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Canadian Judicial Council

**Annual
Report
2002-03**

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Preface

My appointment in January 2000 as Chief Justice of Canada brought with it the role of Chairperson of the Canadian Judicial Council, an organization called to preserve and improve the quality of judicial service in our country.

The Council was then entering its 30th year of existence. I considered the time ripe for the organization to review its environment and its mandate, mission, structure, performance and relationships.

I asked the Honourable Richard Scott, Chief Justice of Manitoba, to head a Special Committee on Future Directions to lead this work. The recommendations of the Committee's two-year study, endorsed by the Council in 2002-03, are discussed in this annual report. The text of their report, entitled *The Way Forward*, may be found on the Council's Web site.

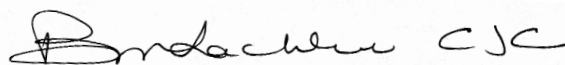
While satisfied with its original broad mandate, under the *Judges Act*, the Council has decided that to fulfil the mandate in today's environment it must broaden its horizons, extend its activities and operate more flexibly and efficiently.

The key change is a new operational concept for Council committees and sub-committees. Their membership will be supplemented to take advantage of the experience and expertise of federally appointed judges across Canada and, in some cases, of non-judges. They will receive additional advice and support from the Council office, for which the Council has sought and received increased resources. And they will introduce flexible schedules and arrangements for their meetings, which will no longer be compressed arbitrarily into the few days reserved for the Council's twice-a-year plenary sessions.

Other important decisions extend the Council's role in developing policies and priorities for the continuing education of judges and place more importance than ever on the use of information technologies to enhance the efficiency of judges and their courts.

The Council also endorsed the creation of a broadly representative outside group to advise me on issues I wish to raise with it.

In parallel with the Futures Committee review, a working group examined the Council's procedures for dealing with complaints about judicial conduct. This is a central role of the Council, and its complaints by-laws and procedures are subject to ongoing consultation and evolution, as explained in Chapter 3 of this report.



The Right Honourable Beverley McLachlin,
Chief Justice of Canada
Chairperson
Canadian Judicial Council
Winter 2004

The Canadian Judicial Council

Introduction

The Canadian Judicial Council concluded a two-year project of self-examination and planning in 2002-03 with decisions on its future as a national judicial institution.

This annual report, covering activities for the period April 1, 2002, to March 31, 2003, describes in some detail changes approved by the Council's 39 members on the basis of recommendations from:

- The Special Committee on Future Directions, which examined the Council's mandate, structure, procedures and relationships. The full text of the Committee's report, entitled *The Way Forward*, may be found on the Council's Web site at www.cjc-ccm.gc.ca.
- A Working Group on the Complaints Process, which examined how the Council carries out its responsibilities under the *Judges Act* related to judicial conduct. Major changes are discussed in Chapter 3. The related by-laws and procedures are set out in appendices D and E.

Established by act of Parliament in 1971, the Council includes the chief justices and associate chief justices, chief judge and associate chief judge — and in the case of the three northern territories, the senior judges — of all courts whose members are appointed by the federal government. Members serving during 2002-03 are listed in Appendix A. The Council was served by an Executive Director, Counsel and two support staff, located at the Council's office in Ottawa. The expenditures for 2002-03 are set out in Appendix H.

The Council's practice has been to meet twice a year — in Ottawa during the spring, and outside Ottawa in the fall. The September 2002 meeting was held in Calgary.

Mandate and Governing Principles

The objects of the Council as set out in the *Judges Act* (Appendix C) are “to promote efficiency and uniformity, and to improve the quality of judicial service, in superior courts and in the Tax Court of Canada.”

The essential question before the Special Committee on Future Directions (the “Futures Committee” in further references in this report) was whether the Council has actually been fulfilling this role. The Committee's answer: A qualified “yes.” Said its report:

In the Committee's view, the Council must become a more dynamic and productive body if it is to continue to fulfil its mandate. The Committee suggests a number of ways in which this should happen. In short, they include: more active and efficient committees of Council; greater leadership and oversight by the Council's Executive Committee; greater involvement of puisne judges and non-judges in the Council's work through its various committees and sub-committees; and increased staff and financial resources for the Council as a whole.

The Futures Committee observed that the Council had been performing its most important function well — the processing and disposition of complaints about federally appointed judges — and doing important work relating to the administration of justice. Its main problems were cited as a lack of adequate staffing and resources, resulting in inefficiencies in its work.

The Way Forward said the Council's existing objects provide it with an appropriate broad mandate “to address a considerable range of issues affecting the administration of justice and to serve the public interest in ensuring that Canadians have the benefit of a professional, dedicated and independent judiciary.”



Members of the Canadian Judicial Council at the September 2002 Annual Meeting in Calgary

The Futures Committee adopted a number of governing principles for its own deliberations and they were ultimately accepted by Council as guidance for the way in which the Council's mandate should be fulfilled:

- (a) The Council must be guided by the constitutional principles of federalism, judicial independence, judicial accountability, equality, the rule of law and due process;
- (b) The Council must set its own policies and priorities; the role of the Council secretariat is advisory, administrative and executory in nature;
- (c) The governance structure of the Council should be one that, through the effective use of active committees, promotes efficiency and flexibility in operation, while respecting the ultimate responsibility of the full Council for the carrying out of its statutory mandate;
- (d) In fulfilling its responsibility to carry out its statutory mandate, the Council should operate on the principles of democratic decision making, including the equality of all of its members;
- (e) The Council should be mindful of both the representative role it plays in relation to the federally appointed judiciary as a whole and the experience and expertise that are available to the Council from within that judiciary; and
- (f) The overarching duty of the Council is to ensure that in all that it does it is guided by a commitment to serving the public interest in the administration of justice.

Similarly, the Futures Committee saw no real need for a change in the Council's statutory powers. Subsection 60(2) of the *Judges Act* providing for the continuing education of judges and the handling of complaints "was never intended to be exhaustive, and all of the activities in which the Council is now engaged are authorized by the broad language of its statutory mandate," concluded *The Way Forward*.

Membership of the Council

With 39 members, the Council does not perform well as a deliberative body, said the Futures Committee. A preferable size for this purpose should be in the range of 20-25 members. But the Committee decided against recommending a smaller Council, arguing that a relatively large membership helps ensure that the burden of the Council's activities does not fall on only a few members, and allows for more broadly based input into the Council's work. A more important question was whether the Council should include federally appointed puisne judges and/or "non-judges." The Committee concluded that it was better to draw on outside wisdom and expertise through appointments to Council committees, where the real work will take place and new members "can truly make a difference." The Council's decisions on committee membership and procedures are discussed in Chapter 4.

Chairperson's Advisory Group

As a further source of advice on issues of judicial governance, the Council endorsed a Futures Committee recommendation authorizing the creation of a representative advisory group to serve as a sounding board on issues the Chairperson raises with it. A range of perspectives and philosophies would be represented in its membership. Although not a decision-making body, it would provide the Chairperson and the Council with thoughtful ideas about key issues and "enhance the Council's credibility as an open and outward-looking institution, and one in which Canadians can continue to have confidence," said *The Way Forward*.

The group would include six members from areas other than the law — such as the public service, business, universities, arts, social sciences and self-governing professions — as well as two members from the legal profession, a puisne judge of the Supreme Court of Canada, a puisne judge from another court, and the two vice-chairpersons of the Council.

Structure and Operations

The Way Forward stated: “If the Council is to remain at its current size and become more active than it now is, the Council must have stronger and more effective committees” where “most of the real work of the Council must be done . . .”

The Executive Committee, already provided by the existing by-laws with ample authority to supervise and manage the affairs of the Council, should act as “a responsive body to which these committees can report and a forum in which the work of the committees can be coordinated, directed, reviewed and discussed,” said *The Way Forward*. “In addition, with an expanded secretariat, the Executive Committee will have an enhanced management role — directing staff activities, apportioning resources amongst committees and setting general priorities.” Accordingly, the Council approved recommendations that the Executive Committee should consist of the Council chairperson and two vice-chairpersons, the chairpersons of the main standing committees, and three members of the Council chosen at large.

On the operation of committees, *The Way Forward* said:

This Committee is strongly of the opinion that the current practice with respect to the holding of committee meetings is unsatisfactory. In its view, as a general rule, Committee reports should be considered by Council members well in advance of its two plenary meetings. No major policy issues or recommendations should be sent to the Council just a day or two before those meetings, as the present system effectively requires. In the absence of circumstances requiring urgent action, the Council should not be asked to consider an important recommendation from any committee without adequate time.

The Council agreed that it should continue to hold annual and mid-year plenary meetings. But Council committees should be strongly encouraged to meet

as and when required between Council meetings, use conference calls and video-conferencing whenever possible, and report to the full Council on an ongoing basis.

To support the expanded activity envisaged, the Council agreed to seek Treasury Board approval for three additional positions in the Council secretariat and additional contract money for research and advisory services, bringing the core operational budget to \$1.2 million from \$600,000.

Relationships with other Institutions

The Office of the Commissioner for Federal Judicial Affairs ensures that administrative needs of the Council secretariat are met and performs a number of functions on behalf of the Canadian judiciary. *The Way Forward* noted these important tasks and specifically recommended that Council support the office’s role in extending information technology to judges.

The Futures Committee recommended continuing the practice of inviting both the Minister and Deputy Minister of Justice to the Council’s twice yearly meetings, and extending invitations to the Deputy Minister to attend meetings of Council committees from time to time.

The Canadian Superior Courts Judges Association is a volunteer organization serving the interests of the federally appointed puisne judges in Canada. The Council has long worked in cooperation with the Association, and its predecessor, the Canadian Judges Conference, on the issue of judicial salaries and benefits. The terms of reference approved by the Council for the Judicial Salaries and Benefits Committee state that it should both “collaborate, as appropriate, with the counterpart committee of the Canadian Superior Courts Judges Association,” and “develop with it, as appropriate, and where so approved by the Council, joint submissions to the Judicial Compensation and Benefits Commission.”

Judicial Education

Overview of Responsibilities

Under the *Judges Act* the Council may “establish seminars for the continuing education of judges.” Until 1993, the Council conducted its own annual summer seminars for this purpose. The Council strongly supported the establishment of the National Judicial Institute (NJI), an independent organization for judicial skills training, continuing professional education and professional enrichment funded by the federal and provincial governments.

The Council makes educational opportunities available for judges through its Judicial Education Committee, which recommends attendance at conferences and seminars with reimbursement of expenses under subsection 41(1) of the *Judges Act*. However, authorization by the Council is not the sole avenue for judicial education and training opportunities.

As authorized or required through provincial judicature acts, individual courts can also undertake educational programs. Further, with expenses covered under subsection 41(2) of the Act, individual chief justices can authorize the reimbursement of expenses incurred by judges of their courts in attending certain meetings, conferences and seminars. The Council’s Study Leave Advisory Committee reviews applications and recommends judges for the Study Leave Program at Canadian universities.

The Futures Committee considered the Council’s role in judicial education and its relationship with the NJI, concluding that the Judicial Education Committee should be more active in developing general policies and priorities in the area. It said the Committee should also call for periodic reports from the NJI on the state of judicial education in Canada.

The Way Forward also examined the involvement of Canadian judges in judicial education programs around the world, remarking:

These programs are obviously of great importance to the establishment of the bedrock constitutional principles of democratic self-government, the rule of law, due process and judicial independence in the host countries. It should be, and is, a matter of considerable pride to the Canadian judiciary that the organizers of such programs often invite Canadian judges to participate in them.

But the Futures Committee also noted that these activities can put considerable pressure on the courts from which the judges are drawn, and the Canadian Judicial Council should be involved to take their interests into account in determining who participates. *The Way Forward* called for formal protocols in this respect and a continuing Council role in monitoring these programs.

Approval of Attendance at Seminars and Conferences

Subsection 41(1) of the *Judges Act*¹ provides for payment of the expenses of judges attending designated educational conferences.

The Council approves attendance in most cases for a specific number of judges to participate in particular seminars and conferences that the Judicial Education Committee believes will be important and beneficial to them. The Office of the Commissioner for Federal Judicial Affairs administers the resulting claims.

1 The *Judges Act* subsection 41(1) provides as follows: “A judge of a superior court or of the Tax Court of Canada who attends a meeting, conference or seminar that is held for a purpose relating to the administration of justice and that the judge in the capacity of a judge is required to attend, or who, with the approval of the chief justice or chief judge of that court, attends any such meeting, conference or seminar that the judge in that capacity is expressly authorized by law to attend, is entitled to be paid, as a conference allowance, reasonable travel and other expenses actually incurred by the judge in so attending.”

2. Judicial Education

National Judicial Institute programs

Ultimately, the responsibility to further their education falls on individual judges. While the demands of the bench exercise constant pressure on judges' time and energies, the Council supports their commitment to continuous learning in cooperation with the National Judicial Institute.

The NJI designs and presents courses for both federally and provincially appointed judges to help them

contribute to the improvement of the administration of justice, achieve personal growth, obtain high standards of official conduct and social awareness, and perform judicial duties fairly, correctly and efficiently.

The Council approved judges' participation at various NJI seminars which took place in 2002-03. Attendance of federally appointed judges varied depending on the format and topic of the seminar, as seen below.

NJI Event	Location	Dates	Attendance
Settlement Conferences			
Managing Successful Settlement Conferences, Level I	Quebec City	April 23-25, 2002	31
	Vancouver	May 8-10, 2002	19
Level II Settlement Conferences in Family Law	Montreal	Nov. 5-7, 2002	22
	Toronto	Dec. 4-6, 2002	16
Settlement Conferences in Child Protection Proceedings	Kelowna	July 12-13, 2002	26
	Ottawa	Sept. 24, 2002	16
Negotiation: The Foundation of JDR/Settlement — Conferencing	Toronto	Feb. 26-28, 2003	25
Social Context Education: Faculty and Program Development Conferences	Niagara-on-the-Lake	June 4-6, 2002	9
	Charlottetown	Sept. 24-26, 2002	17
	Montreal	Jan. 22-23, 2003	23
Retirement Planning			
Prairie Region Judges	Edmonton	June 12-14, 2002	14
Quebec Judges	Montreal	Sept. 11-13, 2002	15
B.C. Judges	Vancouver	Oct. 9-11, 2002	7
Atlantic Region Judges	Halifax	Oct. 23-25, 2002	16
Appellate Courts Seminar	Vancouver	April 7-10, 2002	40
Federal Court Education Seminar: Immigration Law	Ottawa	May 10, 2002	27
Civil Law: Torts Seminar	Montreal	May 22-24, 2002	66
Courts Second International Working Conversation on Enviro-Genetics Disputes and Issues	Ottawa	June 14-17, 2002	19
Intensive Summer Workshop: Hearing and Deciding Charter Issues	Mont Tremblant	July 28-Aug. 2, 2002	26
<i>Youth Criminal Justice Act</i> Seminar	Toronto	Sept. 11-15, 2002	15
Child Protection and the Law Seminar	Ottawa	Sept. 25-27, 2002	32
Criminal Jury Trials Seminar	Vancouver	Nov. 14-15, 2002	128*
Early Orientation for New Judges Seminar	Ottawa	Nov. 25-29, 2002	44
Judicial Safeguards for the Prevention of Wrongful Convictions	Toronto	Dec. 4-6, 2002	27
Aboriginal Law Seminar	Calgary	Jan. 23-25, 2003	64
NJI Workshop	Mactaquac	Feb. 6-7, 2003	27
Family Law Seminar: Financial & Property Issues	Vancouver	Feb. 12-14, 2003	75
Criminal Law Seminar: Criminal Cases: They are a changin'	Quebec City	March 19-21, 2003	74

* Combined with Supreme Court of British Columbia education seminar. Total includes 73 B.C. judges.

Computer training and education

During the year approximately 500 federally appointed judges from courts across Canada participated in some 1,800 hours of group sessions, private training sessions and distance learning sessions on computer applications and the use of the judges' own JUDICOM computer network.

The courses were delivered under a Computer Education Partnership between the Office of the Commissioner for Federal Judicial Affairs, the office responsible for the development of the network, and the National Judicial Institute.

Canadian Institute for the Administration of Justice programs

As in past years, two annual seminars for federally appointed judges were organized by the Canadian Institute for the Administration of Justice (CIAJ), operating out of the University of Montreal, for which the Council approved attendance of judges:

- Judgment Writing Seminar, Montreal, July 2-5, 2002, with 55 judges plus judicial organizers and faculty authorized to attend;

- Newly Appointed Judges Seminar, Château Mont-Tremblant, Quebec, March 1-4, 2003.

The Council also approved judges' participation in other CIAJ events held during the year:

- Round Table on Tribunal Structure, Independence and Impartiality, Ottawa, June 2002 (10 judges authorized).
- Round Table Dialogues between Courts and Tribunals — Fredericton, April 2002; Vancouver, April 2002; and Saskatoon, May 2002 — (24 judges authorized, eight at each session).
- Dialogues about Justice: The Public, Legislators, Courts and the Media, Hull, Quebec, October 17-19, 2002 (95 judges authorized).

Other seminars

The Council approved judges' attendance at a variety of other seminars, meetings and conferences during the year, including those listed below.

Event	Location	Dates	Authorized Attendance
New York Appellate Judges Seminars	New York	April-July 2002	4
Trial Courts of the Future	Saskatoon	May 2002	30
Annual Conference of the Association of Family and Conciliation Courts	Hawaii	June 5-8, 2002	20
National Criminal Law Program of the Federation of Law Societies of Canada	Ottawa	July 8-12, 2002	65
National Family Law Program of the Federation of Law Societies of Canada	Kelowna	July 14-18, 2002	65
Annual Conference of the Canadian Bar Association	London, Ont.	Aug. 12-14, 2002	27
Third World Congress on Family Law and Rights of Children and Youth	Bath, England	Sept. 20-22, 2002	18
International Conference on Law via the Internet	Montreal	Oct. 2-4, 2002	72
Meeting of family law judges organized by the Canadian Judicial Council	Ottawa	Nov. 21-22, 2002	22

Study Leave Program

The Council has long recognized the need for education programs to equip judges for their work in an evolving society. In October 1992, the Council established *Standards for Judicial Education in Canada* stating that continuing education is a duty for judges “if they are to maintain and enhance essential competence, personal growth, and social awareness.” In March 1993, the Council set a goal of having all judges spend 10 days per calendar year attending judicial education programs relating their responsibilities or court assignments, subject to availability of human and budgetary resources.

Since 1989, the Canadian Judicial Council and the Council of Canadian Law Deans (CCLD) have jointly operated a special kind of leave providing for study and/or research at a host Canadian academic institution, based on a substantial proposal beneficial to both the judge and the institution, normally a faculty of law. As a general rule, study leave is for seven months — September to March, the duration of the academic year.

Proposals are recommended by a Study Leave Advisory Committee composed of Council members, representatives of the CCLD representing common law and civil law jurisdictions, and the Executive Director of the National Judicial Institute. Members of the Committee in 2002-03 are found in Appendix B. Following approval by the Council’s Executive Committee, the Governor in Council (Cabinet) is then asked to approve the leave, as required under paragraph 54(1)(b) of the *Judges Act*.² Programs are tailored to the needs of each judge and to those of the host institution.

The aims of the program are:

1. To enable a judge to engage in research, teaching or related activities at a Canadian law school or cognate institution, so that he or she can return to the bench better equipped to carry out judicial duties; and
2. To provide Canadian law schools and related institutions with the opportunity to have experienced jurists participate in and contribute to research, teaching and other related activities of benefit to faculty and students.

Since the introduction of the Study Leave Program, a number of judges have pursued studies at universities from Dalhousie in the east to Victoria in the west. They have carried out research on many aspects of civil and criminal law in Canada and elsewhere, studied the impact of the *Canadian Charter of Rights and Freedoms* and other aspects of the *Constitution Act*, examined courtroom procedures and the developing areas of alternative dispute resolution and computer technology in the courts, taught courses and coached students in moot trials and advocacy. A few judges have used the time to research and write books for publication in their areas of expertise.

Eight judges participated in the Study Leave Program in the period September 1, 2002, to March 31, 2003. Their leave from judicial duties had received approval by the Governor in Council in October 2001. As set out below, the judges on study leave had a range of experiences.

At the Faculty of Law of the University of Victoria, Mr. Justice Donald S. Ferguson of the Ontario Superior Court of Justice taught two courses in advocacy and lectured in several other subjects. He judged mock appeals and motions, attended a students’ Aboriginal Cultural Awareness Camp and worked on a book on Ontario trial procedure. He described his leave as “an absolutely wonderful experience which will be one of the highlights of my judicial experience.”

2 The *Judges Act*, subsection 54(1) provides as follows: “No judge of a superior court or of the Tax Court of Canada shall be granted leave of absence from his or her judicial duties for a period (a) of six months or less, except with the approval of the chief justice or senior judge of the superior court or of the chief judge of the Tax Court of Canada, as the case may be; or (b) of more than six months, except with the approval of the Governor in Council.”

Mr. Justice André Forget of the Quebec Court of Appeal followed masters-level courses at the Faculty of Law, University of Montreal on law, biotechnology and society, and law and political philosophy. He participated in seminars, lectured undergraduates, presided over moot courts and improved his grasp of court applications of computer technology.

At Queen's University Faculty of Law, Madam Justice Nola E. Garton of the Ontario Superior Court of Justice assisted in teaching a course in sentencing, participated in moot court activities and researched similar fact evidence and other areas of the law. As a result of her participation she was invited to join the Queen's Law Dean's Council to advise on the future direction and strategies of the law school.

As chair of a sub-committee of the Council's Judges Technology Advisory Committee, Madam Justice Fran Kiteley of the Ontario Superior Court of Justice devoted her study leave at the University of Ottawa Faculty of Common Law to drafting a report on the implications of electronic filing and electronic access to court documents. She also made a presentation on the security of judicial information to an international conference held in Montreal on Law via the Internet and helped organize, and addressed, an education program for lawyers on privacy issues. During her leave she was also instrumental in establishing various elements of the Ontario Justice Education Network.

Madam Justice Lynne C. Leith of the Ontario Superior Court of Justice was judge in residence at the Faculty of Law, University of Western Ontario. She taught classes in contracts and constitutional law, civil procedure, administrative law, advanced criminal law and litigation practice, participated actively in moot court programs, and she was instrumental in organizing a summer law institute as part of Ontario's public legal education initiative. She wrote papers on corporate law and helped design a one-day educational program on equal access for her court.

As lecturer, student and researcher, Madam Justice Nicole Morneau of the Superior Court of Quebec participated in information technology programs of the Faculty of Law, University of Montreal, during the fall and followed a masters course in the law, biotechnology and society in the winter term.

At the Faculty of Law, University of Toronto, Mr. Justice Robert J. Sharpe of the Ontario Court of Appeal spent most of his study leave on the completion of *Brian Dickson: A Judge's Journey*, a book he was writing with Professor Kent Roach. He also presented seminars on the project; attended many seminars, workshops and lectures; and gave lectures and seminars to a number of outside groups.

Mr. Justice William J. Vancise of the Saskatchewan Court of Appeal participated in the teaching of sentencing to first-year students at the University of Montreal and to second- and third-year students at McGill University. He helped organize a program on Aboriginal law sponsored by the National Judicial Institute, lectured to judges on his experiences learning a second language and participated in sessions of the Quebec Court of Appeal's semi-annual meeting.

Council Members' Seminar

The Council's practice is to hold a seminar for members in conjunction with its March plenary meeting. The 2003 seminar, *Court Security in an Insecure World*, addressed the safety and protection of the courthouse and individuals within it — employees, judges and judicial staff, the public and participants in court proceedings. The seminar also dealt with the continuity of the judicial process in the face of many kinds of disruptions — from disorderly conduct to mail and phone threats, prisoner escapes and attacks on the judiciary, fires and natural disasters, medical emergencies and failures of court systems.

Introducing the seminar, Chief Justice McLachlin said:

Being a judge forces one to identify winners and losers, and the losers are rarely pleased. Sitting in a court puts one in close proximity to dangerous individuals, and stories of judges being assaulted on the bench or in the courthouse corridor or even in their homes are reported every now and then. And, as some of our colleagues discovered to their dismay, even deciding cases on controversial matters like child pornography, divorce or abortion can lead to threats that have to be taken seriously.

Seminar leaders Tina Lewis Rowe and Al Palmer advised Council members that they have leadership roles to play in ensuring that security surveys or “audits” of court facilities are carried out and that plans are put in place for a range of contingencies — from screening courthouse entrances to bomb threats, courtroom emergencies and utility shut-downs. They were encouraged to set up court security committees and to ensure employees are trained about how to respond in emergencies.

Seminar Participants

The Honourable Donald J. Brenner, Chief Justice of the Supreme Court of British Columbia

Mr. Al Palmer, Executive Director of Security Services, Government of Alberta

Ms. Tina Lewis Rowe, TRowe Training, Denver, Colorado

The Honourable David D. Smith, Chief Justice of the Court of Queen’s Bench of New Brunswick

The Honourable Heather J. Smith, Chief Justice of the Ontario Superior Court of Justice

Mr. George Thomson, Executive Director of the National Judicial Institute

Complaints

Overview of Responsibilities

In parallel with the work of the Futures Committee, the Council Chairperson established a separate working group to undertake a fundamental review of the Council's process for assessing complaints against judges. The Canadian Superior Courts Judges Association provided the working group with its views on the process. The working group submitted a separate set of recommendations to the Council at the same time as the Futures Committee.

In accordance with current drafting conventions, the existing complaints by-laws were split into informal procedures and formal by-laws registered under the *Statutory Instruments Act*, as set out in Appendices D and E.

Canada's Constitution states that only Parliament can remove a judge who has breached the standard of good behaviour. The process to assess alleged breaches of conduct by federally appointed judges is assigned to the Canadian Judicial Council under the *Judges Act*.

When a complaint or allegation is made against a judge, the Council is required to decide whether the judge's conduct has rendered him or her "incapacitated or disabled from the due execution of the office of judge." The Council's assessment of a complaint can lead at most to a recommendation to the Minister of Justice that a judge be removed from office. The Minister, in turn, can only make a further recommendation to Parliament.

The Council seeks to ensure consideration of the fundamental issues involved in a complaint, not just the form in which it was made or the technicalities surrounding it. There is no requirement that a complainant be represented by a lawyer or that a complaint be made in a specific way or on a specific form. The Council requires only that a complaint be in writing and that it name a specific federally appointed judge. The complaints process is demon-

strably open and equitable. Each complaint is considered seriously and conscientiously.

Members of the Council who deal with complaints make an independent assessment of the judicial conduct in question — not whether a judge has made an erroneous decision. This distinction between judicial *decisions* and judicial *conduct* is fundamental. Judges' *decisions* can be appealed to progressively higher courts. They can be reversed or varied by the appeal courts without reflecting on the judges' capacity to perform their duties, and without jeopardizing their tenure on the bench, so long as they have acted "within the law and their conscience." The Council has no role in assessing a judicial decision to determine whether it was right or wrong.

The Council must undertake a formal inquiry into a judge's conduct if requested to do so by the Minister of Justice of Canada or a provincial attorney general, under subsection 63(1) of the *Judges Act*. However, in practice, most complaints come from members of the public, typically by individuals who are involved in some way in court proceedings.

The Council has no basis for investigating generalized complaints about the courts or the judiciary as a whole, or about judges whom complainants have not named or do not want to name. It cannot change judicial decisions, compensate individuals, grant appeals or address demands for new trials. Nor can it investigate complaints about other judicial officers such as masters or provincial court judges or court employees or lawyers, about whom many complain — erroneously — to the Council.

The complaints process inevitably risks exposing judges to unjust allegations and unwarranted public questioning of their character. This is particularly so when a complaint that was made public by the complainant is later found to be baseless, and the finding is not given the same public prominence as the original allegation. Judges are not in a position

to refute such allegations publicly, or act independently to protect themselves from what they see as damage to their reputations.

All this underscores the importance of providing a process that respects judicial independence but is also fair and credible. Those who feel aggrieved by a judge's conduct must be assured of an opportunity to have their concerns reviewed. A judge whose conduct is in question must be assured that the matter will be resolved as promptly and fairly as possible. And the public must have confidence that the process is objective and effective.

If a complainant has made his or her complaint public, in closing the file the Council will generally issue a news release or have a statement available in the event of media inquiries. As a protection for both the complainant and the judge, the Council will not make the fact of a complaint or its disposition public on its own initiative.

A brochure entitled *The Conduct of Judges and the Role of the Canadian Judicial Council*, setting out the complaints procedures in some detail, has been distributed widely and may be found on the Council's Web site at www.cjc-ccm.gc.ca.

The Complaints Process

The Chairperson or one of three Vice-Chairpersons³ of the Judicial Conduct Committee of the Council initially reviews each complaint and decides on its disposition. The judge and the judge's chief justice may be asked for their comments, but with or without such comments, the Chairperson may close a file with an appropriate reply to the complainant. By far the largest proportion of complaints are dealt with in this way.

In some circumstances, the Chairperson may choose to refer a complaint to a Panel of up to five judges. Panels are usually composed of three members of the Council but may include a judge who is not a member of the Council. Panels are established to

deal with particularly sensitive issues, matters that may benefit from review by more than a single Council member, or instances where the allegations about the judge may warrant concern.

The new Procedures (applicable to complaints closed after January 1, 2003) permit the Chairperson or a Panel, in closing a file, to write the judge expressing an "assessment of, and any concerns about, the judge's conduct . . ." This terminology replaces the phrase "expression of disapproval" contained in the previous by-laws, which applied to complaints closed on or before December 31, 2002.

The new Procedures also introduce an opportunity for the Chairperson or a Panel to suggest to a judge that he or she seek counselling or take other remedial steps to deal with a problem identified by consideration of a complaint.

A Panel may conclude that no further action by the Council is warranted and direct that the file be closed, or recommend to the Council that an Inquiry Committee undertake a formal investigation.

Grounds for a recommendation for removal are set out in subsection 65(2) of the *Judges Act*. The Council's investigation would have to determine that the judge has become incapacitated or disabled from the due execution of the office of judge by reason of:

- (a) age or infirmity,
- (b) having been guilty of misconduct,
- (c) having failed in the due execution of that office, or
- (d) having been placed, by conduct or otherwise, in a position incompatible with the due execution of that office.

As part of its complaints review, the Council revised and expanded its existing policy on counsel retained in judicial conduct matters (Appendix F). The previous policy dealt only with the designation of counsel to assist the Chairperson or a Panel by

3 Throughout the remainder of this chapter "Chairperson" can include "Vice-Chairperson."

gathering further information on a complaint. In this respect, the policy states that counsel's role is to interview the judge and others familiar with the circumstances surrounding the complaint, and collect and analyse documentation. The task is not to weigh the merits of a complaint or make any recommendation on how to deal with it.

The policy also describes three other roles for legal counsel in the complaints process:

- *Independent Counsel for Inquiry Committees.* Acting in the public interest, independent counsel has “carriage of the complaint or allegation” and takes the initiative in marshalling and presenting the evidence before the Committee.
- *Internal Counsel to an Inquiry Committee.* Internal counsel acts on the instructions of the Committee in any way that may be helpful, such as providing research, assisting in the recording of deliberations and assisting in the preparation of drafts of rulings and the Committee's report.
- *Outside Counsel re Complaints Involving Council Members.* Before a complaint file involving a Council member may be closed, an outside counsel must review the file and the proposed disposition and provide an opinion on whether the proposed course of action is appropriate.

Files Considered in 2002-03

In 2002-03, 170 new files were opened and 173 files were closed. Over the preceding 10 years, the number of new files annually fluctuated within a range of about 125 to 200 and averaged 174.

Slightly more than half of the files closed arose in cases of family law, and for the first time since such statistics have been recorded, more than half — 54 percent — of these complainants had been unrepresented by legal counsel. This compared with 40 percent over all.

In 80 percent of files closed during the year, the complainant was a party to litigation.

All of the 173 files closed except four involved “on the bench” conduct — that is, the complaint related to a court case in which the judge was involved in one way or another.

When a file is closed without seeking comment or conducting further investigation, typically the complainant is seeking directly or indirectly to have the judge's decision altered or reversed. Complainants often ask for a new trial or hearing, for compensation as a result of an allegedly incorrect or “unlawful” decision, or for a judge to be removed from hearing a case. The Council has no power to deal with these requests. In 2002-03, 50 percent of files were closed on this basis.

When the nature of the proceeding giving rise to the complaint is not clear, when information is required from the judge in order to respond appropriately to the complaint, or when it appears that there may be substance to the allegations of inappropriate conduct, the judge and chief justice concerned will be asked for comment. When these comments are received, the Chairperson decides what, if any, further action is warranted. In 2002-03, comments were requested from the judge and chief justice in 50 percent of the files closed.

Of all files closed during the year, 56 percent were closed within 60 days of receipt, and 70 percent within 90 days. A longer delay is usually the result of awaiting production of transcripts, holding a file in abeyance until a case is concluded in the courts, or awaiting the report of a counsel who has conducted further inquiries.

Table 1
Caseload — Ten-year Overview

	New files opened	Carried over from previous year	Total caseload	Closed	Carried into new year
1993-94	164	31	195	156	39
1994-95	174	39	213	186	27
1995-96	200	27	227	180	47
1996-97	186	47	233	187	46
1997-98	202	46	248	195	53
1998-99	145	53	198	162	36
1999-2000	169	36	205	171	34
2000-01	150	34	184	155	29
2001-02	180	29	209	174	35
2002-03	170	35	205	173	32

Complaints that fall within the jurisdiction of the Council continue to represent a small fraction of the tens of thousands of decisions made each year by superior court judges across Canada. Moreover, complaint levels have remained relatively constant over a period when increasing numbers of self-represented litigants have appeared before judges, individuals have become more aware of their rights generally, and the opportunity to register complaints with the Council has become better known.

In the discussion which follows, names of judges are included in those few cases where the fact of the complaint was in the public domain and the Council issued a news release about its disposition. The Council will not make the fact of a complaint or its disposition public on its own initiative.

Files closed by Chairperson or Vice-Chairperson

The vast majority of files are closed by the Chairperson or one of the Vice-Chairpersons of the Judicial Conduct Committee without the necessity of referral to a Panel. As can be seen from Table 2, this was the case in 168 of the 173 files closed (or 97 percent) during the year.

Included in the 168 files closed by the Chairperson were seven involving Council members. Because these files require that the Chairperson managing them deal with allegations against a fellow Council member, Council procedures require that outside counsel review the proposed disposition before the file is closed. In all cases counsel agreed with the proposed disposition by the Chairperson.

Table 2
Files Closed in 2002-03

	Closed by Chairperson or Vice-Chairperson	Closed by Panel	Dealt with by full Council
After response from the judge	82	4	1
Without requesting response from the judge	86	—	
Total	168	4	1

Examples of files closed by the Chairperson follow.

Alleged bias

Bias on the basis of gender or race, or against the complainant or in some instances on a variety of counts was alleged in 16 files closed during the year under review. Six examples are presented here.

- A complainant represented in family law proceedings concerning custody and access alleged the judge was biased against him because he was dark skinned, Muslim and a man. He alleged the judge refused to let him take his daughter out of the country, assuming he would abduct her. He alleged that the judge had given him demeaning or sarcastic looks when he asked to swear the oath on the Koran, rather than the Bible.

The judge provided a copy of the transcript of the hearing and denied giving the complainant a demeaning or sarcastic look. The judge had granted the complainant leave to give oral evidence on the motion. Given the judge's conduct of the hearing, as revealed by the transcript, and the fact that he granted the complainant leave to give oral evidence, the complainant was advised that there was no basis to support an allegation of bias against him. The transcript did not support the allegation that the judge assumed the complainant would abduct his daughter.

- A complainant alleged that the judge's speech to a bar association revealed a social agenda and a gender bias in favour of women. He also said the speech showed a "pre-judgment" of many issues of family law and specifically revealed a pre-judgment before the appellate court of which the judge was a member.

The complainant was advised that the text of the speech did not support these allegations. The judge had presented a summary of the case law concerning a number of issues in family law as developed by the courts in Canada, and the Supreme Court of Canada in particular, and legislation that had been enacted to address some of

these issues. The case law discussed did indicate how the courts had dealt with four substantive areas of family law. The complainant was advised that these decisions may have given some indication of how the courts could approach other cases on the principle whereby a precedent or decision of a higher court is binding on lower courts. The complainant was advised that he had provided no basis for further action by the Council pursuant to its mandate under the *Judges Act*.

- The complainant represented himself in a tax appeal, alleging the judge was a racist and that he based his decision that the mother was the "eligible individual" for purposes of the child tax benefit on the fact that she was a Christian. He alleged the judge was biased on the basis of race, gender and religion.

The judge provided a transcript of the hearing and a copy of his reasons for judgment. He noted that the statutory regime lists the factors to be taken into account in determining what constitutes the care and upbringing of the qualified dependent, in this case the complainant's two children. In her cross-examination by Crown counsel, the mother raised the issue of the religious guidance she was giving to the children. The judge inquired as to the mother's religion. The complainant was advised that such a question was not inappropriate for the purposes of deciding the issues before the court. He was advised that there was no evidence to support the allegation that the judge made his decision on the basis of race, religion or gender or that he was biased against the complainant.

- The complainant disagreed with the judge's decision in a custody and access case which involved her fiancé, alleging the judge was "pro-mom." The complainant asked that the Council review the decision because they were unable to afford the appeal.

The complainant was advised that errors or alleged errors in judicial decisions alone do not amount to judicial misconduct or constitute a basis for bias, and they can be reviewed only by way of appeal. The complainant was informed that the Council's mandate does not change as a function of whether a decision is or can be appealed. The complainant was also informed that an adverse decision alone is not a sufficient basis for a finding of bias.

- The complainant had entered into an agreement with her former husband to have his rights to a judgment assigned to her. A writ of execution had been registered against the judgment debtor. She complained that the judge had refused to have her added as a judgment creditor when the assignment of judgment came up for renewal. She alleged the judge made his decision because her husband was a lawyer and was known to the judge; because he did not recognize child support payments as the obligation of the father; or because her lawyer was a “very young Aboriginal lawyer.”

The complainant was advised that a judicial decision is not reviewable by the Council to determine whether or not it is correct. An error on the part of the judge would not amount to judicial misconduct. She was advised that she had provided no evidence to support her allegations.

- The Chinese Canadian National Council (CCNC) alleged that Mr. Justice James MacPherson of the Ontario Court of Appeal made inappropriate comments to counsel during the course of argument on an appeal. The CCNC alleged that views expressed by the judge constituted stereotyping of a racial community and reflected his view that the community was inferior to other Canadians. The letter sought an apology from the judge.

The judge explained that he had not asserted any personal views and that his interventions were direct questions or comments inviting a response. The CCNC was advised that it was both unjusti-

fied and unfair to extrapolate from the judge's language that he was racist. It was understandable that litigants who have experienced an injustice would be dismayed to see their attempts to seek redress aggressively questioned by the judges who must ultimately rule on the matter, but that is a reality of appellate advocacy. The obligation of judges to avoid the dangers of stereotyping was emphasized but it was clear the judge understood this responsibility. There was no intention on the judge's part to offend or be insensitive to any individual or group. To the extent that had occurred, unintentionally, Mr. Justice MacPherson expressed his sincere regret. There was no basis for further action by the Council. The responses of the Council and Mr. Justice MacPherson were made public.

Alleged conflict of interest

In 11 complaints, the complainants alleged a conflict of interest on the part of the judge. Five examples follow.

- Complainants represented by counsel at the trial of their action against an oil company and others wondered whether the judge should have presided over their case because of his “prior involvement with [the oil] and environmental companies.” The trial transcript showed that the judge disclosed to the parties at the outset his prior relationship with the oil company and his belief he had acted “for or against various insured interests in environmental matters.” He had stated that he was satisfied that there was nothing he knew about the case that would cause a problem. The complainants' counsel, and counsel for the oil company, were content to have the judge preside over the trial.

The complainants were advised that the judge had disclosed his prior involvement with the oil company and stated his conclusion that he knew nothing of the case that would cause a problem with him presiding over the trial. The complainants were advised that there was no basis to

conclude that the judge had acted improperly or was in a conflict of interest. The complainants were further advised that the Council had no mandate to review the judge's decision. An error on the part of the judge, if any, would not amount to judicial misconduct.

- The complainant, convicted of tax shelter fraud, alleged that in dismissing his appeal the three judges of a Court of Appeal had "exceeded the limits of the law by splitting the appeal in the joint trial of two co-accused without taking into account the fact that the inter-relation of new evidence to be submitted to a new judge of fact, properly instructed, was likely to infringe the complainant's right to have a fair and impartial trial." The complainant "wondered about" a "potential" conflict of interest between one of the judges and "certain investors."

The complainant was informed of the Council's mandate and his right of appeal. He was told that any allegation of error could only be examined on appeal. It was noted that he had already applied for leave to appeal the Court of Appeal's decision to the Supreme Court of Canada, and that this was the proper forum in which to make his allegations. As regards his allegation of a "potential conflict of interest," the complainant was told that the evidence he had put forward in support of his argument was not such as to establish a connection of any kind between the judge and "certain investors." He was told that action by the Council in accordance with the *Judges Act* was not warranted.

- The complainant, a member of an advocacy group, filed a complaint on behalf of the father regarding a trial concerning custody and access, alleging that the judge was in a conflict of interest because he knew that the mother was being advised by his former law partner. The complainant also alleged that the judge had told his former partner of the outcome of the trial before the publication of his reasons. The complainant

also disagreed with the judge's actual decision, alleging among other things that he had erred in his assessment of the evidence.

The judge responded that during the 14-day trial each of the parties was unrepresented, the lawyer in question made no appearance in the courtroom and there was no information made available indicating that the mother was consulting or being advised by the lawyer. Information was sought directly from the lawyer in question who advised he did not prepare the mother for trial and did not assist her in any manner during the trial. Other than a chance meeting with her when he was present in the courthouse on unrelated matters, the lawyer advised he had no conversations or contact with the mother during the trial. They did not discuss the custody trial at that chance meeting, other than in a general way. The complainant was advised that the lawyer did not provide any advice or assistance to the mother during the trial and that the judge was not made aware of the allegation regarding the lawyer's involvement during the course of the trial. There was no evidence to support the allegation that the judge was in a conflict of interest because of his prior partnership with the lawyer. The judge denied communicating with the lawyer before his reasons for judgment were published and an affidavit was provided by the lawyer to support this statement. The complainant was advised that there was no evidence to support the allegations of misconduct.

- The complainant, whose application to have a judgment set aside was dismissed, alleged that the judge "made a judgment that is an insult to intelligence," and that there had been a denial of justice. The complainant further claimed that the judge was a relative of "the intimate friend of her former spouse's best friend." The complainant indicated that the case had been appealed and that "things had remained pending at the court of appeal." The judge was asked for comments.

The complainant was informed of the Council's mandate and of her right to lodge an appeal against the judgment she was contesting. She was told that the record of the appeal file indicated that, with regard to her appeal, there was a certificate of discontinuance and that a subsequent application to have the discontinuance lifted had been struck off. As to the allegation of conflict of interest, the complainant was advised that the judge had stressed that at no time did she receive a request for recusal or was she made aware of facts or of grounds that could have justified a recusal and that she was certain that she was neither a relative nor a close friend of either of the parties or of persons close to them. The complainant was informed that further intervention by the Council in accordance with the *Judges Act* was not justified.

- Two complainants complained about Madam Justice Southin of the British Columbia Court of Appeal in response to media reports that she smoked in her office and accepted changes to her chambers to accommodate a ventilation system. One complainant alleged that the judge's disregard for her own health and apparent lack of interest in setting an example for others were an affront to the reputation of the judiciary and the high standards of behaviour expected of judges. The judge should apologize and reimburse the government for the ventilation system, the complainant stated. The second complainant, Vancouver lawyer Dugald Christie, alleged that by her actions Madam Justice Southin had brought the administration of justice into disrepute. In a second letter, Mr. Christie argued that Madam Justice Southin's dissenting reasons in a decision in *Reilly v. Lynn* were an "effrontery" to the Supreme Court of Canada. He also argued that when cases were argued before her by the provincial government or its Crown corporations, she would be beholden to the Attorney General for providing the changes in her chambers.

The complaints were dealt with by a Vice-Chairperson of the Judicial Conduct Committee, who advised that the judge's smoking and the installation of a ventilation system in her chambers at the direction of the B.C. Attorney General, "do not fall within the ambit of judicial conduct reviewable under the *Judges Act*." B.C.'s Occupational Health and Safety Regulations place the onus on the Attorney General to control exposure to workplace smoke by prohibitions, restrictions or "other equally effective means." In this case, it was up to the Attorney General to decide how the province would comply with the regulation. The first complainant was advised that the Council had no jurisdiction or power to require reimbursement of the government or to ask the judge to apologize. Mr. Christie was advised that the Council had no jurisdiction to review whether a judicial decision was correct and that he had provided no evidence of bias or conflict of interest. Because Mr. Christie's complaint was in the public domain, the Council issued a news release setting out the disposition of the file.

Alleged delay in rendering judgment

In five files, complainants argued that they had been unjustly treated due to judges' delay in rendering decisions. Three examples follow.

- The complainant and her husband were represented in family law proceedings and a fraudulent conveyance action. She complained about the delay in obtaining a decision and the fact that, although the judge awarded her husband's ex-wife her costs in the fraudulent conveyance action, he failed to award her husband his costs in the application to vary support and arrears. The complainant stated that the couple's young children had suffered due to the delay in obtaining judgment.

The judge explained that there were delays in bringing the action to trial due to the complainant's requests for adjournment and her

request to try together both the fraudulent conveyance action and application to vary. While his decision was under reserve, the judge had waited for a decision of the court of appeal which would deal with some of the issues before him. When the decision was not rendered, and upon being contacted by counsel for the parties, he had delivered his reasons. The complainant was advised of the six-month guideline for delivering decisions taken under reserve unless there are special circumstances. In this case, the matter was complex, involving the trial of two matters together. In addition, it was not unreasonable for the judge to wait for the decision of the court of appeal. The delay in rendering a decision on costs and the amount of the arrears was a separate decision and the two-month period to deliver a decision on these issues was within the guideline. The complainant was advised that she had provided no evidence of bias in favour of the first wife. The husband had divided success in that he was successful on the application to vary, but unsuccessful on the fraudulent conveyance action. He was successful on the issue of the amount of arrears and unsuccessful on the issue of costs. This divided success did not support the allegation of bias.

- The complainant alleged that the judge had taken too long to render judgment: he said he would give his decision in the week following the hearing, despite the fact that her counsel had “emphasized that her state of health was serious.” She alleged she was forced to settle six weeks later, as she was too ill to continue the proceeding.

The judge was asked for his comments. The complainant was informed of the Council’s mandate. She was told that a six-week delay did not raise any ethical question where the judge said he needed time, on account of his workload, to reflect on the merits of the decision. The complainant was informed that the judge was very sorry if a six-week delay had caused difficulties to any of the parties in question and said he would

certainly have preferred to be able to render a decision on the day of the hearing, or within a short period of a few days. However, in the circumstances, it required more careful thought and six weeks after the hearing he was just about to review the matter so that he could render a judgment, when he was told that the parties had settled. The complainant was informed that a judge ordinarily has six months to render judgment and in the circumstances any further action by the Council in accordance with its mandate under the *Judges Act* was not warranted.

- A party in a family law matter complained that the judge’s decision had still not been released some 16 months after the trial.

The judge responded that the delay in rendering the decision was intolerable and the complaint was justified. He described personal difficulties he had faced due to serious health problems and said he had recently taken steps to try to ensure that he would be able to perform his judicial duties in an appropriate and timely manner. He recognized that it is unacceptable to unduly delay decisions. While there were difficult circumstances for the judge, in the interests of the proper administration of justice, the Chairperson wrote to the judge expressing disapproval of the judge’s conduct, and the complainant was advised accordingly.

Miscellaneous

Other examples of files closed by the Chairperson follow.

- A letter to reporter Kirk Makin of *The Globe and Mail* from the Honourable Clyde C. Wells, Chief Justice of Newfoundland and Labrador, was the subject of two complaints. In his letter, the chief justice took issue with the newspaper’s interpretation of a judgment of the court of appeal in which two judges had concurred with the decision of the third judge. The newspaper article suggested that a “unanimous appeal court” had challenged the Supreme Court of Canada by saying judicial

activism had gone too far. The Honourable John C. Crosbie alleged that the chief justice had interfered with the judicial independence of two judges of the court of appeal by writing to the newspaper to contradict its interpretation of their concurrence. He said the words of a judgment must speak for themselves and he submitted that the Council should affirm that the administrative responsibilities of a judge, no matter how broadly defined, do not permit him or her to interfere with the exercise of judicial functions by another judge. The other complainant alleged that the chief justice's intervention was political. Once rendered, a decision should stand on its own merits "unless reviewed in the proper forum." A letter was also received from the law society of the province, expressly not submitted as a complaint, in which the benchers had directed that their concerns about the chief justice's statements be directed to the Council.

The chief justice responded that a Council policy endorses a role for judges in correcting errors in public reports of judicial decisions. He had written to set the record straight about the decision because the journalist had misinterpreted the concurring judgments.

In a letter to the chief justice, the Chairperson concluded that his actions did not constitute judicial misconduct but there were several lessons to be drawn from the experience. The Chairperson noted that the chief justice, who had written to the newspaper with the consent of the two judges, intended only to point out that the judge who wrote about the Supreme Court of Canada had spoken only for himself. The chairperson stated that "a lesson for all of us in this matter is the abundant caution that must prevail when taking the initiative to correct perceived errors in relation to judgments."

Because the complaint received national media attention, a media release was issued.

- A party in family law proceedings provided a copy of the decision of the Court of Appeal allowing an appeal from the judge's trial decision on the basis that the judge's intervention, in the course of the presentation of the case on each side, was so extensive that it "crossed the line" and resulted in him losing jurisdiction to give a valid judgment.

The judge responded that his conduct was inappropriate and stated that he was "aware that trials must, absent exceptional circumstances, be allowed to follow the course charted by counsel. The problems evident in [this] trial in respect of my interventions will not be repeated." He stated "I very much regret that my interventions lead [sic] to a new trial and thus exposed both parties to additional expense and a further period of uncertainty with respect to spousal support." The Chairperson expressed disapproval of the conduct.

- Two complainants representing two groups of community organizations, one existing to promote the interests of and to defend the rights of persons receiving social assistance and the other concerned with social justice, independence, equality and fairness for women, jointly filed a complaint of misconduct against the judge in question for statements he made at a hearing in a family proceeding, which involved an application to adjourn, for reasons of health, a motion to vary relief measures. The complainants objected to the following remarks by the judge: "If I were a judge, I would not put a child in a home with two people living on welfare, who then have babies and someone will want to remove custody of a child. I am thinking of the welfare of the child living with a father who has his head together, who has values to pass on which are something other than just staying at home and collecting welfare benefits. However, I am not the judge of the merits — I could deal with this at some length." The complainants alleged that the judge's remarks were offensive and discriminatory

to persons receiving social assistance and that such remarks all too often conceal other prejudices: in particular, sexist prejudices regarding the parental ability of women on social assistance. They asked that an inquiry be held and the judge be reprimanded.

The judge was asked for his comments and outside counsel was asked to undertake further inquiries. The complainants were given a copy of the judge's reply. The judge admitted he had "expressed himself badly" and that he "deeply regretted" the remarks complained of. The judge stated that his remarks did not correspond to the principles by which he had always been guided, both in conducting trials and in his personal life, and were "in no way representative of his values." The complainants were told that the judge had undertaken to take courses in the coming year on social issues and judicial behaviour in the courtroom. The complainants were informed that in the view of the Chairperson, the statements complained of were inappropriate and regrettable. They were advised that the Chairperson had written to the judge expressing disapproval of the remarks. Because the fact of the complaint was in the public domain a media release was issued.

- A complaint was received against a judge for deciding to withdraw from a trial and against the members of a Council Panel for failing to anticipate the possible consequences of expressing disapproval of the judge while he was conducting the trial. The Chairperson found no evidence of any oblique or improper motive on the part of the judge in deciding to withdraw from the trial. This was a case of a judge exercising his discretion within the proper scope of his judicial role, albeit in a manner with which many might disagree, the Chairperson concluded. With respect to the Panel, the Council did not have jurisdiction to review the decision or its deliberation in concluding that no investigation under subsection 63(2) of the *Judges Act* was warranted.

- A notary complained of remarks by the judge which referred to the "state of impoverishment" in which the notary would find himself if he was not paid for copies of notarial deeds which one of the lawyers in a case involving one of his clients had asked him to file. The complainant objected to the lack of respect shown him. The judge was asked for his comments.

The complainant was informed that the judge, when he learned of the complaint, said that although he still could not say he approved the action by the notary, who tried to refuse to file the documents requested, relying on a right of retention for unpaid fees, it would still have been better for his disapproval to have been expressed in some other way, in a neutral, unemotional way and of course without sarcasm, as the complainant alleged. The complainant was informed that in the circumstances further action by the Council pursuant to its mandate under the *Judges Act* was not warranted.

Files considered by Panels

A Panel may be designated to deal with a particular file when the Chairperson responsible for it concludes that it is particularly sensitive and might benefit from review by more than a single Council member, or that an expression of disapproval or concern might be warranted, or in more serious cases, that there might be reason for a Panel to recommend to the Council that a formal investigation be undertaken under subsection 63(2) of the *Judges Act*. During the year, four files were considered and closed by Panels. Each Panel consisted of three members; in three of the four cases, a puisne judge was one of the Panel members. In two cases the Panel Chairperson wrote to the judge expressing disapproval of the conduct in question. Summaries of the four cases follow:

- Representatives of five Aboriginal groups lodged 10 specific complaints alleging derogatory comments about Aboriginal culture by Mr. Justice F. G. Barakett of the Superior Court of Quebec in a

custody case. The complaint was received shortly before the Quebec Court of Appeal was to hear the appeal of Mr. Justice Barakett's judgment. While a three-member Panel was reviewing Mr. Justice Barakett's statements and judgment and his response to the complaint, the Council received a further letter from Mr. Justice Barakett in which he indicated that he was prepared to offer a "public apology" for the hurt his comments had caused. He subsequently wrote a letter of apology for public release.

The Panel concluded that some of the judge's comments were insensitive and insulting to Aboriginal culture. The judge's observations implied an inherent inferiority in the Aboriginal community, references which were "incompatible with the equality rights guaranteed in the *Canadian Charter of Rights and Freedoms*." The Panel concluded that the judge was sincere in recognizing his errors and had made a full and unqualified acknowledgment of the impropriety of his comments. Mr. Justice Barakett had indicated that he would pursue seminars to improve his understanding of Aboriginal culture. The judge's associate chief justice, expressed confidence in Mr. Justice Barakett and his view that the judge was capable of continuing to serve the public in that role. The Panel noted that the comments complained of did not affect the outcome of the case. Some of the complaints raised legal matters for consideration on appeal and were not matters of conduct for the Council. The Panel decided that no investigation by an Inquiry Committee was warranted as the judge's conduct was not serious enough to warrant removal. The Panel closed the file with a letter expressing its disapproval of certain aspects of the conduct. Because of the publicity surrounding the release of the complainants' letter and their subsequent news conference, the Panel authorized public release of its letter to the judge.

The Court of Appeal dismissed the Aboriginal mother's appeal of Mr. Justice Barakett's judgment, and the Aboriginal groups then complained about the three judges who sat on the appeal, alleging they "sought to legitimize the highly questionable conduct of [the judge]" and in doing so had "engaged in an undeniable pattern of discriminatory and inappropriate conduct in reaching their conclusions." The complainants were advised that there was no evidence of misconduct by the appeal court judges.

- Quebec lawyer Gilles Doré complained about the attitude, conduct and behaviour toward himself of Mr. Justice Jean-Guy Boilard of the Quebec Superior Court, alleging that he was incapable of performing the role of judge. After receipt of a report of further inquiries from outside counsel, the file was referred to a Panel. The Panel decided not to recommend any investigation pursuant to subsection 63(2) of the *Judges Act*, but concluded that some of the judge's remarks about the lawyer were unjustified and unacceptable. Mr. Justice Boilard was advised of the Panel's concerns in a letter from the Chairperson of the Panel, and the Council's file was closed. The complainant was provided with a copy of the Panel's letter to the judge. Before he received the letter from the Council in July 2002, Mr. Justice Boilard was advised of its contents by a reporter, and he subsequently withdrew from the "Hell's Angels mega-trial" he was conducting. In accordance with its normal practice, the Council had not made public its disposition of the file. However, after the letter sent to the judge by the Panel was made public, the Council issued a press release in response to numerous media calls.
- The husband in divorce proceedings alleged that "the judge yelled very loudly and threatened to expel him from his seat beside his lawyer for whispering to her" and that the judge formed a negative opinion of his "character" early on and did a "character analysis" of him "which was

utmost scathing.” He alleged that the judge yelled at his lawyer for various reasons. He said that he had never witnessed nor experienced “such blatant, emotionally charged, use of negative labelling by someone in such an important position of authority.” He complained that the judge discounted his witnesses’ statements as irrelevant and went out of his way in his reasons to write that he was “a most discreditable person.” The complainant said that the situation “wasn’t just stressful” but that the judge “made it a nightmare.” He asked whether the judge’s “attitude and curt manner” in his case were to be “considered the norm.”

A three-member Panel informed the complainant of his right to appeal alleged errors of fact or of law, including findings of credibility. The judge advised that an assessment of credibility was required in order to decide the case, but that he did not go out of his way to make the findings he did, nor did he recall thinking that the complainant was discreditable as a person — simply that he did not believe him as a witness. The complainant was informed that whether the judge was right or wrong in his findings of credibility could be reviewed only by way of appeal. The judge’s overall impression was that “it seemed unfortunate that both parties were insistent on dragging many irrelevant issues into court, particularly, but not limited to, the party who was represented by counsel and that he had admonished the complainant to stop talking loudly to his counsel in a “stage whisper,” something the complainant had done on numerous occasions prior to being cautioned by the judge. A review of the transcript of the proceedings had shown that at the start of the trial the judge had, patiently and at length, explained matters of procedure and points of law, spending time identifying the issues and advising both parties on evidence to be called. The complainant was informed that the Panel concluded that the judge appeared to be fair in that both parties were admonished or thanked from time to time, despite their evident difficulty in identifying

relevant evidence and focussing on the issues. The complainant was advised that the judge acknowledged having shown some impatience at certain times during the trial. The Panel found that the judge made certain remarks during the trial proceedings which could be considered unfortunate. The judge indicated that he was sorry if the complainant was offended. The complainant was informed that no further intervention by the Council was warranted.

- The complainant alleged that the judge constantly fell asleep during his civil case, in which he was the plaintiff and which had taken seven years to get to trial. He felt that the case should be “reheard” and that the judge should be “cautioned” about sleeping in further trials.

The judge denied that he slept during the course of the trial. He took 117 pages of detailed notes, and was not aware of either sleeping or giving the impression of sleeping. The file was referred to a three-member Panel, which concluded there was little doubt the judge closed his eyes during the trial, and during another trial identified during the course of further inquiries. However, the information was in conflict on whether the judge was really asleep, or merely gave the impression of being asleep. Any further inquiries would require measures that, in the opinion of the Panel, would be not only intrusive and potentially disruptive, but unlikely to yield a definitive resolution of the factual dispute. The Panel preferred to deal with the matter in a more constructive and remedial way. The judge had become sensitized by the complaint and had undertaken to be more vigilant in the future. His senior judge had indicated he would monitor the situation for any further sign of a problem. The complainant was thanked for drawing the matter to the attention of the Council, as it is often only through such complaints that judges are made aware of such concerns. He was informed that the Court of Appeal was the appropriate avenue to determine whether a case should be reheard, and

that the Panel had noted the matter was scheduled to be heard by the appropriate appellate court.

Judges Act inquiries

The year 2002-03 was unique in that the Attorney General of Quebec asked the Council to establish two inquiries about judges of the Superior Court of Quebec. As outlined at the beginning of this chapter, the Council must undertake a formal inquiry into a judge's conduct when a provincial attorney general makes a request under subsection 63(1) of the *Judges Act*.

The Flynn Inquiry

- The Attorney General of Quebec asked the Council to establish an inquiry into comments attributed to Mr. Justice Bernard Flynn of the Superior Court of Quebec in the newspaper *Le Devoir* in February 2002. The judge was quoted defending the sale of municipal assets of L'île-Dorval. The Attorney General asked the Council to determine whether, by speaking out in the circumstances, the judge had become, pursuant to paragraph 65(2)(c) of the *Judges Act*, "incapacitated or disabled from the due execution of the office of judge by reason of having failed in the due execution of that office."

A three-person Inquiry Committee was established, chaired by the Honourable Joseph Z. Daigle, Chief Justice of New Brunswick, with the Honourable Alban Garon, Chief Judge of the Tax Court of Canada, and Paul Bédard of the Montreal law firm Gowling Lafleur Henderson. The Inquiry Committee held a hearing in Montreal on October 28, 2002. It heard submissions from L. Yves Fortier, the independent counsel, and Gérald Tremblay, counsel for Mr. Justice Flynn.

In its December 12, 2002, report to the Council, the Committee concluded Mr. Justice Flynn should not have spoken out about the proposed sale to local residents, who included his wife. The Committee said that "the duty to act in a reserved manner, as well as the image of impartiality and integrity which the judiciary must project, require that judges refrain from entering the arena of political controversy." The purchase of the L'île-Dorval property was unquestionably a subject of current political and legal debate. The judge knew that the then Minister of Municipal Affairs had publicly stated that the proposed purchase of public property would be rejected. Provincial legislation subsequently prohibited the disposal of any property having a value greater than \$10,000, without the prior authorization of the Minister. Similarly, judges should not deal with issues likely to come before their own courts. While expressing disapproval of Mr. Justice Flynn's "inappropriate and unacceptable" remarks, the Inquiry Committee did not find the judge incapable of fulfilling his judicial functions and did not recommend his removal from the bench under the terms of paragraph 65(2)(c) of the *Judges Act*.

The 31 members of the Council who considered the Inquiry Committee report agreed with its conclusion, and so reported to the Minister of Justice on March 23, 2003. The report of the Council to the Minister appears as Appendix I.

The Boilard Inquiry

- In October 2002, the Attorney General of Quebec requested an inquiry pursuant to subsection 63(1) of the *Judges Act* to consider whether Mr. Justice Jean-Guy Boilard's decision to recuse himself from the "mega" trial he was conducting in July 2002 constituted misconduct, or a failure in the due execution of office or meant that the judge has been placed, by his conduct or otherwise, in a position incompatible with the due

execution of his office. A three-person Inquiry Committee was established, chaired by the Honourable John D. Richard, Chief Justice of the Federal Court of Canada, with the Honourable J.J. Michel Robert, Chief Justice of Quebec and Michael H. Cain, Q.C. of the Chicoutimi law firm Cain Lamarre Casgrain Wells.

The Committee held hearings in Montreal on February 3 and February 19, 2003. At the end of the year under review the Committee was scheduled to continue its hearing.

By decision in February 2003, the Federal Court of Appeal dismissed the appeal. The Court concluded that there was no evidence of bias on the part of the Chairperson who closed the file. The Court also concluded that the decision of the Chairperson to close the file with an expression of disapproval was not patently unreasonable and should not be set aside.

Judicial Review

As reported in annual reports since that of 1999-2000, there has been judicial review of a decision made in a complaint file originally closed by the Judicial Conduct Committee Chairperson in December 1994 and re-closed by him in December 1998 with an expression of disapproval.

The complaint arose from the exclusion from the court of male persons who would not remove head coverings during the trial of a black accused. The complainant alleged that Mr. Justice A.C. Whealy of the then named Ontario Court of Justice (General Division) (now called the Superior Court of Justice) had discriminated against these persons on the basis of their religion because the head coverings in question were religious. After the file had been re-closed in 1998 with an expression of disapproval, one of the persons excluded from the courtroom, Mr. Michael Taylor, brought an application for judicial review in the Federal Court of Canada. The application was dismissed by the Federal Court Trial Division in November 2001.

Mr. Taylor appealed the decision to the Federal Court of Appeal. In a hearing in October 2002 Mr. Taylor's counsel asked the Court to set aside the decision to close the file on Mr. Justice Whealy and to return the matter to the Council for reconsideration.

Much of the Council's work takes place in standing and other committees and working groups, where Council members address issues related to the judiciary and the administration of justice, and exchange information on best practices.

The Way Forward endorsed the importance of the Council's past work on such issues as judicial ethics, the use of information technology in the administration of justice, the use of contempt powers, television in the courtrooms, and public outreach. Given adequate staffing and resources, the Council could and should do more, urged the Committee.

The Council, working primarily through its committees, could make valuable suggestions on "model policies" and "best" or "preferred" practices for courts to follow in particular areas, and provide general guidance to judges in respect of a broad range of issues relating to their judicial functions. Even if the Council were to limit itself only to issues relating to the administration of justice, there are a great many issues that the Council could address. These include, to name only a few, models of court governance in a parliamentary democracy; the use of technology in improving the efficiency of the courts; trial and pre-trial practices and procedures, including case management; court-managed ADR mechanisms and procedures; appellate procedures; court security; measures to ensure the timely delivery of reasons for judgments; practices regarding unrepresented litigants; measures to deal with the long-term disability of judges; the role of and support for supernumerary judges; support for chief justices; and the need for adequate funding for the courts. All of these are real and important issues affecting the Canadian judiciary and the manner in which it performs its functions.

Many of these issues are receiving little, if any, attention from governments, in some instances properly so, since they fall within the exclusive domain of the courts. And they do not appear to be of much if any interest to the law schools and other bodies conducting research into legal matters. If these issues are going to be dealt with, it will have to be the judiciary that deals with them. And the Council, assuming it is able to obtain the necessary resources, is well placed to play a lead role.

The Futures Committee argued that the most meaningful way for puisne judges and non-judges to contribute to the work of the Council would be through full membership on the Administration of Justice Committee, the Judicial Education Committee, the Judicial Independence Committee, the Public Information Committee and special and advisory committees. They should also be eligible to serve on all sub-committees created by standing, special and advisory committees. Non-judges should be eligible to serve as advisors on Council standing and special committees.

Delays in the Criminal Justice Process

Council committees have been concerned for some time about the length of time involved in taking charges through the criminal justice process, particularly pre-trial times and the growing length of trials and appeals. Processes in the United States, United Kingdom and other jurisdictions seem to proceed with less delay.

The issue was raised in discussion with the Minister of Justice at the Council's annual meeting in September 2002. Chief Justice McLachlin subsequently wrote the Minister suggesting that an appropriate body undertake a fundamental study of the causes of delays, which she described as "a matter of extreme concern implicating the integrity

of the justice system and public confidence in the administration of justice.”

Federal, provincial and territorial deputy ministers subsequently took up the issue, agreeing to give it priority and to involve judges in discussion of the problem and possible approaches to finding solutions. The matter was pursued at a meeting in March 2003 chaired by the federal Deputy Minister of Justice and attended by five members of the Council, five chief judges of provincial courts and a number of provincial deputy attorneys general. It was agreed that the issue has to be addressed at different levels, involving responsibilities for both the provincial and federal governments. Problems differ from jurisdiction to jurisdiction, although some — such as megatrials — are consistent across the country. Members of the Council accepted that much of the initiative for reform must come from the bench, and chief justices have a responsibility to ensure that reform is pursued.

Self-represented Litigants

Courts across Canada have taken many steps to help the growing number of litigants who represent themselves before the courts. Plain-language guides have been developed and posted on Web sites, educational programs introduced, and court staff have offered assistance — short of advice that only those with legal training are qualified to provide. Council members have exchanged information on these initiatives in the Trial Courts, Administration of Justice and other committees, surveyed practices across all jurisdictions and discussed the issue at one of its annual seminars.

In March 2003, the Administration of Justice Committee took a further step by establishing a sub-committee to assess the nature and extent of the challenges presented by self-represented litigants. The sub-committee was to compile experience, including pro-bono initiatives, with a view to developing a good-practices manual for member courts and generic materials for litigants.

Models of Court Administration

Under Canada’s federal system, the federal government appoints judges of superior courts and the provinces provide court facilities and support services. This executive model of court administration has been the subject of several Canadian reports and documents over the past quarter century. Some chief justices argue that changes are required in this structure to achieve a more responsive, accessible and affordable court system. The Council agreed in March 2003 to devote its 2004 Council members’ seminar to the subject of models of court administration and to establish a sub-committee to examine alternative models that might better serve the role of the judiciary as a separate branch of government and improve the quality and delivery of judicial services.

Technology and the Courts

New forms of technology have brought about significant changes in the functioning of Canada’s courts, and this trend will continue, observed *The Way Forward*.

Because such changes can have a dramatic impact on both the “efficiency” and the “quality of judicial service” in the superior courts of this country, the Council has an important role to play. In fact, in the Committee’s view, the Council has to take more of a leadership role in this area than it has taken to date.

The Futures Committee recommended that the Council encourage all members to become computer literate in order to permit Council communications to be conducted electronically. It recommended steps to improve the security of court information technology systems and encouraged judges to develop computer skills in their work.

In 2002-03, the Judges Technology Advisory Committee (JTAC), already seized of the issue of computer security in the courts, continued its work in this area. Computer monitoring guidelines

developed by JTAC, and approved by Council at its September 2002 annual meeting, advised judges how they can protect their computer networks against security threats without compromising their privacy and judicial independence. The Office of the Commissioner for Federal Judicial Affairs was working with the National Judicial Institute to place security considerations in training programs for judges, including a 1.5-hour computer security element in a travelling workshop. The two organizations produced “35 Tips on Computer Security” for judges.

At its September 2002 meeting, the Council also approved the *Canadian Guide to the Uniform Preparation of Judgments*, which revises the 1996 *Standards for the Preparation, Distribution and Citation of Canadian Judgments in Electronic Form* and integrates the 1999 *Neutral Citation Standard for Case Law*. The new document, like the standards which preceded it, is designed to disseminate best practices in the preparation of electronic versions of judgments and to simplify the publication and retrieval of case law. The voluntary standards apply to all judgments prepared on computers and are generally consistent with international standards used by governments, commercial publishers and large organizations. The standards have gained worldwide attention and use. In Canada, the Guide was being adopted in British Columbia and Alberta, Saskatchewan, New Brunswick, Nova Scotia. Other jurisdictions were dealing with the issues involved; and promising results were reported by the Supreme Court of Canada, Federal Court of Canada and Tax Court of Canada.

JTAC wrote legal publishers in Canada explaining the problem of hidden metadata (see Issue No. 33 below) and asking for their views on establishing a protocol to address and prevent this problem and for withdrawing judgments from databases when necessary.

Computer News for Judges

Two issues of JTAC’s newsletter *Computer News for Judges* were published in 2002-03. These issues, as well as those back to 1993-94, are accessible on the Council Web site at www.cjc-ccm.gc.ca.

Issue No. 32

The issue reported on the Council’s seminar on computer security (also described in the 2001-02 annual report) and offered a 10-point primer on the subject for individual judges. The issue summarized a paper prepared for the Council by Professor Michael Geist on computer surveillance and a paper on electronic filing and electronic access issues prepared by the B.C. Supreme Court. CNJ also took a look at developments in court Web sites across the country and some of the plans under way for further refinement of these sites.

Workplace monitoring

In his paper *Computer and E-Mail Workplace Surveillance in Canada: The Shift from Reasonable Expectation of Privacy to Reasonable Surveillance*, Professor Geist of the Faculty of Law, University of Ottawa, said computer and e-mail surveillance programs are quietly monitoring the network activity of millions of employees. These programs can generate customized reports disclosing how employees use their computers. However, emerging case law, statute and policy suggest that a balanced perspective is rapidly emerging in Canada between rights of interception and the right to privacy. The paper advised judges that they must consider how monitoring should be instituted in the Canadian judiciary. From international convention and Canadian jurisprudence, it can be concluded that computer and e-mail surveillance of the judiciary is lawful in only the narrowest of circumstances.

Access versus privacy

In their report *Electronic Filing, Access to Court Records and Privacy*, Chief Justice Donald I. Brenner of the Supreme Court of British Columbia and Ms. Judith Hoffman, Law Officer of the court, said courts should introduce electronic filing of court

records only when they have developed policies that balance fundamental considerations of accountability, privacy and right of access.

Electronic filing and electronic access to court records will greatly increase the efficiency of the courts and the administration of justice. But the new technology will also alter the current balance between the need for open courts and the right of individual citizens to maintain the privacy of personal information. These impacts must be fully considered and protections put in place before systems are implemented.

Current access rules assume that all court records are open to the public except in limited specified circumstances. In fact, the privacy of individuals involved in the court process has been protected by the difficulty, effort and cost of getting at the files.

Issue No. 33

The issue reported on the Council's decisions about computer security, published the computer monitoring guidelines, and discussed two specific security concerns from the point of view of the judiciary.

Metadata

An article explained that documents created by common word processing software such as Word and Word Perfect contain various types of more or less hidden information, called metadata — elements of text added by software to the visible text of a document. They may be as innocuous as formatting instructions. But they may also tell a story of the document's history, including former versions of the text, text fragments removed or added, and reviewers' comments. Because metadata may be readable by recipients, there is a serious risk of disclosing sensitive information when documents are distributed.

Risks with cordless and cellular phones

Judges were advised that even careful use of cordless and cellular phones can expose users to serious loss of privacy and interception of confidential information. Cordless phones and other signal-emitting

devices, such as wireless baby monitors, are mini-radios whose signals can be picked up by a number of devices, including other phones and scanners. Cellular phones send out radio signals to low-power transmitters "cells" whose signals can be picked up in turn by scanners. Moreover, a cell phone can be "cloned" with the use of an "ESN" reader. The article described a number of telephone best practices and ways to minimize risks of interception.

Reaching out to Communities

The Council created a Special Committee on Public Information in 1999 to develop and recommend a public information and education strategy, with a focus on media initiatives and outreach to schools and communities.

A national policy framework recommended by the committee and approved at the September 1999 Council meeting recognized a responsibility to support federally appointed judges across Canada in efforts to increase public and media understanding of the role of judges and the operation of the court system.

In the years since 1999 most jurisdictions set up communications or media relations committees, stepped up programs of student visits to courts and made dramatic progress in establishing and expanding court Web sites. *The Way Forward* underlined the continuing importance of judicial outreach in recommending that the Special Committee be made a standing committee of the Council.

Some examples of outreach activities in 2002-03 are listed here.

- With help from law students and guest lecturers, the judges of the Nunavut Court of Justice taught a five-credit high school course in law. The Nunavut court was also active in one of Canada's first off-campus legal programs at the Akitsiraq Law School. Inuit students enrolled as law students of the University of Victoria while residing

and attending classes in Iqaluit. Once a month, a panel of 6 to 12 high school students sat on selected Youth Court cases in which individuals had entered guilty pleas.

- Residents of Prince Edward Island responded enthusiastically to public sessions on the judicial system offered by justices of the Supreme Court. The scheduled three evenings were expanded to nine, and the program has since been made a continuing feature.
- The Nova Scotia courts leading-edge Web site introduced the *Virtual Classroom*, an on-line resource on the criminal justice system for students in Grades 11 and 12, first-year law students and the general public. From the Bench, another feature, offered articles by judges on frequently misunderstood areas of law. A liaison committee of the Nova Scotia courts and the provincial Department of Justice introduced meetings with historically disadvantaged groups with the goal of increasing judicial awareness and understanding of their communities.
- A two-day Summer Law Institute for Ontario high school teachers won praise as an outstanding professional development event. Sponsors had to double the capacity of their facilities to handle a bumper enrolment of 120. Ontario introduced curriculum-linked lesson plans for Grade 10 Civics classes to enhance its *Courtrooms & Classrooms* program, which brings many thousands of students into the courts each year to observe proceedings.
- Manitoba courts expanded their outreach program of court tours across the province, speeches to school and community groups and a Judge Shadowing Program in partnership with the University of Manitoba, Faculty of Law.
- Saskatchewan's Court Education Program targetted students enrolled in high school law classes but was also popular among Grade 7 and 8 classes through its fit with the social studies

curriculum for these grades. Students participated in workshops; guest speakers and court watching/touring and events were held for social science teachers and members of the media, including panel presentations and Q & A sessions; a workshop was held for journalism students at the University of Regina; and presentations were made at teacher in-services.

- Alberta introduced a publication ban notification system for media and adopted guidelines patterned on a B.C. model for applications to permit the televising of court proceedings. A pocket-size reference book on court structures, court procedures, legal principles and legal terminology was prepared for media, and a pilot project permitted reporters to verify their notes of proceedings in the main Calgary courtroom by tapping into a multibox designed for the purpose.
- In British Columbia, two Web sites were set up for the Air India Trial — one directed to the public, the other to family members. The Law Courts Education Society of BC launched the educational site, "On Trial — Air India Trial" (www.airindiatrial.ca), the first of its kind in Canada.

Jury Instructions

For many years the Council has supported the complex and time-consuming project of developing uniform, plain-language jury instructions in criminal cases. As far back as 1996-97, an Ontario trial project and a national symposium lent impetus to reform of criminal jury charges, and in 1999 a National Committee on Jury Instructions was formed under Council auspices.

By the end of 2002-03, English versions of preliminary, mid-trial and final model jury instructions had been prepared for the benefit of judges, with French versions in preparation. The Committee had commenced work on instructions concerning offences and defences. The Committee bases its work on

draft instructions prepared by an Ontario committee chaired by Mr. Justice David Watt of the Superior Court of Justice.

The purpose of the project is to deliver standardized, nationally accepted instructions, which are available to all trial judges across the country as well as to defence counsel, prosecutors and jurors.

Standardized instructions could reduce the extent to which disputes about the merits of particular jury charges form the basis of appeals.

Judicial Salaries and Benefits

Supernumerary Survey

The concept of supernumerary judges was introduced with changes to the *Judges Act* in 1971. A judge who would otherwise be eligible for retirement, and an annuity equal to 2/3 of salary, was permitted to continue to work on a part-time basis for full salary — in the words of the Act “hold himself available to perform such special judicial duties as may be assigned.” The initial changes provided for the election of supernumerary status at age 70 with 10 years of service and a maximum supernumerary term of five years. Two years later, election of supernumerary status was extended to judges of 65 years of age with a minimum of 15 years of service and a maximum supernumerary term of 10 years.

Both the Crawford and Scott commissions on judicial compensation and benefits supported supernumerary appointments, and both encouraged the Canadian Judicial Council to monitor the supernumerary program and document its contribution to managing court workloads. The government reiterated this suggestion in its December 2000 response to the Drouin Commission. The Canadian Judicial Council asked chief justices in March 2002 to carry out a comprehensive survey of supernumerary status in superior trial and appellate courts, assessing existing and anticipated complements, current and historical workloads, costs and benefits.

Essential findings

The survey established that at September 1, 2001, there were 205 supernumerary judges in superior trial and appeal courts, compared with 714 puisne judges. Sixteen years earlier, about one in 10 superior court judges was a supernumerary judge. The ratio increased over this period to slightly more than two in 10.

In the 10 years prior to the survey, more than four of five trial judges who elected supernumerary status did so as soon as they were eligible, compared with two of three appeal court judges.

While the *Judges Act* says only that supernumerary judges shall hold themselves available for “special judicial duties,” the practice for a number of years has been to give one third of their time, i.e., the difference between the salary and the pension. However, since the early 1990s, it has been the understanding that they would in fact work for 50 percent of the time of a regular judge.

Almost all trial courts reported that supernumeraries do carry at least half the workload of their full-time colleagues. In most appeal courts, supernumeraries also assume at least half as much work as puisne judges. In almost every court there is in fact work to occupy 50 percent of the time of supernumerary judges. In some courts, supernumerary judges routinely sit more than 50 percent of full-time colleagues or volunteer to do so to help out.

Table 3
Supernumerary Survey Findings

	Supernumerary judges			Puisne judges			Total	Supernumerary judges as % of total
	Trial	Appeal	Total	Trial	Appeal	Total		
Sept. 1/86	57	12	69	538	100	638	707	9.75
Sept. 1/91	113	27	140	600	105	705	845	16.56
Sept. 1/96	154	27	181	563	115	678	859	21.07
Sept. 1/2001	171	34	205	603	111	714	919	22.30

In all courts, supernumerary judges are expected to share support services.

Trial courts estimated they would require between 95 and 102 more full-time judges to replace the work done by their 171 supernumerary judges. The seven appeal courts in position to reply on this question estimated they would require between 10 and 13 new full-time judges to replace their 21 supernumerary judges.

Supernumerary judges were cited as cost-effective above all because they do one half or more of the work of a full-time judge for a net cost increase to the federal government of one third of a judge's pay. Further advantages are the flexibility they make available in managing caseloads, and a number of direct and indirect contributions in court performance. Their courts said supernumerary judges contribute much more than the incremental cost in continuity, maturity and mentoring to junior judges. They help avoid conflicts in case assignments. They are an important resource for controversial and sensitive cases and for pre-trial and settlement conferences.

Nominee to the Judicial Compensation and Benefits Commission

Under subsection 26.1(1) of the *Judges Act*, one of the three members of the Judicial Compensation and Benefits Commission (the "Quadrennial" Commission) is to be nominated by the judiciary. By agreement, the nomination is arrived at through consideration between the Canadian Judicial Council and the Canadian Superior Courts Judges Association. By letter to the Minister of Justice in December 2002, the Council Chairperson asked that the Governor in Council re-appoint Mr. Earl A. Cherniak, Q.C. as the nominee of the judiciary to the 2003 Quadrennial Commission, due to begin its work September 1, 2003.

APPENDIX A

MEMBERS OF THE CANADIAN JUDICIAL COUNCIL, 2002-03

The Right Honourable Beverley McLachlin, P.C.
Chief Justice of Canada
Chairperson

The Honourable Richard J. Scott
Chief Justice of Manitoba
First Vice-Chairperson

The Honourable Pierre A. Michaud
Chief Justice of Quebec
Second Vice-Chairperson
(to June 2002)

The Honourable John D. Richard
Chief Justice of the Federal Court of Canada
Second Vice-Chairperson
(from August 2002)

The Honourable Edward D. Bayda
Chief Justice of Saskatchewan

The Honourable Donald G.H. Bowman
Associate Chief Judge of the Tax Court of Canada

The Honourable Donald I. Brenner
Chief Justice of the Supreme Court of British
Columbia

The Honourable Beverley Browne
Senior Judge of the Nunavut Court of Justice

The Honourable J. Douglas Cunningham
Associate Chief Justice of the [Ontario] Court of
Justice
(from December 2002)

The Honourable Joseph Z. Daigle
Chief Justice of New Brunswick
(to March 2003)

The Honourable André Deslongchamps
Associate Chief Justice of the Superior Court of
Quebec

The Honourable J.S. Armand DesRoches
Chief Justice of the Trial Division of the Supreme
Court of Prince Edward Island

The Honourable Patrick D. Dohm
Associate Chief Justice of the Supreme Court
of British Columbia

The Honourable Ernest Drapeau
Chief Justice of New Brunswick
(from March 2003)

The Honourable Robert F. Ferguson
Associate Chief Justice of the Supreme Court
of Nova Scotia, Family Division

The Honourable Lance S.G. Finch
Chief Justice of British Columbia

The Honourable Catherine A. Fraser
Chief Justice of Alberta

The Honourable Alban Garon
Chief Judge of the Tax Court of Canada

The Honourable W. Frank Gerein
Chief Justice of the Court of Queen's Bench for
Saskatchewan

The Honourable Constance R. Glube
Chief Justice of Nova Scotia

The Honourable J. Derek Green
Chief Justice of the Trial Division of the Supreme
Court of Newfoundland and Labrador

Note: Except that the Chairperson and Vice-Chairpersons are listed first, members are listed here in alphabetical order.

The Honourable Benjamin Hewak
Chief Justice of the Court of Queen's Bench for
Manitoba

(to January 2003)

The Honourable Ralph E. Hudson
Senior Judge of the Supreme Court of the Yukon
Territory

The Honourable Joseph P. Kennedy
Chief Justice of the Supreme Court of Nova Scotia

The Honourable Lyse Lemieux
Chief Justice of the Superior Court of Quebec

The Honourable Patrick J. LeSage
Chief Justice of the [Ontario] Superior Court
of Justice

(to August 2002)

The Honourable Allan F. Lutfy
Associate Chief Justice of the Federal Court
of Canada

The Honourable J. Michael MacDonald
Associate Chief Justice of the Supreme Court
of Nova Scotia

The Honourable R. Roy McMurtry
Chief Justice of Ontario

The Honourable Gerald Mercier
Associate Chief Justice, Family Division of the Court
of Queen's Bench for Manitoba

The Honourable Gerard E. Mitchell
Chief Justice of Prince Edward Island

The Honourable Marc M. Monnin
Chief Justice of the Court of Queen's Bench for
Manitoba

(from March 2003)

The Honourable Dennis O'Connor
Associate Chief Justice of Ontario

The Honourable Jeffrey J. Oliphant
Associate Chief Justice of the Court of Queen's
Bench for Manitoba

The Honourable Robert Pidgeon
Senior Associate Chief Justice of the Superior Court
of Quebec

The Honourable J. Edward Richard
Senior Judge of the Supreme Court of the Northwest
Territories

The Honourable J.J. Michel Robert
Chief Justice of Quebec
(from June 2002)

The Honourable David D. Smith
Chief Justice of the Court of Queen's Bench of New
Brunswick

The Honourable Heather J. Smith
Associate Chief Justice of the [Ontario] Superior
Court of Justice

(to December 2002)

Chief Justice of the [Ontario] Superior Court
of Justice
(from December 2002)

The Honourable Barry L. Strayer
Chief Justice of the Court Martial Appeal Court
of Canada

The Honourable Allen B. Sulatycky
Associate Chief Justice of the Court of Queen's
Bench of Alberta

The Honourable Allan H.J. Wachowich
Chief Justice of the Court of Queen's Bench
of Alberta

The Honourable Clyde K. Wells
Chief Justice of Newfoundland and Labrador

APPENDIX B

COMMITTEE MEMBERS

EXECUTIVE COMMITTEE

Chief Justice Beverley McLachlin (*Chairperson*)
Chief Justice Edward D. Bayda
Chief Justice Donald I. Brenner
Chief Justice Constance R. Glube
Chief Justice R. Roy McMurtry
Senior Associate Chief Justice Robert Pidgeon
Chief Justice John D. Richard
Chief Justice Richard J. Scott
Chief Justice Allan H.J. Wachowich
Chief Justice Clyde K. Wells

STANDING COMMITTEES

Administration of Justice Committee

Chief Justice Clyde K. Wells (*Chairperson*)
Chief Justice Edward D. Bayda
Associate Chief Judge Donald G.H. Bowman
Chief Justice Donald I. Brenner
Associate Chief Justice André Deslongchamps
Associate Chief Justice Robert F. Ferguson
Chief Justice Gerard E. Mitchell
Associate Chief Justice Dennis O'Connor
Chief Justice Barry L. Strayer

Judicial Conduct Committee

Chief Justice Richard J. Scott (*Chairperson*)
Chief Justice Constance R. Glube (*Vice-Chairperson*)
Senior Associate Chief Justice Robert Pidgeon
(*Vice-Chairperson*)
Chief Justice John D. Richard (*Vice-Chairperson*)

Judicial Education Committee

Chief Justice Constance R. Glube (*Chairperson*)
Madam Justice Beverley Browne
Chief Justice J.S. Armand DesRoches
Associate Chief Justice Patrick D. Dohm
Chief Justice W. Frank Gerein
Chief Justice Lyse Lemieux
Associate Chief Justice Allan F. Lutfy
Associate Chief Justice Gerald Mercier
Chief Justice Heather J. Smith
Mr. George Thomson (*ex officio*)

Judicial Independence Committee

Chief Justice R. Roy McMurtry (*Chairperson*)
Chief Justice Lance S.G. Finch
Chief Judge Alban Garon
Chief Justice J. Derek Green
Mr. Justice J. Edward Richard
Chief Justice David D. Smith

Judicial Salaries and Benefits Committee

Associate Chief Justice Allen B. Sulatycky
(*Chairperson*)
Chief Judge Alban Garon
Mr. Justice Ralph E. Hudson
Associate Chief Justice J. Michael MacDonald
Chief Justice J.J. Michel Robert
Chief Justice Barry L. Strayer

Notes:

1. These lists show Committee membership as at March 31, 2003.
2. Committee membership is generally established at the Council's annual meeting, held in the autumn.
3. All members of the Council, except the Council Chairperson, are members of either the Appeal Courts Committee or the Trial Courts Committee.

Public Information Committee

Associate Chief Justice Jeffrey J. Oliphant
(*Chairperson*)
Chief Justice Edward D. Bayda
Chief Justice Lance S.G. Finch
Chief Justice Catherine A. Fraser
Chief Justice J. Derek Green
Chief Justice Joseph P. Kennedy
Chief Justice R. Roy McMurtry
Senior Associate Chief Justice Robert Pidgeon
Chief Justice David D. Smith

Appeal Courts Committee

Chief Justice Richard J. Scott (*Chairperson*)
Chief Justice Edward D. Bayda
Chief Justice Ernest Drapeau
Chief Justice Lance S.G. Finch
Chief Justice Catherine A. Fraser
Chief Justice Constance R. Glube
Chief Justice R. Roy McMurtry
Chief Justice Gerard E. Mitchell
Associate Chief Justice Dennis O'Connor
Chief Justice John D. Richard
Chief Justice J.J. Michel Robert
Chief Justice Barry L. Strayer
Chief Justice Clyde K. Wells

Trial Courts Committee

Chief Justice Allan H.J. Wachowich (*Chairperson*)
Associate Chief Judge Donald G.H. Bowman
Madam Justice Beverley Browne
Associate Chief Justice J. Douglas Cunningham
Associate Chief Justice André Deslongchamps
Chief Justice J.S. Armand DesRoches
Associate Chief Justice Patrick D. Dohm
Associate Chief Justice Robert F. Ferguson
Chief Judge Alban Garon
Chief Justice W. Frank Gerein
Chief Justice J. Derek Green
Mr. Justice Ralph E. Hudson
Chief Justice Joseph P. Kennedy
Chief Justice Lyse Lemieux
Associate Chief Justice Allan F. Lutfy

Associate Chief Justice J. Michael MacDonald
Associate Chief Justice Gerald Mercier
Chief Justice Marc M. Monnin
Associate Chief Justice Jeffrey J. Oliphant
Senior Associate Chief Justice Robert Pidgeon
Mr. Justice J. Edward Richard
Chief Justice David D. Smith
Chief Justice Heather J. Smith
Associate Chief Justice Allen B. Sulatycky

Nominating Committee

Chief Justice Catherine A. Fraser (*Chairperson*)
Associate Chief Justice Patrick D. Dohm
Chief Justice Lyse Lemieux

ADVISORY COMMITTEES**Judges Technology Advisory Committee**

Madam Justice Adelle Fruman (Alberta) (*Chairperson*)
Mr. Justice Michel Bastarache (Supreme Court of Canada)
Chief Justice Donald Brenner (British Columbia)
Madam Justice Nicole Duval-Hesler (Quebec)
Mr. Justice David MacAdam (Nova Scotia)
Madam Justice Ellen Gunn (Saskatchewan)
Mr. Justice Garrett Handrigan (Newfoundland and Labrador)
Madam Justice Fran Kiteley (Ontario)
Madam Justice Laurie Allen (Manitoba)
Mr. Justice Denis Pelletier (Federal Court of Canada)
Mr. Justice Thomas Riordon (New Brunswick)
Madam Justice Linda Webber (Prince Edward Island)
Advisors:
Dr. Martin Felsky
Ms. Jennifer Jordan
Professor Daniel Poulin

Study Leave Advisory Committee

Chief Justice Edward D. Bayda (*Chairperson*)
Dean Patricia Hughes
Dean Louis Perret
Chief Justice Heather J. Smith
Mr. George Thomson

APPENDIX C

PART II OF THE *JUDGES ACT*

Following is the text of Part II of the *Judges Act*, which governs the Canadian Judicial Council. It is taken from the 2001 Office Consolidation of the Act.

PART II CANADIAN JUDICIAL COUNCIL

Interpretation

Definition of “Minister”

58. In this Part, “Minister” means the Minister of Justice of Canada.

Constitution of the Council

Council established

59. (1) There is hereby established a Council, to be known as the Canadian Judicial Council, consisting of

- (a) the Chief Justice of Canada, who shall be the chairman of the Council;
 - (b) the chief justice and any senior associate chief justice and associate chief justice of each superior court or branch or division thereof;
 - (c) the senior judges, as defined in subsection 22(3), of the Supreme Court of the Yukon Territory, the Supreme Court of the Northwest Territories and the Nunavut Court of Justice;
 - (d) the Chief Justice of the Court Martial Appeal Court of Canada; and
 - (e) the Chief Judge and Associate Chief Judge of the Tax Court of Canada.
- (2) and (3) [Repealed, 1999, c. 3, s. 77].

Substitute member

(4) Each member of the Council may appoint a judge of that member’s court to be a substitute member of the Council and the substitute member shall act as a member of the Council during any period in which he is appointed to act, but the Chief Justice of Canada may, in lieu of appointing a member of the Supreme Court of Canada, appoint any former member of that Court to be a substitute member of the Council.

R.S., 1985, c. J-1, s. 59; 1992, c. 51, s. 25; 1996, c. 30, s. 6; 1999, c. 3, s. 77.

Objects of Council

60. (1) The objects of the Council are to promote efficiency and uniformity, and to improve the quality of judicial service, in superior courts and in the Tax Court of Canada.

Powers of Council

- (2) In furtherance of its objects, the Council may
- (a) establish conferences of chief justices, associate chief justices, chief judges and associate chief judges;
 - (b) establish seminars for the continuing education of judges;
 - (c) make the inquiries and the investigation of complaints or allegations described in section 63; and
 - (d) make the inquiries described in section 69.

R.S., 1985, c. J-1, s. 60; 1992, c. 51, s. 26.

Meetings of Council

61. (1) The Council shall meet at least once a year.

Work of Council

(2) Subject to this Act, the work of the Council shall be carried on in such manner as the Council may direct.

By-laws

(3) The Council may make by-laws

(a) respecting the calling of meetings of the Council;

(b) respecting the conduct of business at meetings of the Council, including the fixing of quorums for such meetings, the establishment of committees of the Council and the delegation of duties to any such committees; and

(c) respecting the conduct of inquiries and investigations described in section 63.

R.S., c. J-1, s. 30; R.S., c. 16 (2nd Supp.), s. 10; 1976-77, c. 25, s. 15.

Employment of counsel and assistants

62. The Council may engage the services of such persons as it deems necessary for carrying out its objects and duties, and also the services of counsel to aid and assist the Council in the conduct of any inquiry or investigation described in section 63.

R.S., c. 16 (2nd Supp.), s. 10; 1976-77, c. 25, ss. 15, 16; 1980-81-82-83, c. 157, s. 16.

Inquiries concerning Judges**Inquiries**

63. (1) The Council shall, at the request of the Minister or the attorney general of a province, commence an inquiry as to whether a judge of a superior court or of the Tax Court of Canada should be removed from office for any of the reasons set out in paragraphs 65(2)(a) to (d).

Investigations

(2) The Council may investigate any complaint or allegation made in respect of a judge of a superior court or of the Tax Court of Canada.

Inquiry Committee

(3) The Council may, for the purpose of conducting an inquiry or investigation under this section, designate one or more of its members who, together with such members, if any, of the bar of a province, having at least ten years standing, as may be designated by the Minister, shall constitute an Inquiry Committee.

Powers of Council or Inquiry Committee

(4) The Council or an Inquiry Committee in making an inquiry or investigation under this section shall be deemed to be a superior court and shall have

(a) power to summon before it any person or witness and to require him to give evidence on oath, orally or in writing or on solemn affirmation if the person or witness is entitled to affirm in civil matters, and to produce such documents and evidence as it deems requisite to the full investigation of the matter into which it is inquiring; and

(b) the same power to enforce the attendance of any person or witness and to compel the person or witness to give evidence as is vested in any superior court of the province in which the inquiry or investigation is being conducted.

Prohibition of information relating to inquiry, etc.

(5) The Council may prohibit the publication of any information or documents placed before it in connection with, or arising out of, an inquiry or investigation under this section when it is of the opinion that the publication is not in the public interest.

Inquiries may be public or private

(6) An inquiry or investigation under this section may be held in public or in private, unless the Minister requires that it be held in public.

R.S., 1985, c. J-1, s. 63; 1992, c. 51, s. 27.

Notice of hearing

64. A judge in respect of whom an inquiry or investigation under section 63 is to be made shall be given reasonable notice of the subject-matter of the inquiry or investigation and of the time and place of any hearing thereof and shall be afforded an opportunity, in person or by counsel, of being heard at the hearing, of cross-examining witnesses and of adducing evidence on his own behalf.

R.S., c. J-1, s. 31; R.S., c. 16 (2nd Supp.), s. 10; 1976-77, c. 25, s. 15.

Report and Recommendations*Report of Council*

65. (1) After an inquiry or investigation under section 63 has been completed, the Council shall report its conclusions and submit the record of the inquiry or investigation to the Minister.

Recommendation to Minister

(2) Where, in the opinion of the Council, the judge in respect of whom an inquiry or investigation has been made has become incapacitated or disabled from the due execution of the office of judge by reason of

- (a) age or infirmity,
- (b) having been guilty of misconduct,
- (c) having failed in the due execution of that office, or
- (d) having been placed, by his conduct or otherwise, in a position incompatible with the due execution of that office,

the Council, in its report to the Minister under subsection (1), may recommend that the judge be removed from office.

R.S., 1985, c. J-1, s. 65; R.S., 1985, c. 27 (2nd Supp.), s. 5.

Effect of Inquiry

66. (1) [Repealed, R.S., 1985, c. 27 (2nd Supp.), s. 6]

Leave of absence with salary

(2) The Governor in Council may grant leave of absence to any judge found, pursuant to subsection 65(2), to be incapacitated or disabled, for such period as the Governor in Council, in view of all the circumstances of the case, may consider just or appropriate, and if leave of absence is granted the salary of the judge shall continue to be paid during the period of leave of absence so granted.

Annuity to judge who resigns

(3) The Governor in Council may grant to any judge found to be incapacitated or disabled, if the judge resigns, the annuity that the Governor in Council might have granted the judge if the judge had resigned at the time when the finding was made by the Governor in Council.

R.S., 1985, c. J-1, s. 66; R.S., 1985, c. 27 (2nd Supp.), s. 6.

67. [Repealed, R.S., 1985, c. 16 (3rd Supp.), s. 5]

68. [Repealed, R.S., 1985, c. 16 (3rd Supp.), s. 6]

Inquiries concerning Other Persons*Further inquiries*

69. (1) The Council shall, at the request of the Minister, commence an inquiry to establish whether a person appointed pursuant to an enactment of Parliament to hold office during good behaviour other than

(a) a judge of a superior court or of the Tax Court of Canada, or

(b) a person to whom section 48 of the *Parliament of Canada Act* applies,

should be removed from office for any of the reasons set out in paragraphs 65(2)(a) to (d).

Applicable provisions

(2) Subsections 63(3) to (6), sections 64 and 65 and subsection 66(2) apply, with such modifications as the circumstances require, to inquiries under this section.

Removal from office

(3) The Governor in Council may, on the recommendation of the Minister, after receipt of a report described in subsection 65(1) in relation to an inquiry under this section in connection with a person who may be removed from office by the Governor in Council other than on an address of the Senate or House of Commons or on a joint address of the Senate and House of Commons, by order, remove the person from office.

R.S., 1985, c. J-1, s. 69; 1992, c. 1, s. 144(F), c. 51, s. 28; 1993, c. 34, s. 89.

Report to Parliament*Orders and reports to be laid before Parliament*

70. Any order of the Governor in Council made pursuant to subsection 69(3) and all reports and evidence relating thereto shall be laid before Parliament within fifteen days after that order is made or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that either House of Parliament is sitting.

1974-75-76, c. 48, s. 18; 1976-77, c. 25, s. 15.

Removal by Parliament or Governor in Council*Powers, rights or duties not affected*

71. Nothing in, or done or omitted to be done under the authority of, any of sections 63 to 70 affects any power, right or duty of the House of Commons, the Senate or the Governor in Council in relation to the removal from office of a judge or any other person in relation to whom an inquiry may be conducted under any of those sections.

1974-75-76, c. 48, s. 18; 1976-77, c. 25, s. 15.

APPENDIX D

CANADIAN JUDICIAL COUNCIL INQUIRIES AND INVESTIGATIONS BY-LAWS

Interpretation

1. The definitions in this section apply in these By-laws.

“Act” means the *Judges Act*. (*Loi*)

“Judicial Conduct Committee” means the committee of the Council established by the Council and named as such. (*comité sur la conduite des juges*)

Constituting an Inquiry Committee

2. (1) An Inquiry Committee constituted under subsection 63(3) of the Act shall consist of an uneven number of members, the majority of whom shall be members of the Council designated by the Chairperson or Vice-Chairperson of the Judicial Conduct Committee.

(2) The Chairperson or Vice-Chairperson of the Judicial Conduct Committee shall choose one of the members of the Inquiry Committee to be the chairperson of the Inquiry Committee.

(3) A person is not eligible to be a member of the Inquiry Committee if

(a) they are a member of the court of which the judge who is the subject of the inquiry or investigation is a member; or

(b) they participated in the deliberations, if any, of the Council in respect of the necessity for constituting the Inquiry Committee.

Independent Counsel

3. (1) The Chairperson or Vice-Chairperson of the Judicial Conduct Committee shall appoint an independent counsel, who shall be a member of the bar

of a province having at least 10 years standing and who is recognized within the legal community for their ability and experience.

(2) The independent counsel shall present the case to the Inquiry Committee, including making submissions on questions of procedure or applicable law that are raised during the proceedings.

(3) The independent counsel shall perform their duties impartially and in accordance with the public interest.

Counsel to the Inquiry Committee

4. The Inquiry Committee may engage legal counsel to provide advice and other assistance to it.

Inquiry Committee Proceedings

5. (1) The Inquiry Committee may consider any relevant complaint or allegation pertaining to the judge that is brought to its attention.

(2) The independent counsel shall give the judge sufficient notice of all complaints or allegations that are being considered by the Inquiry Committee to enable the judge to respond fully to them.

6. (1) Any hearing of the Inquiry Committee shall be conducted in public unless, subject to subsection 63(6) of the Act, the Inquiry Committee determines that the public interest and the due administration of justice require that all or any part of a hearing be conducted in private.

(2) The Inquiry Committee may prohibit the publication of any information or documents placed before it if it determines that publication is not in the public interest.

7. The Inquiry Committee shall conduct its inquiry or investigation in accordance with the principle of fairness.

Inquiry Committee Report

8. (1) The Inquiry Committee shall submit a report to the Council setting out its findings and its conclusions in respect of whether or not a recommendation should be made for the removal of the judge from office.

(2) After the report has been submitted to the Council, the Executive Director of the Council shall provide a copy to the judge, to the independent counsel and to any other persons or bodies who had standing in the hearing.

(3) If the hearing was conducted in public, the report shall be made available to the public.

Judge's Response to the Inquiry Committee Report

9. (1) Within 30 days after receipt of the report of the Inquiry Committee, the judge may

(a) make a written submission to the Council regarding the report; and

(b) notify the Council that he or she wishes to appear in person before the Council, with or without counsel, for the purpose of making a brief oral statement regarding the report.

(2) If the judge is unable, for any reason beyond the judge's control, to meet the time limit set out in subsection (1), the judge may request an extension of time from the Council.

(3) The Council shall grant an extension if it considers that the request is justified.

10. (1) If the judge makes a written submission regarding the inquiry report, the Executive Director of the Council shall provide a copy to the independent counsel. The independent counsel

may, within 15 days after receipt of the copy, submit to the Council a written response to the judge's submission.

(2) If the judge makes an oral statement to the Council, the independent counsel shall also be present and may be invited by the Council to make an oral statement in response.

(3) The judge's oral statement shall be given in public unless the Council determines that it is not in the public interest to do so.

Consideration of the Inquiry Committee Report by the Council

11. (1) The Council shall consider the report of the Inquiry Committee and any written submission or oral statement made by the judge or independent counsel.

(2) Persons referred to in paragraph 2(3)(b) and members of the Inquiry Committee shall not participate in the Council's consideration of the report or in any subsequent related deliberations of the Council.

12. If the Council is of the opinion that the report of the Inquiry Committee is unclear or incomplete and that clarification or supplementary inquiry or investigation is necessary, it may refer all or part of the matter in question back to the Inquiry Committee with specific directions.

Report of Council

13. The Executive Director of the Council shall provide the judge with a copy of the report of its conclusions presented by the Council to the Minister.

Coming into Force

14. These by-laws come into force on January 1, 2003.

APPENDIX E

PROCEDURES FOR DEALING WITH COMPLAINTS MADE TO THE CANADIAN JUDICIAL COUNCIL ABOUT FEDERALLY APPOINTED JUDGES

1. Definitions

In these Procedures,

“Act” means the *Judges Act*;

“complaint” means a complaint or allegation;

“chief justice” is a Council member who is a Chief Justice, Chief Judge or Senior Judge;

“Council” means the Canadian Judicial Council established pursuant to section 59 of the Act;

“Counsel” means a lawyer who is not an employee of the Council;

“Inquiry Committee” means a Committee constituted under subsection 63(3) of the Act.

2. Receipt of Complaint/Opening of File

- 2.1 The Executive Director is responsible for the administration of the Council secretariat and accordingly shall act in a support capacity under the direction of the Chairperson of the Judicial Conduct Committee as defined in section 3.3 in all matters relating to the complaints function of the Council.
- 2.2 The Executive Director shall open a file when a complaint about a named, federally appointed judge made in writing is received in the Council office from any source, including from a member of the Council who is of the view that the conduct of a judge may require the attention of the Council. The Executive Director shall not open a file for complaints which, although naming one or more federally appointed judges, are clearly irrational or an obvious abuse of the complaints process.
- 2.3 A complaint received from an anonymous source shall be treated to the greatest extent

possible in the same manner as any other complaint.

3. Review by the Chairperson/Vice-Chairpersons of the Judicial Conduct Committee

- 3.1 Neither the Chairperson of the Council nor any member of the Council who is a judge of the Federal Court of Canada, shall participate in the Council’s consideration of any complaint, unless the Chairperson of the Council considers that the public interest and the due administration of justice require it.
- 3.2 The Executive Director shall refer a file to either the Chairperson or a Vice-Chairperson of the Judicial Conduct Committee in accordance with the directions of the Chairperson of the Committee. The Chairperson or a Vice-Chairperson shall not deal with a file involving a judge of his or her court.
- 3.3 Throughout the remainder of these procedures “Chairperson” refers to either the Chairperson or one of the Vice-Chairpersons of the Judicial Conduct Committee established by the Council.
- 3.4 After a file has been opened, and upon receipt of a letter from the complainant asking for the withdrawal of his or her complaint, the Chairperson may:
 - (a) close the file and categorize it as “withdrawn”; or
 - (b) proceed with consideration of the complaint on the basis that the public interest and the due administration of justice require it.

- 3.5 The Chairperson shall review the file and may
- (a) close the file if he or she is of the view that the complaint is
 - (i) trivial, vexatious, made for an improper purpose, manifestly without substance, or does not warrant further consideration, or
 - (ii) outside of the jurisdiction of the Council because it does not involve conduct; or
 - (b) seek additional information from the complainant; or
 - (c) seek the judge's comments and those of his or her chief justice.
- 3.6 When the Chairperson has closed a file under this section, the Executive Director shall provide to the judge and to his or her chief justice a copy of the complaint and of the letter advising the complainant that the file has been closed.
- 4. Request for Comments from Judge/Chief Justice**
- 4.1 Where the Chairperson has decided to seek comments from the judge, the Executive Director shall write to the judge and his or her chief justice requesting comments.
- 5. Consideration of Response of the Judge**
- 5.1 The Chairperson shall review the response from the judge and the judge's chief justice, as well as any other relevant material received in response to the complaint, and may
- (a) close the file where:
 - (i) the Chairperson concludes that the complaint is without merit or does not warrant further consideration, or
 - (ii) the judge acknowledges that his or her conduct was inappropriate and the Chairperson is of the view that no further measures need to be taken in relation to the complaint; or
 - (b) hold the file in abeyance pending pursuit of remedial measures pursuant to section 5.3; or
 - (c) ask Counsel to make further inquiries and prepare a report, if the Chairperson is of the view that such a report would assist in considering the complaint; or
 - (d) refer the file to a Panel.
- 5.2 When closing the file pursuant to subparagraph 5.1(a)(ii), the Chairperson may, in writing, provide the judge with an assessment of his or her conduct and express any concerns he or she may have about it.
- 5.3 In consultation with the judge's chief justice and with the consent of the judge, the Chairperson may
- (a) recommend that any problems identified as a result of the complaint be addressed by way of counselling or other remedial measures, and
 - (b) close the file if satisfied that the matter has been appropriately addressed.
- 5.4 When the Chairperson closes a file, the Executive Director shall provide to the judge and to his or her chief justice a copy of the letter informing the complainant that the file has been closed.
- 6. Complaints involving a Council Member**
- 6.1 When the Chairperson proposes to close a file that involves a member of the Council, he or she shall refer the complaint and the proposed reply to Counsel who shall provide his or her views on the proposed disposition of the complaint.
- 7. Further Inquiries by Counsel**
- 7.1 If the Chairperson asks Counsel to make further inquiries under paragraph 5.1(c), the Executive Director shall so inform the judge and his or her chief justice.

- 7.2 Counsel shall provide to the judge sufficient information about the allegations and the material evidence to permit the judge to make a full response and any such response shall be included in the Counsel's report.
- 8. Consideration of Counsel's Report**
- 8.1 The Chairperson shall review the Counsel's report and may
- (a) close the file on any grounds specified in paragraph 5.1(a); or
- (b) hold the file in abeyance pending pursuit of remedial measures under section 5.3; or
- (c) refer the file to a Panel.
- 8.2 When the Chairperson closes a file, the Executive Director shall provide to the judge and his or her chief justice a copy of the letter informing the complainant that the file has been closed.
- 9. Consideration by a Panel**
- 9.1 A Panel
- (a) shall consist of three or five members, including a Chairperson of the Panel, appointed and designated by the Chairperson;
- (b) may include one or two puisne judges chosen from among a roster of judges established for this purpose, provided that the Chairperson and a majority of a Panel shall be members of the Council;
- (c) shall not include any judges who are members of the court of which the judge who is the subject of the complaint is a member.
- 9.2 In referring a file to a Panel for consideration, the Chairperson may provide the Panel with such assistance as, in his or her opinion, could help to expedite the Panel's consideration of the file.
- 9.3 The Executive Director shall write to the judge and his or her chief justice, informing them of the constitution of the Panel.
- 9.4 If a file is referred to a Panel, the judge shall be provided with any information to be considered by the Panel that he or she may not have previously received and shall be given a reasonable opportunity to respond in writing.
- 9.5 After referring a file to a Panel, the Chairperson shall not participate in any further consideration of the merits of the complaint by the Council.
- 9.6 The Panel shall review the file, including Counsel's report if any, and may
- (a) direct that further inquiries be made by Counsel in accordance with the provisions of section 7; or
- (b) close the file if it decides that no Inquiry Committee should be constituted under subsection 63(3) of the Act because the matter is not serious enough to warrant removal; or
- (c) hold the file in abeyance pending pursuit of remedial measures by the Panel in the same manner as may be done by the Chairperson pursuant to s. 5.3; or
- (d) make a recommendation to the Council that an Inquiry Committee be constituted under subsection 63(3) of the Act because the matter may be serious enough to warrant removal, and provide a report to the Council and to the judge that specifies the applicable grounds set out in subsection 65(2) of the Act.
- 9.7 When closing the file pursuant to paragraph 9.6(b), the Panel may, in writing, provide the judge with an assessment of his or her conduct and express any concerns it may have about it.

- 9.8 When the Panel closes a file, the Executive Director shall provide to the judge and to his or her chief justice a copy of the letter informing the complainant that the file has been closed.
- 9.9 After a Panel has completed its consideration of a complaint, the members of the Panel shall not participate in any further consideration of the same complaint by the Council.
- 10. Review by the Council of the Panel's Report Recommending an Inquiry**
- 10.1 Before the Council considers the Panel's report, the Chairperson shall name those Council members who will be members of the Inquiry Committee and designate its Chairperson, in the event an Inquiry Committee is subsequently constituted.
- 10.2 The Council members named under section 10.1 shall not be members of the court of which the judge is a member and shall not participate in any deliberations of the Council in relation to the matter in question.
- 10.3 The judge shall be entitled to make written submissions to the Council as to why there should or should not be an investigation under subsection 63(2) of the Act.
- 10.4 After considering the Panel's report and any submissions of the judge, the Council shall decide
- (a) that no investigation under subsection 63(2) of the Act is warranted because the matter is not serious enough to warrant removal, in which case the Council shall inform the judge with an appropriate reply in writing; or
- (b) that an investigation shall be held under subsection 63(2) of the Act because the matter may be serious enough to warrant removal, and inform the judge accordingly.
- 10.5 When closing the file under paragraph 10.4(a) the Council may provide the judge with an assessment of his or her conduct and express any concerns it may have about it.
- 11. Notification of Judge when Judge Appears to be Seized of Subject Matter of Complaint**
- 11.1 If at any time it appears to the Chairperson or the Panel that the judge remains seized with a matter that is the subject of the complaint, they may defer any communication with the judge by:
- (a) sending a letter addressed to the judge to the judge's chief justice requesting that he or she provide the letter to the judge when the Chief Justice considers it appropriate to do so; or
- (b) delaying writing to the judge until the judge is no longer seized of the matter referred to in the complaint.
- 12. Notification of Complainant**
- 12.1 The Executive Director shall inform the complainant by letter when a complaint file is closed by the Chairperson, a Panel or the Council, and the basis on which the file was closed.
- 12.2 The Executive Director may inform the complainant by letter when a file is held in abeyance under paragraphs 5.1(b), 8.1(b) and 9.6(c).
- 12.3 The Executive Director may inform the complainant by letter when the Chairperson or a Panel refers a file to Counsel for further inquiries under paragraph 5.1(c) or 9.6(a).
- 12.4 The Executive Director may inform the complainant by letter when the Chairperson refers a file to a Panel under paragraph 5.1(d) or 8.1(c).

- 12.5 When a Chairperson or Panel defers any communication with the judge under s. 11, communication with the complainant shall also be deferred accordingly.
- 12.6 When the Council has decided that an investigation under subsection 63(2) of the Act shall be held, the Executive Director shall inform the complainant by letter.
- 12.7 In the event that an Inquiry Committee has been constituted, the complainant shall be advised by letter that the Inquiry Committee has made a report of its findings and conclusions to the Council and, if the Inquiry Committee conducted its hearings in public, the complainant shall be provided with a copy of the report.

APPENDIX F

CANADIAN JUDICIAL COUNCIL POLICY RE COUNSEL RETAINED IN JUDICIAL CONDUCT MATTERS

There are four distinct roles in which legal counsel may be retained to assist the Council in relation to proceedings involving judicial conduct. They are:

- (1) As Counsel to conduct “further inquiries” pursuant to the Procedures for Dealing with Complaints;
- (2) As Independent Counsel pursuant to the Council’s Inquiries and Investigations By-laws;
- (3) As Counsel to the Inquiry Committee;
- (4) As Outside Counsel to review the proposed disposition of a complaint against a Council member.

This Policy is intended to clarify their respective roles.

(1) Counsel Conducting “Further Inquiries”

The Procedures provide for the Chairperson (or a Vice-Chairperson) of the Judicial Conduct Committee or a Panel designated by the Chairperson of the Committee to “ask Counsel to make further inquiries and prepare a report.” The report may assist the Chairperson in deciding whether to refer a file to a Panel and may assist a Panel in deciding whether to recommend that an Inquiry Committee be constituted. Such a report may also be of assistance in writing to the judge to advise that the file has been closed and in assessing and expressing any concerns about the judge’s conduct.

The role of Counsel in conducting further inquiries is, essentially, to gather further information. Persons familiar with the circumstances surrounding the complaint, including the judge who is the subject of the complaint, will be interviewed. Documentation may be collected and analyzed. It is not the role of Counsel conducting further inquiries to weigh the merits of a complaint or to make any

recommendation as to the determination that a Chairperson or a Panel should make. Such Counsel acts on the instructions of the Chairperson or the Panel.

This role is sometimes referred to as that of a “fact-finder.” This description is accurate if it is limited to the gathering or clarification of facts. It would not be accurate if it were intended to encompass adjudicative fact-finding in the sense of making determinations based on the relative credibility of witnesses or the persuasiveness of one fact over another. The role of Counsel conducting further inquiries is simply to attempt to clarify the allegations against the judge and gather evidence which, if established, would support or refute those allegations. The Counsel must obtain the judge’s response to these allegations and evidence, and present all of this information to the Chairperson or Panel.

The role of Counsel undertaking further inquiries is to focus on the allegations made. However, if any additional, credible and serious allegations of inappropriate conduct or incapacity on the part of the judge come to the Counsel’s attention, Counsel is not precluded from inquiry into those matters as well.

This approach is supported not only by the *Judges Act* and past practice, but also by sound policy considerations. First, a complaint is most frequently made directly to the Council by a member of the public. It should not be treated as a legal document which strictly confines the scope of the review of the judge’s conduct. Normally, the review will be confined to the scope of the complaint but, occasionally, other allegations may arise. Secondly, the Council would be the subject of strong and justifiable criticism if it came to light that, in the course of

reviewing the conduct of a judge, serious allegations of inappropriate conduct were ignored because they were not mentioned in the initial complaint. Thirdly, the incident which is the subject of the complaint may be only one example of a pattern of conduct on the part of the judge which renders him/her unable to fulfil the judicial role. Finally, there is no procedural unfairness to the judge in question since the judge must be given the opportunity to respond to sufficient information about the allegations and the material evidence to permit a full response and the answer of the judge must be included in the report of such further inquiries. It should also be kept in mind that this is still part of the informal stage of the consideration of the conduct of a judge.

(2) Independent Counsel re Inquiry Committees

The role of Independent Counsel is recognized by the By-laws and is unique. Once appointed by the Chairperson or a Vice-Chairperson of the Judicial Conduct Committee, Independent Counsel does not act pursuant to the instructions of any client but acts in accordance with the law and counsel's best judgment of what is required in the public interest. This is an important public responsibility that requires the services of Counsel of high ability, experience and stature in the legal community.

Independent Counsel is, of course, subject to the rulings of the Inquiry Committee, but is expected to take the initiative in marshalling and presenting the evidence before the Committee.

Although Independent Counsel "shall present the case to the Inquiry Committee," this does not mean that Counsel acts on behalf of the complainant or the Council. Nor does Counsel act on behalf of the Minister or Attorney General who may have initiated the constitution of the Inquiry Committee.

Independent Counsel does not act as a "prosecutor." Rather, such Counsel presents the evidence and related submissions to the Inquiry Committee with full appreciation of the objective concerns underlying the complaint or allegations, with complete fairness to the judge who is the subject of the Inquiry Committee, and conscious of the importance of conducting the proceedings in a manner that will enhance public confidence in the judiciary.

(3) Counsel to the Inquiry Committee

An Inquiry Committee may decide to appoint a Counsel to provide assistance. The role of Counsel to the Inquiry Committee is to act on the instructions of the Committee in any way that may be helpful. Counsel would attend the hearing, but not as a participant. Nor would such counsel participate in the adjudicative deliberations, although he/she is available to provide advice and assistance for those deliberations. This might include acting as liaison with other legal counsel, providing research, assisting in the recording of deliberations and preparing drafts of rulings and the Committee's report.

(4) Outside Counsel re Complaints Involving Council Members

This function arises out of the concern that the Council not be perceived as providing favourable treatment to Council members when dealing with complaints against them. Before a complaint file involving Council members may be closed, an Outside Counsel must review the file and the proposed disposition and provide an opinion as to whether the proposed course of action is appropriate. If Counsel is in disagreement, it is expected that the proposed disposition would be re-considered taking into account Counsel's opinion. If Counsel is in agreement, the complainant would be advised of this conclusion.

APPENDIX G

OPERATING PROCEDURES OF THE CANADIAN JUDICIAL COUNCIL

1. Interpretation

- 1.1 The definitions in this section apply to the Operating Procedures of the Council.

“Council” means the Canadian Judicial Council established by section 59 of the *Judges Act*;

“Chairperson” means the Chairman of the Council as designated by paragraph 59(a) of the *Judges Act*;

“First Vice-Chairperson” means the Vice-Chairperson who has been a member of the Council longer than the other Vice-Chairperson;

“Second Vice-Chairperson” means the Vice-Chairperson who is not the First Vice-Chairperson.

2. Officers of the Council

- 2.1 The Chairperson may designate two members of the Council to be its Vice-Chairpersons. They hold office at the pleasure of the Chairperson. One of the Vice-Chairpersons will be the Chairperson of the Judicial Conduct Committee as set out in s. 7.1.

- 2.2 In the event of the absence or incapacity of the Chairperson, or at his or her request, the First Vice-Chairperson or, in the absence of the First Vice-Chairperson, the Second Vice-Chairperson, or in the absence of the Second Vice-Chairperson, the senior Council member, may act as Chairperson of the Council.

3. Office of the Council

- 3.1 The office of the Council is to be located in the National Capital Region in premises that meets its needs.

- 3.2 The Council is to be supported by an Executive Director who shall be the Council's chief administrator. He or she will

(a) be responsible for the implementation of the governance process as set out in these procedures;

(b) provide appropriate mechanisms to enable the Council to fulfil its obligations;

(c) make recommendations to increase the effectiveness and efficiency of the Council;

(d) serve as custodian of the Council records and as guardian of its corporate memory;

(e) manage the provision of secretariat support to the Council and its committees, including the management and coordination of activities relating to the conduct of formal and informal Council and committee business;

(f) perform any other duties assigned by the Chairperson, the Council or the Chairpersons of any of its committees.

4. Meetings of the Council

- 4.1 There must be two regular meetings of the Council every year.

(a) Unless the Executive Committee directs otherwise, the mid-year meeting will be held in the National Capital Region in March and the annual meeting will be held in September.

- (b) The Executive Committee fixes the dates of the meetings and, for the annual meeting, the place.
- 4.2 The Executive Director must give the members of the Council at least 60 days notice of the date, time and place of the annual and mid-year meetings.
- 4.3 (a) Special meetings of the Council may also be called by the Chairperson, jointly by the two Vice-Chairpersons, by the Executive Committee, or at the written request of not fewer than 10 members of the Council, at a time and place to be fixed by whoever calls the meeting.
- (b) Notice of the date, time, place and purpose of a special meeting shall be communicated to Council members in the most appropriate and expeditious manner.
- 4.4 The Chairperson presides at all meetings of the Council unless circumstances require otherwise, in which case the provisions of s. 2.2 apply.
- 4.5 Meetings of the Council are held in closed session, unless the Council decides otherwise.
- 4.6 A quorum for a meeting consists of a simple majority of the members of the Council in office at the time of the meeting.
- 4.7 The Council must attempt to achieve a consensus in all its decisions. Where a consensus cannot be achieved, the Chairperson in consultation with the Vice-Chairpersons will decide whether a vote by a show of hands is appropriate, or whether it is preferable to have a vote by secret ballot.
- 4.8 The Chairperson may authorize any person who is not associated directly with the regular work of the Council to attend a meeting of the Council, but that person will not participate in the Council's decision-making process.

Committees of the Council

5. Executive Committee
- 5.1 The Council's Executive Committee will consist of the following members:
- the Chairperson;
 - the two Vice-Chairpersons;
 - the Chairpersons of the following Standing Committees:
 - Administration of Justice;
 - Judicial Education;
 - Judicial Independence;
 - Appeal Courts;
 - Trial Courts;
 - three other members of the Council.
- 5.2 The Chairperson presides over all meetings of the Executive Committee, except where s. 2.2 applies.
- 5.3 The three other members of the Council elected to the Executive Committee will each serve a term of three years.
- 5.4 A member of the Council who is elected to a three-year term on the Executive and who ceases to be a member of the Council will be replaced by a new member. He or she will be elected at the next meeting of the Council to a three-year term.
- 5.5 The Executive Committee is responsible for the supervision and management of the affairs of the Council and has all the powers vested in the Council except the following:
- (a) the making of by-laws;
 - (b) amendments to these Operating Procedures;
 - (c) the appointment of members of the Executive Committee and Standing Committees other than as provided in these procedures;

- (d) the approval of terms of reference for Standing Committees; and
- (e) the powers of the Council referred to in the *Canadian Judicial Council Inquiries and Investigations By-laws*.
- 5.6 The meetings of the Executive Committee shall be held where and when the Executive Committee or the Chairperson decides.
- 5.7 A simple majority of the members of the Executive Committee constitutes a quorum.
- 5.8 The Executive Committee may from time to time delegate its duties and functions to the Chairperson.
- 6. Standing Committees**
- 6.1 The following are the Standing Committees that will report to the Council:
- Judicial Conduct;
 - Judicial Education;
 - Judicial Independence;
 - Judicial Salaries and Benefits;
 - Administration of Justice;
 - Public Information;
 - Appeal Courts;
 - Trial Courts;
 - Nominating.
- 6.2 Unless stated otherwise in these Procedures, Standing Committees consist of a minimum of five members, including both Council members (who should be in the majority) and puisne judges, chosen on the basis of their expressed interest in and commitment to the subject matter of the particular Committee.
- 6.3 A Standing Committee, with the approval of the Executive Committee, may create one or more sub-committees to report to it. These sub-committees may consist of both members of the Committee and other judges, in which case the Chairperson of the sub-committee must be a member of that Committee.
- 6.4 Standing Committees may call upon non-judges to act as advisors to them or their sub-committees.
- 6.5 The Appeal Courts Committee and the Trial Courts Committee shall, respectively, consist only of the Council members who are members of those courts.
- 6.6 Unless stated otherwise in these Procedures, a member of a Standing Committee serves for a term of three years, with the possibility of extension for a further one to three years on the recommendation of the Nominating Committee.
- 6.7 Except as provided in sections 7 and 8 in these Procedures, the Chairpersons of Standing Committees are to be elected by the Council on the recommendation of the Nominating Committee.
- 6.8 Each Standing Committee is responsible for developing its terms of reference for the approval of the Council and carrying out the duties set out in them in accordance with any procedures which the Council may adopt from time to time.
- 6.9 The Executive Director of the National Judicial Institute is an *ex officio* member of the Judicial Education Committee.

7. Judicial Conduct Committee

7.1 The Judicial Conduct Committee consists of a Chairperson and up to four Vice-Chairpersons, the exact number of which will be determined from time to time by the Chairperson of the Committee on the basis of its workload and other relevant considerations.

7.2 (a) The Chairperson must choose, in consultation with the Chairperson of the Committee, the Vice-Chairpersons of the Committee from among the Council members.

(b) The Vice-Chairpersons of the Committee serve for such terms as the Chairperson of the Committee, in consultation with the Chairperson, deems appropriate.

8. Nominating Committee

8.1 The Nominating Committee consists of three Council members who are not members of the Executive Committee. Members serve for three-year rotating terms, and act as Chairperson of the Committee in their last year.

8.2 The outgoing member will be replaced on a vote of the Council, after receiving the recommendation of the Committee.

8.3 The Nominating Committee reports annually to the Council with respect to the matters falling within its terms of reference and any other specific duties set out in these procedures.

9. Other Committees

9.1 The Council may, for specific needs not covered within the terms of reference of any Standing Committee, establish special or advisory committees.

9.2 When establishing such a committee, the Council will determine its mandate, and may also determine its size and composition, and provide direction to the committee.

9.3 Special committees may consist of those Council members and puisne judges, and non-judges as advisors, as the Council considers appropriate in the circumstances.

9.4 Advisory committees may consist of such Council members, puisne judges and non-judges whom the Council considers appropriate in the circumstances.

10. Participation at Seminars and Meetings

For the purpose of subsection 41(1) of the *Judges Act*

10.1 the Council may authorize judges to attend seminars and conferences for their continuing education; and

10.2 the Chairperson may authorize judges to attend meetings, including seminars, conferences or Council committee meetings, relating to the administration of justice.

APPENDIX H

HUMAN AND FINANCIAL RESOURCES, 2002-03

During the year, the Council was served by an Executive Director, a legal counsel and two support staff located at the Council office in Ottawa.

2002-03 Expenditures of the Canadian Judicial Council

Salaries and Benefits	\$387,917
Transportation and Communications	52,761
Information	2,047
Professional and Special Services	577,408
Rentals	15,126
Purchased Repair and Upkeep	150
Utilities, Materials and Supplies	146,707
TOTAL	\$1,182,116

APPENDIX I

REPORT OF THE CANADIAN JUDICIAL COUNCIL TO THE MINISTER OF JUSTICE OF CANADA

under ss. 63(1) of the *Judges Act*
concerning the conduct of Mr. Justice Bernard Flynn of the Superior Court of Quebec
March 25, 2003

In accordance with the *Judges Act* and the By-laws adopted by the Canadian Judicial Council pursuant to the Act, Council members considered the report of the Inquiry Committee established as a result of a request from the Attorney General of Quebec to inquire into the conduct of Mr. Justice Bernard Flynn of the Superior Court of Quebec.

The Inquiry Committee, by report dated December 12, 2002, concluded that the conduct of Mr. Justice Flynn had not incapacitated or disabled him from the due execution of his office within the meaning of subsection 65(2) of the *Judges Act* and therefore did not recommend the removal of Mr. Justice Flynn from office.

The members of the Council who considered the report agree with this conclusion of the Inquiry Committee.

Members of the Council who participated in this decision:

Associate Chief Judge Bowman (Tax Court of Canada),
Chief Justice Brenner (British Columbia),
Madam Justice Browne (Nunavut),
Associate Chief Justice Cunningham (Ontario),
Associate Chief Justice Deslongchamps (Quebec),
Chief Justice DesRoches (Prince Edward Island),
Associate Chief Justice Dohm (British Columbia),
Associate Chief Justice Ferguson (Nova Scotia),
Chief Justice Finch (British Columbia),

Chief Justice Fraser (Alberta),
Chief Justice Gerein (Saskatchewan),
Chief Justice Glube (Nova Scotia),
Chief Justice Green (Newfoundland and Labrador),
Mr. Justice Hudson (Yukon),
Chief Justice Kennedy (Nova Scotia),
Chief Justice Lemieux (Quebec),
Associate Chief Justice MacDonald (Nova Scotia),
Chief Justice McMurtry (Ontario),
Associate Chief Justice Mercier (Manitoba),
Chief Justice Mitchell (Prince Edward Island),
Associate Chief Justice O'Connor (Ontario),
Associate Chief Justice Oliphant (Manitoba),
Senior Associate Chief Justice Pidgeon (Quebec),
Mr. Justice Richard (Northwest Territories),
Chief Justice Robert (Quebec),
Chief Justice Scott (Manitoba),
Chief Justice Smith (New Brunswick),
Chief Justice Smith (Ontario),
Associate Chief Justice Sulatycky (Alberta),
Chief Justice Wachowich (Alberta) and
Chief Justice Wells (Newfoundland and Labrador).