



*Moving Forward*

| 2003-04 Annual Report



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MESSAGE FROM THE CHAIRPERSON

## Moving Forward



Canadian courts play a vital role in Canadian life, as do our judges. For 33 years now, the Canadian Judicial Council has supported the rule of law in this country by fostering a strong and independent judiciary. As Canadian society changes, so does the law. Under the influence of the *Canadian Charter of Rights and Freedoms*, Canada's judges have entered new territory, and so have we at the Council.

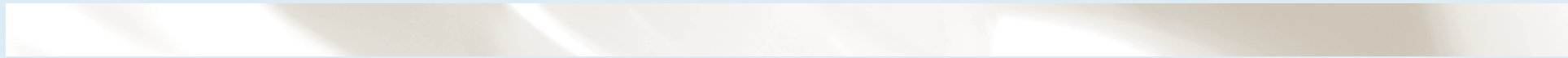
In 2000, we set out to chart a map of the future and to understand how the Council needed to change in order to remain relevant and effective. The result was a study released in 2002 called *The Way Forward*, which examined every system and procedure at the Canadian Judicial Council in light of future obligations and opportunities, especially in the area of communications and professional development. Since then, I am proud to say, we acted on most of the recommendations in this important study and we are now pursuing our efforts in

that direction. The result is a very different Council and one that is ready to do more and different kinds of work.

The plans laid out in *The Way Forward* will take several years to realize fully, and adjustments will no doubt be needed as we continue to strive toward our goal of having the best judicial system we possibly can. We have laid the groundwork, we are putting the systems in place and we are prepared for a new kind of future. We are, in every way, "moving forward."

A handwritten signature in blue ink that reads "B. McLachlin CSC".

The Right Honourable Beverley McLachlin  
Chairperson



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**“...the Council must become a more dynamic and productive body if it is to continue to fulfil its mandate.”** THE WAY FORWARD, 2002

#### INTRODUCTION

## Preparing for Change

The role of Canada’s judiciary has evolved in the past 30 years, along with the way judges are perceived. In 2000, the Canadian Judicial Council cast its eyes forward, established a Special Committee on Future Directions and authorized it to examine the structures and processes of the Council in light of emerging opportunities and demands. The intention was to establish future priorities for action and to determine where and how the Council needed to change in order to remain relevant and effective in the 21st century.

What the Council wanted—and got—was a fundamental discussion of what the Council does and how it works. This includes its mandate, governance, procedures and relationships with other bodies in the field of law. The questions that the Special Committee on Future Directions asked were many and far-reaching, extending even to possible changes to the *Judges Act*. In the end, the conclusions were “not so dramatic as the questions asked.” In fact, the committee found that many of the structures and processes already in place could

continue to serve the cause of justice very effectively with only minor enhancements. Their recommendations included:

- More active and efficient committees of Council, able to take on more work.
- Greater leadership and oversight by the Council’s Executive Committee.
- Greater involvement of judges who are not members of the Council.

The recommendations of the Special Committee on Future Directions were laid out in *The Way Forward* (2002), the Council’s roadmap into tomorrow. This document formed a backdrop for the achievements of 2003–04. The central task of the past year has been responding to recommendations made by the Special Committee on Future Directions—for example, seeking and gaining new resources from Parliament, hiring new staff and elaborating ambitious work plans. Thanks to the accomplishments of 2003–04, the Council is now well positioned for the coming year and, in 2004–05, is ready to move on a whole range of new activities in the service of Canadian justice.



## Highlights of the Year



### Talking to Canadians

Canadians in the 21st century demand openness and transparency in their institutions. As the overseer of judicial conduct in superior courts, the Council is ideally placed to show Canadians that the judicial system deserves their confidence. It is also well placed to interpret the workings of the judicial system to a lay public. To focus on these tasks, the Council set up a new standing committee, the Public Information Committee.

### A word of advice

A judge's instructions to a jury must be clear, complete and accurate. No area of the law produces so many appeals and none is so vital to the smooth functioning of the judicial process. The Council recognizes the preparation of "best practice" guidelines as an emerging role, and last year it set up a national committee to produce model jury instructions for Canadian judges. The resulting guidelines are an important practical tool for judges and, as they are used and revised, they will continue to evolve.

### Considering conduct

Canada's judiciary is recognized worldwide for its professionalism, integrity and high ethical standards. The Canadian Judicial Council, through the work of the Judicial Conduct Committee, contributes to maintaining that excellence. In 2003–04, the Council responded to 138 new complaints. The existence of such a process is essential to maintaining the health of Canada's judicial system.

### New people, new resources


After a successful appeal for additional resources, the Council secured the funds needed to hire new permanent staff for the Office and to secure contract expertise when needed. In February 2004, the Council hired a new Executive Director and General Counsel, Norman Sabourin. He brings the legal expertise and leadership qualities needed to support the Council in this time of transition. He was previously Executive Director and Senior Counsel of the RCMP External Review Committee, an independent body presiding over labour relations in Canada's national police force. The mandate now is to help the Council realize the goals laid out for it in *The Way Forward*.



“There is hereby established a Council, to be known as the Canadian Judicial Council...” JUDGES ACT, 1971

FOSTERING THE JUDICIARY

## About the Canadian Judicial Council



The past year was a time of growth and a time of change for the Canadian Judicial Council. Necessary, considered and progressive change reflecting the new environment in which we operate. What has not changed, of course, is the purpose of the organization, grounded as always on the twin pillars of accountability and efficiency in Canada’s judicial system. When Parliament created the Council as a statutory body more than 30 years ago, its purpose under the *Judges Act* was to improve the administration of justice in Canada’s superior courts and to ensure that Canadians have recourse to a professional, dedicated and independent judiciary. The Council’s statutory role includes overseeing judicial conduct among federally appointed judges. In other areas, the work includes setting standards that improve efficiency in the courts and proposing models for ongoing education so that judges can achieve excellence on the bench.

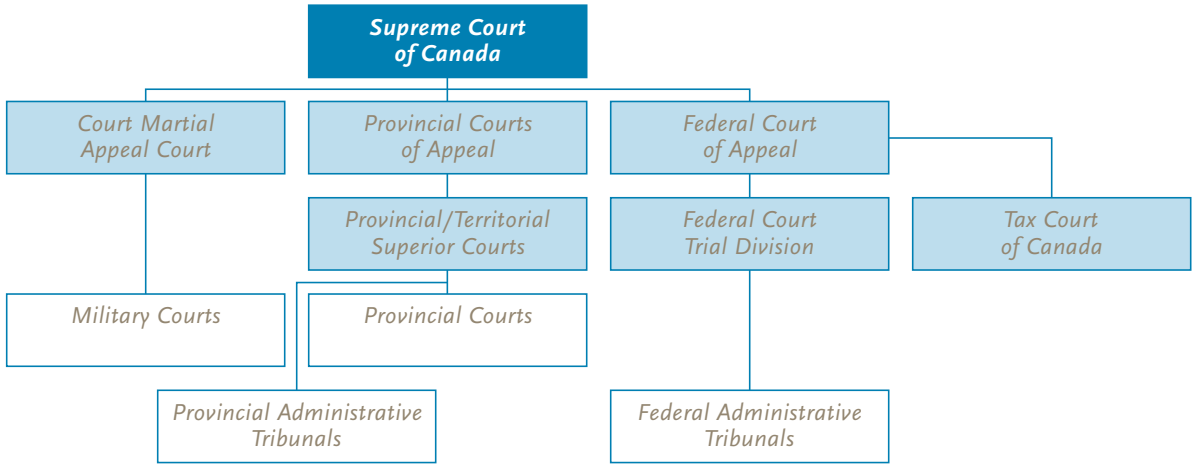
That mandate remains intact. What has changed since 1971 are certain fundamental aspects of Canadian law and society. Since 1982, law in this country has operated within the framework of the *Canadian Charter of Rights and Freedoms*. To respond to the flood of litigation that followed in the wake of the new Charter, to navigate the implications of change and to respond to new public expectations, the judges of today need new kinds and levels of support from the Canadian Judicial Council.

As the law has changed in the past 30 years, so has Canadian society. The way we work, the way we collect information and the way we communicate has been transformed. At the same time, the public has intensified its calls for openness and accountability in public institutions. In this rapidly evolving context, organizations like the Canadian Judicial Council have needed to change in order to remain relevant. That, in a nutshell, is the story of 2003–04. Review, reorientation and renewal in keeping with recommendations sketched out in *The Way Forward*, the Council’s blueprint for change.

**THE COUNCIL** The Canadian Judicial Council is made up of 39 members who convene twice a year. The Chief Justice of Canada, the Right Honourable Beverley McLachlin, chairs the Council. Membership consists of the chief justices and associate chief justices from provincial superior courts and senior judges from the territories and from Federal Court, Tax Court and the Court Martial Appeal Court. In 2003–04, the Council members collectively had authority over a body of 1,035 federally appointed judges in superior courts across Canada.



## Outline of Canada's Court System



**POWERS** Parliament has given the Council authority to investigate complaints from the public and from the government itself. Complaints must be about the conduct (not the decisions) of federally appointed judges. This process of “self-regulation” for judges is grounded in the concept of judicial independence. In a democracy, public institutions must be made accountable. At the same time, democracies demand that the judiciary must be free from outside influence. Canada’s Constitution provides that only Parliament can remove a judge from office. The most senior judges in Canada, who make up the Council, have been given the authority to recommend when, in appropriate circumstances, Parliament should remove a judge from office.

## Working for Justice: Governance Structure

**“The Council should extend the range of activities in which it is engaged as consistent with its statutory mandate.”**

THE WAY FORWARD, 2002

### The Council—making decisions

With 39 members across all of Canada, the Council meets as a full body only twice a year. As a whole, the Council cannot debate the details of all the issues surrounding the administration of justice. Members do reflect on issues of principle and agree to set general direction and policy. *The Way Forward* recommended that the size of the Council be maintained, however, to ensure a continued flow of ideas from all parts of the country. A large Council also provides a generous pool of time, energy and expertise for committee work. Generally speaking, it is there—in the committees—that the day-to-day work of the Council takes place: their job is to provide the Council with full, accurate information to support decision-making. Though the Council has traditionally concentrated on judicial conduct and education, it is now expanding its activities in such areas as research, communications and the development of best-practice models.

**“...with an expanded secretariat, the Executive Committee will have an enhanced management role....”**

THE WAY FORWARD, 2002

### Executive Committee—directing work

The Executive Committee exercises effective authority on behalf of the Council. With a membership of ten, including the chairs of most standing committees, as well as three members elected from the Council, the Executive Committee acts for the Council on urgent matters. It reviews and discusses committee reports and, when necessary, acts on findings. Since the recommendations in *The Way Forward* were accepted, the Executive Committee can also set up *ad hoc* committees to address specific needs. During the past year, with committees taking on more and different work in the wake of *The Way Forward*, the Executive Committee has played a central role in setting priorities and apportioning office resources.

**“The Council committees should be strongly encouraged to meet as and when required...and report to the full Council on an ongoing basis....”**

THE WAY FORWARD, 2002

### Committees—doing the work

The committees are the workhorses of the Canadian Judicial Council. Some of these are permanent, standing committees; others are formed to deal with specific issues or questions. Historically, standing committees have met on the same schedule as the full Council (that is, twice a year). As well, standing committees are often supported by smaller sub-committees, constituted to deal with specific issues—for example, the sub-committee on Self-Represented Litigants, which reports to the Administration of Justice Committee. With new kinds of work and responsibilities emerging, *The Way Forward* urged the committees to meet more frequently, using modern communications technology to facilitate work. Another recommendation involved making *puisne* judges and even non-judges eligible to advise or serve on committees. This improves the Council’s transparency, broadens its base of knowledge and expertise and allows the burden of committee work to be shared out more evenly.

***“The Council should make every effort to ensure that the request for additional staffing and resources now before Treasury Board is granted.”***

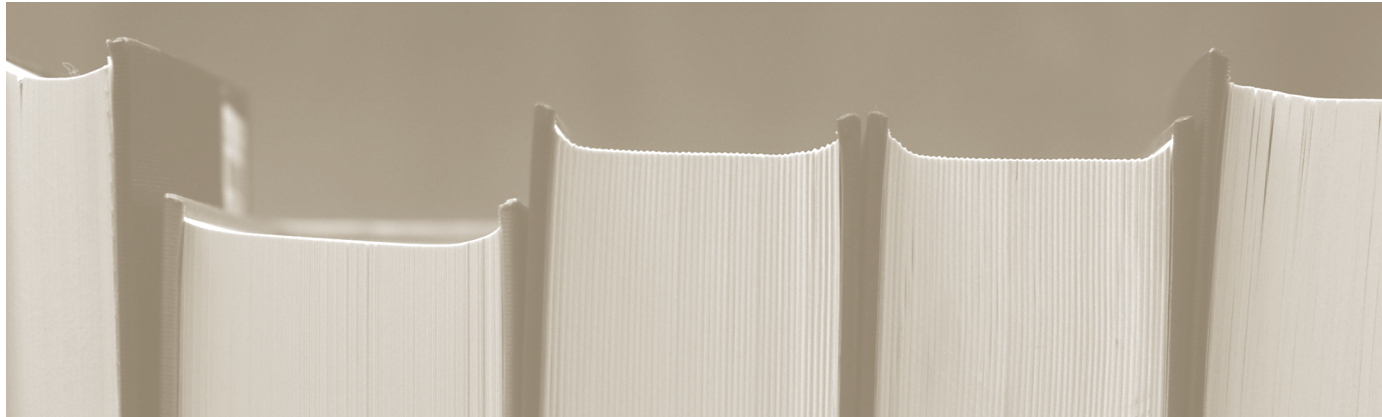
THE WAY FORWARD, 2002

#### **Council Office—supporting the work**

The Office of the Canadian Judicial Council supports the judges who work at the forefront, and it has always been kept small. During most of the past year, full-time staff at the office consisted of:

- Executive Director, who as of 2004 also serves as General Counsel to the organization
- Counsel, who supports the work of the Judicial Conduct Committee
- Administrative Services Officers

With the recommendations of *The Way Forward* in hand and new kinds of activity envisioned, the Council is poised to devote more resources to such areas as research and communications.





**“The Judicial Conduct Committee should be a separate standing committee from the Executive Committee.”** THE WAY FORWARD, 2002

THE COUNCIL IN ACTION

## Committees at Work Creating Confidence: Judicial Conduct Committee

**TERMS OF REFERENCE** *“To deal with complaints... about the conduct of federally appointed judges in a manner that is fair to the judges subject to the complaints, sensitive to the complainants, respectful of judicial independence, and credible both to the judiciary and the public.”*

When dealing with complaints, the Canadian Judicial Council is concerned with the *conduct* and not the *decisions* of federally appointed judges. Decisions that may be wrong in law can be appealed to higher courts. From time to time, judges do make mistakes. This need not reflect on a judge’s ability to hold office. However, issues of conduct can threaten a judge’s right to tenure. The Judicial Conduct Committee is responsible for

managing a process of review that is fair, objective and effective. The public must have a way to voice its concerns about judges. At the same time, judges who are accused of misconduct must be given an opportunity, in a prompt and fair manner, to respond. In all cases, the process must respect the fundamental principle of judicial independence, which is the foundation stone of the Canadian justice system.

In past years, membership in the Judicial Conduct Committee was identical to that of the Executive Committee. However, in a move that recognizes the central importance of judicial conduct to the workings of the Canadian Judicial Council, the composition of the committee was changed last year and it is now a separate working group.

From the tens of thousands of judicial hearings that take place every year in Canada's superior courts comes a surprisingly low number of complaints. The highest number in recent years has been 202. In 2003–2004, there was a total of 138 complaints. The largest single source of complaints continued to be cases of family disputes such as divorce and child custody. In these difficult cases where emotions run high, it is only natural that parties in a dispute may have difficulty accepting an adverse decision from a judge. However, this does not call into question the *conduct* of a judge. In dismissing many such complaints, members of the Judicial Conduct Committee make a special effort to explain to the complainant the mandate of the Council.

In some cases, a complainant may raise a serious matter of inappropriate conduct on the part of a judge. During the year, three cases were serious enough to warrant further review. In two instances, the Judicial Conduct Committee member referred the case to a separate Panel of judges. In one case, an Inquiry Committee made a recommendation to the Minister of Justice further to a request by a provincial Attorney General.

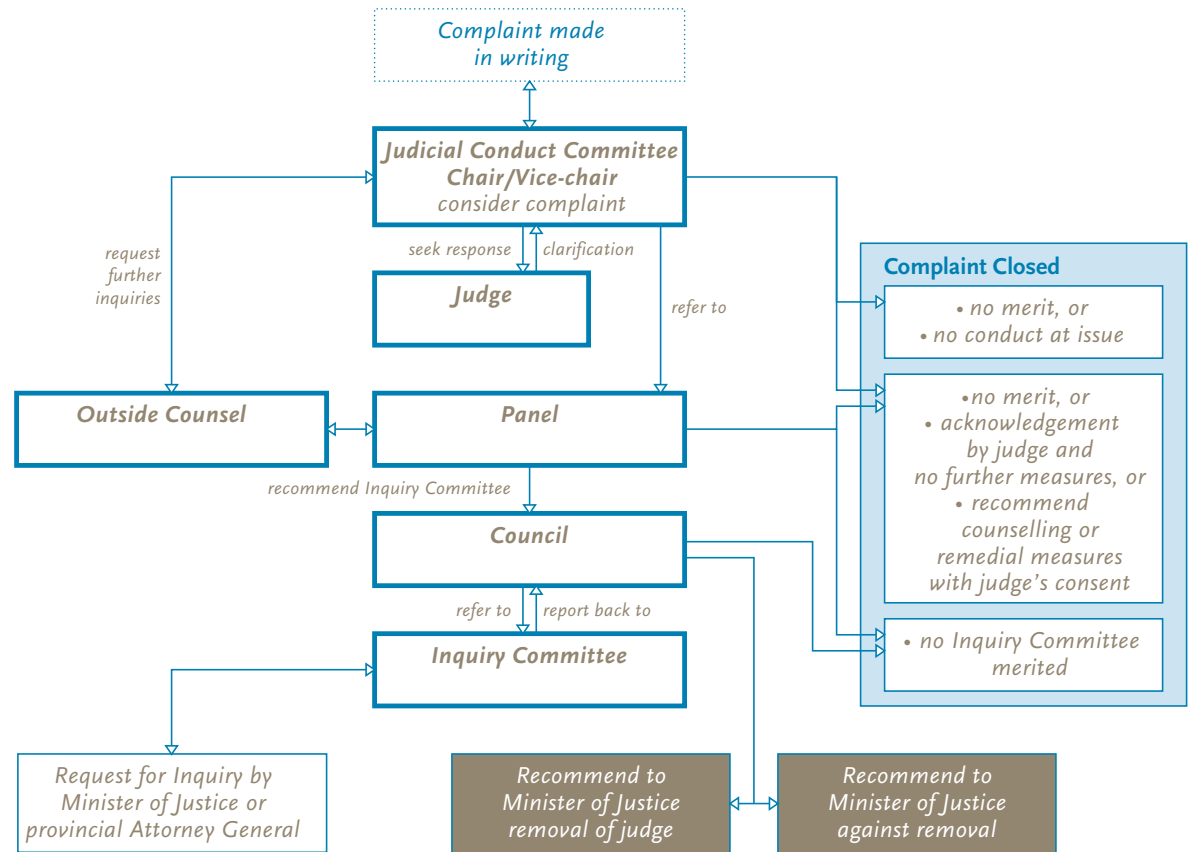
	New files opened	Carried over from previous year	Total caseload	Closed	Carried into the new year
1994–1995	174	39	213	186	27
1995–1996	200	27	227	180	47
1996–1997	186	47	233	187	46
1997–1998	202	46	248	195	53
1998–1999	145	53	198	162	36
1999–2000	169	36	205	171	34
2000–2001	150	34	184	155	29
2001–2002	180	29	209	174	35
2002–2003	170	35	205	173	32
2003–2004	138	32	170	125	45

## Complaints Process

### The Complaints Process

The complaints process is periodically reviewed and adjusted to ensure that it continues to serve the public interest. The Minister of Justice of Canada or a provincial Attorney General may ask the Council to conduct a formal inquiry. In most cases, however, complaints come from the general public. There are few rules set by Council about the nature of complaints. As long as a complaint is made in writing and names a specific judge, the Council will investigate the matter. There is no formal procedure to follow and the person making a complaint does not need to be represented by a lawyer. Administrative and legally trained personnel support the work of the Judicial Conduct Committee by reviewing complaints, conducting research and assisting in the preparation of reports by committee members.

In the consideration of a complaint, the Chair or a Vice-chair of the Judicial Conduct Committee first examines the complaint and decides whether it may be considered on its own, or whether a response from the judge should be sought. Then, if necessary for the full treatment of the matter, further inquiries may be made by an independent counsel. If the complaint is such that it would benefit from a more in-depth review, a Panel made up of Council members and *puisne* judges may be struck.



If the matter is very serious, or if requested by a provincial Attorney General or the Minister of Justice of Canada, an Inquiry Committee may be appointed to consider whether a recommendation should be made to the Minister of Justice for removal of the judge. Such an Inquiry Committee must hold a hearing, normally in public. The Council then considers the report of the Inquiry Committee and makes a recommendation to the Minister.

A complaint file is closed when it is without merit; when the judge has acknowledged some inappropriate conduct and no further measures are necessary; or, with the consent of the judge, when remedial measures—such as counselling—are undertaken.

## At Issue: Judicial Conduct, 2003–04

Of the 138 new complaints addressed to the Canadian Judicial Council last year, most were found to be without merit. In most cases, the complainant was not truly raising a matter of conduct, but dissatisfaction with a judge's decision. In each such case, the mandate of the Council and the difference between a judge's *conduct* and a judge's *decision* was explained. Highlighted below are three cases that illustrate a number of common themes and collectively show the process in action.

CASE NO. 03–014

### *Alleged bias*

**COMPLAINT** The complainant alleged that the judge demonstrated bias against him at a settlement conference in family court, that she spoke to him in a tone sharply different from that used to address his wife and that she used intimidating body language. He also claimed that the judge told him he had no right to inquire about his wife's new boyfriend when she expressed an intention to move with that man to another city. The complainant also stated that the judge did not order mediation when she had the power to do so.

**BACKGROUND** The complainant, his wife and their children—each party represented by a lawyer—attended a settlement conference in an attempt to avoid going to trial on an issue of family law. At that conference, for the first time, the complainant learned that his wife planned to move to another city. The complainant manifested some confusion about the powers of the judge to order mediation in the absence of consent.

**INVESTIGATION** The judge and participating lawyers were asked to comment in writing on the allegations. The judge denied that she had spoken inappropriately or had demonstrated bias, though she had advised the parties of the expense involved in going to trial. As for mediation, it was not within her power to order this in the absence of consent. The complainant's lawyer stated that his client's frustration with the judge's conduct was justified although with respect to tone of voice, the lawyer did not observe any difference. Other participants did not observe any cause for complaint in tone or behaviour.

**CONCLUSION** The Chairperson of the Judicial Conduct Committee concluded that the judge had not acted improperly during the settlement conference. Moreover, he found that even if the judge had made the alleged statement regarding the wife's boyfriend, it would not have constituted abuse of authority or incapacitated or disabled her from performing the duties of a judge, particularly as it had been in the context of a settlement conference. The Council informed the complainant of its findings and closed the file. Like many cases that come before the Canadian Judicial Council, this one emerges from the emotional cauldron of a family law dispute, though not from a trial but from a settlement conference. It illustrates well the typical process for handling complaints.

CASE NO. 02-080

## *Alleged bias and aggressive behaviour*

**COMPLAINT** The complainants—a client and counsel—reported bias in the context of an ongoing trial, citing a lack of judicial impartiality both in the form and tone of questions posed by the judge. After an initial conclusion that the complaint was unfounded, the complainants submitted a new allegation, claiming that the judge was using negative gestures and making negative comments.

**BACKGROUND** The complainant was appearing before the judge in a contract law case during which the judge intervened on a number of occasions to ask questions and to point out inconsistencies in the complainant's testimony.

**INVESTIGATION** Audio tapes from the trial were reviewed and the judge was asked to comment in writing. In doing so, the judge admitted that he might have been a little severe in his interventions and promised in future to be more sensitive. At the same time, he maintained that he had a duty to intervene in an attempt to clarify the evidence. When the complainant's new allegation was received, a Panel made up of three chief justices was established to consider the matter. The judge explained that his comments addressed not the character of the witness but the nature of his testimony.

**CONCLUSION** A Panel found that the judge had maintained the difficult balance between impartiality and the need to intervene in order to clarify the testimony. Thus, there was no cause for further action. The Council informed the complainants of its findings and closed the file. This case illustrates how the concerns of a complainant can be addressed promptly by a judge and how the Council is receptive to hearing new allegations in appropriate cases.



## The Boilard Inquiry

**COMPLAINT** In October 2002, the Attorney General of Quebec requested an inquiry to determine if Justice Jean-Guy Boilard was guilty of misconduct or a failure to execute his office. At issue was the judge's decision to recuse himself from a high-profile trial that he was conducting in 2002 against a group of Hell's Angels' bikers accused of crimes that included murder and narcotics trafficking.

**BACKGROUND** The background to this inquiry was described in the Council's Annual Report for 2002-03, and the matter proceeded to its conclusion in 2003-04. During the trial, a lawyer acting in a separate but related trial complained to the Council about allegedly disparaging remarks made by the judge at an earlier trial. The Council reviewed the allegations and, though it found the conduct not serious enough to warrant Justice Boilard's removal from office, concerns were expressed to him in the written decision. The press learned of the findings before the judge had read the Council's letter. Feeling that he had lost the "moral authority" to preside over the court, Justice Boilard opted to recuse himself from the current trial, and a new trial was subsequently ordered. The recusal resulted in a considerable loss of time and money and, in the view of the Attorney General of Quebec, put the delivery of justice at risk.

**INVESTIGATION** A three-person Inquiry Committee was established to consider the matter. During the hearing, the independent counsel (who marshals and presents evidence on behalf of the public) submitted that the judge's decision could not be reviewed by the Council as it concerned the judge's capacity to preside with complete independence and impartiality. Counsel for Justice Boilard argued that

there was no *prima facie* evidence of misconduct and therefore no case to answer. Counsel for the Attorney General of Quebec expressed disagreement with the rationale for Justice Boilard's decision and posed certain ethical questions.

**CONCLUSION** The Inquiry Committee concluded that Justice Boilard's decision to recuse himself was "improper," especially given that the original complainant was not appearing before him in the biker trial. The report added that the judge had misunderstood the nature of the Council's intervention, which did not question his ability to carry out his duties effectively; it merely urged him to "alter his approach in his relations with counsel." The report went on to state that, despite this finding, the judge was not guilty of conduct that incapacitated him from the due execution of his office. Accordingly, the committee did not find that a recommendation for removal of the judge from the bench was warranted.

The Council, in reviewing the report of the Inquiry Committee, agreed that there were no grounds for removal. It also concluded, however, that the judge had acted in good faith and within his prerogative as a judge. The Council reported to the Minister of Justice that "a discretionary judicial decision cannot form the basis for any of the kinds of misconduct, or failure or incompatibility in due execution of office, contemplated by...the *Judges Act*." The Boilard case illustrates the review process when a complaint comes not from a member of the public but from a provincial Attorney General. In such cases, an Inquiry Committee must be convened and the Council must subsequently submit its recommendation to the Minister of Justice.



***“The Council’s Judicial Education Committee should play a greater role in the development of general policies and priorities in the area of judicial education....”*** THE WAY FORWARD, 2002

## ***In the Service of Excellence: Judicial Education Committee***

**TERMS OF REFERENCE** *To provide advice and recommendations to the Council with a view to ensuring that the federally appointed judiciary has access to high-quality, effective, ongoing judicial education.*

In the ever-changing modern world, education—targeted, professional, up-to-date education—is vital. It is also the single most important area of growth for the Canadian Judicial Council. Since 1988, the National Judicial Institute (NJI) has collaborated with the Council, taking hands-on responsibility for planning, coordinating and delivering judicial education. This partnership lets the Council focus increasingly on setting priorities, determining policy and providing guidance on curriculum.

To facilitate the reciprocal flow of information and advice, the NJI last year reported to the Judicial Education Committee on such matters as the emerging Electronic Library and the need for courts to appoint Judicial Associates and Judicial Faculty to the NJI. The committee responded by endorsing the institute as the central provider of court-level educational programming. To bolster the relationship between the two organizations, the Council encouraged courts to establish their own educational committees, to invest in long-range educational planning, to encourage study leaves and to contribute best practice models to the institute’s database and curriculum.

Every year, the Canadian Judicial Council authorizes and funds the attendance of judges at a range of training seminars and conferences. In 2003–04, these authorizations included:

- Communication Skills in the Courtroom
  - Annual Conference of the International Society for the Reform of Criminal Law
  - International Conference on Education of the Judiciary, NJI
  - “Governance of Professions, Corporations, Tribunals and Courts: Ethics, Responsibility and Independence,” CIAJ
- and in 2005:
- Seminars for Newly Appointed Judges, NJI/CIAJ
  - “Judging Across Borders: Canadian Judges and International Law,” NJI/Canadian Chapter of the International Association of Women Judges
  - Judicial Colloquium, UNCITRAL/INSOL





**“The Public Information Committee should be made a standing committee of the Council.”** THE WAY FORWARD, 2002

## Opening Windows: Public Information Committee

**TERMS OF REFERENCE** *To provide advice and assistance to members of the Council, and to their respective courts on request, with respect to public information initiatives which courts might undertake to assist the public in better understanding the role of courts and judges in the judicial system.*

In its early years and well into the 1980s, the Council did little to spark public interest in its activities. That has changed. With a new emphasis on openness and transparency emerging in the 1990s, the Council began to take communications more to heart. It set up an *ad hoc* committee to deal with public information and, in 1999, published its first communications policy. In 2003–04, the Council took even more energetic action in responding to recommendations in *The Way Forward*. In particular, it raised the *ad hoc* Public Information Committee to the level of a standing committee as a way of acknowledging that communications are now a central responsibility.

In 2003–04, the committee undertook a comprehensive review of its communications policy, *The Judicial Role in Public Information*, and began to develop a national strategy to support accurate reporting about judges and their contribution to the administration of justice in Canada. During the course of its review, the Council consulted extensively with the legal community across the country. Among many conclusions, the Committee suggested that superior courts should cooperate with provincial courts with regard to educational, judicial outreach and media relations initiatives and that courts across Canada should introduce educational initiatives based on best-practice models in various provinces—for example, the staging of annual court opening ceremonies, the active participation of judges in school visits or in judge shadowing and the active development of the web as a communications tool.

To deal with critical issues, the Council recognized the Public Information Committee as a national media response team, supported by advisors, to address serious national media issues. Work was also done with the Council’s partners, including the Canadian Bar Association, to explore ways to work together when interventions are needed to explain the role of the judiciary.

With regard to media workshops, which were pioneered in Charlottetown in 2001, chief justices from six provinces last year undertook to push for similar developments in their jurisdictions. The Law Society of Alberta held the first such event in Red Deer on March 27, 2004. Other events are slated to follow, with materials from the sessions available on relevant websites.



*“The Council should extend the range of activities in which it is engaged as consistent with its statutory mandate.”* THE WAY FORWARD, 2002

## ***Models of Good Practice: Administration of Justice Committee***

### **Towards clarity, completeness and accuracy**

During the past year, the Canadian Judicial Council continued adding new activities to the traditional agenda. In particular, its Administration of Justice Committee (through a special national sub-committee) invested considerable time and resources in developing best-practice models for Canadian judges. In that area, a major achievement was the publication of model jury instructions.

Jury instructions are the communication intended to bridge the gap between the technical complexities of the law and a jury’s need for clear and simple advice. If judges are to help jurors understand the law and how it relates to the evidence before them, they must find ways to communicate effectively to lay people. In criminal matters, the single largest source of appeals at any time centers on the instructions that are given to juries.

By elaborating model jury instructions outlined in language that is clear and comprehensible to non-specialists, the Canadian Judicial Council is helping judges to achieve a higher standard of professionalism. The Council, working through a specially formulated national committee, adapted instructions originally developed for use in Ontario courtrooms and turned them into practical guidelines for judges sitting in criminal trials. It was no easy task, given the variations that exist in laws across the country. However, the result is a fully indexed electronic document, the first part of which is now readily available to Canadian judges on the Council’s website.

The model jury instructions fall into two broad categories: the first concerns general instructions on procedures and the rules of evidence (published electronically in March 2004); the second part applies to elements of specific offences and defences (to be published in the near future).

The model instructions have no legal force nor do they cover every conceivable point that a judge may have to explain to a jury. Judges retain absolute discretion to instruct juries as they see fit. If the instructions prove useful, however, they are expected to evolve and improve in light of actual application to criminal trials. Moreover, it is hoped that they will serve as a focus for ongoing discussion. The committee has undertaken to revise the instructions in light of future debate and to adapt them periodically to reflect commentary and new developments.



**“The Council should...generally take a leadership role in the use of information technology in superior courts.”** THE WAY FORWARD, 2002

## **New Times, New Tools: Judges Technology Advisory Committee**

**TERMS OF REFERENCE** *To provide advice and make recommendations to the Council on matters relating to the effective use of technology by the courts, consistent with the Council's overall mandate to promote uniformity and efficiency and improve the quality of judicial service in courts across the country.*

Technology has huge implications for the efficiency and quality of Canada's judicial system in the 21st century. That is a fact that the Canadian Judicial Council recognized early, and it established an advisory committee on technology nearly two decades ago, in 1987. Technological security was a central concern of the committee in 2003–04. The group distributed a preliminary draft of its “Blueprint” for the Security of Judicial Information, sent out a press release and made

the document available on the Council's website. The Council Chairperson wrote to all deputy ministers and provincial court chief justices, and members of the Judges Technology Advisory Committee addressed a meeting of Deputy Ministers (federal, provincial and territorial). With feedback having come in from many directions, the blueprint is due to be finalized by the end of 2004.

A discussion paper called “Open Courts, Electronic Access to Court Records, and Privacy” was also released for comment. The response from deputy ministers of justice, chief justices and judges, privacy commissioners and others was detailed and thoughtful. The commentary reinforced the conclusion that there are competing interests at work, and the committee has its work cut out for it in developing a model policy.

The committee discussed the feasibility of creating a Canadian centre for court-related technology. With the Council's support, work will continue, with the assistance of partners, to explore the possibility of establishing such a centre.

The Judges Technology Advisory Committee developed a model judicial acceptable use policy for court technology. The policy, which was intended as a generic tool that individual courts could modify to suit local conditions, was distributed to Council members. Several courts responded by implementing the model policy or referring it to their own technology committees.

## Highlights from Other Committees

### Judicial Independence Committee

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**TERMS OF REFERENCE** *To enhance the understanding of and make recommendations to the Council aimed at protecting and promoting the independence of the judiciary.*

The Judicial Independence Committee, in a thrust to formalize its work, prepared a detailed work plan during the year, specifying objectives, priorities and resources required. Canadian judges are being asked more and more frequently to participate in international development work. The National Judicial Institute has suggested that the Council, through the Judicial Independence Committee, should explore the issue of how the expertise of Canadian judges might be engaged in overseas projects through the institute's International Cooperation Group. There is concern about the lack of guidelines to assist judges in considering overseas requests and also that the channeling of this work through NJI may constitute a threat to judicial independence. The issue of secure, accessible parking for judges was also negotiated during the year.

### Judicial Salaries and Benefits Committee

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**TERMS OF REFERENCE** *To study and make recommendations to the Council with regard to all matters affecting the salaries and benefits of federally appointed judges.*

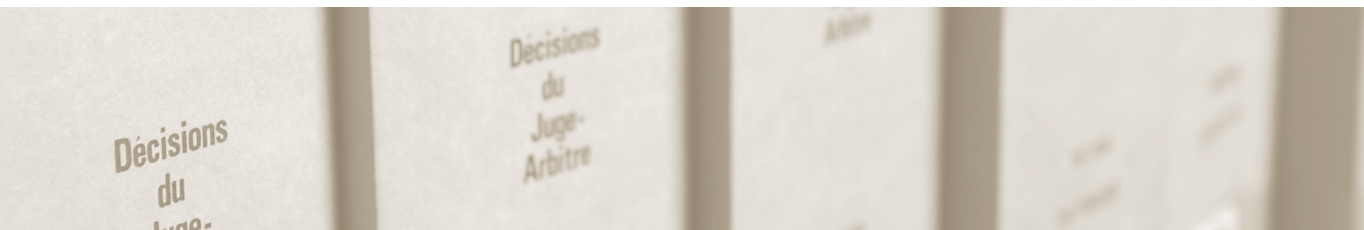
The Judicial Salaries and Benefits Committee participated in a submission to the government's Quadrennial Commission, incorporating a principle of relativity with senior assistant deputy ministers. The committee also addressed such issues as the division of annuities for judges in the case of family breakdown and worked to develop a formula that applies specifically to the situation of judges.

### Appeal Courts Committee

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**TERMS OF REFERENCE** *To exchange information among all Council members on Appeal Courts.*

The Appeal Courts Committee prepared an in-depth study of best practices in Courts of Appeal and undertook to improve caseload and delay statistics that have been instrumental in helping courts to reduce the processing time for appeals dramatically (in one case from 51 months to only nine months). E-filing initiatives were discussed, with a number of initiatives now underway across Canada, though others have stalled because of financial considerations or because of privacy issues.



## INTO THE FUTURE

# Maintaining Forward Momentum



The achievements of 2003–04 have everything to do with the “future.” In 2002, the Canadian Judicial Council took the recommendations of the Special Committee on Future Directions very seriously and last year acted on every single recommendation in its report, *The Way Forward*. What the year’s effort amounted to, in effect, was a clearing of the decks, a gathering of resources and a readying of systems for a second, even stronger push forward in the coming year.

Late in 2003–04, the new Executive Director and General Counsel worked with committee chairs to define new areas of endeavour and to capture them in the form of concrete work plans. Clearly, the committees—the “workhorses of the organization—cannot take on more and different work, especially in the field of education and communications, without added technical and administrative assistance. With additional resources, an expanded Office will be able to provide that support, especially in terms of research and communications.

A landmark achievement last year was the preparation of model jury instructions to act as a roadmap through the minefield of judge-to-jury communication. Those instructions illustrate a new and promising role that the Council is beginning to forge for itself as a provider of judicial tools. The Council will continue to explore this promising avenue in the next few years.

Work will continue in many new areas. Some things, however, will not change. The Canadian Judicial Council will continue to fulfil its statutory role and work to make the administration of justice in Canada more efficient. It will go on working with the National Judicial Institute to design educational programs. It will continue to scrutinize judicial conduct to make sure that Canada’s judges remain the best in the world. It will identify best-practice models, draft professional guidelines, design new information tools and launch new communications activities. It will invest in building public awareness and understanding.

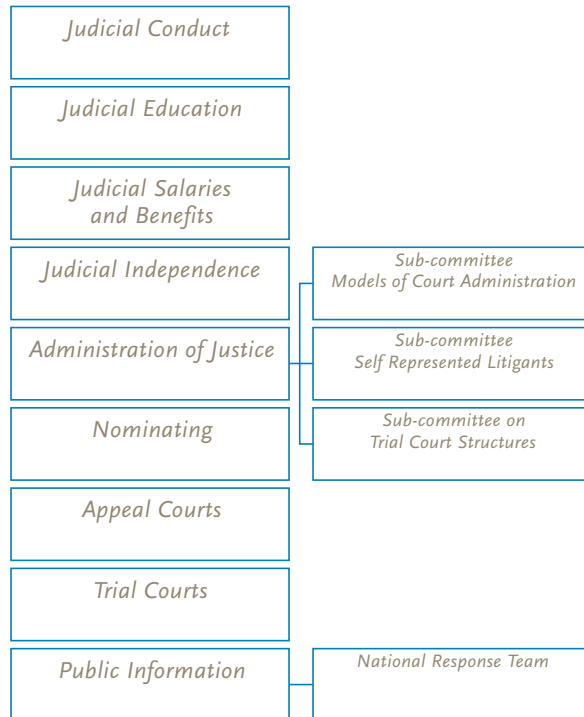
A new page was turned in 2003–04 and the Council is maintaining forward momentum.

## Canadian Judicial Council

Chairperson—Chief Justice of Canada

Executive Committee

### Standing Committees



### Advisory and other Committees—Operating procedure 9

