



CANADIAN JUDICIAL COUNCIL 2004-05 ANNUAL REPORT

Senior judges from all of the country's Superior Courts gather to provide direction, oversight and leadership for Canada's judicial community. **BUILDING ON CHANGE**

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Canadian Judicial Council
Ottawa, Ontario
Canada K1A 0W8

Telephone: (613) 288-1566
Fax: (613) 288-1575
Email: info@cjccm.gc.ca

Also available on the Council's Web site
at www.cjc-ccm.gc.ca

MESSAGE FROM THE CHAIRPERSON **Building on Change**



The mission of the Canadian Judicial Council is 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 Canadian justice system and judges are attracting increased attention from the media and the public. The Council welcomes the attention as it provides an opportunity to address Canadians on the important issues facing the justice system and the judiciary today.

The coming into force 20 years ago of the *Canadian Charter of Rights and Freedoms*, the unprecedented explosion of technology and its effect on the courts, the increasing diversity of Canadian society – these are all developments that are having an impact on the perception of the justice system by Canadian society. The Council has taken steps to address the challenges presented by these changes. At the same time, the Council continues to carry out its essential mandate under the *Judges Act* to investigate complaints against federally-appointed judges. A credible complaints process is crucial to nurture and sustain the public trust in Canada's judiciary and the justice system.

In 2004–05, the Council took several important steps to increase its understanding of the issues confronting the justice system, most notably the formation of the Chairperson's Advisory Group. This was recommended in the Council's 2002 study, *The Way Forward*. The Advisory Group brings together distinguished Canadians from many different backgrounds. Their knowledge and broad experience will help me, as Council Chairperson, to identify and clarify the issues facing Canada's judiciary and the justice system. This will, in turn, allow the Council to develop policies and programs to increase understanding of the judicial role and the issues confronting the justice system. This initiative, and others described in this Annual Report, will sustain the program of change that began with publication of *The Way Forward*.

I hope that this Annual Report will aid in the understanding of the Council's activities and achievements during the past year.

A handwritten signature in blue ink that reads "Beverley McLachlin CJC". The signature is fluid and cursive.

The Right Honourable Beverley McLachlin
Chairperson

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BUILDING ON CHANGE Introduction

In 2002, the Canadian Judicial Council invested in a strategic study, *The Way Forward*, which set a course of action that will continue to guide the Council for many years to come. It encouraged an expansion of outreach, media relations and professional development activities. It recommended the reshaping of committees to be more active and efficient. It urged a greater leadership role for the Council's Executive Committee and recommended reaching out for guidance into both judicial and non-judicial communities.

The transformation began two years ago with a number of structural and organizational changes, including an enlarged secretariat and a broader mandate for the Public Information Committee. Those preparations paid off in 2004–05 when, with new personnel to support them, the Council's committees were re-energized. A highlight of the year was the creation of a broad-based, high-level Chairperson's Advisory Group. The Council also launched a new website for a more effective exchange of information, and committees worked with courts across the country to create policies and guidelines for judges engaged in the day-to-day delivery of justice.

The idea of "preparation" dominated 2003–04. This year, it was "action." A record of solid accomplishment is the result.

IN ACTION Highlights of the Year

TOWARDS A BROADER PERSPECTIVE

The Council created the Chairperson's Advisory Group in 2004–05 and, at the very first meeting, the Group moved into substantive debate on the issues confronting Canada's judiciary. The members are distinguished Canadians from a wide variety of fields and represent a full range of stakeholders in the judicial system. With representation from the legal community, business, public affairs and journalism, to name just a few, the group allows the Chairperson – and through her the Council – to benefit from broad-based expertise and advice. It will bring important, persistent issues to the Chairperson's attention and will offer fresh insight and a new, broader perspective to inform debates on the evolving role of the judiciary.

THE WEBSITE RENEWED

The Council allocated significant resources of time and planning to update web-based services for members, the media and the general public. Notably, in September 2004, it launched a new website, incorporating into it a new look as well as new accessibility in the form of electronic correspondence and the online availability of reports, documents and judicial instruments. Some 12,000 visits were made to the site between the launch and year's end.

THE JUDICIARY ONLINE

The Council continues to identify opportunities and to mediate risks as technology is introduced more and more widely to Canadian courtrooms. For example, the Council urged courts to adopt the newly published *Blueprint for the Security of Judicial Information* as a national standard. It developed a protocol to guide the use of personal information in judgements and drafted a model policy on privacy. It planned a national forum to work towards a Canadian Centre for Court Technology.

TOWARDS EQUAL ACCESS

As part of a program to ensure equal access to the judicial system, the Council has been working to develop key principles for judges dealing with the growing number of litigants who choose to represent themselves in court. The aim is to provide guidance on court procedures to litigants, lawyers, judges and court administrators.

“ 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

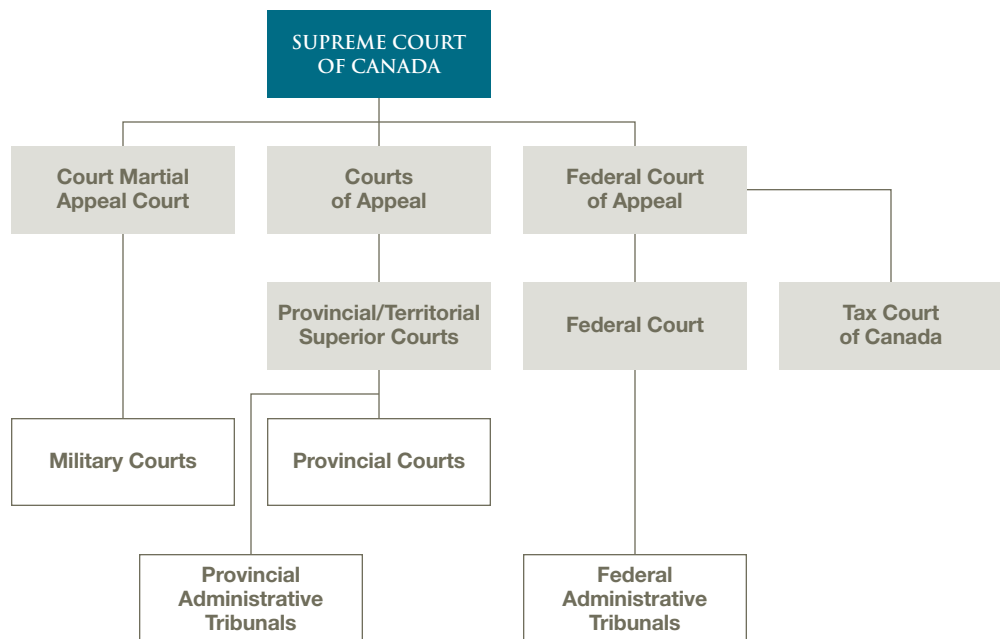
The operations of the Canadian Judicial Council are based on the principles of accountability and efficiency in Canada’s judicial system. In 1971, when Parliament created the Council, its purpose under the *Judges Act* was to improve the administration of justice in Canada’s superior courts and to ensure 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 addition to setting standards that improve efficiency in the courts and proposing a framework for ongoing judicial education.

Although the mandate remains intact, certain fundamental aspects of Canadian law and society have changed over the past 34 years. Notably, law in this country has operated since 1982 within the framework of the *Canadian Charter of Rights and Freedoms*. To respond to the new demands of Charter-related litigation, the judiciary needs new kinds and levels of support from a variety of sources. The Canadian Judicial Council works with partners, such as the National Judicial Institute, to ensure that judges are given the tools they need.

In 2003–04, the Council embarked on a process of review, reorientation and renewal in keeping with recommendations sketched out in *The Way Forward* (2002), the Council’s blueprint for change. It was this restructuring that enabled the Council to initiate activities and programs in the past year and to move forward on its agenda for change.

POWERS The *Judges Act* authorizes the Council to investigate complaints from the public and from government regarding the conduct (not the decisions) of federally appointed judges. 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 authority to recommend when and under what circumstances Parliament should remove a judge from office.

OUTLINE OF CANADA'S COURT SYSTEM



Senior judges from all of the country's Superior Courts gather to provide direction, oversight and leadership for Canada's judicial community.

Working for Justice Governance Structure

THE COUNCIL – MAKING DECISIONS

The Council represents the interests of the Canadian public by ensuring high standards of professionalism and independence in the Canadian judiciary. It is chaired by the Chief Justice of Canada and consists of 39 chief justices and associate chief justices, who in 2004–05 had authority over 1,050 federally appointed judges in Canada's superior courts. The Council, which meets twice a year to consider issues of principle and to set policy, continued to expand its activities in the areas of research, communications and outreach over the past year.

EXECUTIVE COMMITTEE – DIRECTING WORK

The Executive Committee exercises effective authority on behalf of the Council. With a membership of eleven, 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. The Executive Committee can also set up *ad hoc* committees to address specific needs. In a period of continuing change, the Executive Committee plays a central role in setting priorities and apportioning office resources. See Appendix A – Statement of Expenditures for the Council 2004–2005.

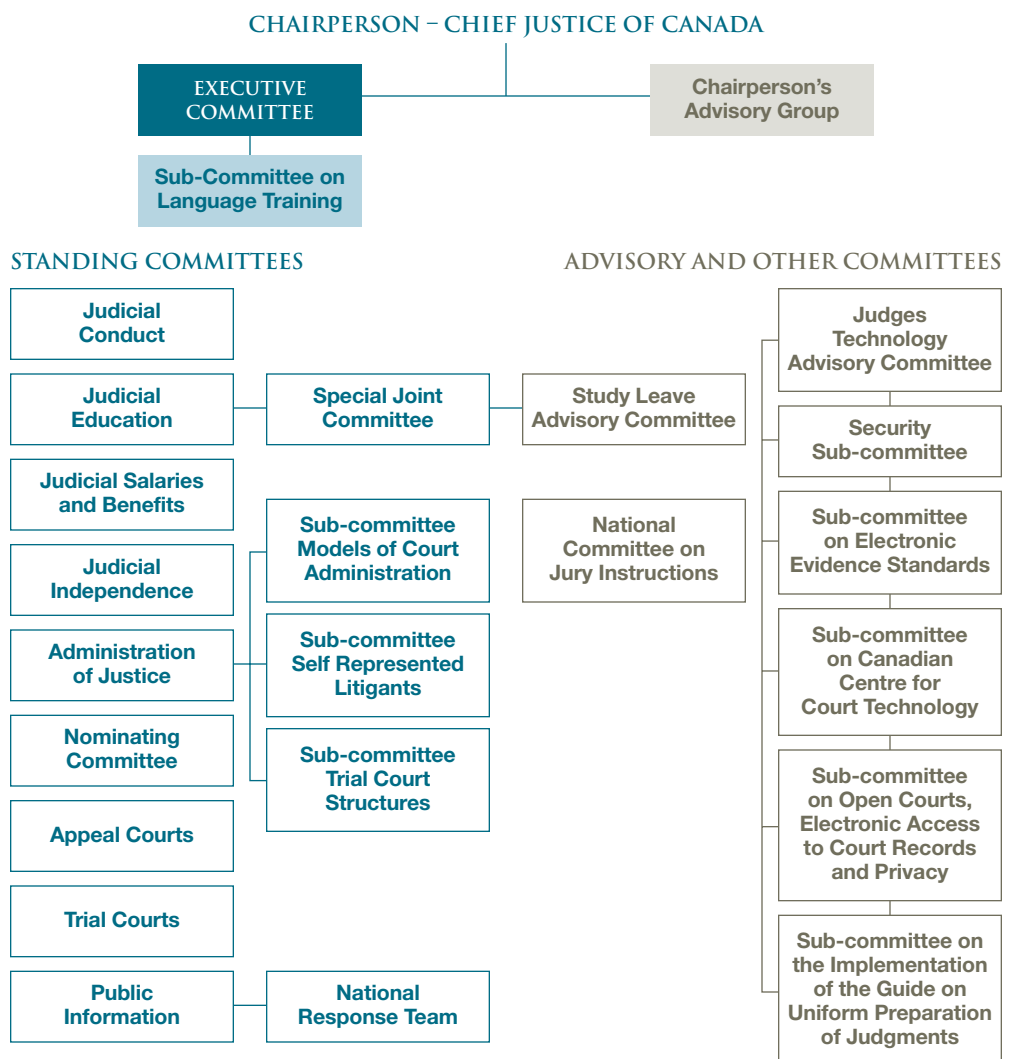
COMMITTEES – DOING THE WORK

The committees are the workhorses of the Canadian Judicial Council. Some are standing committees; others are formed to deal with specific issues or questions. Their job is to provide the Council with full, accurate information to support decision-making. Standing committees generally meet at least twice a year, but they can meet more often or use telecommunications technology to facilitate a more frequent exchange of ideas. Recently, puisne judges and non-judges have begun to advise and serve on committees, thus improving the Council's outreach, broadening its base of knowledge and expertise and allowing the burden of committee work to be shared out more evenly.

COUNCIL OFFICE – SUPPORTING THE WORK

The office of the Canadian Judicial Council acts as the Secretariat in terms of day-to-day administration. This year, largely in response to the need for increased support for committee work, the Office grew from four to seven persons. Full-time staff now include legal specialists, program managers and administrative service officers.

CANADIAN JUDICIAL COUNCIL



“...there can and should be a means of tapping into the wealth of wisdom and experience possessed by judges at large and members of the public...”

The Way Forward, 2002

Towards a Broader Perspective The Chairperson's Advisory Group

An independent judiciary is central to our justice system. Canadians today are asking more and more questions about justice issues, and they expect accountability from all public institutions, including the judiciary. The Canadian Judicial Council is aware of its important role in fostering an efficient system of justice. To perform this role responsibly, the Council must not only provide support and guidance to judges, but also actively listen to and respond to public concerns. To identify new and broader sources of advice regarding the judiciary, the Council created the Chairperson's Advisory Group in September 2004.

The Advisory Group provides a variety of perspectives and acts as a forum for high-level debate on issues affecting judicial governance. The group is informally organized and meets as required. The Chairperson, in consultation with the Executive Committee, invited senior judges to join the inaugural committee, along with a range of senior Canadians, legal scholars and experts in such areas as conflict resolution, non-profit business management and aboriginal affairs.

The Advisory Group met in March 2005 and got off to a rapid and productive start. The group identified the interests of major stakeholders and discussed the changing role of the judiciary in Canadian society and the public's understanding of that role. It has begun assuming the important task of providing informed advice to the chairperson. After a very positive beginning, the Group plans to maintain momentum by meeting again in August 2005.

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 Council is concerned with the *conduct* and not the *decisions* of federally appointed judges. When someone believes that a decision has been made in error, they can appeal that decision to higher courts. However, issues of conduct can be reviewed by the Council. The Judicial Conduct Committee is responsible for reviewing judicial conduct in a way that is fair, objective and effective. The process acknowledges that 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 to respond in a prompt and fair manner. In all cases, the process must respect the fundamental principle of judicial independence, the foundation of the Canadian justice system.

Family disputes such as divorce and child custody have been, for some years, the largest single source of complaints and generally account for half of all complaints. In these difficult cases, where many litigants are self-represented, parties to a dispute often have difficulty accepting adverse decisions. However, this does not generally 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 Council's mandate in this regard.

THE COMPLAINTS PROCESS

The Minister of Justice of Canada or a provincial attorney general may require the Council to conduct a formal inquiry about a judge. In most cases, however, complaints come from the general public. The Council sets few rules about the process of making a complaint. As long as a complaint is made in writing, names a specific judge and relates to the judge's conduct, the Council will commence an investigation of the matter. There is no formal procedure for the complainant to follow, and the complainant does not need to be represented by a lawyer. Staff support the work of the Judicial Conduct Committee by reviewing complaints, conducting research and assisting in the preparation of reports by committee members.

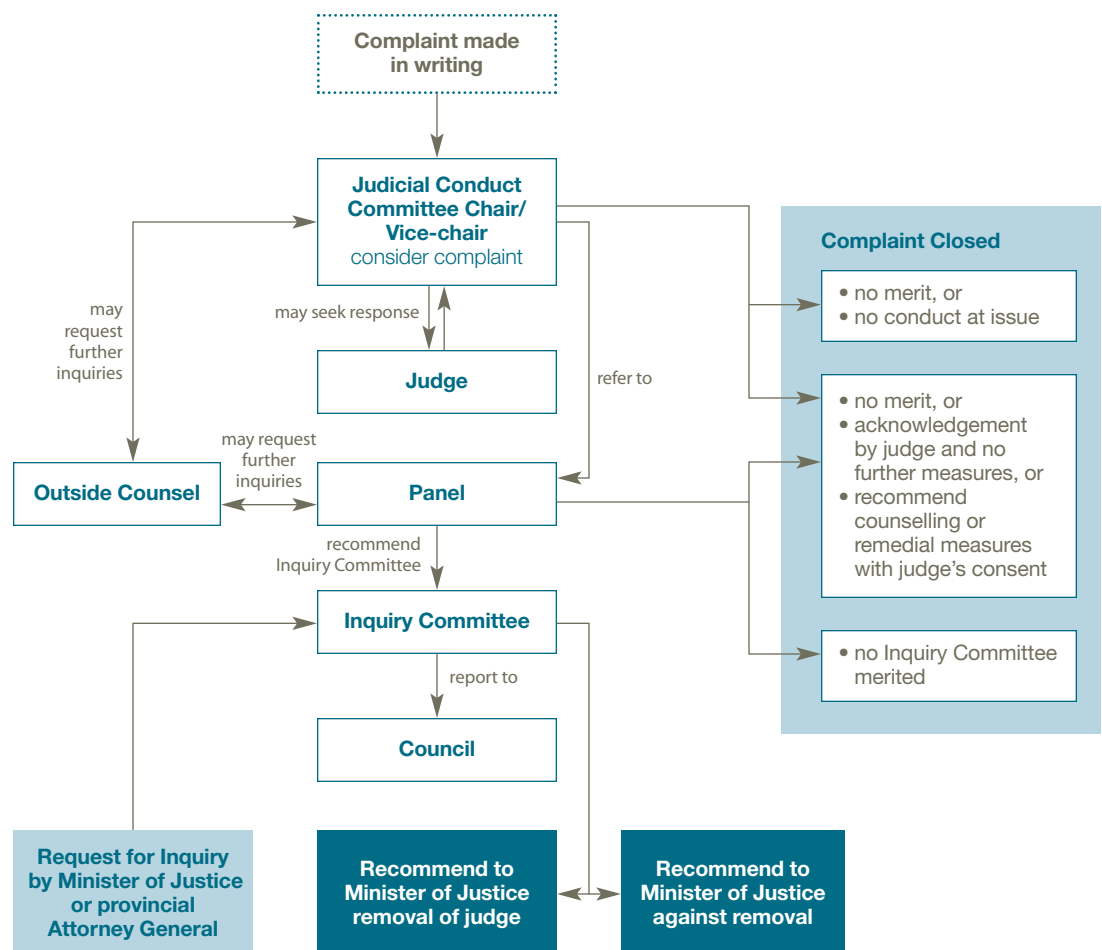
In considering a complaint, the Chair or a Vice-Chair of the Judicial Conduct Committee first examines the complaint and decides whether there is enough information to consider it on its own, or whether a response from the judge is needed. Further inquiries can also be made by an outside counsel. If 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 formed.

If a provincial attorney general or the Minister of Justice of Canada makes a request, the Council must appoint an Inquiry Committee to consider whether a recommendation should be made to the Minister of Justice to remove 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. The Council can also initiate an Inquiry Committee.

A complaint file is closed when it is found to be without merit or when the judge has acknowledged some inappropriate conduct and no further measures are necessary. Remedial measures – such as counseling – can also be undertaken with the consent of the judge in question.

The complaints process is periodically reviewed and adjusted to ensure that it continues to serve the public interest in the best way possible. The Judicial Conduct Committee has begun such a review in 2004–05, examining complaint files and interviewing a certain number of interested individuals, including Council members, puisne judges, complainants, members of the Bar and Council staff. The review will continue into 2005–06, with a comparative analysis of processes in other jurisdictions and of standards of procedural fairness that should apply.

COMPLAINTS PROCESS



COMPLAINTS, 2004–05

From the tens of thousands of judicial hearings that take place every year in Canada's superior courts come a surprisingly low number of complaints. The highest number in recent years has been 202. In 2004–05, 149 new complaints were received, and these were addressed along with 45 files still active from the previous year. At any one time during the year, 40 to 50 files were active. A total of 145 files were finalized. Overall, two-thirds of complaints were found to be without merit and were closed without referral to the judge in question – a proportion consistent with results in past years. The average time for responding to complaints not referred to a judge for comment was about six weeks. Where files are referred to a judge for comment, however, the time line is longer: 66 per cent of all files were closed within three months; 95 per cent within six months.

Some cases raise truly serious allegations of inappropriate conduct on the part of a judge and are the subject of further scrutiny by the Council. Such cases may be investigated with the assistance of a lawyer from outside the Council. This person is chosen for their expertise and reputation in the legal community. They may interview the judge, the complainant and others connected with the situation that gave rise to a complaint. A complaint can also be referred to a Panel for review by 3 or 5 senior judges. This year, two cases were referred to a Panel: one case concerned allegations of financial impropriety (ultimately found to be without foundation); the other related to undue delay in the issuance of reasons. In that last case, remedial measures were pursued and, at year's end, were being evaluated by the Panel members.

COMPLAINTS

CASELOAD – 10 YEAR OVERVIEW

	New files created	Carried over from previous year	Total caseload	Closed	Carried into new year
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
1999-00	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
2003-04	138	32	170	122	45
2004-05	149	45	194	145	49

At Issue Judicial Conduct, 2004–05

ALLEGATION OF BIAS

COMPLAINT The complainant alleged that the presiding judge was biased against men, stating specifically that the judge “had his mind made up” before hearing arguments and that changes in custody were made without reference to evidence or law.

BACKGROUND In this case, the judge determined that the joint custody he ordered was in the best interest of the complainant’s child. Although leave to appeal was granted, his interim order was left in place, pending the outcome of the appeal.

INVESTIGATION Comments were sought from the judge at the direction of the Chair of the Judicial Conduct Committee.

CONCLUSION The Chairperson advised that although he was unable to comment on the correctness of the judge’s conclusion concerning custody, any legal error on the part of the judge in his reasons for decision would not amount to judicial misconduct. In relation to the specific allegation that the judge “had his mind made up” when he entered the courtroom, the Chair noted that the complainant had provided no support for this allegation other than his interpretation of the judge’s judicial reasoning and decision-making. In the absence of any other evidence, the Chair concluded that this allegation was unsubstantiated. The file was closed.

ALLEGATIONS OF BIAS, DEFAMATORY COMMENTS AND COLLUSION

COMPLAINT The complainant alleged that the judge had failed to consider all of the evidence or to assess it properly and that, in the course of his decision, made defamatory comments and allowed a personal dislike of the complainant to influence his decision. The complainant further alleged that the judgement had been held in reserve for an unreasonable length of time and that there had been collusion between that judge and another who had presided over a different but related case in which the complainant was also involved.

BACKGROUND In rejecting significant portions of the complainant’s evidence, the judge characterized the complainant as “manipulative” and “deceitful” and stated at several points that he did not believe the complainant, whose position he referred to as “spurious,” “mean-spirited” and “without foundation.”

INVESTIGATION The Vice-Chair of the Judicial Conduct Committee considered the complaint and materials that the complainant provided in support of his allegation including the decisions in the two related cases.

CONCLUSION The Vice-Chairperson advised that a trial judge has a duty to assess the credibility and truthfulness of witnesses and to decide whom to believe. Especially when there is conflicting evidence on important points, it is sometimes necessary to make judgements that may seem harsh to the person whose evidence is not accepted. The Vice-Chair concluded that the judge was entitled and, indeed, obliged to comment on the truthfulness and integrity of the witness in the course of assessing the evidence. He concluded, moreover, that adverse comments are not necessarily indicative of personal dislike and that nothing in the evidence showed that the assessment was motivated by personal reasons. With regard to delay, the Council has resolved that reserved judgements

should be delivered, except in exceptional circumstances, within six months of the conclusion of the trial: in this case, the judgement was delivered within four months. The Vice-Chair therefore found nothing inappropriate or unreasonable in the length of time taken for the release of the decision. Regarding the alleged collusion, the Vice-Chair found that the ruling of two judges against the complainant in the related cases did not in itself amount to evidence of collusion. He noted that the second judge was unaware of the other's decision and, when informed of it, opted not to read it. Also, the second judge stated clearly that his assessment of the witnesses in the trial before him was determined solely on the basis of their submissions made before him. In light of this and in the absence of any evidence of collusion, the Vice-Chair concluded that the allegation was simply not substantiated.

ALLEGATION OF BIAS, CONSTITUTIONAL CHALLENGE

COMPLAINT The Attorney General of Ontario requested that an Inquiry Committee be convened by the Council to investigate the conduct of Mr. Justice Paul Cosgrove during the trial over which he presided in the case of *R. v. Julia Yvonne Elliott*.

BACKGROUND In 1995, Julia Yvonne Elliott was charged with second-degree murder and interfering with a dead body in connection with the killing and dismemberment of a resident of Kemptville, Ontario. Following a preliminary inquiry and orders to stand trial on both counts, pre-trial applications commenced before Mr. Justice Cosgrove in 1997. In 1999, the judge stayed the proceedings as abuse of process and ordered the Crown to pay the accused's legal costs from the outset of proceedings. In addition, Mr. Justice Cosgrove concluded that the alleged misconduct of the Crown and the police delayed the accused's trial and therefore violated her s.11(b) Charter right to a trial within a reasonable time. The Crown appealed to the Court of Appeal for Ontario against the stay of proceedings and the order for costs. The Court of Appeal allowed the appeal, set aside the order of Mr. Justice Cosgrove staying the proceedings, set aside his costs order and ordered a new trial.

INVESTIGATION A five-member Inquiry Committee was convened by the Council to investigate the conduct of Mr. Justice Cosgrove. Before hearing the substantive matter of the complaint, however, the Committee considered an application from Mr. Justice Cosgrove challenging the constitutional validity of s.63(1) of the *Judges Act*, which empowers the Attorney General of a province to request an inquiry into the conduct of a federally-appointed judge, as the Attorney General of Ontario had done in this case. The Canadian Superior Court Judges Association and the Criminal Lawyers' Association both applied for and were granted intervenor status on the application. The substantive matter of the complaint has yet to be heard by the Committee.

CONCLUSION The Committee found that s.63(1) of the *Judges Act* does not offend the principle of judicial independence and that s.2(b) of the Charter has no application in the circumstances of this case. The Committee noted that attorneys general occupy a unique position in the Canadian legal system and that "judges are not immune from the legitimate interests of the executive and legal branches of the government in ensuring the due administration of justice." Mr. Justice Cosgrove has sought a judicial review of that decision to the Federal Court of Canada.

With Canadians more interested in the role of the judiciary, the Council has taken to heart the need for advanced communications.

Reaching Out 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.

The Council has recently taken on new responsibility for explaining the role of the judiciary to Canadians. As well as bolstering the ability of the Council to deliver timely and accurate information to the media and public, the Public Information Committee supported the communication initiatives of judges throughout the country. Judges have participated in a number of activities that serve to increase exchanges with the public.

COUNCIL WEBSITE

In September 2004, the Council launched a new website. Public interest was considerable, with anywhere from 250 to 500 people a week visiting the site and some 12,000 visitors by the end of the year. The website has electronic capability to receive correspondence and distribute documents to selected readers. Reports and publications are now available online, as well as press releases and judicial instruments such as the Sample Jury Instructions. Throughout the year, the Public Information Committee worked on further enhancements, the most important being revisions to the Complaints page and the addition of a new online newsletter, *Technology News for Judges*.

MEDIA RELATIONS

During the year, the Public Information Committee worked towards a comprehensive communications strategy and identified practical procedures to respond effectively to media inquiries and coverage. The Council's response to public interest in the Cosgrove Inquiry (see page 16) illustrates the progress made in developing internal and external communications procedures. For example, when the Cosgrove Inquiry Committee reached a decision, the reasons were promptly posted on the Council's website, followed by the almost immediate dispatch of a press release that referred media to the site as a source of further information. As a result, traffic to the website increased considerably, and the resulting newspaper coverage was up-to-date and accurate. The committee also organized workshops on "Courts and the Media" in Winnipeg and Fredericton, and received excellent feedback from media participants and judges.

NATIONAL RESPONSE TEAM

The committee set up a National Response Team to allow for quick analysis and reaction, as required, to media reports of concern to the judiciary. Last year, the team was active in considering possible responses to a number of media stories and maintaining liaison with reporters on important issues.

Canadian judges need new structures, tools and information to address the issues of today and to continue delivering the highest possible quality of justice.

Equal Access to Justice Administration of Justice Committee

The Administration of Justice Committee wants to ensure equal access to justice for all Canadians and to promote a judicial system that is clear, well founded in law and efficient in its structures and processes. To that end, the committee consults on changes to court structure and provides information and tools that judges can use in responding to new issues and requirements in the Canadian judicial system.

BEST MODELS

The Administration of Justice Committee worked extensively on Models of Court Administration in 2004–05. After conducting a second round of interviews and exploring various models of court administration, it presented a seminar and progress report to the Council in March 2005. This important work is essential in ensuring the courts can function with maximum efficiency, with due regard to the expenditure of public funds.

SELF-REPRESENTED LITIGANTS

Equal access to justice depends on awareness of procedural and substantive law: thus, representation by qualified counsel is virtually indispensable. The fact that more and more litigants are choosing to represent themselves in court means that judges and courts face new challenges in the fair, timely and efficient delivery of justice. Even the simplest of court procedures can be overwhelming for the non-specialist. Self-represented litigants are often unaware of their rights and the consequences of legal decisions. Indeed, many are further compromised by literacy and language limitations. Last year, the Administration of Justice Committee continued working towards the adoption of a statement of principles to guide judges in dealing with self-represented litigants. The committee is also planning a Bench Book for Sitting Judges with suggested scripts and protocols to help judges support self-represented litigants.

Technology represents new opportunities in the 21st century, but only to the extent that the implications and risks are thoroughly understood and addressed.

Understanding the Implications 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.

Realizing the benefits of technology for Canadian courts depends on a thorough understanding of the implications and risks associated with new systems and processes. The Judges Technology Advisory Committee worked during the year to explore such issues as privacy and security of information in relation to courtroom technology, to identify educational resources and to develop protocols for the use of new electronic tools in the courtroom. It also laid out a communications process to ensure that its work is shared within the judicial community: A central tool in that communications effort will be an electronic newsletter, *Technology News for Judges*, now available on the Council website.

BLUEPRINT FOR THE SECURITY OF JUDICIAL INFORMATION

The arrival of new technological tools in the judicial arena has brought new issues to the fore – notably the issue of security. Jurisdictions across the country have addressed security in varying ways and to varying degrees. The committee set out to bring a measure of consistency to the way in which security is addressed from court to court through publication of a *Blueprint for the Security of Judicial Information*. The document sets clear national policies for improving the security, accessibility and integrity of computer systems in Canadian courts. The *Blueprint* was posted on the Council website and copies were sent to all chief justices, chief judges and attorneys general in Canada. The Council will encourage all users of court systems to adopt the new policies and, where appropriate, to use them to enhance or improve their own practices. The committee also began to work on a strategy to keep the *Blueprint* current through a system of biennial reviews.

PROTOCOL FOR USE OF PERSONAL INFORMATION IN JUDGEMENTS

The committee, when it asked Council members for information on how various courts use personal information in judgements, found a broad range of practices across the country. In response, it developed a protocol and uniform set of standards. The committee asked the National Judicial Institute to incorporate the report in its curriculum for judgement writing courses and requested Council members to encourage courts to adopt it voluntarily.

FOSTERING TECHNOLOGY IN THE COURTS

The committee engaged outside experts to develop a model policy for issues relating to privacy. The first phase of the work involved synthesizing and analyzing comments generated by a discussion paper that was circulated in 2003, after which the committee drafted a policy that is now being reviewed within the judicial community. The committee heard expert advice on the development of national standards and best practices for evidence production at trial and appeal levels. It prepared for a 2005 survey of the degree to which Canadian courts have implemented Council recommendations to date. Finally, it prepared a framework to guide Canadian courts in the setting up of technology committees of their own. The protocol – which has been posted on the Council website – defines membership and proposes a broad mandate, including needs assessment, communications and advice to the Chief Justice on technology issues and opportunities.

Judicial independence is the cornerstone of Canada’s judicial system.

Sustaining the Institution Judicial Independence Committee

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 quality of justice in Canada hinges on judicial independence. Without freedom from political, social and financial pressures, the judiciary cannot guarantee the objectivity of its judgements. The Council, through the Judicial Independence Committee, seeks to protect judicial independence, to identify challenges and areas of possible conflict and to promote ethical standards for Canadian judges.

ETHICAL PRINCIPLES

Judges are expected to adhere to the highest possible standards of conduct. However, it was not until the Council published *Ethical Principles for Judges* in 1998, that Canadian judges were provided with a set of written guidelines for appropriate responses to certain situations which raise ethical issues. In 2004–05, the Judicial Independence Committee, with support from the Judicial Conduct Committee and thoughtful commentary from across the judicial community embarked on a revision of this publication.

INTERNATIONAL MEETINGS

There is growing demand for Canadian judges to contribute to justice reform in developing countries. However, many reform projects are delivered through private-sector companies, and the involvement of judges in competitive bidding processes may pose a real threat to judicial independence. The Council has been urged to monitor the overseas activity of Canadian judges and to develop protocols for guidance in this area. To that end, the Judicial Independence Committee began a contextual analysis of the issues. In its report to Council, the committee concluded that international participation should be fostered but that more research is needed to determine the precise role of the Canadian Judicial Council. Work has now begun on a statement of principles to guide judges who attend international meetings.

Highlights from Other Committees

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 information.

In 2004–05, the Judicial Education Committee continued to set educational policy, determine priorities and guide the National Justice Institute in the development and delivery of educational programs for judges.

JUDICIAL SALARIES AND BENEFITS COMMITTEE

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 provided background materials to the Quadrennial Commission, which presented its report to Parliament in November 2004. In preparing to advise the commission, the committee consulted broadly to ensure that Canada's judiciary speaks with one voice on the matter of salaries and benefits and to ensure that the process was not politicized.

NATIONAL COMMITTEE ON JURY INSTRUCTIONS

TERMS OF REFERENCE The National Committee on Jury Instructions was established in 1999 to prepare jury instructions for use in criminal cases across Canada. A Working Group of judges, lawyers and academics meets to review and revise model charges to jury members.

Considerable progress was made in 2004–05 in adding to the work already done. Revisions and additions to the model jury instructions are posted on the Council website and are available to judges, lawyers and interested readers.

BUILDING ON CHANGE The Road Ahead

Since 2002, when *The Way Forward* detailed a vision for the future, the Canadian Judicial Council has been working to modernize its structures and processes in order to serve better the needs of today's judiciary. Though a great deal has been achieved in the past two years to act on the far-reaching recommendations contained in that document, the full shift will take several years to complete. The accomplishments in this report, the work of the committees, the documents issued – these are only the beginning. Just as important last year were the projects begun but not yet completed – drafts circulated, consultations begun, studies launched. In 2005-06, the Canadian Judicial Council will bring these projects to fruition.

The future amounts to more than a series of projects, however. What is really key to the road ahead is a shift in attitude. Thanks to *The Way Forward* and the action that it has inspired, the Canadian Judicial Council of the future will operate an organization that is much more responsive to its environment. The website, the consultative processes, the Chairperson's Advisory Group – these are all mechanisms designed to keep the Council in touch with its constituency. They have opened the door to an ongoing exchange of information and advice. They will allow the Council to evolve in keeping with changes in the community and to respond to emerging issues and opportunities. As a result, the Council of the future will continue to evolve so as to serve the judiciary not only of today but of tomorrow as well.

CONTACT US

Your comments and questions about the Council are always welcome. Contact us at:

Canadian Judicial Council

Ottawa, Ontario

Canada K1A 0W8

Telephone: (613) 288-1566

Fax: (613) 288-1575

Email: info@cjccm.gc.ca

APPENDIX A CANADIAN JUDICIAL COUNCIL STATEMENT OF EXPENDITURES

FISCAL YEAR 2004-05

Salaries and Benefits	\$ 679,807
Transportation and Communications	112,476
Information	43,767
Professional and Special Services	491,058
Rentals	102,295
Purchased Repair and Upkeep	19,368
Utilities, Materials and Supplies	29,767
Construction and Acquisition of Machinery and Equipment	71,317
TOTAL	\$ 1,549,855