteously, refraining from prejudgment or behaviour that could be seen as prejudgment, and then deciding impartially.
- The judge's conduct suggested that he may need further education about the transmission of HIV/AIDS.

After serious consideration, the review panel decided to refer the matter, pursuant to subsection 51.4(18)(c) of the *Act*, to the Chief Justice for discussion with the judge.

Following the report from the Chief Justice on her meeting with the judge, the Judicial Council observed that it was clear that the judge genuinely reflected upon his conduct, that he now fully understands the concerns with his conduct, that he has taken steps to address those concerns, and that he has learned from the experience.

The judge acknowledged that his behaviour had been inappropriate. He deeply regretted his actions and that he had acted in such a manner without adequate knowledge of the transmission of HIV/AIDS. He appreciated that he needed to build his understanding about HIV/AIDS and he initiated steps to do so, including seeking information from and attending at Casey House to build a better understanding. Casey House Hospice is a world-renowned facility affiliated with St. Michael's Hospital that provides a continuum of care for persons infected and affected by HIV/AIDS through a range of palliative and supportive care services in residential hospice and community programs. Staff who work with the patients daily provided the judge with a better understanding of the science, of the disease and of the people affected by the disease.

The Chief Justice advised that the judge had expressed his apologies for his conduct, with

sincere regret for any harm his behaviour may have caused to the witness in the proceeding or to others with HIV/AIDS, and for any impacts that his behaviour may have had upon the public.

With respect to the manner in which the judge treated the witness and conducted the proceedings, the Council noted that the judge had seriously reflected upon his behaviour and regretted his actions. The review panel was satisfied that he appreciated the responsibility of a judge to conduct himself in accordance with the standard expected by the public, without prejudgment, impartially, courteously and in a manner that accords every party a full right to be heard according to the law.

The review panel indicated that the Chief Justice noted that although a lack of understanding on the transmission of HIV/AIDS is not an institutional problem on the bench of the Ontario Court of Justice, the education committee would be asked to consider including HIV/AIDS in the context of any future educational session on pandemic management in the courtroom.

After considering the report from the Chief Justice and the steps taken by the judge, the review panel determined that no further action was required and the file was closed.

CASE NO. 13-034/08 AND 13-037/08

The complainant filed two complaints against two separate judges arising out of the same family law proceeding (an Application commenced by the Family Responsibility Office to enforce a support order). The complaint subcommittee felt that these two complaints could best be dealt with together.

Case No. 13-034/08

In Case No. 13-034/08, the complaint subcommittee ordered and reviewed the transcript, conducted their investigation and submitted a report to a review panel.

The review panel reviewed the complaint letter, the transcript and the subcommittee's report. The panel noted that on the date when the complainant was scheduled to attend before the subject judge, the complainant was not present at 2 p.m. when the matter was scheduled to be dealt with. The judge was provided with information which suggested that complainant might be leaving the country. The Applicant requested a warrant for the arrest of the complainant and the judge ordered a warrant to issue. When the complainant arrived some time later, the warrant was cancelled.

The complainant had alleged that the judge falsified the record by stating that the warrant was issued at 2:16 p.m. when he had arrived at 2:15 p.m. He alleged that this constituted 'a serious lie'. The review panel noted that the record indicated that the warrant was cancelled at 2:16 p.m., not that it was issued at 2:16 p.m. The review panel suggested that the complainant must have misunderstood the record. The panel found that there was nothing to substantiate the allegation of judicial misconduct.

The complainant also alleged that the judge exhibited bias because he ordered the complainant to

produce corporate records when another judge had previously ordered that the applicant file a written application for production. The review panel noted that it was the responsibility of the Respondent to file financial statements in order to justify the court not enforcing a valid support order. It was within the judge's discretion to make the Order that he made. The review panel also noted that the complainant appeared to take exception to the legal requirements placed on him in this type of application. Further, they reported that there was nothing on the record that showed any bias on the part of the judge.

For the reasons noted above the review panel dismissed this complaint.

Case No. 13-037/08

In Case No. 13-037/08, the complaint subcommittee ordered and reviewed the transcript of the proceedings, conducted their investigation and submitted a report to a review panel.

The review panel reviewed the letter of complaint, the transcript and the report from the subcommittee. The panel found that at the conclusion of the appearance discussed above, the matter was adjourned and the complainant was ordered to produce financial materials and file them by a specified date.

The matter came before another judge who is the subject of this complaint. The complainant alleged that the judge exhibited bias when he refused to accept a sworn affidavit containing his financial statements; ignored the fact that there was an outstanding motion before the Superior Court of Justice to reduce the support order; and, ordered payment of the full amount in arrears within 30 days.

The review panel noted that the transcript showed that counsel for the applicant took the position that the matter should proceed as an uncontested hearing because the complainant had not filed any material as he had been required to do by an Order made on a previous appearance. The review panel further noted that during the proceeding the complainant stated that he had "half of everything' and wanted to give it to the judge. The complainant also informed the judge that he did not want to 'share those informations with the other party". The review panel found that the court record showed that the judge took the view that the complainant's failure to file any material, despite having been ordered to do so prior to the hearing date, resulted in his losing standing to oppose the enforcement proceedings and he made an Order based on the admissible evidence before him.

The review panel found that the transcript did not support the allegation that the judge was biased in any way towards the complainant, and dismissed this complaint.

CASE NO. 13-035/08

The complainant was the owner of a family-run business. He alleged that over the past eight years, members of the local O.P.P. detachment had conspired to ruin his business and to endanger his safety and that of his family. The complainant alleged that the police engaged in numerous criminal acts of intimidation, stalking and harassment against him and his family.

The history of the vendetta alleged against the police began in 2000 when the police charged the complainant with a traffic violation. That charge was ultimately dismissed on appeal by the same judge who was the subject of this Judicial Council complaint.

The complaints to the Judicial Council were in relation to cases that the judge had heard in 2002 and 2006.

On behalf of the complaint subcommittee, the Registrar requested a transcript of the 2002 proceeding. However, six years had passed since that time. The court reporter's office was unable to locate the audiotape of the trial and could not provide a transcript. The complaint subcommittee ordered and reviewed the transcript of the 2006 proceeding. The subcommittee concluded their investigation and submitted a report to a review panel.

The review panel reviewed the complaint, the transcript and the report of the subcommittee. The panel noted as there was an absence of evidence to support the complaint related to the 2002 matter, this part of the complaint was dismissed.

With respect to the 2006 proceeding, the review panel reviewed the transcript of the proceeding. They noted that the O.P.P. had charged the complainant with weapons offences. At his trial, the complainant was not represented by counsel. However, he did have the assistance of duty counsel for the purpose of receiving legal advice both prior to and during the proceeding. Following the completion of the evidence of a police officer, the complainant, with the benefit of legal advice from duty counsel, decided to change his pleas from not guilty on two weapons charges to guilty.

The review panel noted that the judge then ordered that the case be adjourned for a sentencing hearing. The judge also ordered that a pre-sentence report be prepared. The judge also offered to request that Legal Aid provide representation for the complainant at the sentencing hearing. The complainant accepted the judge's offer.

The review panel informed that the complainant made the following allegations in his complaint material regarding the 2006 matter:

1. The judge did not permit the complainant to "display our evidence".
2. The judge, the Crown Attorney and the OPP had "a long talk behind closed doors" before the complainant appeared before the judge.
3. The judge never spoke to the complainant.
4. The judge's reputation was "damaged by becoming involved with very dangerous people, the [local] Detachment of Ontario Provincial Police.

Following their review of the transcript, the review panel observed the following regarding the judge's conduct:

- Although the complainant decided to lie down on the floor twice during the proceedings, the second time being after the judge had told him that he would be found

in contempt of court if he persisted in this behaviour, the judge was both patient with and courteous to the complainant throughout the proceeding. The judge displayed the utmost restraint and permitted the complainant to reconsider his position.

The complainant told the judge that he had been unable to retain counsel because none of the many lawyers he contacted had agreed to represent him. Because he could not retain a lawyer, the complainant did not wish to participate in his trial and threatened to leave the courtroom. The transcript showed that while the judge did tell the complainant that he would be held in contempt if that were to happen, the judge carefully explained to the complainant how it would be in the best interests of the complainant to remain in the courtroom. The judge listened patiently to the complainant about his inability to retain counsel. After the judge reviewed the history of the case and ruled that the trial was to proceed, he also assured the complainant that he would assist the complainant as much as he could to ensure that the complainant received a fair trial. The judge also ensured that duty counsel remained in the courtroom to assist the complainant.

With respect to the complainant's allegations, the review panel found the following:

1. The allegation that the complainant was not permitted to display his evidence was unfounded. The review panel noted that the complainant had the benefit of legal advice from duty counsel and decided to change his plea from not guilty to guilty. He admitted the facts supporting the guilty pleas. The complainant chose not to "display" his evidence when he changed his not guilty plea to guilty.

2. In relation to the allegation that the judge, the Crown and the OPP had a "long talk behind closed doors", the review panel informed that this serious allegation of impropriety on the part of the judge was not supported by their investigation. As well, they noted that the complainant never raised this concern during the proceeding in 2006.

3. In response to the allegation that the judge never spoke to the complainant, the transcript revealed that, in fact, the judge spoke to the complainant throughout the proceeding. The judge spoke to the complainant about the complainant's misconduct in the courtroom. The judge carefully explained to the complainant the procedural and evidentiary issues as they arose during the trial. Following the complainant's guilty pleas, the judge carefully explained how a pre-sentence report is prepared. He spoke to the complainant as to his right to dispute the contents of the pre-sentence report and to call evidence at the sentencing hearing.

4. Regarding the allegation that the judge's reputation was "damaged by becoming involved with very dangerous people, the [local] Detachment of the Ontario Provincial Police," the complaint subcommittee reported that the judge's only

"involvement" with the police in this case was listening to the evidence of one police witness. The review panel advised that this is what the judge was required to do during the complainant's trial.

For all of the above reasons, the review panel dismissed this complaint as unfounded.

CASE NO. 13-036/08

The complainant was a self-represented plaintiff at a settlement conference in a Small Claims Court matter before the subject judge. The complainant alleged that the judge did not seem to believe a word that she said, and did not give any apparent consideration to the report made by the condominium maintenance man. She further alleged that the judge made her feel like a liar and that her case had no merit. She stated that the judge looked at her and told her she would be getting "a big zero" and made the circular shape of a zero with his hands. The complainant also felt that the judge's behaviour to her was demeaning and made her feel like a "stupid or undeserving person".

The complaint subcommittee ordered a transcript and audiotape of the settlement conference; however, one was not available as such proceedings are not routinely recorded. The complaint subcommittee requested a response from the judge to this complaint. In addition, the complaint subcommittee also requested a response from a third party, a student-at-law who had represented the defendant in the case, who was present during the proceeding. Following their investigation, the subcommittee reported to a review panel.

The review panel reviewed the letter of complaint, the correspondence from the judge and the student-at-law, and the report from the subcommittee. The panel noted that, in his response, the judge indicated that he had explained to the litigants, including the complainant, that the nature and purpose of a settlement conference in Small Claims Court is to provide an opportunity for parties to speak freely and openly making sincere efforts to resolve a dispute at this stage of the proceeding, thus potentially avoiding the stress and expense of a trial with an uncertain outcome in terms of success or failure. His involvement at the settlement conference did not damage the complainant's case in any way, as any remarks made by a judge at the settlement conference are not disclosed without the consent of both parties. The litigants remain entitled to a final resolution following the setting down of an action to trial.

The judge indicated in his response that he advised the litigants that it is the duty of the trial judge to be the trier of fact, to weigh and consider the evidence of witnesses whose testimony may contradict theirs, and that in taking these matters into account, the plaintiff should seriously consider whether any monetary award may be forthcoming if the matter proceeds to a trial. The judge did not recall making a hand gesture to indicate a negative final result and noted that if that had occurred, it would have been to clarify his verbal projection of the possibility of such a result.

The review panel also noted that the judge, in his response to Council, advised that he was never demeaning and felt that he had not, at

any time, showed contempt towards the complainant. Nor did he feel or express that the complainant was stupid or undeserving. He indicated that he always tries to be fair minded and even handed and respectful to all litigants. The judge also advised that he very much regretted that the complainant felt badly about her court experience.

In her response, the student-at-law had indicated that after hearing from both parties, the judge had explained his evaluation of the evidence and provided his assessment that the complainant had an uphill battle in making her case, and he explained to her some of the weaknesses of the evidence. In that context, the student-at-law did recall that the judge had commented that the complainant had a "zero" chance of proving total damages and should consider an offer of a lesser amount, but she did not recall any hand gesture by the judge. The student-at-law also confirmed that the judge had explained the purpose of the settlement conference, and had advised that the discussions would be without prejudice to the outcome of a trial. The panel noted that the student-at-law's response confirmed that the judge's behaviour had not been demeaning or inappropriate. On the contrary, she described his manner as firm but fair.

Taking into account the response by the judge, and the corroborating information obtained from the student-at-law, the review panel found that the allegations were not substantiated and dismissed this complaint.

CASE NO. 13-039/08 AND 14-017/08

The complainant, an agent, filed two complaints against the judge who refused to permit the agent to appear in front of him.

Case No. 13-039/08

The complaint subcommittee advised that this complaint arose on a trial date. They noted that the transcript showed that the judge informed the complainant/agent that he had ruled on other occasions that he could not appear in front of him. The judge refused to re-litigate the matter on this day and sent the file to another court to set a date for trial before a different judge.

Case No. 14-017/08

The complaint subcommittee reported that the facts of this complaint were very similar to those in Case No. 13-039/08. They informed that the judge refused to re-litigate a finding that he had made on a previous occasion. The complaint subcommittee informed that the judge said, "I don't want to embarrass you. I won't permit you to appear as agent before me because you have found to have been dishonest and I simply won't permit you to appear as agent." The complaint subcommittee advised that the transcript did show any evidence of discourtesy by the judge.

The subcommittee submitted a report on each file to the review panel.

The review panel reviewed both letters of complaint, the transcripts and the reports from the

subcommittee. With respect to both matters, the review panel advised that the judge was entitled to make a finding that the complainant was dishonest and to refuse to permit him to appear as agent. The panel also noted that, given the previous findings and the judge's belief that the complainant was dishonest, it would have been improper for the judge to have conducted a proceeding with the complainant as the agent.

The review panel also advised that the complainant's recourse was to seek an extraordinary remedy if he wished to compel the judge to hear his cases.

The panel found no evidence of judicial misconduct and these complaints were dismissed.

CASE NO. 13-041/08

The complainant was a respondent in a Small Claims matter before the judge. The complainant, in his letter to Council, alleged that:

1. He felt that he was not allowed to present his case or evidence fully while the opposing party "talked all the time and lied".
2. The judge yelled at him and called him "a nasty dirty old man", generally humiliated him, and showed him no respect.
3. The judge stated that "she is the law and can put me down any moment she likes".

The complaint subcommittee reviewed the letter of complaint and ordered the audiotapes and transcript of the proceedings. They reported that in reaching her decision, the judge looked in great detail at all of the evidence presented by both parties. The complaint subcommittee also reported that the court record showed that while the judge conducted the proceedings in a forceful manner, she did not insult the complainant or treat him disrespectfully. Following their investigation, the subcommittee reported to the review panel.

The review panel reviewed the complaint letter, the transcripts and the report from the subcommittee. The panel noted that a complete review of the audiotapes by the subcommittee did not substantiate the allegations made by the complainant. The panel found that there was no support on the court record for the allegations. They determined that there was no judicial misconduct and this complaint was dismissed.

CASE NO. 13-042/08, 13-043/08 AND 13-044/08

The complainant/father made complaints against three family law judges who heard different parts of his dispute over custody and access. Court records indicated that there were thirty court appearances starting in 2004. The complainant alleged that the judges discounted or ignored his evidence while ruling in favour of the mother.

The complaint subcommittee investigated each complaint and made a report to the review panel. The subcommittee outlined the complaints as follows:

Case No. 13-042/08

The complainant alleged that the judge wilfully endangered the lives of his children by

disallowing the complainant's motions, awarding custody to the mother and ordering that the complainant not be permitted to file further motions. The complainant further alleged that the judge denied all of his requests, including requests for an adjournment, requests for costs, and a request for a variation of an order.

Given the number of court appearances involved, the complaint subcommittee instructed the Assistant Registrar to write to the complainant to ask for further specifics about his allegations of judicial misconduct. In particular, he was asked for the dates when the alleged misconduct took place so that transcripts could be ordered and reviewed. Despite several requests from the Registrar's office, no response was received.

In light of the failure of the complainant to pursue this complaint or to provide sufficient particulars to enable the Council to respond to the complaint, the review panel dismissed this complaint.

Case No. 13-043/08

The matter complained of originated in one community and was dealt with by the judges in that community. The complainant then brought a motion in an adjoining community in what he described as emergency circumstances. The judge who heard the motion refused to hear the application and referred it back to the originating community. The complainant took exception to that decision.

The review panel advised that the proper remedy for the complainant to pursue if he wished to address this issue would be an appeal (the subcommittee did not comment on the merit of an appeal). This was a matter outside of the jurisdiction of the Council. The panel also noted that the complaint was outside of the jurisdiction of the Council as it disclosed no misconduct. For those reasons, this complaint was dismissed.

Case No. 13-044/08

The complainant alleged that the judge who was the subject of this complaint followed orders from the judge complained of in complaint 13-042/08 and did not make up his own mind. The review panel found that there was no evidentiary basis to substantiate this complaint and that no specifics were provided by the complainant. The complainant further alleged that the judge wrongfully denied him an adjournment request and had generally favoured the other litigant. The complaint subcommittee reported that the complainant did not respond to the requests by the Registrar's office for further particulars. In the absence of particulars, the review panel noted that the complaint appeared to be a disagreement about the decision, rather than about the conduct of the judge. The review panel advised that his disagreement with the decision was a matter which was outside of the jurisdiction of Council, and they dismissed this complaint.

CASE NO. 13-045/08

The complainant/agent filed a complaint against the judge who refused to permit the agent to appear in front of him.

The complaint subcommittee advised that the complainant/agent tried to appear before this

judge in 2000 but the judge had refused to grant him standing to appear. They noted that the complainant was now writing to the Judicial Council eight years later after the court appearance, alleging that:

1. The judge failed to hold a hearing to determine if the complainant was competent to appear as an agent.
2. The judge showed a strong person antipathy against that complainant.
3. The judge had an imperious and dismissive attitude and acted in a manner that was inconsistent with the requirements of natural justice.

The complaint subcommittee reviewed the transcript that was provided by the complainant. Following their investigation, the subcommittee reported to the review panel.

The review panel reviewed the letter of complaint and the transcript. The transcript showed that the charge before the court was one on which an agent was not by law permitted to appear until the Crown had made an election to proceed summarily. They noted that the Crown had not yet elected and that the judge was correct in not permitting the complainant to appear as agent. Therefore, no competency hearing was required and there was no denial of natural justice.

The review panel noted that the judge, in the transcript, did appear to be frustrated with the agent's appearance. They commented that the frustration was in the context that the judge refused to have the complainant appear in front of him on that day or on any other. The panel observed that given the remarks made, there could have been an apprehension of bias if the agent were to appear in front of this judge. They advised that the judge acted ethically and properly in refusing to have the complainant appear before him, thereby avoiding the appearance of or risk of a biased hearing.

The panel also advised that the complainant's recourse was to seek an extraordinary remedy if he wished to compel the judge to hear his case.

For the reasons noted above, the review panel found no evidence of judicial misconduct. The complaint was dismissed.

CASE NO. 14-001/08

The complainant, an accused in a criminal proceeding, was before the judge for a bail hearing with the assistance of counsel. As the complainant had been at large on an earlier bail release before new charges were laid, the legal onus was on him to satisfy the court that he could be released.

The complaint subcommittee reported that the complainant felt aggrieved by the judge's orders that the complainant would be detained on the new charges and bail was cancelled on the new charges. The complainant also alleged in his complaint that the judge engaged in racial profiling and conducted the hearing in a malicious and unprofessional manner.

The complaint subcommittee ordered and reviewed the transcript of the proceedings before

the judge. They informed that at the conclusion of the hearing the judge gave reasons in which he reviewed the evidence, referred to the appropriate test in the *Criminal Code* and then made a detention order. The subcommittee concluded its investigation and reported to the review panel.

The review panel reviewed the letter of complaint, the transcript and the report from the subcommittee. The panel found that there was absolutely no evidence to support the allegations in the transcript, and that the judge conducted the hearing in a professional manner and gave fulsome reasons for his decision.

For the reasons noted above, the complaint was dismissed.

CASE NO. 14-002/08

The complainant was a respondent in a family law motion before the judge that dealt with issues including custody, access, child support and costs. The complainant made the following allegations against the judge:

1. The judge did not give him an adjournment to obtain a lawyer and mount a proper defence.
2. The judge did not let him speak.
3. The judge was guilty of discrimination.
4. The judge was racist.

The complaint subcommittee ordered and reviewed the transcript of the proceeding, conducted their investigation and submitted a report to a review panel.

After consideration of the letter of complaint, the subcommittee's report, and the transcript, the review panel made the following findings regarding the complainant's allegations:

1. With respect to the complainant's allegation that his request for an adjournment to get a lawyer and mount a proper defence was not granted, the transcript showed that the matter had been ongoing for nine months. The judge considered the request for an adjournment and concluded, after hearing both sides, that the complainant had had adequate time to get his information and defence together.

The review panel noted that if the judge made any errors in assessing the evidence or determining any of the issues (and the review panel is not suggesting that he did), the proper way for the complainant to proceed would have been through an appeal. The exercise of discretion or decision-making by a judge are matters outside of the jurisdiction of the Ontario Judicial Council, and did not represent misconduct on the part of the judge.

2. Although the complainant alleged that the judge didn't let him talk, the transcripts showed that the judge allowed and encouraged the complainant to speak on numerous occasions and the judge was attentive to the complainant's point of view.
3. The transcript showed no indication that the judge displayed bias towards the complainant's wife or discrimination towards the complainant. Rather, the complainant appeared to be unhappy with the outcome

of the proceeding and the fact that the judge did not find in his favour did not mean that the judge showed bias or discrimination.

4. With respect to the allegation of racism, there was no indication in the transcript that there was any merit to this allegation.

For the reasons noted, the review panel dismissed this complaint.

CASE NO. 14-003/08

The complainant was convicted of one count of sexual assault by the judge. In his letter of complaint to Council, the complainant made the following allegations:

1. The judge gave his judgment "in terrible anger, saliva was in his mouth".
2. The judge was working with the prosecutor and lawyer against him.
3. The judge permitted the trial to proceed without a translator for the complainant.
4. The complainant was never arraigned.
5. The judge stopped the complainant "when [he]talk real".

The complaint subcommittee ordered and reviewed the transcript of the reasons for both the judgment and the sentencing. One member of the subcommittee also listened to the audiotape of the judgment and sentencing. They conducted their investigation and submitted a report to a review panel.

Following the review of the subcommittee's report, the transcripts and the letter of complaint, the review panel noted that the judge's reasons were delivered in a dispassionate and measured tone and that the judge did not speak angrily to or about the complainant.

The review panel also noted that their investigation showed that the reasons for judgment were thorough and well-reasoned. The judge carefully considered the evidence of the complainant and explained why his evidence was not worthy of belief.

With respect to the allegation that the judge was colluding with counsel against the complainant, the review panel noted that this was not substantiated by their review and that there was no air of reality to the complainant's claim. Further, both the audiotape and the transcript confirmed that the complainant did have the services of an interpreter in court, and that the complainant was arraigned in court and had entered a plea of not guilty.

The review panel also noted that their review of the judge's reasons demonstrated that the complainant did in fact present a defence and that he testified at the trial. Their review did not provide any basis to support the allegation that the complainant was ever stopped by the judge from fully presenting his case when he testified.

For the above noted reasons, the review panel found no misconduct on the part of the judge and dismissed this complaint.

CASE NO. 14-004/08

The complainant in this matter was the mother of a child who was under the care of the local Children's Aid Society. Her complaint was based on the decision reached by the judge presiding over a custody hearing and the judge's subsequent decision to make the child a Crown Ward. The complainant was of the view that the judge accepted the evidence of the Children's Aid Society even though she proved 'beyond a reasonable doubt' that the evidence was 'lies'. She feels that the judge made the wrong decision.

The complaint subcommittee ordered and reviewed the transcript of the judge's decision in this matter. Following their investigation, the subcommittee reported to a review panel.

The review panel reviewed the complaint, the transcript and the report from the subcommittee. The panel reported that the transcript disclosed that the judge's reasons showed the subject judge to be thoughtful and considerate of the complainant/mother and tailored to appropriately fit the special needs of the child. They noted that the transcript also showed that the judge considered the evidence presented to her at trial and incorporated that evidence into her decision.

Following their review, the review panel advised that this complaint was a disagreement with the judge's decision and was, therefore, a matter outside of the jurisdiction of the Council. The complaint was dismissed.

CASE NO. 14-005/08

The complainant was found guilty of assault by the judge in 2006. The judge granted her a conditional discharge with probation for three years. The judge also imposed a five-year firearms prohibition pursuant to s.110 of the *Criminal Code*. On appeal, the term of probation had been reduced to eighteen months. The probation term was not varied or rescinded.

The complainant alleged that when she subsequently attended court on an application seeking removal or variation of the firearms prohibition, the judge ignored her concerns that in legal documents submitted to the court the police made references to convictions that she did not have. She alleged that both the police and the judge discriminated against her. Further, she alleged that the judge favoured the Crown Attorney. She also stated that the original sentence was too harsh.

The complaint subcommittee ordered the transcript from the proceeding at which the complainant applied to have the prohibition order rescinded. After their investigation, the subcommittee reported to a review panel.

The review panel reviewed the letter of complaint, the subcommittee's report and the transcript. The review panel found no evidence that the judge was biased in favour of the Crown or that he acted in a discriminatory fashion. They also advised that the judge's ruling on the threshold issue, that the court had no jurisdiction to entertain the complainant's application, was a

legal ruling that the judge was entitled to make. The panel observed that during the proceeding the judge did note that the "concerns at the time of the hearing resulting in the s.110 order are likely no longer valid but the proper method of resolution must be by way of appeal as provided by statute." The panel advised that the judge's statement demonstrated that he did not ignore the complainant's concerns. Rather, the judge ruled that the appeal court was the appropriate forum to address them.

The review panel also reported that the complainant's concern relating to the fitness of the original sentence was a disagreement with the judge's decision and was, therefore, a matter outside of the jurisdiction of the Council. For all of these reasons, the review panel dismissed this complaint.

CASE NO. 14-006/08 AND 14-019/08

The complainant, a respondent in a family court matter, filed two complaints against two separate judges, Justice "A" and Justice "B", arising out of the same family court proceeding.

The matter was assigned to a complaint subcommittee for review and investigation. The subcommittee ordered and reviewed transcripts from the proceedings before each of the subject judges. They also reviewed the judges' endorsements and a transcript of the related proceedings before a judge of the Superior Court of Justice.

Case No. 14-006/08

The complaint subcommittee reported that the complainant initially filed an Application before the family court to prohibit the Family Responsibility Office from enforcing an Order made by a Superior Court judge awarding child support to the complainant's former spouse. The complainant alleged that Justice "A":

1. Twice refused to consider evidence that the Order of the Superior Court of Justice being enforced in her court was a fraudulent document.
2. Refused to consider evidence that the Family Responsibility Office presented fraudulent statements of account to the court.
3. Showed an unprecedented lack of judgment in relying upon the submissions of counsel for the Family Responsibility Office who "repeatedly put in front of her falsified documents' to support he issuance of a bench warrant.

With respect to the complaint against Justice "A", after their review of the transcripts and the endorsements, the subcommittee reported to the review panel.

The review panel reviewed the complaint letter, the transcripts, the judges' endorsements and the report of the subcommittee. The panel determined that the complainant appeared to be unwilling or unable to accept the views of three different judges that they had no jurisdiction to review or set aside an Order from the Superior Court of Justice, or that section 41(9) of the *Family Responsibility and Support Arrears Enforcement Act* provides that, unless the contrary is shown, the statement of arrears is presumed to be correct. The panel advised that if either of those views was

incorrect (and the panel made no such finding), it would be a matter of appeal and outside of the jurisdiction of the Judicial Council.

With respect to issuance of the warrant, the panel reported that although the complainant suggested that he was not notified of the proceeding as required by the *Family Law Rules*, the investigation by the subcommittee showed that he was in fact advised in person by Justice "A" both of the date of the hearing and of the potential result. The panel indicated that if there was an error made when the judge signed a warrant of arrest rather than a warrant of committal, the investigation showed that it would have been an honest mistake and there was nothing to suggest judicial misconduct.

For those reasons, the review panel dismissed the complaint against Justice "A".

Case No. 14-019/08

The subcommittee advised that the complainant alleged that Justice "B":

1. Made her mind up to incarcerate him prior to hearing his submissions, as evidenced by the fact that police were summoned into the court as soon as the complainant arrived.
2. "Railroaded" him into submission by claiming that Justice "A" had made a mistake.
3. Upheld the decision of Justice "A" with full knowledge that it had been improperly obtained, and failed to consider that the complainant had attempted to appeal Justice "A"'s previous decisions.

With respect to these allegations, the panel noted from the subcommittee's investigation that on prior occasions it had been necessary for the court to call security into the courtroom due to the complainant's behaviour. The panel also advised that it is not unusual for a judge to request security where there is a possibility that someone may be ordered into custody in order to avoid the situation where it would otherwise be necessary to instruct the party to sit and wait for someone to take them into custody, a situation fraught with risks for all concerned. In the view of the review panel, the investigation showed that although Justice "B" was aware of the prior endorsement of Justice "A", nonetheless Justice "B" listened patiently to both parties before making her decision to order the complainant into custody.

The panel found nothing in their review of the transcripts to support the allegation that the complainant was "railroaded". Justice "B" reviewed the file, including the previous Order of Justice "A", made a determination of Justice "A"'s intentions, listened to both parties and decided that she was satisfied that the committal Order should be made. The panel advised that Justice "A"'s decision was within her jurisdiction, and that if the complainant felt that it was wrong, that would be a matter of appeal rather than a question of any misconduct, and would be outside of the jurisdiction of the Ontario Judicial Council.

For those reasons, the review panel dismissed the complaint against Justice "B".

CASE NO. 14-009/08 AND 14-010/08

The complainant in this matter was a staff person in a local courthouse who sent a letter of complaint that contained allegations against three separate judges relating to the same incident that occurred at the courthouse.

The dispositions of two of the judges, Justice "A" and Justice "B" are discussed below. The dispositions regarding a third judge, Justice "C", are discussed under the case summary for Case No. 13 007/08 and Case No. 14-008/08.

The complainant had been a complainant on an earlier matter, who had filed an earlier complaint (see the case summary for Case No. 13-008/07 and Case No. 14-008/08) against another judge, Justice "C", on behalf of another court staff person. The complainant then advised that some time after she had filed the first complaint, she was scheduled to be the court reporter in Justice "C"s courtroom. She alleged that when the judge saw her and she said "good morning" to him, he immediately stood up and walked out of the courtroom. She indicated that the judge would not sit in a court where she was present because of her involvement in filing the first complaint. Another court reporter had to be brought into the courtroom so the proceedings could resume. The complainant agreed to work in another courtroom. The start of court was held up until 10:45 a.m. The complainant was concerned that lawyers and staff would assume that she had done something wrong when, in fact, she had not.

In her letter to Council, the complainant indicated that management staff approached two other judges, Justice "A" and Justice "B" for assistance in resolving the matter, and that both judges appeared to support Justice "C" and neither would get involved to assist. Her perception was that the judges had "closed ranks around one of their own" and that she was being retaliated against for her involvement in filing a complaint earlier.

External counsel was retained by the Judicial Council to assist in the investigation of the complaints. The complaint subcommittee also asked Justice "A" and Justice "B" for a response to the allegations made in the complainant's letter.

The subcommittee completed its investigation and reported to the review panel. In their report, the subcommittee noted that the complainant had referenced a management policy at the courthouse of not acceding to requests by judges that certain staff not be scheduled with them. The subcommittee reported that the investigation by the external investigator revealed that there was no written management policy with respect to this issue and that there appeared to be different impressions and understandings among those working in the court house, including among court staff, about the policy with respect to whether a judge could request that he or she not be assigned to work with particular staff.

The review panel read the complaint letter, the responses from the judges and the report from the subcommittee.

Case No. 14-009/08

Regarding Justice "A", the subcommittee reported that Justice "A" responded to the allegations

through counsel. The subcommittee advised that the investigation showed that management staff and the judges involved in the events on the day in question had varied recollections and perceptions of the discussions held with Justice "A".

The review panel advised that due to the differing recollections and perceptions of the parties as to what was said and intended by those involved in the discussions, they were unable to conclude whether there was judicial misconduct on the part of Justice "A" and this complaint was dismissed.

Case No. 14-010/08

Regarding Justice "B", the review panel noted that it appeared from the investigation and from the response of Justice "B" that she had thought that it may be appropriate to avoid scheduling Justice "C" and the complainant in the same courtroom pending the Judicial Council completing its review of the earlier complaint in Case No. 13-008/07. However, upon reviewing the information available to them, the panel observed that regrettably the information that reached the complainant was, in the circumstances, unintentionally incomplete and somewhat misleading. Justice "B" intended that the complainant be reassured that her professional reputation was in no way being questioned as a result of the events that had occurred, and that Justice "B" was, in fact, willing to intervene to assist, if needed. The panel observed that the investigation indicated that Justice "B" was not informed that the information that she had intended to be communicated to the complainant had not been conveyed.

As well, Justice "B" was not aware that a satisfactory resolution had not been reached or that the complainant continued to feel aggrieved by the experience.

The review panel also noted that the scheduling of judges and of court staff were matters of administrative decision-making. They advised that it is not the role of the Judicial Council to second-guess *bona fide* administrative decisions. Following the investigation and after considering all of the information about the circumstances, the review panel found that there was no evidence of misconduct on the part Justice "B" and the complaint was dismissed.

CASE NO. 14-014/08

The complainant/accused disagreed with the procedures used by the presiding judge to remand his criminal trial for four months without the complainant's consent and to enter a plea on his behalf. He also felt that he should have had an option to elect a trial by jury.

He also alleged that that he did not get a fair hearing because of his race.

The subcommittee examined the initial French language transcript and an English translation, conducted their investigation and submitted their report to a review panel.

The review panel reviewed the letter of complaint, the transcript and the subcommittee's report. The panel advised that they found the judge to be patient and accommodating toward the complainant, who was self-represented

although a Legal Aid lawyer was present in an Amicus Curiae capacity.

The review panel noted that the complainant had raised issues of bias during the course of the proceedings and that he had attempted to canvas all parties to determine whether any were of the Jewish faith, as he felt that they could be part of a conspiracy against him. The judge dealt with these sensitive issues in a calm and professional manner, displaying no bias toward the complainant.

The review panel also noted that the allegation concerning procedural issues was not a matter of conduct and did not fall within the jurisdiction of the Council. After their review of the transcript, they further noted that there was no evidence to support the allegation of racial bias by the judge.

For these reasons, the review panel dismissed this complaint as unfounded.

CASE NO. 14-016/08

The complainant was before the subject judge in a criminal proceeding where the judge convicted him of two counts of fail to comply with a probation order and one count of uttering a death threat. Taking into account pre-sentence time served in custody, the complainant received the equivalent of a twenty month sentence and was placed on probation.

In his correspondence to Council the complainant made the following allegations:

1. The judge improperly admitted and considered private medical files from a local hospital which were illegally released to a government ministry.
2. In order to assist the police authorities in their investigation of an attempt by the complainant to arrange for his former wife's murder, the judge improperly delayed sentencing so the complainant could be held in a local detention centre.
3. In order to assist the police in its investigation of an alleged attempt by the complainant to arrange for the murder of his former wife, the judge sentenced the complainant to a longer period of incarceration than was warranted.
4. The judge improperly met with the Crown on the date of his sentencing, without the complainant's lawyer being present.

The complaint subcommittee carefully reviewed correspondence received from the complainant and from his mother, as well as the transcripts of the trial and sentencing hearing. The subcommittee submitted a report to a review panel.

Following their review of the subcommittee's report, the complaint letters and the transcripts, the review panel noted that the material provided did indicate that the complainant's hospital records were released to the Ministry of Community Safety and Correctional Services, and that the medical information was included in the complainant's pre-sentence report.

However, the review panel also noted that the complainant, through counsel, raised no objection to the judge considering that information. They further noted that counsel for

the complainant had "no problem" with this information being included in the pre-sentence report since it assisted the complainant's position on sentence. In the circumstances, the review panel advised that it could not be said that the judge engaged in any misconduct by considering the information that was released by the hospital.

In relation to the complainant's second allegation that the judge delayed the sentencing hearing for an improper purpose, the review panel observed that the investigation showed that the complainant's sentencing was adjourned in order for a pre-sentence report to be prepared. They also advised that at one of the intervening appearances by the complainant, prior to sentencing, the judge was required to hear a Crown application for the complainant to have a psychiatric assessment. The review panel noted that the judge dismissed this application. They also noted that a further adjournment was necessary due to the unavailability of the judge because of the death of a member of the judge's family. The review panel found that the record showed that these were the reasons for the delay in holding a sentencing hearing, and that there was no evidence to support the complainant's allegation with respect to an improper purpose.

With respect to the complainant's allegation that the judge sentenced the complainant to a longer period of incarceration than was warranted, the review panel noted that the complainant asserted that the judge should have sentenced him to "time served", given the length of pre-trial custody. The complainant also alleged that the judge sentenced him to further time in custody in order to keep him in the local detention centre so that the police could successfully complete their investigation into an alleged attempt by the accused to murder his former wife. The review panel advised that the Judicial Council had no jurisdiction to review the appropriateness of a sentence for an indictable offence. Only the Court of Appeal has that jurisdiction. Nevertheless, following their review of the transcripts and the correspondence, the review panel observed that the judge gave comprehensive reasons for the sentence. Further, there was no evidence to support the claim that the judge gave the complainant an unduly long sentence in order to assist the police in its investigation of an attempt by the complainant to murder his former wife.

In relation to the complainant's allegation that the judge improperly met with the Crown on the date of the sentencing without the complainant's lawyer being present, the review panel noted that the transcript revealed that the complainant's case was spoken to in open court. In the presence of the complainant's lawyer, Crown counsel asked that the sentencing hearing be deferred until the afternoon, and the judge acceded to this request. The transcript showed that defence counsel was present during the request and during the afternoon when the sentencing proceeded, and that nothing improper took place.

For the reasons noted above, the review panel dismissed this complaint as unfounded.

CASE NO. 14-018/08

The complainant, a paralegal filed a complaint about the subject judge. The complainant alleged

that although he did not appear before the judge on the specified date, his client attended to adjourn the proceedings. The complainant alleged that the judge told his client that the complainant was not welcome in his court, in the court building or any other court in the province.

The complaint subcommittee ordered and reviewed the transcript of the proceeding before the judge and that of the accused's guilty plea before another judge (not subject of this complaint). Following their investigation, the subcommittee submitted a report to a review panel.

The review panel reviewed the letter of complaint, the transcript and the report of the subcommittee. The review panel requested that the judge be asked for a response. The review panel reviewed his response. The panel noted that while the remarks of the judge appeared to show frustration on his part toward the complainant, they did not constitute misconduct. Further, the review panel also noted that the complainant had appeared before this judge on numerous prior occasions and had previously been advised of the judge's determination of his competence to appear before him. They advised that while there may be other legal proceedings available to consider the question of whether a judge should hold a competency hearing, it is not a matter within the jurisdiction of the Ontario Judicial Council.

For the reasons noted above, the review panel found no evidence of judicial misconduct and dismissed this complaint

CASE NO. 14-020/08

The complainant appeared before the subject judge on a criminal charge. An exchange of dialogue took place related to the attire of the complainant in the courtroom, during which the complainant stated that wearing a hat was related to his religion.

Subsequently, the complainant provided to the Judicial Council a copy of a letter that he had sent to the judge after the appearance. The letter had been returned to him unopened. The complainant alleged in the letter that the judge attacked him in the courtroom, causing the complainant to feel hurt, and denigrated and humiliated publicly for no reason. He sought an apology from the judge.

The complainant requested that he be present when the Ontario Judicial Council reviewed his complaint and indicated that he wanted to make oral representations if necessary. He also asked that the audiotape of the hearing be placed before the Council as evidence of the mean spirit and verbal abuse of the judge toward him. He also requested an explanation as to why his letter to the judge was returned unopened.

With respect to the request for an explanation as to why the sealed letter was returned by the judge, that related to a matter of policy related to such matters as security, rather than a question of conduct to be considered by the Judicial Council.

The complaint subcommittee ordered and reviewed the transcript and the audiotape of the proceedings, requested a response from the judge.

The subcommittee conducted their investigation and submitted a report to a review panel.

The review panel considered the complainant's letter, the transcript, and the subcommittee's report. In response to the complainant's request to appear before the Judicial Council, the review panel advised that subsection 51.4(6) of the *Courts of Justice Act* requires that investigations of the Ontario Judicial Council be conducted in private.

The review panel found that the record did not support the allegations of mean spirit or verbal abuse. Further, they advised that while the judge may have been abrupt in the manner in which he addressed the complainant, that did not represent misconduct on the part of the judge.

For the reasons indicated, the review panel dismissed the complaint and closed the file.

CASE NO. 14-022/08

The complainant, who was not a party in the court case that gave rise to the complaint, wrote a letter to the Ontario Judicial Council that expressed the view that the judge failed to meet even a minimal standard of conduct when she granted custody of a child in favour of a friend who had been proposed by the child's mother to be the custodial parent. The complainant also advised that subsequently the friend and her common-law partner were charged with the murder of the child. The complainant indicated that the child had a right to expect that her best interests would be protected by the judge. A review was requested to determine whether the judge's conduct constituted judicial misconduct and neglect of duty.

In accordance with the procedures of the Council, the complaint was assigned to a complaint subcommittee, consisting of a judge and a community member, for review and investigation. The subcommittee carefully considered each of the allegations and concerns before providing its report to a review panel. The review panel was comprised of four other members of the Council, including two judges, a lawyer and a community member. In accordance with the *Act*, when making its report to the subcommittee, the members did not identify the judge or the complainant. The complaint and the subcommittee's report were, therefore, considered by a total of six members of the Council.

The letter set out a number of allegations, as noted below. In the course of their review and investigation of the allegations, the complaint subcommittee reviewed the letter of complaint, the contents of the court file, and the transcripts of the court appearances. They also listened to the audiotapes of the proceedings. The subcommittee completed its investigation and reported to the review panel.

The review panel reviewed the complaint letter, the transcripts and the report of the complaint subcommittee. The panel noted that the complainant had advised in his letter that the transcripts had shown that:

1. There was an alarming absence of any consideration of the best interests of the child and a failure by the judge to consider the child's needs and circumstances.
2. The judge appeared to have dealt with the matter of this child's custody in a cavalier and overly-casual manner.
3. The judge appeared to have ignored her obligations as dictated by section 24 of the *Children's Law Reform Act*.
4. The judge did not employ any of the statutory tools, inter alia section 30 of the Children's Law Reform Act in order to determine the appropriateness of a proposed custodial parent.

Further, in the course of its investigation, the subcommittee observed that the transcript of one of the appearances indicated that the judge remarked that she "had not read this matter". Although the complainant's letter did not reference this aspect of the proceedings, given the Judicial Council's practice of conducting their review based on all factors that may arise during an investigation, this remark was also considered by the review panel.

The review panel members advised of the following in response to each of the allegations noted above:

1. The investigation did not show that the judge failed to consider the best interests of the child. The members reported that although there were two consents signed by the mother attached to the application and a verbal consent from the mother on the record that the friend should have custody, the judge did make inquiries and engaged in discussion with the parties on the first court date regarding the following:
   - how it was that the mother knew this friend and how long they had been friends;
   - how long the friend had already been looking after the child;
   - the correct identity of the natural father, whether he was listed on the child's birth certificate and his availability for service;
   - where the child was going to school and for how long;
   - whether the friend had other children and details about them;
   - why the mother had chosen this friend to take care of her child;
   - whether the friend was a single parent or whether she had any help caring for the children;
   - on finding that the friend had a partner, the judge asked the mother if she approved of that partner;
   - the judge discussed that the friend would control and be in charge of the child's access to the mother. (The members advised that the application before the court revealed that the mother was a drug addict who was not able to manage her addiction.)
   - the judge expressed in one of the transcripts of an appearance that the "number-one concern" was the child.

The review panel observed that there was no indication or suggestion that the child was in peril or that her best interests were not being met while being cared for by the friend. On the other hand, the contents of the court file established that the judge would have been aware from the application that the natural mother suffered from a serious drug problem and that the child had already lived with the friend for a considerable period of time and for good reasons. By granting an interim consent custody order in favour of the caregiver on the first court date, the judge's order was maintaining a status quo.

The judge did not make a final order for custody on the first court date because the natural father had not been served with the custody application. On the third court date, she dispensed with service on the natural father and granted a final custody order in favour of the friend. The transcript and the audio tape disclosed that in doing so, the judge stated the importance of getting the child settled, and that she, the judge, had been advised that the friend could not access services for the child's learning and behavioural problems without a final custody order. The record also indicated that on that date, the judge expressly referenced the best interests of the child when leaving the drug-addicted mother's access in the discretion of the friend.

2. The record did not substantiate a conclusion that the judge was cavalier or overly-casual in manner. In the review panel's opinion, the judge appeared to be interested and engaged with the people who were before her. She spoke to them directly using a vocabulary and manner that was appropriate, given that they were self-represented parties.

3. and 4. With respect to the two concerns in relation to the legislative provisions of the *Children's Law Reform Act*, and in light of the allegation that the judge may have failed to meet even a minimal standard, the review panel noted that they considered the legal framework in which her conduct occurred. The review panel advised that section 24 of the *Children's Law Reform Act* states that the merits of an application for custody or access to a child shall be determined on the basis of the best interests of the child in accordance with subsections (2) (3) and (4). Section 30 of the Act allows the Court to order that an expert be retained to complete an assessment of the needs of the child and the ability and willingness of the person in question to satisfy those needs.

The review panel observed that this case involved a civil proceeding between private parties. Following their review of the court record, they reported that when the mother consented to her friend having custody, the mother, in effect, conceded that this arrangement was in her child's best interests. In the context of the legal framework, the members advised that it would not have been appropriate for the judge, on her own initiative, to undertake an extensive inquiry in order to ascertain character flaws by ordering a criminal record check

or a section 30 assessment of the friend or her partner. Likewise, it would not have been expected that the Ontario Children's Lawyer would have agreed to act for the child in the case where the mother was consenting to her friend's claim for custody and given the presenting circumstances.

On the other hand, the review panel advised that under the established court process, even when a matter is contested, it is not the role of a judge to spearhead an inquiry into the merits of a case. Rather, that is the task of the litigants who seek a decision from an impartial and neutral judge. The panel advised that if there had been an indication that the child was at risk of harm, the judge, like any other member of the public, would have been obliged to report her concerns to the local Children's Aid Society. However, the court record supported the conclusion that there was nothing in this particular proceeding to suggest such a concern. The court record instead disclosed that all indications in this case were that the child was being kept out of harm's way by being placed with the proposed custodial parent, the mother's friend.

The applicable law did not require that a criminal record or a section 30 assessment be produced before a party can obtain a custody order. Although in this case the mother had already conceded that her child should be placed in the custody of her friend, nonetheless the judge did ask some questions and those questions were appropriate.

5. While on the first day that the matter was before the court, the judge in her opening comments stated that she hadn't "read this matter", the review panel noted that the record showed that she continued on to state, "That's all right. Okay, well let us have a look here." From their review of the court file, the panel observed that the file was very brief and would have been quickly read by an experienced person. They reported that it was evident in considering the full context, including the words "Okay, well let us have a look here; the pauses in the audio tape, and, the questions that the judge asked immediately afterwards, that she had fully read the file before proceeding to deal with the matter.

Upon completion of their investigation, the review panel expressed their view that the death of the child was extremely tragic. However, having very thoroughly and carefully considered the allegations in the complaint, the court documents, the transcripts, and the court record, the panel advised that the court record did not support a conclusion that in this case there was misconduct or neglect of duty on the part of the judge.

Accordingly, the review panel dismissed this complaint.

CASE NO. 14-023/08

The complainants were the parents of a child who was in the care of the Children's Aid Society in a foster home. They sought to get custody of their daughter, and they raised concerns about the staff and lawyer of the Society. As well, they

raised concerns with an order by the judge that the Society must pay legal costs to the parents in the amount of $1,000. The complainants provided materials that showed they had raised allegations about the quality of care their daughter was receiving in the foster home.

The complainants alleged that the order by the judge for costs was a misinterpretation of the law and that it should have been framed as a criminal conviction. As well, they alleged that the order showed that there was obstruction of justice and that the judge supported the Children's Aid Society.

The complaint subcommittee carefully reviewed the complaint letter, the endorsement of the judge, and several letters of general complaint subsequently sent by the complainants about the Children's Aid Society and the justice system. They conducted their investigation and submitted a report to a review panel.

The review panel reviewed the correspondence, the endorsement and the report of the subcommittee. The panel noted that the correspondence indicated that the complainants strongly disagreed with and were very upset by the decision made by judge in relation to custody of their daughter and his decision with respect to an order for costs in the matter. As well, the review panel also noted the complainants' concerns about staff of the Children's Aid Society and the foster parents with whom their daughter was placed. However, the materials did not identify an incident or allegation of misconduct by the judge. The subcommittee had requested that the complainants be provided with a further opportunity to clarify whether they had a concern that could be misconduct; in response, the complainants subsequently provided additional correspondence to the Council that again focused on the decisions of the judge and the justice system generally.

The review panel advised that the complaint related to matters outside of the jurisdiction of the Judicial Council. Rather than a complaint about judicial misconduct by a judge, the complainant's concerns related to dissatisfaction with the decisions made and the justice system generally. The Judicial Council has jurisdiction only with respect to particular complaints about judicial misconduct. With respect to the complainant's concerns about the decisions made by the judge about the placement of their daughter and about costs in the matter, the proper remedy for the complainants to pursue would be an appeal.

The review panel dismissed this complaint as it related to matters outside of the jurisdiction of the Judicial Council.

CASE NO. 14-026/08

The complainant entered a guilty plea to a charge of defrauding the welfare authorities. The complainant alleged that despite a joint submission by the defence and the Crown for an eighteen month conditional sentence which would not include electronic monitoring, the subject judge nevertheless ordered electronic monitoring. He further alleged that the judge did not listen, made up her mind before hearing from counsel, and imposed conditions upon him which made it impossible for him to continue his employment. As well, the complainant alleged that the sentence was more

severe than sentences imposed upon other individuals for offences that he believed to be more serious than his.

The complaint subcommittee ordered and reviewed the transcript of the proceeding before the subject judge. They conducted their investigation and submitted a report to a review panel.

The review panel reviewed the letter of complaint, the transcript and the report from the subcommittee. The panel observed that although there was a joint submission for a conditional sentence, the Crown took the position that electronic monitoring was required. The defence took the position that, because of the type of employment held by the complainant, electronic monitoring would be extremely difficult and could interfere with his employment.

The review panel noted that after hearing submissions from both counsel, the judge made it clear in her comments that in her view electronic monitoring was necessary to ensure that the terms of a conditional sentence were enforced and to emphasize the punitive aspect of the sentence. The review panel also noted that this was a matter within the judge's jurisdiction to decide.

With respect to the sentence, the review panel advised that if the judge made any errors in assessing the evidence or determining any of the issues (and the review panel did not suggest that she did), the proper way for the complainant to proceed would have been through an appeal.

The review panel found no evidence of judicial misconduct by the judge and dismissed this complaint as it related to matters outside of the jurisdiction of the Judicial Council.

CASE NO. 14-027/08

The complainant was a plaintiff in a Small Claims court proceeding before the subject judge. In her letter to Council, the complainant alleged that the judge allegedly stated that 'you do not have a chance in hell of winning this case….if it were me I would throw this case out the door and then clap you with severe costs; I hope that you will have your cheque book out because you will lose'. She also alleged that the judge informed that 'not a word that he mentioned in that room should be quoted.'

Before assigning the file to a complaint subcommittee, Council was advised that the subject judge had attained the mandatory retirement age and retired. Council had no jurisdiction to investigate the complainant's allegations and the file was closed.

CASE NO. 14-030/08

The complainant obtained a default judgment in a Small Claims Court matter against a defendant. Subsequently, he was served with a Notice of Motion by the lawyer for the defendant, along with a letter advising the defendant of a motion date and an order from the subject judge stating that the matter should be set for a settlement conference if the default judgment was set aside on the motion date.

The complainant alleged that the defendant's lawyer was not consistent with the Rules of the

Small Claims Court and that it showed favouritism and corruption in the justice system between the judge and the defendant.

The matter was assigned to a complaint subcommittee, made up of a provincially-appointed judge and a community member. After reviewing the complaint, the subcommittee conducted their investigation and submitted a report to a review panel.

The review panel advised that the complainant did not appear to understand the Rules of the Small Claims Court, the case management system of the court, and the fact that there were two files in the matter. The review panel found that the complaint raised a question of procedure rather than judicial misconduct. For that reason, the panel dismissed this complaint as outside the jurisdiction of Council.

APPENDIX A

ONTARIO JUDICIAL COUNCIL
JUSTICES OF THE PEACE REVIEW COUNCIL
BROCHURE:
DO YOU HAVE A COMPLAINT?

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

APPENDIX – A

ONTARIO JUDICIAL COUNCIL – *DO YOU HAVE A COMPLAINT?*

Making a Complaint

If you have a complaint of misconduct about a provincial judge or a justice of the peace, 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 or justice of the peace.

Just a reminder...

The Ontario Judicial Council may only investigate complaints about the ***conduct*** of provincially-appointed judges. The Justices of the Peace Review Council may only investigate complaints about the ***conduct*** of justices of the peace. If you are unhappy with a ***decision*** of a judge or a justice of the peace in court, you can pursue an appeal on your own or by consulting with a lawyer or paralegal.

Any complaint about the ***conduct*** of a federally-appointed judge (e.g. Superior Court of Justice or Ontario Court of Appeal) should be directed to the Canadian Judicial Council in Ottawa.

How are Complaints Processed?

If your complaint is about a judge: The Ontario Judicial Council will write to you to let you know your letter of complaint has been received. A complaint sub-committee, which includes a judge and a community member, will investigate your complaint and make a recommendation to a larger review panel. This review panel, consisting of two judges, a lawyer and another community member, will also carefully review your complaint prior to reaching its decision.

If your complaint is about a justice of the peace: The Justices of the Peace Review Council will write to you to let you know that your letter of complaint has been received. A complaints committee, consisting of a judge, a justice of the peace and a lawyer or community member will investigate your complaint. The complaint will be carefully considered before a decision is made.

Provincial Judges in Ontario – Who are they?

In Ontario, most criminal and family law cases are heard in the Ontario Court of Justice by one of the many judges appointed by the province to ensure that justice is done. Provincial judges are lawyers who have practised law for a minimum of 10 years before their appointments to the bench.

Justices of the Peace in Ontario – Who are they?

Justices of the peace are also appointed by the province. Their assignments include conducting trials under the *Provincial Offences Act* or municipal by-laws, presiding at bail hearings, and conducting most criminal remand courts. When not in court, they perform a number of functions, including issuing search warrants. Most justices of the peace are not lawyers but must meet the qualifications set out in the *Justices of the Peace Act.*

What does the colour of the sash indicate?

- **Judges** wear **red** sashes
- **Justices** of the peace wear **green**

Ontario's Justice System:

In their roles, our provincial judges and justices of the peace 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. One party will almost always be seen as the winner or the

loser. For this type of justice system to work, judges and justices of the peace must be free to make their decisions courageously, independently, and justly even if one of the parties will be unhappy with the outcome.

What if You Disagree with the Decision Reached in Court?

A judge's decision can result in many serious consequences. These can range from a fine, probation, a jail term or, in family matters, orders directing custody, access and support of children.

A justice of the peace's decision can also be serious. For example, in provincial offences court, it may result in a fine, probation, a jail sentence, or a suspension of a driver's licence. In bail court, denial of bail could result in imprisonment until the conclusion of a criminal trial.

Often, the decision leaves one party disappointed. If one of the parties involved in a court case thinks that a judge or justice of the peace has reached the wrong *decision or conclusion*, he or she may request a review or appeal of the decision in higher court. This higher court is more commonly known as an appeal court. If the appeal court agrees that a mistake was made, the original decision can be changed, or a new hearing can be ordered.

Professional Conduct of Judges and Justices of the Peace

In Ontario, we expect high standards both in the delivery of justice and in the *conduct* of the provincial judges and justices of the peace who have the responsibility to make decisions. If you have a complaint about the conduct of provincial judges or justices of the peace, as opposed to the outcome of a trial, you may make a formal complaint.

Examples of misconduct could include: gender or racial bias, having a conflict of interest with one of the parties or unprofessional conduct.

Who Can You Contact if You Have a Complaint?

In Ontario, there are two Councils that have the authority to investigate complaints arising from conduct of provincial judicial officers. The Council that you would contact depends upon whether your concern is about the conduct of a provincial judge or a justice of the peace.

If the court case was a criminal or family matter in the Ontario Court of Justice, the judicial officer was likely wearing a red sash and was a provincial judge. For a bail hearing, or a provincial offence (e.g. traffic violation) or municipal offence (e.g. parking or noise violation) case, the judicial officer was likely wearing a green sash and was a justice of the peace.

Complaint about a Provincial Judge: The Role of the 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?*

Complaint about a Justice of the Peace: The Role of the Justices of the Peace Review Council

The Justices of the Peace Review Council is an agency which was established by the Province of Ontario under the *Justices of the Peace Act*. The Review Council serves many functions, but its main role is to investigate complaints of misconduct made about justices of the peace. The Council is made up of judges, justices of the peace, a lawyer and community members. The Council does not have the power to interfere with or change a justice of the peace's *decision* on a case. Only an appeal court can change a justice of the peace's decision.

Decisions of the Councils

Whether your complaint is about a judge or a justice of the peace, misconduct is taken seriously by the Council responsible for considering the particular complaint.

If the members of a Council considering a complaint believe that an allegation of misconduct has a basis in fact and may result in a finding of judicial misconduct, a public hearing may be held and appropriate disciplinary measures will be determined.

It may result in penalties ranging from issuing a warning to the judge or justice of the peace, to recommending that a judge or justice of the peace be removed from office.

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

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

For Further Information

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

TTY/Teletypewriter users may call:
1-800-695-1118, toll free.

For further information on the Ontario Judicial Council, please see their website at:
http://www.ontariocourts.on.ca/ojc/en/

For further information on the Justices of the Peace Review Council, please see their website at:
http://www.ontariocourts.on.ca/jprc/en/

Written complaints should be mailed or faxed to:

For a complaint about a provincial judge:

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

For a complaint about a justice of the peace:

The Justices of the Peace Review Council
P.O Box 914
Adelaide Street Postal Station
31 Adelaide St. E.
Toronto, Ontario M5C 2K3
416-327-2339 (FAX)

APPENDIX–B

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT

ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT

INDEX

COMPLAINTS

Generally B-1

COMPLAINT SUBCOMMITTEES

Composition B-1
Administrative Procedures B-1
Status Reports B-1

Investigation

Guidelines & Rules of procedure
re: investigation of complaints B-1
Agreement on how to proceed B-2
Dismissal of Complaint B-2
Conducting Investigation B-2
Previous Complaints B-2
Information to be obtained by Registrar B-2
Transcripts, etc. B-2
Response to Complaint B-2
Generally B-3
Advice and Assistance B-3
Multiple Complaints B-3
Interim Recommendation to Suspend or Reassign B-3
Complaint against Chief Justice *et al*
– Interim Recommendations B-3
Criteria for Interim Recommendations
to Suspend or Reassign B-3
Information re: Interim Recommendation B-4

Reports to Review Panels

When Investigation Complete B-4
Guidelines & Rules of Procedure re:
Reports to review panels B-4
Procedure to be Followed B-4
No Identifying Information B-5
Decision to be Unanimous B-5
Criteria for Decisions by Complaint Subcommittees:
a) to dismiss the complaint B-5
b) to refer to the Chief Justice B-5
c) to refer to mediation B-5
d) to recommend a hearing B-6
Recommendation re: hearing B-6
e) compensation B-6
Referring Complaint to Council B-6
Information to be Included B-6

REVIEW PANELS

Purpose B-6
Composition B-7
When Review Panel Formed B-7
Guidelines and Rules of Procedure B-7

Review of Complaint Subcommittee's Report

Review in Private B-7
Procedure on Review B-7

Referral of Complaint to a Review Panel

When Referred B-8
Power of Review Panel on Referral B-8
Guidelines and Rules of Procedure B-8
Guidelines re: Dispositions
a) ordering a hearing B-8
b) dismissing a complaint B-8
c) referring a complaint to the Chief Justice B-9
d) referring a complaint to mediation B-9

B

REVIEW PANELS *(cont'd)*

Notice of Decision

Decision communicated B-9
Administrative Procedures B-9

HEARING PANELS

Applicable Legislation B-9
Composition B-10
Power B-10

HEARINGS

Communication by Members B-10
Parties to the Hearing B-10
Public or Private/All or Part B-10
Open or Closed Hearing – Criteria B-11
Revealing judge's name when Hearing was private – Criteria B-11
When an order prohibiting publication of judge's name may be made, pending the disposition of a complaint – Criteria B-11
New Complaint B-11

PROCEDURAL CODE FOR HEARING

Preamble B-12
Interpretation B-12
Presentation of Complaints B-12
Notice of Hearing B-12
Response B-13
Disclosure B-13
Pre-Hearing Conference B-13
The Hearing B-13
Pre-Hearing Rulings B-14

POST-HEARINGS

Disposition at Hearing

Disposition B-14
Combination of Sanctions B-15

Report to Attorney General

Report B-15
Identity Withheld B-15
Judge not to be Identified B-15

Order to Accommodate

Order to Accommodate B-15

Removal from Office

Removal B-15
Tabling of Recommendation B-16
Order removing judge B-16
Application B-16

COMPENSATION

After Complaint Disposed Of B-16
Public or Private B-16
Recommendation B-16
Where Complaint Dismissed After a Hearing B-16
Disclosure of Name B-16
Amount and Payment B-17

CONFIDENTIALITY AND PROTECTION OF PRIVACY

Information to Public B-17
Policy of Judicial Council B-17
Complaint Subcommittee Investigation Private B-17
Review Panel Deliberation Private B-17
When Identity of Judge Revealed to Review Panel B-17
Hearings may be Private B-17
Judge's name not disclosed B-17
Order prohibiting publication B-18
Criteria established B-18
Report to Attorney General B-18
Judge not to be identified B-18
Order not to disclose B-18
Exception B-18
Amendments to *Freedom of Information and Protection of Privacy Act* B-18

B

ACCOMMODATION OF DISABILITIES

Application for Order B-19
Duty of Judicial Council B-19
Undue Hardship B-19
Guidelines and Rules of Procedure B-19
Opportunity of Participate B-19
Order Binds the Crown B-19
Chair for Meeting B-19
Chair entitled to Vote B-19
Quorum for Meeting B-19
Expert Assistance B-19
Confidential Records B-19
Accommodation Order after a Hearing B-20
Rules of Procedure and Guidelines B-20
Application in Writing B-20
Accommodation Subcommittee B-20
Report of Accommodation Subcommittee B-20
Initial Consideration of Application and Report B-20
Threshold Test for Qualification as Disability B-21
Notification of Minister B-21
Submissions on Undue Hardship B-21
Time frame for Response B-21
Meeting to Determine Order to Accommodate B-21
Copy of Order B-21

SPECIAL CONSIDERATIONS

French-speaking complainants/judges B-22
Complaints against Chief Justice et al B-22
Complaints against Small Claims Court judges B-23
Complaints against Masters B-23

ADMINISTRATIVE MATTERS

Intake/Opening Complaint Files B-24
Complaint Subcommittees B-24
Review Panels B-25
Meeting Materials B-25
Notice of Decision – Notification of Parties B-26
Closing Files B-26

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)

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

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

GENERALLY

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

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

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

ADVICE AND ASSISTANCE

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

subs. 51.4(5)

MULTIPLE COMPLAINTS

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

When a judge is the subject of three complaints from three different complainants within a period of three years, the Registrar will bring that fact to the attention of the Judicial Council, or a review panel thereof, for their assessment of whether or not the multiple complaints should be the subject of advice to the judge by the Judicial Council or the Associate Chief Justice or Regional Senior Justice member of the Judicial Council.

INTERIM RECOMMENDATION TO SUSPEND OR REASSIGN

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

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

COMPLAINT AGAINST CHIEF JUSTICE ET AL – INTERIM RECOMMENDATIONS

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

subs. 51.4(12)

CRITERIA FOR INTERIM RECOMMENDATIONS TO SUSPEND OR REASSIGN

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

to the appropriate Regional Senior Justice the temporary suspension or re-assignment of a judge pending the resolution of a complaint:

subs. 51.4(21)

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

INFORMATION RE: INTERIM RECOMMENDATION

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

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

Reports to Review Panels

WHEN INVESTIGATION COMPLETE

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

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

subs. 51.4(13)

GUIDELINES AND RULES OF PROCEDURE

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

subs. 51.1(2)

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

subs. 51.1(3)

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

subs. 51.4(12)

PROCEDURE TO BE FOLLOWED

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

complaint 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;

(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

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

subs. 49(14)

COMPOSITION

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

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

WHEN REVIEW PANEL FORMED

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

GUIDELINES AND RULES OF PROCEDURE

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

subs. 51.1(2)

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

subs. 51.4(19)

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

subs. 51.1(3)

The Ontario Judicial Council has established the following guidelines and rules of procedure under subsection 51.1(1) with respect to the consideration of complaint subcommittee reports made to a review panel or referred to it by a complaint subcommittee and the Judicial Council, or a review panel thereof, shall follow its guidelines and rules of procedure established for this purpose.

subs. 51.4(22)

Review of Complaint Subcommittee's Report

REVIEW IN PRIVATE

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

subs. 51.4(17)

PROCEDURE ON REVIEW

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

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

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

If it is necessary to hold a vote on whether or not to accept the recommendation of a complaint

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

Referral of Complaint to a Review Panel

WHEN REFERRED

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

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

POWER OF A REVIEW PANEL ON REFERRAL

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

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

subs. 51.4(16) and (18)

GUIDELINES AND RULES OF PROCEDURE

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

subs. 51.1(2)

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

subs. 51.4(19)

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

subs. 51.1(3)

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

subs. 51.4(22)

Guidelines re: Dispositions

A) ORDERING A HEARING

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

B) DISMISSING A COMPLAINT

A review panel will dismiss a complaint in circumstances where the majority of members of the review panel are of the opinion that the allegation of judicial misconduct falls outside the jurisdiction of the Judicial Council, is frivolous or an abuse of process,

or where the review panel is of the view that, the complaint is unfounded. A review panel will not generally dismiss as unfounded a complaint unless it is satisfied that there is no basis in fact for the allegations against the provincially-appointed judge.

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-

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 makes 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)

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

subs. 51.6(9)

OPEN OR CLOSED HEARINGS – CRITERIA

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

subs. 51.6(7)

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

a) where matters involving public security may be disclosed, or

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

REVEALING JUDGE'S NAME WHEN HEARING WAS PRIVATE – CRITERIA

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

subs. 51.6(8)

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

a) at the request of the judge, or

b) in circumstances where it would be in the public interest to do so.

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

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

subs. 51.6(10)

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

a) where matters involving public security may be disclosed, or

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

NEW COMPLAINT

If, during the course of the hearing, additional facts are disclosed which, if communicated to a member of the Judicial Council, would constitute an allegation of misconduct against a provincially-appointed

judge outside of the ambit of the complaint which is the subject of the hearing, the Registrar shall prepare a summary of the particulars of the complaint and forward same to a complaint subcommittee of the Judicial Council to be processed as an original complaint. The Complaint subcommittee shall be composed of members of the Judicial Council other than those who compose the panel hearing the complaint.

PROCEDURAL CODE FOR HEARINGS

PREAMBLE

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

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

INTERPRETATION

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

   (1) In this code,

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

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

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

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

PRESENTATION OF COMPLAINTS

2. The Council shall, on the making of an order for a hearing in respect of a complaint against a judge, engage Legal Counsel for the purposes of preparing and presenting the case against the Respondent.

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

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

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

NOTICE OF HEARING

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

7. Presenting Counsel shall prepare the Notice of Hearing.

   (1) The Notice of Hearing shall contain,

   (a) particulars of the allegations against the Respondent;

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

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

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

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

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

RESPONSE

9. The Respondent may serve on Presenting Counsel and file with the Council a Response to the allegations in the Notice Hearing.

   (1) The Response may contain full particulars of the facts on which the Respondent relies.

   (2) A Respondent may at any time before or during the hearing serve on Presenting Counsel and file with the Council an amended Response.

   (3) Failure to file a response shall not be deemed to be an admission of any allegations against the Respondent.

DISCLOSURE

10. Presenting Counsel shall, before the hearing, forward to the Respondent or to counsel for the Respondent names and addresses of all witnesses known to have knowledge of the relevant facts and any statements taken from the witness and summaries of any interviews with the witness before the hearing.

11. Presenting Counsel shall also provide, prior to the hearing, all non-privileged documents in its possession relevant to the allegations in the Notice of Hearing.

12. The Hearing Panel may preclude Presenting Counsel from calling a witness at the hearing if Presenting Counsel has not provided the Respondent with the witness's name and address, if available, and any statements taken from the witness and summaries of any interviews with the witness before the hearing.

13. Part V applies, *mutatis mutandis*, to any information which comes to Presenting Counsel's attention after disclosure has been made pursuant to that Part.

PRE-HEARING CONFERENCE

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

THE HEARING

15. For greater certainty, the Respondent has the right to be represented by counsel, or to act on his own behalf in any hearing under this Code.

16. The Panel, on application at any time by Presenting Counsel or by the Respondent, may require any person, including a party, by summons, to give evidence on oath or affirmation at the hearing and to produce in evidence at the hearing any documents or things specified by the Panel which are relevant to the subject matter of the hearing and admissible at the hearing.

   (1) A summons issued under this section shall be in the form prescribed by subsection 12(2) of the *Statutory Powers Procedure Act*.

17. The hearing shall be conducted by a Panel of members of the Council composed of members who have not participated in a complaint sub-committee investigation of the complaint or in a Panel reviewing a report from such complaint sub-committee.

   (1) The following guidelines apply to the conduct of the hearing, unless the Panel, on motion by another party, or on consent requires otherwise.

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

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

      (c) Counsel for the Respondent may make an opening statement, either immediately following Presenting Counsel's opening

statement, or immediately following the conclusion of the evidence presented on behalf of Presenting Counsel. After Presenting Counsel has called its evidence, and after the Respondent has made an opening statement, the Respondent may present evidence.

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

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

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

(g) Presenting Counsel and counsel for the Respondent may, at the close of the evidence, make statements summarizing the evidence and any points of law arising out of the evidence, in the order to be determined by the Hearing Panel.

PRE-HEARING RULINGS

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

(1) Without limiting the generality of the foregoing, a motion may be made for any of the following purposes:

(a) objecting to the jurisdiction of the Council to hear the complaint;

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

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

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

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

(f) any matters relating to scheduling.

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

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

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

POST-HEARINGS

Disposition at Hearing

DISPOSITION

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

a) warn the judge;

b) reprimand the judge;

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

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

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

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

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

subs. 51.6(11)

COMBINATION OF SANCTIONS

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

subs. 51.6(12)

Report to Attorney General

REPORT

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

subs. 51.6(18)

IDENTITY WITHHELD

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

subs. 51.6(19)

JUDGE NOT TO BE IDENTIFIED

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

subs. 51.6(20)

Order to Accommodate

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

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

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

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

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

Removal from Office

REMOVAL

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

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

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

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

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

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

subs. 51.8(1)

TABLING OF RECOMMENDATION

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

subs. 51.8(2)

ORDER REMOVING JUDGE

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

subs. 51.8(3)

APPLICATION

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

subs. 51.8(4)

COMPENSATION

AFTER COMPLAINT DISPOSED OF

When the Judicial Council has dealt with a complaint against a provincially-appointed judge, it shall consider whether the judge should be compensated for all or part of his or her costs for legal services incurred in connection with the steps taken in relation to the complaint, including review and investigation of a complaint by a complaint subcommittee, review of a complaint subcommittee's report by the Judicial Council, or a review panel thereof, review of a mediator's report by the Judicial Council, or a review panel thereof, the hearing into a complaint by the Judicial Council, or a hearing panel thereof, and legal services incurred in connection with the question of compensation. The Judicial Council's consideration of the question of compensation shall be combined with a hearing into a complaint, if one is held.

subs. 51.7(1) and (2)

PUBLIC OR PRIVATE

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

subs. 51.7(3)

RECOMMENDATION

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

subs. 51.7(4)

WHERE COMPLAINT DISMISSED AFTER A HEARING

If the complaint is dismissed after a hearing, the Judicial Council shall recommend to the Attorney General that the judge be compensated for his or her

costs for legal services and shall indicate the amount of compensation.

subs. 51.7(5)

DISCLOSURE OF NAME

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

subs. 51.7(6)

AMOUNT AND PAYMENT

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

subs. 51.7(7) and (8)

CONFIDENTIALITY AND PROTECTION OF PRIVACY

INFORMATION TO PUBLIC

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

subs. 51.3(5)

POLICY OF JUDICIAL COUNCIL

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

COMPLAINT SUBCOMMITTEE INVESTIGATION PRIVATE

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

subs. 51.4(6) and (7)

REVIEW PANEL DELIBERATION PRIVATE

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

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

subs. 51.4(17)

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

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

subs. 51.4(18)

WHEN IDENTITY OF JUDGE REVEALED TO REVIEW PANEL

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

subs.51.4(16) and (17)

HEARINGS MAY BE PRIVATE

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

subs. 51.6(7)

JUDGE'S NAME NOT DISCLOSED

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

subs. 51.6(8)

ORDER PROHIBITING PUBLICATION

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

subs. 51.6(10)

CRITERIA ESTABLISHED

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

REPORT TO ATTORNEY GENERAL

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

subs. 51.6(19)

JUDGE NOT TO BE IDENTIFIED

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

subs. 51.6(20)

ORDER NOT TO DISCLOSE

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

subs. 49(24) and (25)

EXCEPTION

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

subs. 49(26)

AMENDMENTS TO THE *FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT*

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

(4) This *Act* does not apply to anything contained in a judge's performance evaluation under section 51.11 of the *Courts of Justice Act* or to any information collected in connection with the evaluation.

(5) This *Act* does not apply to a record of the Ontario Judicial Council, whether in the possession of the Judicial Council or of the Attorney General, if any of the following conditions apply:

1. The Judicial Council or its complaint subcommittee has ordered that the record or information in the record not be disclosed or made public.
2. The Judicial Council has otherwise determined that the record is confidential.
3. The record was prepared in connection with a meeting or hearing of the Judicial Council that was not open to the public.

ACCOMMODATION OF DISABILITIES

APPLICATION FOR ORDER

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

subs. 45.(1)

DUTY OF JUDICIAL COUNCIL

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

subs. 45.(2)

UNDUE HARDSHIP

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

subs. 45.(3)

GUIDELINES AND RULES OF PROCEDURE

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

subs. 45.4(4)

OPPORTUNITY TO PARTICIPATE

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

subs. 45.(5)

ORDER BINDS THE CROWN

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

subs. 45.(6)

CHAIR FOR MEETING

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

subs. 49.(8)

CHAIR ENTITLED TO VOTE

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

subs. 49.(10)

QUORUM FOR MEETING

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

subs. 49.(13)

EXPERT ASSISTANCE

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

subs. 49.(21)

CONFIDENTIAL RECORDS

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

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

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

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

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 audiotape for review by the complaint subcommittee and, if so, will direct the Assistant Registrar to order same.

The complaint is added to the tracking form, a sequential file number is assigned, a letter of acknowledgement is sent to the complainant within a week of his or her letter being received, page one of the complaint intake form is completed and a letter to the complaint subcommittee members, together with the Registrar's recommendations regarding the file, if any, is prepared. Copies of all materials are placed in the office copy and each member's copy of the complaint file.

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

COMPLAINT SUBCOMMITTEES

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

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

Complaint subcommittee members will endeavour to review and discuss their assigned files within a

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

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

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

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

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

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

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

subs. 51.4(5)

One member of each complaint subcommittee will be responsible to contact the Assistant Registrar by a specified deadline prior to each scheduled OJC meeting to advise what files, if any, assigned to the complaint subcommittee are ready to be reported to a review panel. The complaint subcommittee will also provide a legible, fully completed copy of pages 2 and 3 of the complaint intake form for each file which is ready to be reported and will advise as to what other file material, besides the complaint, should be copied from the file and provided to the members of the review panel for their consideration. No information that could identify either the complainant or the judge who is the subject of the complaint will be included in the material provided to the review panel members.

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

REVIEW PANELS

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

MEETING MATERIALS

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

When a complaint subcommittee has indicated that it is ready to make a report to a review panel,

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

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.

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APPENDIX C

CONTINUING EDUCATION PLAN

ONTARIO COURT OF JUSTICE

CONTINUING EDUCATION PLAN
2008-2009

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;

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, the National Judicial Institute and the Canadian Association of Provincial Court Judges 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), issues related to self-represented accused, controlling the courtroom, 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 2008 when eight newly-appointed judges from the Ontario Court of Justice joined 14 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 also invited to participate in a mentoring program which has been 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 personal 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 selects a director of criminal law education and a director of family law education. The two directors in turn may create a support committee to advise and assist them in putting together the core education programs. 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:

There are 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 to be delivered 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 fulfil a variety of education needs such as the development of judicial skills and leadership and social context training. Particulars of the programs offered are set out below.

a) JUDGMENT WRITING/ORAL JUDGMENTS: Professor Emeritus Edward Berry and faculty from the Ontario Court of Justice and the National Judicial Institute present an intensive course to assist judges in developing the skills required to deliver oral judgments and to write effective judgments. This course was not offered in 2008.

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 2008.

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. This course was presented in June 2008.

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 was held again in April 2008 and, for the first time, was jointly developed and delivered by and for the judges of both 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.

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.

As a result of our experience with these special programs, social context education is now integrated into most of the courses 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 2008, the latest cycle of this program entitled "Judges to Jails" was delivered. It is a week-long education initiative held in Gananoque to permit the judges to tour federal and provincial correctional institutions in the Kingston area and to participate in seminar work related to correctional issues. The Judges to Jails program will be repeated in 2009.

g) JUDICIAL ADMINISTRATION CONFERENCE: This is a biannual conference last held over two days in February 2008. It brought together about 75 administrative judges of the Ontario Court of Justice and was also open to those judges who have shown an interest in judicial administration. The conference addressed issues of leadership and human resource management in a judicial environment. It also addressed the changing landscape of judicial administration and provided an overview of the tools available to assist judges to make the courts more accessible and effective.

h) COMPUTER TRAINING: The Computer Effectiveness and Skills Training Seminar, developed in 2008, will be delivered for the first time in February 2009. This course was designed by judges of the Ontario Court of Justice, the National Judicial Institute and the Judicial Information Technology Office. A maximum of 30 judges will have intensive hands-on computer skills training. The course will be divided into two programs – one designed for judges at the beginner level and another designed for those at the intermediate level where a new note-taking template will be introduced. This note-taking template was developed to assist and encourage judges who wish to use their computers in the courtroom.

(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. This program will now be offered annually.

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 but not limited to:

- 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
- 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 assistance 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 research skills.

   In 2007, the Ontario Court of Justice IT Committee was established, and its mandate includes promoting opportunities for computer training. In addition, the companies that deliver electronic legal research products offer software training 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 assistance and provides bi-weekly updates with respect to legislation and relevant case law through its electronic publication *Items of Interest*.

2. RECENT DEVELOPMENTS: The Honourable Justice Ian MacDonnell provided 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 entitled *Recent Developments*. This publication is distributed electronically to the entire Court along with a search engine called *The Finder*. While the archives of past material are all available, the appointment of Justice MacDonnell to the Superior Court of Ontario in June 2008 has put this publication on hold.

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.

APPENDIX D

PRINCIPLES OF JUDICIAL OFFICE

PRINCIPLES OF JUDICIAL OFFICE

"Respect for the Judiciary is acquired through the pursuit of excellence in administering justice."

Preamble

A strong and independent judiciary is indispensable to the proper administration of justice in our society.

Judges must be free to perform their judicial duties without fear of reprisal or influence

from any person, group, institution or level of government.

In turn, society has a right to expect those appointed as judges to be honourable and worthy of its trust and confidence.

The judges of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

The following principles of judicial office are established by the judges of the Ontario Court of Justice and set out standards of excellence subscribe.

These principles are not exhaustive. They are designed to be advisory in nature and are not directly related to any specific disciplinary process. Intended to assist judges in addressing ethical and professional dilemmas, they may also serve in assisting the public to understand the reasonable expectations which the public may have of judges in the performance of judicial duties and in the conduct of judges' personal lives.

PRINCIPLES OF JUDICIAL OFFICE

1. THE JUDGE IN COURT

1.1 Judges must be impartial and objective in the discharge of their judicial duties.

Commentaries:

Judges should not be influenced by partisan interests, public pressure or fear of criticism.

Judges should maintain their objectivity and shall not, by words or conduct, manifest favour,bias or prejudice towards any party or interest.

1.2 Judges have a duty to follow the law.

Commentaries:

Judges have a duty to apply the relevant law to the facts and circumstances of the cases before the court and render justice within the framework of the law.

1.3 Judges will endeavour to maintain order and decorum in court.

Commentaries:

Judges must strive to be patient, dignified and courteous in performing the duties of judicial office and shall carry out their role with integrity, appropriate firmness and honour.

2. THE JUDGE AND THE COURT

2.1 Judges should approach their judicial duties in a spirit of collegiality, cooperation and mutual assistance.

2.2 Judges should conduct court business with due diligence and dispose of all matters before them promptly and efficiently having regard, at all times, to the interests of justice and the rights of the parties before the court.

2.3 Reasons for judgment should be delivered in a timely manner.

2.4 Judges have a duty to maintain their professional competence in the law.

Commentaries:

Judges should attend and participate in continuing legal and general education programs.

2.5 The primary responsibility of judges is the discharge of their judicial duties.

Commentaries:

Subject to applicable legislation, judges may participate in law related activities such as teaching, participating in educational conferences, writing and working on committees for the advancement of judicial interests and concerns, provided such activities do not interfere with the judges' primary duty to the court.

3. THE JUDGE IN THE COMMUNITY

3.1 Judges should maintain their personal conduct at a level which will ensure the public's trust and confidence.

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

Commentaries:

Judges must not participate in any partisan political activity.

Judges must not contribute financially to any political party.

3.3 Judges must not abuse the power of their judicial office or use it inappropriately.

3.4 Judges are encouraged to be involved in community activities provided such involvement is not incompatible with their judicial office.

Commentaries:

Judges should not lend the prestige of their office to fund-raising activities.

APPENDIX–E

COURTS OF JUSTICE ACT

CHAPTER C.43

ONTARIO JUDICIAL COUNCIL

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

COURTS OF JUSTICE ACT
CHAPTER C.43
ONTARIO JUDICIAL COUNCIL

SECTION 49

JUDICIAL COUNCIL

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

COMPOSITION

(2) The Judicial Council is composed of,

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

(b) the Chief Justice of the Ontario Court of Justice, or another judge of that division designated by the Chief Justice, and the Associate Chief Justice of the Ontario Court of Justice;

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

(d) two judges of the Ontario Court of Justice, appointed by the Chief Justice;

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

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

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

TEMPORARY MEMBERS

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

CRITERIA

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

TERM OF OFFICE

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

Same

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

STAGGERED TERMS

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

CHAIR

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

Same

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

Same

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

OPEN AND CLOSED HEARINGS AND MEETINGS

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

VACANCIES

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

QUORUM

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

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

REVIEW PANELS

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

Same

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

1. The panel shall consist of two provincial judges other than the Chief Justice, a lawyer and a person who is neither a judge nor a lawyer.
2. One of the judges, as designated by the Judicial Council, shall chair the panel.
3. Four members constitute a quorum.

HEARING PANELS

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

Same

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

1. Half the members of the panel, including the chair, must be judges, and half must be persons who are not judges.
2. At least one member must be a person who is neither a judge nor a lawyer.
3. The Chief Justice of Ontario, or another judge of the Court of Appeal designated by the Chief Justice, shall chair the panel.
4. Subject to paragraphs 1, 2 and 3, the Judicial Council may determine the size and composition of the panel.
5. All the members of the panel constitute a quorum.

CHAIR

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

PARTICIPATION IN STAGES OF PROCESS

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

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

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

Same

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

EXPERT ASSISTANCE

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

SUPPORT SERVICES

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

Same

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

CONFIDENTIAL RECORDS

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

Same

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

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 courthouses and elsewhere, information about itself and about the justice system, including information about how members of the public may obtain assistance in making complaints.

Same

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

ASSISTANCE TO PUBLIC

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

TELEPHONE ACCESS

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

PERSONS WITH DISABILITIES

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

ANNUAL REPORT

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

TABLING

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

SECTION 51.1

RULES

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

1. Guidelines and rules of procedure for the purpose of section 45.
2. Guidelines and rules of procedure for the purpose of subsection 51.4 (21).
3. Guidelines and rules of procedure for the purpose of subsection 51.4 (22)

4. If applicable, criteria for the purpose of subsection 51.5 (2).

5. If applicable, guidelines and rules of procedure for the purpose of subsection 51.5 (13).

6. Rules of procedure for the purpose of subsection 51.6 (3).

7. Criteria for the purpose of subsection 51.6 (7).

8. Criteria for the purpose of subsection 51.6 (8).

9. Criteria for the purpose of subsection 51.6 (10).

REGULATIONS ACT

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

SECTIONS 28, 29 AND 33 OF *SPPA*

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

SECTION 51.2

USE OF OFFICIAL LANGUAGES OF COURTS

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

Same

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

Same

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

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

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

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

Same

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

BILINGUAL HEARING OR MEDIATION

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

PART OF HEARING OR MEDIATION

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

Same

(7) In a bilingual hearing or mediation,

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

(b) documents may be filed in either language;

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

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

Same

(8) In a bilingual hearing or mediation, if the complainant or the judge who is the subject of the complaint does not speak both languages, he or she is entitled, on request, to have simultaneous

interpretation of any evidence, submissions or discussions spoken in the other language and translation of any document filed or reasons or report written in the other language.

SECTION 51.3

COMPLAINTS

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

Same

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

Same

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

CARRIAGE OF MATTER

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

INFORMATION RE COMPLAINT

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

SECTION 51.4

REVIEW BY SUBCOMMITTEE

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

ROTATION OF MEMBERS

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

DISMISSAL

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

INVESTIGATION

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

EXPERT ASSISTANCE

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

INVESTIGATION PRIVATE

(6) The investigation shall be conducted in private.

NON-APPLICATION OF *SPPA*

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

INTERIM RECOMMENDATIONS

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

Same

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

POWER OF REGIONAL SENIOR JUDGE

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

DISCRETION

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

EXCEPTION: COMPLAINTS AGAINST CERTAIN JUDGES

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

SUBCOMMITTEE'S DECISION

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

(a) dismiss the complaint;

(b) refer the complaint to the Chief Justice;

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

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

Same

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

CONDITIONS, REFERENCE TO CHIEF JUSTICE

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

REPORT

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

POWER OF JUDICIAL COUNCIL

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

Same

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

(a) hold a hearing under section 51.6;

(b) dismiss the complaint;

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

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

NON-APPLICATION OF *SPPA*

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

NOTICE TO JUDGE AND COMPLAINANT

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

GUIDELINES AND RULES OF PROCEDURE

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

Same

(22) In considering reports and complaints and making decisions under subsections (17) and (18), the

Judicial Council shall follow its guidelines and rules of procedure established under subsection 51.1 (1).

SECTION 51.5

MEDIATION

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

CRITERIA

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

Same

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

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

LEGAL ADVICE

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

TRAINED MEDIATOR

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

IMPARTIALITY

(6) The mediator shall be impartial.

EXCLUSION

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

REVIEW BY COUNCIL

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

(a) approve the disposition of the complaint; or

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

(i) dismiss the complaint,

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

(iii) hold a hearing under section 51.6.

REPORT

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

REFERRAL TO COUNCIL

(10) At any time during or after the mediation, the complainant or the judge may refer the complaint

to the Judicial Council, which shall consider the matter, in private, and may,

(a) dismiss the complaint;

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

(c) hold a hearing under section 51.6.

NON-APPLICATION OF *SPPA*

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

NOTICE TO JUDGE AND COMPLAINANT

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

GUIDELINES AND RULES OF PROCEDURE

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

SECTION 51.6

ADJUDICATION BY COUNCIL

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

APPLICATION OF *SPPA*

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

RULES OF PROCEDURE

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

COMMUNICATION RE SUBJECT-MATTER OF HEARING

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

EXCEPTION

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

PARTIES

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

EXCEPTION, CLOSED HEARING

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

DISCLOSURE IN EXCEPTIONAL CIRCUMSTANCES

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

ORDERS PROHIBITING PUBLICATION

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

PUBLICATION BAN

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

DISPOSITIONS

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

(a) warn the judge;

(b) reprimand the judge;

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

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

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

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

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

Same

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

DISABILITY

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

APPLICATION OF SUBS. (13)

(14) Subsection (13) applies if,

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

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

UNDUE HARDSHIP

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

OPPORTUNITY TO PARTICIPATE

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

CROWN BOUND

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

REPORT TO ATTORNEY GENERAL

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

NON-IDENTIFICATION OF PERSONS

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

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

2. The judge, if the hearing was conducted in private, unless the Judicial Council orders that the judge's name be disclosed.

CONTINUING PUBLICATION BAN

(20) If an order was made under subsection (10) and the Judicial Council dismisses the complaint

with a finding that it was unfounded, the judge shall not be identified in the report without his or her consent and the Council shall order that information that relates to the complaint and might identify the judge shall never be made public without his or her consent.

SECTION 51.7

COMPENSATION

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

CONSIDERATION OF QUESTION COMBINED WITH HEARING

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

PUBLIC OR PRIVATE CONSIDERATION OF QUESTION

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

RECOMMENDATION

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

Same

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

DISCLOSURE OF NAME

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

AMOUNT OF COMPENSATION

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

PAYMENT

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

SECTION 51.8

REMOVAL FOR CAUSE

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

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

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

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

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

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

TABLING OF RECOMMENDATION

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

ORDER FOR REMOVAL

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

APPLICATION

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

TRANSITION

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

SECTION 51.9

STANDARDS OF CONDUCT

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

DUTY OF CHIEF JUSTICE

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

GOALS

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

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

SECTION 51.10

CONTINUING EDUCATION

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

DUTY OF CHIEF JUSTICE

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

GOALS

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

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

SECTION 51.11

PERFORMANCE EVALUATION

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

DUTY OF CHIEF JUSTICE

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

GOALS

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

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

SCOPE OF EVALUATION

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

CONFIDENTIALITY

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

INADMISSIBILITY, EXCEPTION

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

APPLICATION OF SUBSS. (5), (6)

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

SECTION 51.12

CONSULTATION

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

SECTION 87

MASTERS

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

JURISDICTION

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

APPLICATION OF SS. 44 TO 51.12

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

EXCEPTION

(4) The power of the Chief Justice of the Ontario Court of Justice referred to in subsections 44(1) and

(2) shall be exercised by the Chief Justice of the Superior Court of Justice with respect to masters.

Same

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

Same

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

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

Same

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

COMPENSATION

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

SECTION 87.1

SMALL CLAIMS COURT JUDGES

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

FULL AND PART-TIME SERVICE

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

CONTINUATION IN OFFICE

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

COMPLAINTS

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

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

of the Superior Court of Justice, to whom subsections 51.4 (10) and (11) apply with necessary modifications.

APPLICATION OF SS. 51.9, 51.10, 51.11

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

SECTION 45

APPLICATION FOR ORDER THAT NEEDS BE ACCOMMODATED

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

DUTY OF JUDICIAL COUNCIL

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

UNDUE HARDSHIP

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

GUIDELINES AND RULES OF PROCEDURE

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

OPPORTUNITY TO PARTICIPATE

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

CROWN BOUND

(6) The order binds the Crown.

SECTION 47

RETIREMENT

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

Same

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

CONTINUATION OF JUDGES IN OFFICE

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

SAME, REGIONAL SENIOR JUDGES

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

SAME, CHIEF JUSTICE AND ASSOCIATE CHIEF JUSTICES

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

comes first.

Same

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

CRITERIA

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

TRANSITION

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

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