

CANADIAN JUDICIAL COUNCIL

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## Preface

I assumed the chair of the Canadian Judicial Council in January 2000 upon my appointment as Chief Justice of Canada. I arrived after 10 years of Council leadership by Chief Justice Antonio Lamer and with just three months remaining in the year addressed by this annual report.

Ernest Hemingway said: "I have learned a great deal from listening carefully." I have resolved to listen carefully to my colleagues at the Council table. I have much to learn from them, and I look forward to our deliberations in the years ahead.

The Council has become an important forum for promoting progress in the operations of superior courts. In their twice yearly meetings and network of working committees, Council members stay on top of policy issues and ensure that best practices in court administration are identified and transferred where possible into practice across the country.

As the Council approaches its 30th birthday, it can also point to many specific accomplishments:

- Authorship of the acclaimed *Ethical Principles for Judges*, a 1998 publication that is gaining international stature.
- Support for major advances in judicial education, including social context education.
- Development of a system for review of complaints about judicial conduct that respects judicial independence while assuring that grievances will be examined promptly and fairly.
- Assistance to countries around the world in establishing their own judicial systems.
- A policy on the appointment of judges to commissions and boards of inquiry that many governments have adopted as their guideline for such nominations.
- Sponsorship of the landmark *Deschênes* and *Friedland* reports.

- The "Delays Project" promoting court efficiencies and establishing time standards for the processing of appeals.
- Policies on gender fairness and equality in the courts.
- The introduction of standards for the publication of judgments in electronic form.

This annual report addresses in some detail the Council's current initiatives to help judges promote public understanding of the courts, both through the media and by working with other groups to introduce educational programs on courts and the role of judges.

I believe Canada has one of the finest judiciaries in the world, and that the Canadian Judicial Council has a role to play in making that fact known to Canadians. But the judiciary, like all our public institutions, has an obligation to examine itself regularly in order to stay relevant in a world of rapid change. For that reason I strongly supported our recent decision to appoint a special committee to examine the Council's role, operations and future priorities.



The Right Honourable Beverley McLachlin  
Chairperson  
Canadian Judicial Council  
Summer 2000



1.

## The Canadian Judicial Council



Members of the Canadian Judicial Council at the September 1999 Annual Meeting in Victoria.

### ***General Overview***

This report covers the activities of the Canadian Judicial Council for the period April 1, 1999, to March 31, 2000. It is the 13th annual report published by the Council.

The Council includes the chief justices and associate chief justices, chief judge and associate chief judge of all courts whose members are appointed by the federal government and, in the case of the three northern territories, the senior judges. As of April 1, 1999, the Council had 39 members. Members serving during 1999-2000 are listed in Appendix A.

The Council was established by act of Parliament in 1971. Its statutory mandate, set out in subsection 60(1) of the *Judges Act* (Appendix C), is “to promote efficiency and uniformity, and to improve the quality of judicial service in superior courts and in the Tax Court of Canada.”

The Council’s four areas of activity, discussed in subsequent chapters of this report, are:

- the continuing education of judges;
- the handling of complaints against federally appointed judges;
- developing consensus among Council members on issues involving the administration of justice;
- making recommendations, usually in conjunction with the Canadian Judges Conference, on judicial salaries and benefits.

Much of the Council’s work is carried out through standing and ad hoc committees and working groups, which deal with specific questions and continuing responsibilities of the Council. Committee membership as of March 31, 2000, is found in Appendix B.

While required by statute to meet once a year, the Council's practice for some years has been to meet twice — in Ottawa during the spring, and outside Ottawa in the fall. Its September 1999 meeting was held in Victoria.

The Council is served by an executive director, counsel and two support staff, located at the Council's office in Ottawa. The expenditures for the year are set out in Appendix E.

Each year representatives of courts from other countries visit Canada to observe court operations and court administration. In 1999-2000, the Executive Director met with judges and court administrators from Australia, China, New Zealand, Ireland, France, Uganda, Zambia, the Philippines and Japan who were interested in learning of the work and activities of the Council.

### ***Council Members' Seminars***

The Council's practice since 1992 has been to hold an annual seminar dedicated to subjects of interest and importance. In 1999-2000, the Council held two seminars. The first, in Ottawa November 26, 1999, shortly before the retirement of Antonio Lamer, Chief Justice of Canada and Chairperson of the Council, reflected on dominant themes of the Court and the Council during his nearly 20 years on the Supreme Court of Canada and 10 years as Council Chairperson.

The second seminar, held as usual during the Council's spring meeting, addressed "Courts and Communication," a subject that, in the introductory words of Chief Justice McLachlin, "has taken on a life of its own in the last few years and particularly months."

### **Seminar in Honour of the Right Honourable Antonio Lamer**

The November 1999 seminar focussed on Chief Justice Lamer's contributions, particularly since 1985 as seen through the eyes of the six successive Executive Legal Officers of the Supreme Court of Canada during that time.

### **Lamer Seminar Participants**

**The Honourable Allan McEachern**, Chief Justice of British Columbia, seminar chairperson

**Mr. Justice James MacPherson**, Ontario Court of Appeal

**Mr. Justice Robert Sharpe**, Ontario Court of Appeal

**Mr. Eugene Meehan**, President, Canadian Bar Association

**Mr. Justice Thomas Cromwell**, Nova Scotia Court of Appeal

**Professor Robin Elliot**, Faculty of Law, University of British Columbia

**Mr. James O'Reilly**, Executive Legal Officer, Supreme Court of Canada

In describing the position of Executive Legal Officer, Mr. Justice James MacPherson compared it to a chief of staff to the Chief Justice, assisting in administrative and legal tasks, media relations, protocol and the Chief Justice's responsibilities as chair of the Council.

Mr. Justice MacPherson, who held the position between 1985 and 1988, described Chief Justice Lamer as the dominant writer in the court's criminal law jurisprudence and a "scholarly man who knew the criminal law probably better than anyone in the country over the years." He had articulated a body of jurisprudence in substantive criminal law, criminal procedure and evidence, all under the umbrella of the legal rights section of the *Charter*, that put Canada's jurisprudence in the forefront of the world in those areas.

Mr. Justice Robert Sharpe held the position from 1988 to 1990, when senior puisne judge Mr. Justice Lamer played a significant role in the management of the court. He said that Chief Justice Lamer, the last remaining judge who was on the Supreme Court when the *Charter* came into being, played a vital role in defining first the scope and then the limits of *Charter* adjudication.



“What he did essentially was to give very broad and generous meaning to the *Charter* guarantee, but to make sure that that was focussed very specifically on a particular set of problems, thereby limiting the reach of the *Charter* into areas where he didn’t think it belonged,” said Mr. Justice Sharpe. Chief Justice Lamer wished to avoid the “spectre of a judicial super legislature.” Concluded Mr. Justice Sharpe:

. . . Chief Justice Lamer is truly a founding judicial father of the Constitution. Right from the start he was keen to this debate that will go on as long as we have courts and a Constitution, about the appropriate judicial role. He opted for vigorous enforcement of *Charter* rights, but focussed in the area where judges have the expertise, the institutional capacity, and he was careful in attempting to avoid embroiling the courts in broader issues of social policy. I suggest that his work represents an enduring and lasting contribution to Canadian law.

Eugene Meehan, the Executive Legal Officer from 1990 to 1992, stressed Chief Justice Lamer’s role in managing the work of the Court. Between 1988 and 1998, the time between the filing of a leave application and the issuing of the judgment was reduced to 12 months from 25 months, and the number of appeals pending at year-end was reduced to 34 from 62. As chairperson of the Council, Chief Justice Lamer initiated a project to address delays in trial and appeal courts across Canada. This work resulted in a delay reduction program for trial courts, advisory time standards for processing appeals, and case management systems in some courts of appeal. He was also a major supporter of the National Judicial Institute (NJI), which offers educational programs for judges. In 1998 some 1,319 judges took part in 28 NJI programs supported directly or indirectly by the Council.

Mr. Justice Thomas Cromwell was Executive Legal Officer between 1992 and 1995 when Chief Justice Lamer authored many important judgments dealing with legal rights cases under the *Charter*:

*Pearson* and *Morales* dealing with the presumption of innocence; *Tran* with the right to an interpreter; *Bartle* and the associated cases with the right to counsel; *Dagenais* and the *CBC* with freedom of the press. These were all cases which had to go

beyond sketching the broad outlines of the rights in question but also had to operationalize those rights. Each of these judgments provides not only the intellectual bases of the law but practical, step-by-step guidance to those who have to apply it in future cases. They also in my respectful view display a profound and cohesive vision of the architecture of the *Charter*.

Mr. Justice Cromwell said Chief Justice Lamer’s commitment to the eradication of unnecessary delay in the Court is legendary. The delays project had inspired, in particular, the work of the Canadian Bar Association (CBA) Systems of Civil Justice Task Force and of the Canadian Centre for Justice Statistics. “He created a culture of efficiency by precept and example.”

Professor Robin Elliot, the Executive Legal Officer from 1995 to 1997, noted that in the area of Aboriginal rights, Chief Justice Lamer’s judgments established the method by which content is to be given to Aboriginal rights, the means of determining in a given case whether or not those rights have been infringed, and the process by which courts decide whether or not infringement could be justified. He cited other cases that addressed important questions about the role of the courts, and the position of the courts and the judiciary within the system of government and constitutional structure.

Professor Elliot said Chief Justice Lamer played an important role internationally in responding to requests from countries around the world for advice in establishing the rule of law, democracy, independence of the judiciary and an effective and efficient court system. He had sought out volunteers among chief justices to work with these countries and used his influence as the Chair of the Board of Governors of the NJI to make its resources and expertise available.

James O’Reilly, the current Executive Legal Officer, noted the progressive increase in public and media interest in the Supreme Court over recent years. This played out in unprecedented pressure on court facilities. Chief Justice Lamer had consistently showed respect for the media’s role, the demands on their time and the competition that influences their work. In accommodating their requests he had demonstrated an understanding of how the real world of the media works, and set an

example for judges in meeting their responsibilities for public information.

Chief Justice Allan McEachern, seminar chairperson, “cross-examined” Chief Justice Lamer on his recollections as a student, lawyer and judge in Quebec and as member and leader of the Supreme Court. Asked whether the Chief Justice of Canada should sit as much as the other judges of the court, Chief Justice Lamer replied:

Yes, and I think the Chief Justice should take on the hardest cases. . . . If it’s within a field where I have some knowledge and it’s a difficult case, and especially if it’s going to be an unpopular case, then I think the Chief Justice is the one to go to bat.

### **Seminar on Courts and Communication**

Opening the members’ seminar at the spring meeting, Chief Justice McLachlin said:

We’re all aware of the increased public interest in our courts and we’re equally aware of the need to communicate somehow to the public who are so interested in what we’re doing and how we’re going about doing it. I’ve always taken the view that the courts belong to the people of this country, and that the people of this country have the right to know about this important institution. It’s up to us to find ways, through our judgments, but also sometimes outside our judgments, to communicate with the public and to maintain the confidence that I believe the Canadian public has in the judicial system.

#### *The Courts and Public Education*

The first session explored potential roles of judges as educators, and featured important educational initiatives taking place in British Columbia, Manitoba and Nova Scotia.

Rick Craig, Executive Director of the Law Courts Education Society of British Columbia, described the renowned programs mounted by the Society over the previous 10 years. The Society estimates it has reached more than half a million British Columbians directly and many more through its impact on school curriculums. It is a partnership of players from the courts, the Ministries

of the Attorney General and Education, the B.C. Branch of the Canadian Bar Association, and representatives of schools, immigrant, visible minority and First Nations communities.

With a mix of core and project funding, the Society has been able to have classrooms built in courthouses, establish offices in six regions, and work closely with immigrant-serving agencies, schools, community care organizations and others. It organizes simulations, role plays and mock trials; researches and prepares educational materials; and creates programs aimed at primary and intermediate school levels, and native and youth-at-risk groups. Special programs of various kinds are delivered in five languages, and materials prepared in 10 languages. More than 100 judges have worked with the Society, many of them through a community liaison program that permits them to meet immigrant communities in local settings.

#### **Courts and Communication Seminar Participants**

**James O’Reilly**, Executive Legal Officer, Supreme Court of Canada, seminar chairperson

##### *The Courts and Public Education*

**Rick Craig**, Executive Director, B.C. Law Courts Education Society

**The Honourable Jeffrey J. Oliphant**, Associate Chief Justice, Court of Queen’s Bench of Manitoba

**Dean Jobb**, Instructor, School of Journalism, University of King’s College, Halifax

##### *The Courts and the Media*

**Kirk Makin**, Justice Reporter, *The Globe and Mail*

**Giles Gherson**, Editor-in-Chief, Southam News and Political Editor, *The National Post*

**Don Newman**, Senior Parliamentary Editor, CBC National Television News

##### *Perspective*

**Professor Hugh Mellon**, Faculty of Political Science, King’s College, University of Western Ontario

Mr. Craig said that his organization needs to raise about half a million dollars a year to operate in British Columbia, plus \$300,000 for materials.

Associate Chief Justice Oliphant described what Manitoba judges do “with almost no budget whatsoever.” A court committee wrote six Winnipeg high schools advising them that judges were willing to speak to their students, which led to visits to each of the schools in the fall of 1998 and spring of 1999. This pilot program was subsequently expanded to 39 schools across the province. Students from many schools also visit the law courts complex in Winnipeg, normally for a full day. Where possible, they attend a trial that can be completed that day, and counsel stay behind to discuss what has happened in court. Manitoba hopes to put educational materials on the court Web site and introduce a speakers bureau. A longer term objective is to introduce a “teaching the teachers” program on courts and the role of judges.

Dean Jobb described the “News Media and the Courts” course he had taught for the past four years at the School of Journalism at the University of King’s College in Halifax. He draws on his contacts as a working journalist to bring in lawyers, prosecutors, judges and others for panel discussions and guest lectures. The course, which is mandatory for students of the Bachelor of Journalism Program, has attracted working journalists, court reporters, court clerks and employees of the justice department. But its focus is future journalists, who are introduced to basic legal principles and the fundamentals of the justice system — the common law, roles of judges, prosecutors and defence counsel, the *Charter*, civil law and procedure, and key issues such as defamation, bans on publication and contempt of court. Each course features a panel of judges who discuss judicial independence, the appointment and discipline of judges and the role of the judiciary.

Mr. Jobb said some judges have been critical of media reports that reflect only the views of a crime victim or unsuccessful litigant, or that blame judges for the failings of prosecutors, lawyers, parole officers or others in the justice system.

I don’t consider this to be merely media bashing or, for that matter, free therapy for frustrated judges. I believe the students need to hear this. I think it underlines for them how vital it is for them to be thorough, to thoroughly understand the system, and the importance of accuracy and balance. Along the way judges learn some things about deadline pressure, dwindling media resources and the difficulty that faces reporters who want to do a good job and want to understand complicated legal issues and rulings if no one will talk to them.

He said the biggest source of frustration for the media about the court system is the “arbitrary denial of access to documents that should be public, court officials who either through fear or the bureaucratic power over paper, decide they’re going to deny access, not knowing what the rules are.”

Mr. Jobb urged other courts to reach out to journalism schools to encourage them to introduce courses in the law and the courts.

*The Courts and the Media: Pressures faced by print and electronic journalists, and their impact on the coverage of the courts*

Seminar chairperson James O’Reilly said both judges and journalists use language in a precise way to communicate to the public. Each profession has different challenges. The purpose of this seminar was to describe challenges journalists face in trying to cover legal stories.

Kirk Makin of *The Globe and Mail* said that each edition of a daily newspaper is something of a miracle, a product of tens of thousands of interactions and decisions. He added:

As haphazard and overwrought as the final product often appears to you, there’s every reason for a newspaper to want to get it right. For one thing, inaccuracy can cost credibility, and once lost, credibility is pretty hard to get back. Errors and

omissions also cost money. . . . For a reporter, one's reputation for getting the story angles and details is critically important.

Mr. Makin described a typical day reporting on a judgment of the Supreme Court of Canada, including study of the judgment, research and reaction, and the key process of selecting an angle and lead paragraph. Although notice is provided on release of Supreme Court of Canada judgments, most other courts give no advance notice.

The unpredictability of release for appeal court judgments is one of two especially important continuing problems. The other is . . . the often whimsical manner, or what seems to us whimsical manner, in which court officers and administrators decide what files are going to be released to the press.

Speaking from the point of view of an editor who assigns reporters, Giles Gherson of Southam News and *The National Post* said there is a trend now to covering courts with more experienced, knowledgeable and sophisticated reporters similar to the improvement in economic coverage over the past decade. He said there is enormous pressure on justice reporters to deliver the goods in a competitive environment. They are expected to introduce colour, interpretation, nuance and the context of court decisions in ways that readers will find compelling. Print media organizations are trying to combat the steady decline in newspaper subscriptions by being relevant, interesting and entertaining.

As Mr. Gherson said:

The rising influence of the courts, their role in policy development, rulings that go against the ideological grain of elected governments, and the whole area of the *Charter* revolution, are important phenomena.

These are trends that are in the air that editors are taking cognizance of. They are feeling their way, I think, in a very uncertain manner. I don't hesitate to admit that. We're looking for help, I think, from the members of the judiciary to help us understand how it works, how the process operates. We need, I think, better information about what's coming down the pipe.

The CBC's Don Newman recalled his role as a member of the Parliamentary Press Gallery in agitating for the introduction of television cameras to sittings of the Supreme Court of Canada. He discussed the impact of all-news television, which is now setting the agenda for conventional television and to some degree all news media. He said the courts and other institutions are set up and operating in a way that made sense originally but they may have to change some practices now, as they are addressing a larger, interested audience, well beyond lawyers, litigants and other judges. In the wake of staff cutbacks, the CBC has lost many specialist reporting positions, and it is hard for generalists to understand complex court judgments without good briefings. By inadvertence, there is a risk that judgments will be reported only in part, or incorrectly.

Members of the panel urged the Council to provide reporters with access to court representatives who can help point them to what is of importance in judgments. They also urged judges who have complaints about reporting to make their concerns heard.

“. . . it's very important for you to respond if you feel that inaccuracies are being presented because if they're not challenged, they're going to be built upon and just carry on,” Mr. Gherson said.

### *Perspective*

Professor Mellon, invited to contribute “A Perspective from a Court Watcher,” said the seminar indicated to him, first, that judges recognize the importance of communicating with the public and are taking an active personal role. Secondly, it was clear that the low level of public knowledge about the courts presents ongoing difficulties and limitations. Finally, evaluating efforts to improve public understanding is a complex matter.

Professor Mellon said heightened media interest in court proceedings is mirrored in his classrooms. Students are less interested in traditional courses about political parties and legislative politics and are demanding more courses on the *Charter* and the courts.

## 2.

## Judicial Education

***Overview of Responsibilities***

From the Council's inception it was recognized that a judiciary in a dynamic and changing society must constantly renew its intellectual resources. Parliament provided that the Council could, pursuant to paragraph 60(2)(b) of the *Judges Act*, "establish seminars for the continuing education of judges."

The Council makes educational opportunities available for judges through its Judicial Education Committee, which recommends conferences and seminars to be designated for attendance and reimbursement of expenses under subsection 41(1) of the *Judges Act*.<sup>1</sup>

Opportunities for continuing education and training are also provided through other auspices. As authorized or required through provincial judicature acts, individual courts can undertake educational programs, and under subsection 41(2) of the *Judges Act*, individual chief justices can authorize the reimbursement of expenses incurred by judges of their courts in attending certain meetings, conferences and seminars.

As discussed below, the Council's Study Leave Committee reviews applications and recommends judges for the Study Leave Program at Canadian universities.

***Authorization for Reimbursement of Expenses***

The *Judges Act*, subsection 41(1), provides for payment of the expenses of judges attending designated education conferences.

The Council authorizes reimbursement of expenses, in most cases for a specific number of judges to attend particular seminars and conferences that the Judicial Education Committee believes will be important and beneficial to the participating judges.

The Office of the Commissioner for Federal Judicial Affairs administers the resulting claims.

**National Judicial Institute Programs**

Ultimately, the responsibility to further their education falls on individual judges. They are encouraged to spend up to 10 sitting days a year on their continuing education. 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 (NJI), a non-profit organization funded by both federal and provincial governments.

The NJI designs and presents courses for both federally and provincially appointed judges to help them improve the administration of justice, achieve personal growth, maintain high standards of official conduct and social awareness, and perform judicial duties fairly, correctly and efficiently.

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."

During 1999-2000, the Council authorized the following NJI seminars under subsection 41(1) of the *Judges Act*:

Appellate Courts Seminar	Halifax	April 18-21, 1999
Social Context Education		
Faculty Development	Regina	April 28-30, 1999
Faculty Development	Mont Tremblant	June 2-4, 1999
Faculty Development	Edmonton	November 2-3, 1999
Civil Law Seminar	Halifax	May 19-21, 1999
Early Orientation for New Judges	Ottawa	May 31-June 4, 1999
	Ottawa	November 22-26, 1999
Atlantic Courts Seminar	St. John's	November 4-5, 1999
Pre-Trial Settlement Skills	Toronto	November 17-19, 1999
Advanced Settlement Skills	Toronto	December 1-3, 1999
Family Law Seminar	Vancouver	February 9-11, 2000
Criminal Law Seminar	Halifax	March 15-17, 2000

The NJI also works with courts to meet the educational needs of their judges for computer training. Courses generally include instruction on word processing, document management, on-line research and Internet access, and a variety of software packages. During the year, computer training was provided to judges of the following courts:

- Supreme Court of Nova Scotia,
- Tax Court of Canada,
- Federal Court of Canada,
- Supreme Court of British Columbia.

**Judicom Training by the Office of the Commissioner for Federal Judicial Affairs**

During the year some 258 federally appointed judges from 14 courts across nine provinces and three territories participated in group training sessions on the use of the judges' own Judicom computer network. The courses were delivered in major cities under the auspices of the Office of the Commissioner for Federal Judicial Affairs, the office responsible for the development of the network.

**Canadian Institute for the Administration of Justice Programs**

Continuing with past practice, the Canadian Institute for the Administration of Justice (CIAJ), operating out of the Université de Montréal, conducted two annual

seminars for federally appointed judges, for which the Council authorized reimbursement of judges' expenses:

Judgment Writing Seminar, Montreal, July 6-10, 1999, with 55 judges plus judicial organizers and faculty authorized to attend;

Newly Appointed Judges Seminar, Château Montebello, Quebec, March 4-10, 2000.

The Council also authorized reimbursement of expenses for participating judges at two major conferences organized by the CIAJ during the year:

"Changing Punishment at the Turn of the Century: Finding a Common Ground," Saskatoon, September 16-19, 1999, with 48 judges authorized to attend;

"The Judiciary — Third Branch of Government: Manifestations and Challenges to Legitimacy," Quebec City, October 13-16, 1999, with 95 judges authorized to attend.

**Other Seminars Authorized under the *Judges Act***

The Council also authorized judges to be reimbursed for their expenses in attending the following other seminars and conferences during the year:

Council members or their designates — a training program on "Strengthening Your Executive Team"

organized by the Association of Canadian Court Administrators, Ottawa, April 15-16, 1999;

Council members — “Law, Justice and Community: A Symposium” in honour of Lorne O. Clarke, a past Council member, Halifax, April 17, 1999;

60 judges — annual conference of the Association of Family and Conciliation Courts, Vancouver, June 2-5, 1999;

56 judges — The Cambridge Lectures, sponsored by the Canadian Institute for Advanced Legal Studies, Cambridge, England, July 11-21, 1999;

62 judges — Federation of Law Societies of Canada National Criminal Law Program, Université de Montréal, July 12-16, 1999;

Two judges — the New Appellate Judges Seminar and two other judges — the Senior Appellate Judges Seminar, at the Institute of Judicial Administration, New York University School of Law, Summer 1999;

24 judges — the Sixth National Court Technology Conference sponsored by the National Centre for State Courts, Los Angeles, September 14-16, 1999;

Six judges — the INSOL International Conference and Judicial Colloquium, October 13-16, 1999, Munich, Germany.

### ***Study Leave Program***

Enhanced educational programs are essential to equip judges for their work in an evolving society. The desirability of leaves of absence for reflection and study is well-established within and outside the judiciary.

Each year, under a study leave fellowship program, a number of judges undertake research, study and, in some cases teaching, at a Canadian university. The Study Leave Program is operated under the joint auspices of the Canadian Judicial Council and the Council of Canadian Law Deans (CCLD).

Judges are recommended for participation by the Study Leave Committee, composed of three Council members and two representatives of the CCLD, one representing common law and one civil law jurisdictions. Members of the Committee in 1999-2000 are found in Appendix B. The Governor in Council (Cabinet) is then asked to approve the leave, as required under paragraph 54(1)(b) of the *Judges Act*.<sup>2</sup>

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.

During study leave, judges continue to receive their salaries, but must cover living, travel and other expenses from personal resources.

Eight judges participated in the study leave program in the period September 1, 1999, to March 31, 2000, as follows:

- Mr. Justice Jules Allard of the Quebec Superior Court reported that he was student, teacher, monitor and organizer during his leave spent at the Faculty of Law of l'Université de Sherbrooke. He participated in a variety of judicial exercises with students, helped organize a career day and prepare students for the Laskin Competition. He counselled students, took computer training and profited from research and lectures to deepen his understanding of many subjects.
- Mr. Justice André Brossard of the Quebec Court of Appeal attended most of the courses offered on securities law at the Faculty of Law of the Université de Montréal, reviewed the new Code of Civil Procedure

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.”

of Quebec with a view to remaining current, had the pleasure of participating in choosing the ultimately successful representatives for the Laskin Competition, and engaged in comprehensive computer training. He reported that his stimulating study leave experience led him to re-evaluate his earlier decision to retire in June, and prompted him to extend his time on the bench.

- At the University of Toronto's Faculty of Law, Mr. Justice James Carnwath of the Ontario Superior Court of Justice attended lectures and participated in classroom discussions in labour law, constitutional law, Hegel's philosophy of rights, advocacy and remedies. He was involved extensively in the moot court program, spoke to the weekly faculty lunch, and counselled students as the "judge-in-residence." He said it was a year of "unalloyed joy" and encouraged him to return to the bench "with renewed vigour and commitment to my judicial responsibilities." Dean Ronald Daniels wrote the Council that the Faculty of Law was "extraordinarily blessed" to have had Mr. Justice Carnwath in its midst. "His enthusiasm, intelligence, decency, and commitment offered all of us — faculty and students alike — exposure to someone who embodies the highest ideals of our profession."
- Madam Justice Carol Conrad of the Alberta Court of Appeal found her individual contact with students to be one of the most rewarding aspects of her study leave at the University of Calgary. She kept an open door for students to drop in, ask questions, discuss the law and their future, or sometimes just chat. She taught several lectures, attended and participated in others, and was actively involved in the week-long Advanced Intensive Advocacy Program. She assisted with the moot courts held at the university, took time to reflect on current trends in criminal law, sentencing, tort law and endangered species law, and did background work for a paper on case management and alternative dispute resolution at the appellate level.
- Madam Justice Susan Lang of the Ontario Superior Court of Justice had the opportunity throughout the academic year at the University of Toronto to reflect on a wide variety of questions, including the impact of technologies on employees, societal structures, institutional efficiencies, court objectives, leadership and societal interactions. She discussed or attended lectures on many subjects at the Centre for Bioethics. Madam Justice Lang was particularly impressed by her discussions with graduate students and others of the impact that judges' decisions can have at all levels of society.
- Mr. Justice Claude Larouche of the Superior Court of Quebec took his study leave at the Université du Québec à Montréal, Department of Political Science and Law. As a visiting professor he shared his expertise in civil procedure, particularly with regard to specialized procedures such as seizure before judgment and injunctions, as well as chamber applications. He attended and participated in many conferences and seminars and was a conference guest speaker on the subject of abusive civil procedural applications. He reported having benefitted greatly from faculty assistance with regard to computer training. He assisted in preparing students for moot court and for inter-faculty moot contests, and also sat as judge and evaluator.
- Comparative study of American and Canadian law and court systems formed the first part of the study leave for Mr. Justice William McKeown of the Federal Court of Canada, who visited the University of Notre Dame Law School in South Bend, Indiana, as part of his program. Later at the University of Toronto Faculty of Law, he attended classes and lectured in administrative law. At both schools he attended special lectures in a variety of legal subjects and extended his research in reducing the time in long trials. He concluded that case management would benefit from more academic scrutiny in Canada.
- At the University of Alberta, Madam Justice Marguerite Trussler of the Court of Queen's Bench of Alberta was guest lecturer in family law, alternate dispute resolution and judicial remedies. Throughout her leave she was engaged in an interdisciplinary project on issues relating to children in divorce situations, and she worked on two other projects — a counselling model on custody and access assessments, and the production of videos for the Alberta Parenting After Separation seminar. She prepared a comprehensive report for her court on Family Court Structures and Services.



## 3.

## Complaints

***Overview of Responsibilities***

Canadians expect the judges in their courts to act impartially: that is, to make decisions on the basis of the rule of law and the facts before them, free of outside threats or pressures of any kind.

The confidence that judges will act impartially and without bias is thus inseparable from the assurance that judges enjoy independence.

Indeed, guarantees of judicial independence are a cornerstone of liberal democracy and fundamental justice. Such guarantees are imbedded in Canada's own *Constitution Act 1867*, in language borrowed from legislation adopted three centuries ago by the Parliament of Great Britain: that judges shall hold office during good behaviour, that their salaries and benefits be fixed by Parliament, and that they be removable only by the Governor General on Address of the Senate and House of Commons.

This formulation has been effective both in preserving judicial independence and deterring judicial misconduct. Canada's Parliament has never made a decision for removal, although over the years a number of judges whose conduct has been under examination have chosen to retire or resign rather than face such a decision or the process leading to it.

The principle of judicial independence does not eliminate judicial accountability. Canada's Parliament has set in place a process to assess alleged breaches by federally appointed judges. Under the *Judges Act* that process has been the responsibility of the Canadian Judicial Council since 1971.

The Council's role comes into play when a complaint or allegation is made that a judge in some way has breached the requirement of good behaviour. It must then decide whether, by his or her conduct, "the judge has become incapacitated or disabled from the due execution of the office of judge."

The Council makes 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 in any way on the judges' capacity to perform their duties, and without jeopardizing in any way their tenure on the bench, so long as they have acted "within the law and their conscience."

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

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 judge before a complaint file will be opened. 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, provincial court judges, court employees, lawyers or others, about whom many complain — wrongly — to the Council.

The complaints process inevitably risks exposing judges to unjust accusations 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 accusation. Judges are not in a position to refute such accusations 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. The Council seeks to make the complaints process demonstrably open and equitable, to examine each complaint seriously and conscientiously, and to ensure consideration of the fundamental issues involved, not just the form in which it was made or the technicalities surrounding it.

It is against this exacting standard that the complaints process has been measured in its evolution since 1971.

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 enquiries. 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.

Subject to these protections with respect to individual complaints, the Council has been concerned about the potential for misunderstanding of its mandate and its process for dealing with complaints. There is much evidence that the Council's function is often misinterpreted by litigants and not fully understood by the public.

For these reasons, Council members decided in March 2000 to publish and distribute widely to the public and judges brochures explaining the complaints process.

### ***The Complaints Process***

The initial responsibility for dealing with complaints rests with the Chairperson or one of two Vice-Chairpersons of the Judicial Conduct Committee of the Council. Their authority and responsibility are established by the Council by-laws made pursuant to the

*Judges Act*. The by-laws are reproduced at Appendix D.

The Chairperson or a Vice-Chairperson<sup>3</sup> 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.

In a number of circumstances, the Chairperson may choose to refer a complaint to a Panel of up to five judges — usually members of the Council but a Panel could include a judge who is not a member of the Council. The issues involved may be particularly sensitive, may benefit from review by more than a single Council member and an expression of disapproval of the conduct of the judge in question may appear to be warranted.

The Chairperson, or a Panel, may ask an independent lawyer to make further inquiries on an informal basis. A Panel may conclude that no further action by the Council is warranted and direct that the file be closed with or without an expression of disapproval. In essence, an expression of disapproval represents the Panel's view that a complaint has a measure of validity but is not sufficient to warrant a recommendation to the Council for a formal investigation by an Inquiry Committee.

Under the *Judges Act*, only the full Council may order a formal investigation or recommend removal. Formal investigations are carried out by an Inquiry Committee which consists of members of the Council, as well as members of the Bar appointed at the discretion of the Minister of Justice.

In only five cases during the Council's nearly 30-year history have complaints led to formal investigations. By far the largest proportion are dealt with by the Chairperson, and a much smaller proportion go to Panels. Even more rarely — once since 1971 — the Council may recommend to the Minister of Justice that a judge be removed from the bench.

These screening procedures do not take place if the Minister of Justice or a provincial attorney general directs the Council to undertake a formal inquiry under

<sup>3</sup> Throughout the remainder of this chapter "Chairperson" can include "Vice-Chairperson."

### 3 . C O M P L A I N T S

subsection 63 (1) of the *Judges Act*, in which case the Council must do so. Five such inquiries have occurred since 1971, the most recent one terminating in the year under review, as discussed later in this chapter.

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 office, or
- (d) having been placed, by conduct or otherwise, in a position incompatible with the due execution of that office.

#### *The 1999-2000 Complaints*

In 1999-2000, the Canadian Judicial Council closed 171 files dealing with complaints against federally appointed judges.

During the year, 169 new files were opened, which compares with 145 the previous year and an average of 196 over the previous three years.

In the 171 complaint files closed during the year, a total of 201 judges were named, of whom 78 percent were male and 22 percent female. (As of April 1, 2000, 230 of the 1,014 federally appointed judges, or 23 percent, were women.)

**Table 1**  
***Complaint Files***

	New files opened	Carried over from previous year	Total caseload	Closed	Carried into the new year
1992-93	127	14	141	110	31
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

One file was the subject of a formal inquiry directed by the Minister of Justice, and three were referred to Panels. Outside counsel was asked to undertake fact-finding inquiries in one case.

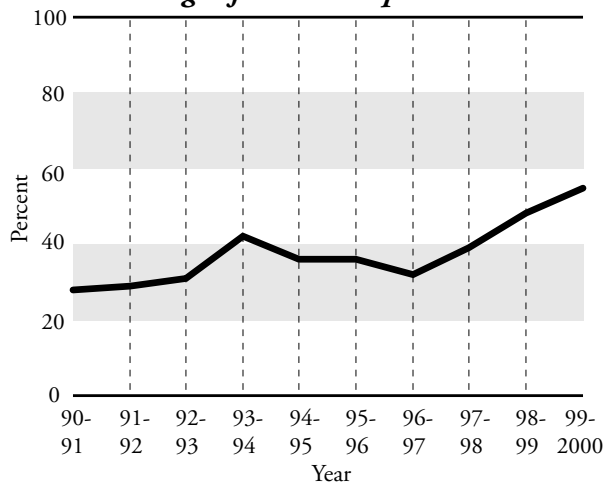
The profile of complainants and their concerns may well reflect much about the changing nature of conflicts being brought before Canada's superior courts. Note that in the following discussion, totals may exceed 171 — the number of files closed during the year — because some files involve more than one complainant, more than one type of dispute, or more than one allegation against a judge.

Males accounted for 113 of 180 complainants or 62.7 percent in 1999-2000.

Custody, divorce and other disputes related to family law accounted for 94 of 177 complaints, or 55 percent, a sharp increase from the average level of 30 to 45 percent experienced in recent years. This compares with 16 complaints related to criminal matters, 11 each related to torts and contracts, and 10 to property matters.

In 104 instances, complainants alleged that judges had been "unfair" in applying the law and in 91 instances that they had erred in law. In 29 other cases judges were said to have failed to hear both sides of the case. There were 17 allegations that the complainant had been treated harshly or abusively, 15 that a judge had abused his or her powers and 10 instances of alleged conflict of interest.

**Family Law Issues —  
Percentage of Total Complaints**



Parties to litigation were the source of 80 percent of complaints, and a further 10 percent came from individuals with a direct interest in the outcome. Interest groups registered four complaints, counsel four complaints and one matter was referred to the Council by the Minister of Justice.

Of 137 litigants involved in complaints, 41 percent were not represented by counsel, 48 percent were represented, and it was unclear in 11 percent of the cases. Of the 171 files closed, 165 referred to conduct on the bench, one to conduct off the bench, and five to conduct on and off the bench.

**Files Closed by the Committee Chairperson**

A complaint naming a federally appointed judge is considered in the first instance by the Chairperson of the Judicial Conduct Committee, who may be able to make a decision on the basis of either the information contained in the complainant’s letter, or also on comments and documentation received from the judge concerned.

Of the 171 complaint files closed during the year 1999-2000, 98, or 57 percent, were closed by the Chairperson without the necessity of seeking comments from the judge. A further 68 files, or 39 percent, were closed on the basis of replies from the judge and his or her chief justice.

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 frequently ask for a new trial or hearing, or for compensation as a result of an allegedly incorrect or unlawful decision. In most instances, the Council has no power to deal with these requests. The files are closed with a letter to the complainant, a copy of which is provided to the judge and his or her chief justice along with the letter of complaint.

**Table 2  
Complaint Files Closed in 1999-2000**

	Closed by the Chairperson* of the Committee	Closed by Panels	Other
After response from the judge	69	3	—
Without requesting response from the judge	98	—	—
Files “Withdrawn” or “Discontinued”	—	—	1**
<b>Total</b>	<b>167</b>	<b>3</b>	<b>1</b>

\* or Vice-Chairperson

\*\* Inquiry directed by Minister — file closed when judge resigned

When it is not certain whether a matter falls within the jurisdiction of the Council, when the nature of the proceeding giving rise to the complaint is not clear, or when it appears that there may be substance to 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.

The Council must, of course, be prepared to deal with complaints against Council members themselves. In these instances, because it may be perceived as improper for Council members to deal with such complaints, it is the Council’s policy for an independent lawyer to review the files before they are closed. During the year, there were four complaints against Council members. In each case, the lawyer agreed with the Chairperson that no action was required by the Council, and the file was closed without requiring comments from the Council member.

Examples of complaint files closed in 1999-2000 by the Chairperson and their assessment follow.

### *Alleged bias*

Bias in some form was alleged in 40 percent of files closed — either against the complainant, against men, against women, or in some other form.

- Members of a national parenting organization alleged that the judge's decisions consistently revealed a bias against non-custodial parents and children of divorce. They also alleged that the judge had made clear on many occasions that she was unable to separate her personal agenda from the duties of her appointment, which in the complainants' view was morally wrong and put the administration of justice into disrepute. They stated that the judge's judicial activism should be curbed as it did not reflect the common sense experience of ordinary citizens. In a second letter, one of the complainants complained about the Supreme Court of Canada's decisions in the family law area and stated that the Court "has set an unacceptable tone in its family law decisions." He asked the Council to launch an independent inquiry into the behaviour of all federally appointed judges "on the family law bench." The complainants were informed that they had provided no evidence of bias on the part of the judge other than their disagreement with her decisions. With respect to the complaint against the Supreme Court of Canada, the concept of judicial impartiality was explained. The complainant was advised that he had provided no evidence of bias. He was also advised that the Council had no mandate to conduct an inquiry as requested in his letter.
- The complainant was an unrepresented party on her motion to vary child support. She alleged that the judge was biased against women and against her, yelled at her and belittled and abused her during the hearing, demonstrated unconscionable support of her ex-husband and refused to admit into evidence police reports and ledger sheets that supported her case. A review of the transcript of the hearing did not support the complainant's version of events. The hearing had taken most of the afternoon, and the complainant and her ex-husband, who was also unrepresented by counsel at the hearing, argued with each other throughout the hearing. The judge had treated the parties in an even-handed manner, seeking to confine them to the relevant issues on the motion. The transcript did not support the allegation that the judge had belittled the complainant or abused her. With respect to the admission of documents into evidence, the complainant was informed that the judge had made a similar ruling on a request by the complainant's ex-husband. If the complainant disagreed with the judge's decision, her only recourse was to appeal the decision. There was no evidence of judicial misconduct.
- Complainant A alleged that the judge's judgments were "repeatedly anti-male." In requesting removal of the "feminist judge" from the bench, the complainant expressed approval of an article impugning the judge's ability to "judge impartially" in view of comments the judge made at a conference. Complainant B alleged the judge was an "outspoken feminist and political ideologue." In support of his complaint, this complainant also relied upon another newspaper article criticizing the judge's alleged "impropriety" for "speaking out" on a controversial issue. Complainant A was advised that his allegation of an anti-male bias had not been substantiated. On the question of impartiality, complainants A and B were advised that while traditionally judges do not speak out about their decisions, judges have often participated in educational conferences and proceedings of learned societies. The judge's comments were hardly enough to establish an inference that the judge would not judge future cases fairly. The complainants were informed that if a party had any apprehensions about a judge's impartiality, the law entitled that party to seek recusal of the judge from the case.
- The complainant was the sister of a child who was the subject of a Christmas access dispute. She stated that the child's father, who was seeking access over the Christmas period, was abusive towards the child, herself and others. She stated she was shocked when the judge ordered that the child spend part of the Christmas period with the father, notwithstanding the allegations of abuse. The judge stated that he was

as mindful as anyone on the bench of the terrible consequence of child abuse and domestic violence. He said he had resolved the Christmas access dispute as best he could based on the material before him and the submissions of counsel. The comments of lawyers for the parties, who were present at the hearing, supported the manner in which the judge conducted the hearing and did not bear out the complainant's version of events. The complainant was informed that there was no basis for a finding that the judge had acted improperly.

- In a widely publicized complaint, a national women's group alleged that a judge had failed to "impartially apply the law and decide cases in accordance with their legal merit." The group asked the Council to recommend that the judge be removed from office because "by her failure to impartially and objectively interpret the law, in identifying herself solely with the legal perspective of feminists, and in her personal attack on another judge" she had "placed herself in a position incompatible with the due execution of her office." Two other complaints were also received as a result of the publicity given to the main complaint. The complainant was advised that some of the information in the letter of complaint about the judge's involvement in various groups appeared to be inaccurate and that the judge's language "was well within the ambit of the case and therefore not outside the realm of appropriate judicial conduct." The Chairperson found no evidence of judicial misconduct.

### *Alleged unfairness*

In some instances, complainants believe their side of a dispute has not been heard by the judge, or the judge has not properly managed court proceedings.

- The complainant, a lawyer, was a party in family law proceedings. Many of his allegations related to decisions made by the judge in the course of proceedings. Outside counsel was asked to undertake further inquiries because the complaint referred to four highly unusual incidents: (1) that the judge telephoned a lower court judge who then told the complainant, in open court and in front of his clients, that unless he returned to appear in court, a warrant would be issued for his arrest; (2) the complainant's arrest, while arguing a case before an appellate court, as a result of a warrant issued by the judge; (3) the commencement of a custody trial in which the child was unrepresented by counsel and the complainant was the respondent, without having received notice; (4) an apparently extraordinary access order which limited phone calls between child and father, required that all such calls be monitored by the mother or her designate, authorized peace officers to pick up the child and return him if he left the mother's home, and prevented the child from seeing his father for 90 days. Outside counsel reviewed the copious material provided with the complaint, and conducted interviews with a number of individuals. He reported that: (1) the complainant's allegation did not reflect well on his credibility, as no such call or comment took place; (2) the judge had no involvement in the circumstances of the arrest; (3) while the circumstances of the incident were certainly extraordinary, the judge was faced with a perceived crisis situation and responded, as he was entitled to do, in a manner which he thought was in the best interests of the child; (4) in the context of the extraordinary circumstances which the judge was facing, there was nothing in the order which could be characterized as improper judicial conduct. The findings were communicated to the complainant, who was advised that there was no basis for any further action by the Council.
- The complainant alleged that the judge who had heard her original motion should not have sat on the panel dealing with her motion for reconsideration. The complainant was informed that the judge's decision not to recuse himself was a judicial decision. The Council has no authority to review the decision to determine whether it was correct or not. It was explained that it is usual for the original panel that hears a matter to hear an application for reconsideration. Otherwise, litigants could obtain successive hearings before freshly constituted panels, which would be tantamount to a second right of argument about a matter that had already been decided.

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- The complainant alleged that the judge had shown bias in remarks about her brother in the course of family law proceedings regarding interim spousal support. She alleged that in her brother's first appearance, the judge had made a prejudiced comment about truck drivers and their statements of account, as well as an unprofessional remark about her brother's claimed entertainment expenses. She also alleged that the judge had made errors of fact and of credibility. The complainant wanted to know if the Council thought her brother had been treated fairly. The complainant was advised that any alleged errors regarding findings of fact or credibility constituted grounds of appeal. The Council had no authority to express an opinion on whether the brother had been treated fairly, a question one would test on appeal. The judge indicated that the first appearance had probably occurred during a case conference. The newly introduced family law rules required that no motion could be argued before a case conference had been held. The judge pointed out that the holding of case conferences was a new concept with which the courts were struggling. They involved informal dialogue among judges, counsel and sometimes the parties. In such conferences, the judge's task was to attempt to narrow the issues and explore the possibilities of settlement without offering an opinion upon the outcome of the matter in dispute. The complainant was informed that this often required frank and open discussion, the nature of which was not always easily understood by the inexperienced lay person. The judge apologized if his remark about the entertainment expense caused offence to the complainant. However, he denied having made any prejudiced remark about truck drivers and the juggling of their statements of account. While expressing his regret that the complainant went away with an unfavourable impression of family court, the judge affirmed that he felt no prejudice had been shown or felt towards her brother. The judge believed that both parties had received a full and fair hearing at which they were represented by able counsel. The complainant was provided with a copy of the judge's response to the complaint and advised there was no basis for further action by the Council.
- Parents whose daughter had been killed in a car accident involving the accused complained that the judge had favoured the accused, while ignoring the rights of the victim. They objected to the adjournment of the trial date because the accused did not have a lawyer. They also alleged that the repetition of an instruction to the jury constituted leading the jury and caused confusion in their minds. The complainants were advised that any alleged errors in the judge's instructions to the jury could be reviewed only by way of appeal by the Crown. It was pointed out that lack of legal representation for the accused could potentially deprive him of a fair hearing. The complainants were advised that it is essential under our system of justice that the process of bringing an accused to trial respect the presumption of innocence — a fundamental principle of the common law — coupled with the right to have a fair and impartial hearing.
- The complainant was the mother of the accused at a criminal trial. She alleged that her son did not get a fair trial because the judge did not have control of the proceedings. She also alleged that the judge wrongly declared a mistrial. She said the judge ordered her not to make eye contact with the alleged victim or her son or give signs of encouragement to him. The complainant was informed that if the Crown or her son believed the judge erred in declaring a mistrial, the judge's decision was reviewable on appeal. She was informed that every judge controls the proceedings by different means. At the end of the day, the judge's performance must be judged by the rulings and decisions made in the course of the proceedings. The complainant was advised that there was no evidence of misconduct arising from the manner in which the trial was conducted. She was advised that judges make orders necessary to ensure that witnesses give their testimony undistracted by behaviour of those in the body of the courtroom, which was apparently the case here.
- The complainant, who was unrepresented on a motion, alleged the judge refused to listen to her submissions and refused her request to have a court reporter present. She stated that when she questioned the judge about "the rule regarding a material change

in circumstances,” the judge refused to deal with her question appropriately, implying that the volume of her ex-husband’s court documents indicated, in itself, a material change in circumstances. She alleged the judge cut her off, ignored and interrupted her. She said her request for legal representation for her son was rejected. The judge provided a comprehensive response and documents from the court file. He stated that the complainant had been awarded access to the children of the marriage and the father had been awarded custody. The hearing in question — which occurred more than 15 months prior to the complaint — was an emergency motion to deal with but one aspect of the husband’s application to vary the terms of the complainant’s access and was a request that the court make an order requiring the complainant to provide the address and phone number where the complainant and one of the children could be reached over the spring break. The complainant had provided only a vague response to the question. The lawyer for the husband had also requested an address and phone number where the child could be contacted when the complainant exercised access. The complainant had refused to answer and walked out of the court room. The judge stated that he had not denied the complainant the opportunity to file materials. The judge denied he had been rude or abusive. He stated he was firm with the complainant regarding the need to provide the information requested in the best interests of her child. The complainant was advised that she had provided no evidence of misconduct.

- The complainant was a party in family law proceedings. The complaint related to a provision in the *Divorce Act* that prevented the withholding of a religious divorce as a means of coercing the other spouse. The complainant and his wife had not obtained a religious divorce — a “get” — under Jewish law. The complainant alleged that the judge denied him the option of observing his religious beliefs by instructing or ordering him to appear before men who were not his religious leaders and who had no standing in the community as religious leaders. He stated that because of his refusal to appear before the religious tribunal as instructed by the judge, he had been

denied access to his five children. The judge provided a copy of his reasons which made it clear that the complainant’s access to his children was denied not because he refused to appear before the religious tribunal but rather on the basis of the conduct of the complainant towards his wife and children. He was advised that if he was dissatisfied with the access order, his only recourse was to appeal.

### *Judicial language and influence*

Some complainants allege that judges have used inappropriate language from the bench, or abused their judicial power.

- The complainant represented herself in family law proceedings. She alleged that the judge told her she was “off the planet” and should “get into the game” and that “in a game of chess, she was now check-mate.” She complained that the judge relied on interim orders that he could not have read and refused to hear her submissions regarding the failure to satisfy outstanding orders. The judge provided copies of orders indicating the complainant was in breach of several court orders. He said his comments had been directed to explaining to the complainant that, with her application struck and her failure to purge the contempt, her lawsuit had little chance of success. He apologized for using metaphoric language, but said his language was directed at the lawsuit, not the complainant personally. The judge’s response was provided to the complainant who was advised there was no evidence of misconduct.
- The complainant represented herself at a pre-trial conference. She alleged that the judge yelled at her and she felt abused and traumatized by his conduct. She also alleged that the judge counselled her to accept a settlement proposed by opposing counsel which was much less than the amount she received at trial the following week. The complainant was advised that the tape of the pre-trial conference did not support her version of events. At no time did the judge yell at her and his conduct throughout the conference was appropriate. He did not counsel her to accept a settlement offer from the other side. No offer to settle was on the table, a fact that was remarked



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upon by the complainant near the outset of the conference. The complainant was informed that through his comments during the pre-trial conference, the judge was trying to assist the parties by pointing out to her and the opposing lawyer the hurdles to be met in proving their respective cases. In doing so the judge was furthering one of the purposes of a pre-trial conference.

- The complainant represented himself on an application in criminal proceedings. He stated that he appeared before the judge in handcuffs, and the judge “knowingly and deliberately” left him in handcuffs throughout the hearing which meant that he could not take notes during the Crown’s submissions. He also complained that the judge had allowed the Crown to make its submissions first, which was a violation of his right to procedural fairness. The complainant was advised that it was not improper for the judge to hear from the Crown on the procedural issue before hearing the complainant’s application on its merits. He was also advised that the judge was unaware that the complainant was in handcuffs when the Crown made its initial submissions. When the judge became aware that the complainant wished to have the handcuffs removed, he ordered their removal after making appropriate inquiries of the persons who had custody of the complainant.
- In an action for annulment of a contract, the complainant alleged that he had given in to “arm-twisting” and had finally accepted a settlement on the advice of his lawyer. He alleged that he had done so under duress and had therefore been deprived of due process. The complainant submitted that his lawyer had encouraged him to accept the offer in view of the fact that the judge had expressed his dissatisfaction with having to preside over a case of “little import.” He alleged that it had become clear to him that a refusal would only serve to irritate the judge and significantly diminish his chances of obtaining damages. The complainant alleged that the judge had abused his powers. The complainant was advised that the Council had no authority to review an agreement between parties and that a motion for repudiation of the agreement for cause could have been made to the superior court. A review of the file, including the

taped court hearing, and the judge’s comments showed that the parties appeared to have been satisfied with the settlement, which they had reached upon the advice of their lawyers. The meeting with the two lawyers in the judge’s chambers appeared to have been very short and the judge indicated that he would have asked the lawyers if they had previously discussed settlement. To the best of the judge’s recollection, the lawyers responded affirmatively and he therefore encouraged them to pursue negotiations. The judge vehemently disagreed, however, with the complainant’s assertion that the judge had “more or less ordered the lawyers to settle the case.” The judge affirmed that he never participated in negotiations between parties before him, being very conscious of the danger that pressing parties to settle would present for a judge seized with a matter. The judge stated that he took every necessary precaution in order to assist parties by clearly explaining the process, while at the same time assuring them that a failure to reach agreement would not influence the decision he may be called upon to render.

- The complainant alleged that adverse comments made about him during sentencing by the judge were “inflammatory” in nature and not based on any evidence. The complainant stated that it was “unfortunate” that a reporter had been present and had subsequently reported the comments in a local newspaper article. The article quoted the judge as saying: “Either this person has no conscience or he has a personality disorder which requires treatment.” The complainant said the fact that he was “unable to secure any kind of employment” and was not able to “face people” in his area was “directly” attributable to the judge’s comments. The complainant was informed that judicial duty often requires a judge to make critical evaluations of the credibility or the past conduct of an accused in the case before the court. Findings of this sort, although perceived as prejudicial by the accused, were an essential part of the trial process in coming to a determination of innocence or guilt as well as in sentencing. The judge must be free to comment adversely on the conduct of the parties when sentencing and when considering factors such as the likelihood of reoffending and the prospects of

rehabilitation. The complainant was reminded that the courts are open to the public and that access by the media, although possibly perceived as unfortunate from the accused's point of view, is a necessary conduit for public scrutiny in the interests of maintaining the integrity of the judicial process.

- This complainant objected to a judge's dismissal of charges of attempted murder, as described in a newspaper article. She alleged that the streets were unsafe and the laws too "easy." She provided another article which identified "suspects" by their ethnic origin. The complainant also referred to the same group as "Asians" and implied by her comments that they were "criminals." She requested that the Council "bring back Capital Punishment" and take away the judge's "license." The complainant was informed that the Council could not assist her in examining the "judicial system" in general or in bringing back capital punishment. It was up to the Attorney General of the Province to decide whether to appeal the dismissal or the sentence in the case described in the newspaper article. As the second article referred to "suspects," the complainant was invited to consider the presumption of innocence, one of the most fundamental legal rules, as well as the proposition that guilt by association with a particular ethnic group undermined and thwarted the search for the truth and that, fortunately, the laws of Canada did not condone such an unwarranted presumption.

#### *Alleged conflict of interest*

The Council is sometimes asked to look into allegations that judges have placed themselves in a conflict of interest.

- The complainant, in litigation regarding jointly held property and business interests against the estate of his deceased brother, alleged that the judge had been influenced because he was a "very good friend" of another brother, who had been employed as a court services officer. He also alleged that the judge was responsible for the alleged delay in the processing of his litigation. The judge categorically denied the allegation of conflict of interest, indicating that the brother in question had been one of a number of

court services officers employed by the provincial authorities and had attended all the judges sitting in that particular court house in putting on and removing robes and in maintaining decorum in the courtrooms. All court services officers were assigned by the court services manager to assist judges on a rotational basis. The officer in question had retired more than a year prior to the litigation involving the complainant. The judge was not aware that he was related to the complainant. The complainant's brother never worked for the judge as alleged, nor was he ever assigned to assist him exclusively. The judge said he did not ask the court services manager to assign the officer to assist him. The complainant was informed that the judge never had any communication with his brother outside the court house and that it had been his consistent practice on the bench to maintain an arm's length relationship with all court house personnel. Finally, the judge advised that the complainant had been represented throughout the proceedings by his lawyer and that the issue of potential or actual bias had never been raised. The judge also noted that the complainant had not filed an appeal from his judgment. The complainant was informed that a review of the litigation processing dates did not, in any way, support his allegation of delay. A review of the court record showed that the judge had delivered his written reasons for judgment on the motion and cross-motion before him only 19 days after the hearing of the motions. The complainant was reminded that the pace of litigation was largely in the hands of the parties and they had not yet passed the record or requested that the action be set down for trial.

- The complainant, a former client of the judge, alleged the judge was in a conflict of interest when he signed an order against her. The judge stated that when he became a judge, many of his files were transferred to the law firm that obtained the order against the complainant. He stated that he had no idea that the *ex parte* order involved a former client. The law firm had sent a student to duty court, where he was presiding, and had not brought the fact that the file involved a former client to his attention, for which they apologized to the judge when he contacted them about the complaint. Had he known the order involved his

former client, he would not have dealt with it. The complainant was advised that a reasonable person informed of all the facts would not conclude that the judge was in a conflict of interest. Most judges, when they recognize that a matter involves a former client, prefer not to deal with it. Conflict exists where a judge has formerly acted for a client in the same matter, which was not the case in this instance. Accordingly, there was no basis for any further action by the Council.

***Disguised appeals***

Many complaints are essentially requests for alteration or reversal of judicial decisions.

- An unsuccessful plaintiff in a suit for damages for negligence alleged that the judge had erred in fact and in law by misapprehending or ignoring the evidence and by reconsidering an issue that had already been decided upon. He further objected to the judge requesting clarification from counsel on the facts and the issues at trial and suggested it was improper of the judge to request written submissions. He objected to the award of costs. The complainant also complained that a delay of “almost nine months” in rendering judgment following the end of the trial, was undue. The complainant was advised that his only recourse regarding his allegations of error in fact and in law and in the awarding of costs was to appeal. He was also advised that there was nothing untoward about the judge requesting clarification of the issues or of the facts from counsel. Written submissions are routinely requested by judges and can prove especially helpful in difficult matters. The delay of “almost nine months” from the end of trial to the issuing of the judgment was beyond the six months established by the Council as a time frame in which reserved judgments should, generally, be issued. In this case, however, the senior judge of the region had been on top of the matter and it could not be said that the nine months was inordinate, given that the judge had clearly been dealing with a difficult piece of litigation.
- A non-custodial father in family law proceedings regarding access and child support complained about the duration of a trial, which had been ongoing for

six months at the time of the complaint. He said the emotional and financial strain of the situation had impaired his judgment, affected his ability to properly conduct his case, damaged his credibility before the court and ultimately, he believed, unfairly prejudiced his case. He also complained that the judge had improperly reviewed evidence prior to the start of the trial, had involved “biased parties in access arrangements” and had refused to allow him to cross-examine a witness. He said the proceedings had caused a “disruption” of his relationship with his daughter, that his privacy rights under section 8 of the *Charter* had been violated and that an order for a further psychiatric assessment was unlawful. The complainant was informed of his right to appeal alleged errors of fact or of law by the judge. He was advised that all the points he had raised, except the duration of the trial, were matters that could be reviewed only by way of appeal. As for the duration of the trial, he was informed that the parties had an obligation to accommodate the process in order to assist in expediting their case. The complainant was advised that any refusal to participate in what appeared to him to be an “unfair and flawed process” could serve to stall matters or prejudice his and the child’s rights. It was explained to the complainant that the overriding consideration of the judge must, by law, be the best interests of the child and that deciding what was in the best interests of the child required careful consideration of all matters that may affect the quality of care of the child. The complainant was advised that proper legal representation could help him understand the process and assist in ensuring the protection of his child’s rights and of his own rights.

**Files Closed by Panels**

Three files were dealt with by Panels during the year. All were three-member Panels; in two of the three cases a puisne judge participated as a panel member. In each case, the Panel Chairperson sent a letter to the judge involved expressing disapproval of his conduct.

- More than 20 letters of complaint were received after a judge wrote a letter to a newspaper criticizing a higher court judge for her judgment, which he considered to be unfairly and personally critical of him.

There was extensive media coverage of the letter and of a subsequent interview the judge gave to a reporter for the newspaper that had initially published his letter. The complaints received over a period of approximately two months, related to the media coverage and to comments made by the judge in two of his judgments. The complaints were referred to a three-member Panel. The Panel noted that the judge had apologized for his letter and recognized unequivocally that its tone was entirely inappropriate. The Panel concluded that sending the letter was an “impetuous and isolated incident which does not warrant further consideration by the Council.” The Panel found comments in the interview were entirely inappropriate. The Panel concluded that some of the comments in each of the two judgments “cross the boundary of even the wide latitude given to judges in expressing their reasons.” They were “flippant, unnecessary and unfortunate.” However, taking into account his long and distinguished career as a lawyer and judge, the Panel concluded that his inappropriate conduct in this instance would not preclude him from treating all litigants fairly and impartially in future. While determining there was no basis for an investigation pursuant to subsection 63(2) of the *Judges Act*, the Panel expressed strong disapproval of the judge’s conduct, which it found to be inappropriate but not malicious or reflecting oblique motive.

- An unrepresented party complained of the judge’s attitude during the course of a family law hearing. She alleged that the judge had deprived her of the opportunity to present her arguments and made sexist comments by suggesting to her ex-spouse that he give her daughter a gift “because lip-stick is expensive.” She also alleged that the judge had demonstrated prejudice against a public institution and against unrepresented parties. The judge was asked for comments and the complaint was referred to a Panel. The judge was of the opinion that the complainant had cited him out of context. He admitted having made a joke essentially to break the tension and believed he had succeeded. The judge explained that he had made his comments about the public institution because its files were processed so slowly and because its allocation of benefits was fully reimbursed by the amount

of its required contributions. He stated he had spoken truthfully and had presided correctly over the hearing. Firstly, the Panel noted that it was not appropriate for a judge to directly enter into negotiations, albeit through an informal exchange, with the complainant’s ex-spouse regarding the amount of support payable. The ex-spouse had been legally represented and should not have been drawn into arguing his case on his own behalf. Secondly, the Panel noted that it was particularly regrettable that in the course of this informal exchange the judge had left the impression that he had already decided the case. Furthermore, the Panel noted that following the informal exchange, the judge had cut off the complainant’s arguments, thus reinforcing the impression he had pre-judged the matter. The Panel also concluded that the judge’s remarks concerning the gift for the daughter were offensive and that his unsolicited humour and criticism of the institution, apparently meant to elicit laughter, were inappropriate. The complainant was advised of the Panel’s conclusions and informed that a letter expressing disapproval of the conduct had been sent to the judge.

- The head of a court made a complaint concerning a judge from another court. The complainant alleged that the judge, who had presided on appeal, had not only criticized the judgments rendered by the lower court judges, but brought into question the integrity of the judges who had delivered the decisions he was reviewing. The complainant alleged that the judge’s comments, made publicly and reported in the media, unjustifiably brought discredit upon the lower court judges with whom he disagreed. It was submitted that the judge had made the presumption that certain lower court judges did not want to apply the law. The complainant alleged that the judge’s remarks had undermined public confidence in the judiciary generally. The complaint was referred to a three-member Panel. The Panel noted the judge’s response that although he may have acted from a lack of experience, he had done so in good faith. The Panel reviewed the transcripts of the three hearings in question as well as a letter from one of the lower court judges who had brought to the impugned judge’s attention the fact that he considered his conduct to be

objectionable. The Panel found some of the judge's comments to be unacceptable and expressed disapproval of them. It concluded that his remarks had presumed bad faith on the part of a certain group of judges, thus creating an apprehension of bias. The Panel held that the judge should have taken account only of the judgment on appeal before him.

### **Inquiry Directed by Minister of Justice**

On February 3, 1999, the Council announced the establishment of an Inquiry Committee to investigate the conduct of Mr. Justice Robert Flahiff of the Quebec Superior Court, who had been convicted in provincial court of criminal charges of money laundering.

Acting on a request received from the Minister of Justice of Canada on January 25, 1999, under subsection 63(1) of the *Judges Act*, the Inquiry Committee's responsibility was to inquire into whether Mr. Justice Flahiff had become incapacitated or disabled from the due execution of the office of judge for any of the reasons set out in paragraphs 65 (2) (a) to (d) of the *Judges Act*, and in particular, by reason of (b) having been guilty of misconduct and (d) having been placed, by his conduct or otherwise, in a position incompatible with the due execution of that office.

It was the first time in the history of the Council that a formal inquiry had been undertaken as a result of a criminal conviction of a judge. The Council's only recommendation for the removal of a judge from office occurred in the case of Mr. Justice Jean Bienvenue of the Quebec Superior Court in September 1996. However, a number of judges have resigned from office at various stages of the process triggered by complaints of misconduct.

The Inquiry Committee was chaired by the Honourable Joseph Z. Daigle, Chief Justice of New Brunswick, and included the Honourable John D. Richard, then Associate Chief Justice of the Federal Court of Canada, and Professor Patrick Healy of the Faculty of Law, McGill University. Me Jacques Bellemare of Montreal was appointed independent counsel to the Inquiry by the Chairperson of the Judicial Conduct Committee. The Inquiry Committee appointed Me François Aquin of Montreal to act as legal advisor to the Committee.

During hearings on March 29 and 31, 1999, the Committee heard a number of preliminary motions from counsel for Mr. Justice Flahiff, arguing among other points:

That the Council by-laws are invalid in authorizing the Chairperson of the Judicial Conduct Committee to appoint members and independent counsel to the Inquiry Committee;

That subsection 63(3) of the *Judges Act* is constitutionally invalid in authorizing the Minister of Justice to appoint a lawyer to the Inquiry Committee;

That the Inquiry be stayed because it threatened Mr. Justice Flahiff's right to an impartial hearing in the Court of Appeal and that is the common law tradition for Parliament to refrain from acting in a case for removal of a judge while his case is before the courts.

In a 26-page decision released April 9, 1999, the Committee dismissed the first argument on the basis that paragraph 61(3)(c) of the *Judges Act* authorizes the Council to adopt Part 2 of the by-laws on complaints, including section 72, which was challenged by Mr. Justice Flahiff.

The Committee said the second argument rested on the assumption that an Inquiry Committee is a superior court (which could not include a lawyer). The Committee concluded it was not a superior court. "It does not perform the function of a court; it does not adjudicate disputes between parties and does not render legally enforceable decisions; its purpose is to conduct an inquiry and report to the Council."

In response to the third argument, the Committee ruled: "There is not one iota of evidence to cast any doubt on the integrity of the judges of the Quebec Court of Appeal who will be assigned to hear the case of the judge concerned. A reasonable and informed person could not reasonably fear that such judges would be concerned by the fact that the Chief Justice of the Court sits on the Canadian Judicial Council or be in any way influenced by the proceedings at this inquiry."

Nor was Mr. Justice Flahiff's case before Parliament, the Inquiry Committee ruled. "He is in fact the subject of an inquiry conducted by a committee of the Canadian Judicial Council. Whereas under section 99 of the *Constitution Act, 1867* Parliament has the power to remove a judge, the Inquiry Committee has no powers other than to investigate and submit to the Council a report on its findings and conclusions, and if necessary indicate that removal of the judge should be recommended."

At the commencement of the Inquiry Committee's hearing on April 13, 1999, counsel for Mr. Justice Flahiff advised the Committee that the judge had submitted his resignation to the Minister of Justice. That brought to an end the proceedings of the Committee, as the Council has no authority to inquire into the conduct of a judge who resigns.

### ***Judicial Review***

A complaint file, which had initially been closed in 1994-95 and reconsidered and reclosed in 1998-99, was the subject of judicial review in the Federal Court of Canada. The complainant was counsel for the accused at a criminal trial. The complainant stated that rulings by the judge, ordering several spectators to leave the courtroom unless they removed their hats and head coverings, were unacceptable in a multicultural society. The complainant was informed that the Chairperson of the Judicial Conduct Committee had concluded that the judge had taken the steps he believed were necessary to maintain order in the courtroom and the file was closed.

The complainant expressed his dissatisfaction with the disposition of his complaint and requested that the Council reconsider its decision. He advised that an appeal of the judge's decision was under way and that the judge's comments constituted one of the grounds of appeal. The complainant was advised that if the Court of Appeal commented adversely about the judge's conduct in its decision, the Council would reconsider the complaint. When the Court of Appeal, in its 1998 decision, stated that the judge may have created the impression of an insensitivity to the rights of minority groups, the file was re-opened.

The judge, when asked to comment, stated that he regretted if the impression was created that he was insensitive to the rights of minority groups as such is not the case and was never his intent. The Chairperson expressed disapproval of the judge's comments pursuant to paragraph 50(1)(b) and subsection 50(2) of the Council's by-laws. The complainant was advised that the Chairperson had expressed disapproval of the judge's comments, on the basis that they created the impression that he was insensitive to minority groups and as such the comments were inappropriate, but that the judge's conduct was not serious enough to warrant further action by the Council.

In January 1999, an application for judicial review of the Council's decision to close the file was commenced in the Federal Court of Canada, Trial Division, with the Attorney General of Canada named as respondent. At the end of the year under review, the Council decided to seek leave of the Court to intervene on the application in order to make submissions regarding the jurisdiction and procedures of the Council.

## 4.

## Issues

***Courts, the Public and the Media***

The Council took steps in 1999-2000 to support judges across Canada in efforts to increase public and media understanding of the judicial role and the operation of the court system.

The Special Committee on Public Information, created as a result of a decision at the Council's 1999 mid-year meeting, considered a range of initiatives to provide guidance and tools to individual courts and judges who wish to take more active roles in public education and information.

At its Annual Meeting in September 1999, the Council approved a national communications framework, recommending that individual courts or jurisdictions develop and implement local public information plans consistent with the national framework and tailored to the needs and opportunities in their communities.

The Council noted that it is the work of judges to deal with conflict and they cannot avoid making decisions that will attract public commentary. Some of that commentary will inevitably be negative. But judges can play a role in enhancing public understanding of the courts and thereby help ensure that commentary is well-informed.

Many factors have combined to put courts and judges in the spotlight: the introduction of the *Charter of Rights and Freedoms*; a judgment of the Court of Appeal of Ontario abolishing for most purposes the common law offence of contempt by "scandalizing the court"; greater public scrutiny of all state institutions, accompanied by growing cynicism and distrust of all things official; the large number of people now directly affected by judicial decisions as litigants, jurors or witnesses; the pervasive influence of American television and other media, and the sensationalization of court proceedings.

Criticism of judges' decisions is not necessarily paralleled by a lack of public esteem for the judiciary. A number of recent public opinion polls have suggested that judges continue to command much public respect, that Canadians support the *Charter*, and that Canadians want judges to have the final say in interpreting it.

The Special Committee's research and consultations encountered a broad consensus that judges have a responsibility to improve the state of public and media understanding of the courts and the role of judges. To the extent that the court system lacks credibility with the public, the committee reported that the problem may stem largely from simple ignorance of what courts do.

Moreover, the Council was told, judges cannot leave it to others to shape public understanding of their work. The media often lack both the time and resources to explain the law, judges and judging. As a senior executive of the American Judicature Society put it: "If judges do not reach out, no one else is going to do it for them."

The Council's *Ethical Principles for Judges* encourages judges to speak up, particularly in supporting the principle of judicial independence:

Neither the judge's personal development nor the public interest is well served if judges are unduly isolated from the communities they serve. . . . judges should, to the extent consistent with their special role, remain closely in touch with the public. . . .

The public may not get a completely balanced view of the principle of judicial independence from the media which may portray it incorrectly as protecting judges from review of and public debate concerning their actions. Judges, therefore, should take advantage of appropriate opportunities to help the public understand the fundamental importance of judicial independence, in view of the public's own interest. . . .

Judges are uniquely placed to make a variety of contributions to the administration of justice. Judges, to the extent that time permits and subject to the limitations imposed by judicial office, may contribute to the administration of justice by, for example, taking part in continuing legal education programs for lawyers and judges and in activities to make the law and the legal process more understandable and accessible to the public.

Similarly, the American Bar Association Model Code of Judicial Conduct and provisions of most states allow judges to teach, write and speak concerning the law, legal profession and administration of justice.

The late Justice John Sopinka, a champion of speaking out, delivered landmark speeches on the subject, “Must a Judge be a Monk” in 1989 and “Must a Judge be a Monk — Revisited” in 1995. In the latter address, he said:

I happen to believe that accepting speaking engagements is important for the image of the judiciary. Under the *Charter*, we are entrusted with the task of making judgments that were previously the exclusive prerogative of elected representatives. These decisions were made after debate in Parliament or the legislature. No longer can we expect the public to respect decisions in a process that is shrouded in mystery and made by people who have withdrawn from society. The public is demanding to know more about the workings of the courts and about judges.

The Council approved recommendations of the Special Committee encouraging courts to undertake educational initiatives at all levels of the education system, speaking initiatives by chief justices and members of their Courts to audiences representative of their communities, and forums to engage the media constructively about the reporting of justice issues.

Some courts are already active in these areas. In Manitoba and Nova Scotia and some other provinces, school classes have been invited to attend trials. Members of the Manitoba Bar and justices of the Manitoba Court of Queen’s Bench speak regularly in schools, to journalism students and in law and alternate dispute resolution courses at post-secondary institutions. In Quebec, real cases have been tried before students at

McGill, Laval and the Université de Montréal. One-day hearings have covered criminal, matrimonial, commercial and administrative law cases.

The Council’s initiative recognized that education is both a starting point and a long-term proposition. The Special Committee’s own survey of journalism schools and political science departments across Canada revealed relatively few courses about judges and the courts. In its 1996 report, the CBA’s Systems of Civil Justice Task Force noted that “community organizations rated their personal level of information about the civil justice system as ‘poor.’” To change educational outcomes would require coordinating efforts across Canada in 13 jurisdictions. Including the subject as a priority in curricula would require buy-in from many groups, ranging from provincial education department officials to classroom teachers.

As noted earlier in this report, the Law Courts Education Society of British Columbia already provides an outstanding model of partners acting to address public education on justice and the law. The provincial government, judiciary, court staff, provincial Bar, teachers and communities have cooperated to introduce court watching, orientation, education sessions with justice system personnel, mock trials, cross cultural workshops, curriculum materials, teacher training and other initiatives.

In Nova Scotia, a Courts Education Committee with representation from all Courts and the Bar as well as the Public Legal Education Society of Nova Scotia have undertaken a series of projects, including a pilot project of speeches by lawyers and judges in high schools. The Courts Education Committee is currently preparing 13 scripts on the criminal justice system to be aired on cable television and, through cable, into classrooms. The Courts Education Committee supported introduction of the “News Media and the Courts” course for students at the School of Journalism, of the University of King’s College, discussed earlier in this report. Manitoba authorities have introduced “Middle Years Teacher’s Kit” on justice system basics aimed at grades five, six and seven.



The Special Committee encouraged courts to establish a dialogue with representatives of the media about matters of professional concern and one another's roles, responsibilities and limits. Court-media committees can provide a mechanism to deal with things that go wrong, consult about new rules or policies affecting the media, and help ensure that practices do not vary unnecessarily from court to court or judge to judge. At the systemic level, it is possible to discuss such matters as how reporters are assigned to courts, how the media decide what is news, and how justice issues are approached by the media.

Such committees now exist in a few jurisdictions and at the Supreme Court of Canada. In Nova Scotia, a committee has facilitated the introduction of media guidelines, a pilot project of cameras in the Court of Appeal, and ongoing dialogue about media access issues. It has been a particularly useful forum for consultation on policy changes about media access and discussion of irritants to both media and the courts. An Alberta committee has changed the procedures for access to judgments and court exhibits and has facilitated regular meetings with management-level media representatives.

The Council has already recognized the value in having an officer in each court assigned to relations with the media. Some 16 individuals fill this function in varying degrees across Canada. The Council convened a first national meeting of these officers in November 1999 to share experience in dealing with media, access issues and other matters common to their existing roles and to discuss the implementation of recommendations arising from the Council's communications initiative.

In cooperation with the Canadian Institute for the Administration of Justice, the Council initiated discussions with a number of organizations that have been seeking to address relationships among members of the public and media and the players in the justice system.

### ***Technology and the Courts***

Developments in computer technology have great potential to increase efficiency in the work of judges and the operation of courts, to improve uniformity and timeliness, and to achieve significant cost savings. The Council

has worked to exploit and share technology, and has supported the leadership of the Commissioner for Federal Judicial Affairs in extending the electronic technologies available to judges.

### **Council Web Site**

The Council's own Web site, <http://www.cjc-ccm.gc.ca> contains background on the Council, publications and frequently asked questions and hot links to related sites and information.

### **Judges Technology Advisory Committee**

The Judges Technology Advisory Committee, which changed its name during the year from the Judges Computer Advisory Committee, draws most of its members from the ranks of puisne judges. It examines new information technologies and advises the Council on emerging issues and appropriate applications in the judicial system.

Through the Committee, the Council supported an important project to create a neutral citation standard for Canadian case law, a means of citing court judgments without reference to specific publishers, databases or report series. The standard was completed in 1999 and the Council announced its endorsement in June, urging implementation by all courts as soon as feasible.

The *Neutral Citation Standard for Case Law* permits every court registry to assign a unique identifier to every judgment which, together with paragraph numbering, provides an easy and accurate way of referring to all court judgments. Such a system is necessary for accurate citations in a computer environment where page numbers have been rendered meaningless. The Standard was developed by the Canadian Citation Committee representing court administrators, law librarians, legal publishers, law societies and others.

The Standard may be obtained electronically through the Canadian Citation Committee's Web site at <http://www.lexum.umontreal.ca/citation/en/index.html>. Copies in paper form may be obtained from the Canadian Judicial Council office in Ottawa.

## Computer News for Judges

The Committee's newsletter, *Computer News for Judges (CNJ)*, has become an important reference for judges seeking to keep up to date on the application of technologies to their work. The newsletter is circulated to nearly 600 federally appointed judges and sent to all Provincial and Territorial Court Chief Judges for distribution by their offices to interested provincially/territorially appointed judges.

The two issues of CNJ published in 1999-2000, as well as back issues to 1993-94, are accessible on the Internet through the Council Web site at <http://www.cjc-ccm.gc.ca/english/cnj/cnj.htm>.

### Issue No. 27

- Mr. Justice Louis Lebel, at the time a member of the Quebec Court of Appeal and later appointed to the Supreme Court of Canada, wrote of his own Internet explorations and "the mesmerizing nature of the Net." As a jurist conducting legal research, Mr. Justice Lebel uses Quicklaw and the SOQUIJ Internet database Azimut, together with the links provided by the virtual library of the Université de Montréal's Centre de recherche en droit public. For other personal use, Mr. Justice Lebel encouraged surfers to "rigorously personalize your own Net":

To start, you must identify your areas of interest. Then, you have to devote some time to searching the main access points, while keeping an eye on multimedia news features. Through this research, you can gradually find a number of useful sites . . . You will not create a useful system for yourself by saving bookmarks haphazardly.

- Alberta's experience in creating a Web site for the Court of Appeal and the Provincial Court was chronicled by court officials Lynn Varty and Faye Morrison. They described the hurdles encountered on the way to the public launch of the site on May 6, 1999. Alberta found it essential to develop policy guidelines and to create a policy committee to oversee the development and ongoing maintenance of both the intranet and Internet sites.

- Martin Felsky, technical advisor to the Judges Technology Advisory Committee, wrote of the risks that confidential information may find its way onto court Web sites, where it could be accessed by hackers or stumbled on accidentally by others. He provided tips on designing sites with proper security features in mind.

### Issue No. 28

- "Is your Court Web site 'User-Friendly'?" asked Marilyn J. Hernandez of the Manitoba Law Library and Susan Baer of the Law Society of Saskatchewan Libraries. They wrote of the challenges of creating a court Web site that is easy to navigate and search. Sites must be updated constantly and attended by both systems staff and court staff. The checklist of types of information users want on a site seems straightforward, they wrote. The challenge "lies in organizing the content and categorizing it so that a user, whether someone in the legal profession or a layperson, can easily find the information they seek." Pages should have a reference point or "anchor" to prevent users from getting lost, and each page should have a navigation bar with access to appropriate categories. The article noted that two national standards pioneered by the Council have provided an important framework for future development of court Web sites. *The Standards for the Preparation, Distribution and Citation of Canadian Judgments in Electronic Form* provide a format for creating judgments in a particular way that facilitates sharing. *The Neutral Citation Standard for Case Law* provides a method of referring to a judgment that is not dependent on where the judgment was seen electronically, or where it was reported. What should be addressed now, the authors wrote, is "a single technical Web site standard for mounting the original source judgments and other documents on all Canadian court Web sites." The standard would provide for consistent language, layout, display of documents, searchable databases and metatagging and conversion to non-proprietary software.

- Madam Justice Marion Allan of the B.C. Supreme Court reviewed the three-volume *Compendium of Law and Judges*, (accessible at [www.courts.gov.bc.ca](http://www.courts.gov.bc.ca)), created by B.C. Chief Justice Allan McEachern with a number of colleagues and staff members. The Compendium provides a description of the law and the B.C. Judiciary in an attempt to increase public awareness of judicial matters.

The Compendium fills the void between the scant and often inaccurate treatment of legal matters in the popular press and authoritative textbooks that are unlikely to be circulated among the lay public. If indeed the public is curious about the workings of the law and courts, then the electronic Compendium is accessible, easily understandable, and free.

- Sophie Hein, researcher at the Court of Quebec, Montreal, wrote that the Internet is being relied on increasingly for legal research and will soon be indispensable. In the preliminary stages of a research project, the Net is an appropriate tool to collect the information available on the subject and explore different approaches to treating it. It is also useful when searching for a specific document or site with an approximate idea of its contents. Ultimately, use of the Net depends on the main legal documents being made available. The article identifies some legal sites as good starting points.

### ***Ethical Principles for Judges***

*Ethical Principles for Judges*, the Council's comprehensive document of guidance for judges published in December 1998, was distributed widely in 1999-2000. Demand from national and international sources exhausted initial supplies and a second printing was ordered. The text of the Principles may be found on the Council Web site at <http://www.cjc-ccm.gc.ca> and copies may be obtained from the Council's office in Ottawa.



## 5.

## Judicial Salaries and Benefits

Legislation approved by Parliament late in 1998 created a three-member Judicial Compensation and Benefits Commission to make recommendations on salaries and benefits for federally appointed judges.

Unlike predecessor commissions, members of the new “Quadrennial Commission” are appointed for four-year terms. One member is nominated by the judiciary and one by the government; these two commissioners nominate the chairperson. Their appointments are made by the Governor in Council (the Cabinet).

The legislation provides the Commission with express statutory criteria to help define and clarify what it must consider in reaching recommendations on judicial compensation. These criteria are: the state of Canada’s economy, including the cost of living, as well as the government’s overall economic and financial situation; the role played by the financial security of judges in maintaining judicial independence; the need to recruit outstanding candidates for the bench; and any other objective factor the Commission deems pertinent.

The Minister of Justice announced on September 9, 1999, the appointment of Richard Drouin, O.C., Q.C., as Commission Chairperson, with Eleanore A. Cronk and Fred Gorbet as Commissioners.

The Commission held public hearings on February 14 and March 20, 2000. It was required to report to government by May 31, 2000. Major submissions were made to the Drouin Commission by the Government of Canada, and jointly by the Canadian Judges Conference and Canadian Judicial Council.

### The Commission Process

The joint submission of the Conference and the Council welcomed the establishment of the Quadrennial Commission as recognition by the Executive “of the importance of an objective judicial compensation process with its attendant acknowledgement of the constitutional

requirement for a timely and responsive reaction on the part of Parliament to the recommendations of the Commission.”

The judges noted that the previous triennial process had not succeeded in “depoliticizing” judicial remuneration or enhancing the financial security of judges.

### Salaries

In their submission, the Conference and Council stated that there is an obvious relationship between judicial compensation and judicial quality. The submission argued that in view of the fact that judges are appointed predominantly from the ranks of senior members of the bar, judicial salaries should bear a relationship to the incomes of senior practitioners. In fact, Canada’s federally appointed judges had fallen far behind lawyers. Governments had failed to act on the recommendations of successive triennial commissions since 1983, and judges had not had a salary increase since 1988 apart from adjustments for the cost of living.

The submission proposed a judicial salary of at least \$225,000 effective April 2000. By comparison, the top third of Ontario lawyers between ages 40 and 50 earned an average of more than \$380,000 in 1997. Higher incomes were earned by lawyers in urban centres, where more than half of the judges live and work. Judges report that senior practitioners in centres such as Vancouver, Calgary, Toronto and Montreal earned incomes in the range of \$450,000 to \$600,000. The existing salary for puisne judges in 1999 was \$178,100.

The judges also drew comparisons with the incomes of the most senior level of federal public servant, the Deputy Minister 3 level, which was cited by the 1992 Crawford Commission as an appropriate benchmark for judicial salaries. For the mid-range of DM3s, base salary and performance-based payments totalled \$225,900 as of April 1, 1999.

## Annuities

The judges also addressed issues of equity in their annuity regime. They said there is an urgent need for adjustments to the judges' annuity regime, given the changing make-up and character of the judiciary in recent years and a relative erosion of benefits vis-à-vis other Canadians. The discrepancies were having a significant adverse impact on young appointees — most of whom were women — older appointees, single judges and judges living in common law and same-sex relationships. Existing annuity provisions did not conform to public and private sector pension plans on vesting, age of retirement, early retirement or interest on member contributions.

The existing regime has required judges to retire at age 75. They were entitled to receive an annuity equal to 2/3 of their salary if they had served 15 years in office and their combined age and years in office totalled 80 — referred to as a “modified Rule of 80,” or they had reached 75 with at least 10 years of service. The result of this, the judges pointed out, had been that a judge appointed, for example, at age 40 must serve 25 years before becoming entitled to the same annuity as a judge appointed at age 50 and holding office for 10 fewer years. Moreover, a judge terminating his or her office prior to age 65, even after long service, would receive only a refund of personal pension contributions.

The judges called for amendments to the *Judges Act* providing for a right to retire after 15 years of service on a full annuity, payable either at age 60 or when the judge would be entitled to retire on a Rule of 80 basis. They also asked for an “unencumbered” Rule of 80, permitting a judge to retire on full pension when the combination of the judge's time of service and age equals 80, with no minimum time of service or age requirements.

The judges also sought an option to retire early, after 10 years service, on a pro-rata reduced annuity. They proposed that judges should have the right to elect supernumerary status on reaching Rule of 80 eligibility. Under the existing rule, a judge who has served 15 years and attained 65 years (or 10 years and 70 years of age) may elect to serve as a supernumerary or part-time judge working about 50 percent of the time of a regular judge until retirement at age 75.

The joint submission proposed that upon 15 years of judicial service, the requirement to contribute 7 percent of salary to retirement benefits should cease, and the right to contribute to an RRSP should be reinstated.

In the March 20 appearance before the Commission, Me Yves Fortier, Counsel for the Conference and Council, indicated that they would not press a number of other proposals of their original submission, including increased pensions for long service, linking annuity amounts to current salaries, permitting single judges to designate their beneficiaries, and enhanced pro-rated pensions for years of service over age 65.

A number of the judges' concerns were addressed by the government's Bill C-23, which was being considered in Parliament during the course of the Commission's deliberations. The Commission advised the Minister of Justice in a letter dated March 27, 2000, that the provisions of Bill C-23 dealt appropriately with the judges' requests concerning survivor annuity benefits and the availability of benefits to unmarried partners of the same or opposite sex.

The judges strenuously opposed the stated government position that their annuity proposals constituted a major reform, and that a separate fundamental review of their annuity scheme was necessary in the circumstances.

## Other Issues

On life insurance and health benefits, the judges asked for adjustments in line with government executive plans. They asked that their dental plan cover retired judges and reflect the industry norm in other respects.

In a separate submission to the Commission, the Canadian Judicial Council sought increases in representational expenses. As heads of their courts, and symbolic heads of the judiciary at the federal or provincial level, members of the Council encounter expenses of travel and hospitality in discharging many extra-judicial duties, such as participation in educational and public events and functions of a ceremonial and social nature. The Council sought increases in allowances for these expenses to the levels proposed by the 1989 Triennial Commission, with indexation from March 1990. This would result in representational allowances of \$22,500

## 5 . J U D I C I A L S A L A R I E S A N D B E N E F I T S

for the Chief Justice of Canada, \$15,000 for chief justices of the Federal Court of Canada and of each province, and \$12,000 for the chief and associate chief justices and judges of trial courts as well as the senior judges of the three northern territories.

The Council submission also asked that the Commission establish a 10 percent differential between the salaries of puisne judges and those of their chief justices and associate chief justices in the Federal Court, Tax Court, Superior, Supreme and Queen's Bench courts.

At the end of the year under review, the Council was awaiting the report of the Commission. Under terms of the *Judges Act*, the Minister of Justice was required to respond to the report within six months of receipt, that is, by the end of November 2000.





## Appendix A

***MEMBERS OF THE CANADIAN JUDICIAL COUNCIL, 1999-2000***

The Right Honourable Antonio Lamer, P.C. Chief Justice of Canada <i>Chairperson (to January 2000)</i>	The Honourable Catherine A. Fraser Chief Justice of Alberta
The Right Honourable Beverley McLachlin, P.C. Chief Justice of Canada <i>Chairperson (from January 2000)</i>	The Honourable Alban Garon Associate Chief Judge of the Tax Court of Canada <i>(to February 2000)</i> Chief Judge of the Tax Court of Canada <i>(from February 2000)</i>
The Honourable Allan McEachern Chief Justice of British Columbia <i>First Vice-Chairperson</i>	The Honourable Constance R. Glube Chief Justice of Nova Scotia
The Honourable Pierre A. Michaud Chief Justice of Quebec <i>Second Vice-Chairperson</i>	The Honourable Benjamin Hewak Chief Justice of the Court of Queen's Bench for Manitoba
The Honourable Edward D. Bayda Chief Justice of Saskatchewan	The Honourable T. Alex Hickman Chief Justice of the Trial Division of the Supreme Court of Newfoundland
The Honourable Donald G.H. Bowman Associate Chief Judge of the Tax Court of Canada <i>(from March 2000)</i>	The Honourable Julius A. Isaac Chief Justice of the Federal Court of Canada <i>(to August 1999)</i>
The Honourable Norman H. Carruthers Chief Justice of Prince Edward Island	The Honourable Joseph P. Kennedy Chief Justice of the Supreme Court of Nova Scotia
The Honourable Joseph Z. Daigle Chief Justice of New Brunswick	The Honourable Lyse Lemieux Chief Justice of the Superior Court of Quebec
The Honourable André Deslongchamps Associate Chief Justice of the Superior Court of Quebec	The Honourable Patrick J. LeSage Chief Justice of the Ontario Court of Justice
The Honourable René W. Dionne Senior Associate Chief Justice of the Superior Court of Quebec	The Honourable Allan Lutfy Associate Chief Justice of the Federal Court of Canada <i>(from December 1999)</i>
The Honourable Patrick D. Dohm Associate Chief Justice of the Supreme Court of British Columbia	The Honourable J. Michael MacDonald Associate Chief Justice of the Supreme Court of Nova Scotia
The Honourable Robert F. Ferguson Associate Chief Justice of the Supreme Court of Nova Scotia, Family Division	

**Note:**

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

CANADIAN JUDICIAL COUNCIL

The Honourable Kenneth R. MacDonald  
Chief Justice of the Trial Division of the Supreme Court  
of Prince Edward Island

The Honourable Donald K. MacPherson  
Chief Justice of the Court of Queen's Bench for  
Saskatchewan

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 W. Kenneth Moore  
Chief Justice of the Court of Queen's Bench of Alberta

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

The Honourable Coulter A. Osborne  
Associate Chief Justice of Ontario  
*(from May 1999)*

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

The Honourable John D. Richard  
Associate Chief Justice of the Federal Court of Canada  
*(to November 1999)*  
Chief Justice of the Federal Court of Canada  
*(from November 1999)*

The Honourable Richard J. Scott  
Chief Justice of Manitoba

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 Court of Justice

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

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

The Honourable Clyde K. Wells  
Chief Justice of Newfoundland

The Honourable Bryan Williams  
Chief Justice of the Supreme Court of British Columbia

## Appendix B

### **COMMITTEE MEMBERS**

#### **EXECUTIVE COMMITTEE**

Chief Justice Antonio Lamer (*Chairperson*)  
 (to January 2000)  
 Chief Justice Beverley McLachlin (*Chairperson*)  
 (from January 2000)  
 Associate Chief Justice André Deslongchamps  
 Chief Justice Joseph P. Kennedy  
 Chief Justice Allan McEachern  
 Chief Justice Pierre A. Michaud  
 Chief Justice W. Kenneth Moore  
 Associate Chief Justice Jeffrey J. Oliphant  
 Chief Justice John D. Richard  
 Mr. Justice J. Edward Richard  
 Chief Justice David D. Smith  
 Associate Chief Justice Heather J. Smith

#### **STANDING COMMITTEES**

##### **Administration of Justice Committee**

Mr. Justice J. Edward Richard (*Chairperson*)  
 Associate Chief Justice Robert F. Ferguson  
 Mr. Justice Ralph E. Hudson  
 Chief Justice Kenneth R. MacDonald  
 Associate Chief Justice Coulter A. Osborne  
 Chief Justice John D. Richard  
 Chief Justice Clyde K. Wells

##### **Finance Committee**

Senior Associate Chief Justice René W. Dionne  
 (*Chairperson*)  
 Chief Justice Constance R. Glube  
 Chief Justice Patrick J. LeSage  
 Chief Justice W. Kenneth Moore  
 Chief Justice David D. Smith

#### **Judicial Conduct Committee**

Chief Justice Allan McEachern (*Chairperson*)  
 Associate Chief Justice Jeffrey J. Oliphant  
 (*Vice-Chairperson*)  
 Chief Justice John D. Richard (*Vice-Chairperson*)  
 Associate Chief Justice André Deslongchamps  
 Chief Justice Joseph P. Kennedy  
 Chief Justice Beverley McLachlin  
 Chief Justice Pierre A. Michaud  
 Chief Justice W. Kenneth Moore  
 Mr. Justice J. Edward Richard  
 Chief Justice David D. Smith  
 Associate Chief Justice Heather J. Smith

#### **Judicial Education Committee**

Chief Justice W. Kenneth Moore (*Chairperson*)  
 Madam Justice Beverley Browne  
 Senior Associate Chief Justice René W. Dionne  
 Associate Chief Justice Patrick D. Dohm  
 Chief Justice Constance R. Glube  
 Chief Justice Joseph P. Kennedy  
 Chief Justice Donald K. MacPherson  
 Chief Justice Richard J. Scott  
 Chief Justice David D. Smith  
 Associate Chief Justice Heather J. Smith

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#### **Notes:**

1. Committee membership is generally established at the Council's annual meeting, held in the autumn.
2. These lists show Committee membership as at March 31, 2000.

**Judicial Independence Committee**

Associate Chief Justice Gerald Mercier (*Chairperson*)  
 Chief Justice Norman H. Carruthers  
 Chief Justice Joseph Z. Daigle  
 Chief Justice T. Alex Hickman  
 Chief Justice Lyse Lemieux  
 Chief Justice Patrick J. LeSage  
 Associate Chief Justice J. Michael MacDonald  
 Chief Justice Barry L. Strayer  
 Associate Chief Justice Allan H.J. Wachowich  
 Chief Justice Bryan Williams

**Judicial Salaries and Benefits Committee**

Associate Chief Justice André Deslongchamps  
 (*Chairperson*)  
 Associate Chief Justice Patrick D. Dohm  
 Chief Justice Catherine A. Fraser  
 Chief Judge Alban Garon  
 Chief Justice Benjamin Hewak  
 Chief Justice Kenneth R. MacDonald  
 Associate Chief Justice Coulter A. Osborne

**Appeal Courts Committee**

Chief Justice Joseph Z. Daigle (*Chairperson*)  
 Chief Justice Edward D. Bayda  
 Chief Justice Norman H. Carruthers  
 Chief Justice Catherine A. Fraser  
 Chief Justice Constance R. Glube  
 Chief Justice Allan McEachern  
 Chief Justice R. Roy McMurtry  
 Chief Justice Pierre A. Michaud  
 Associate Chief Justice Coulter A. Osborne  
 Chief Justice John D. Richard  
 Chief Justice Richard J. Scott  
 Chief Justice Barry L. Strayer  
 Chief Justice Clyde K. Wells

**Trial Courts Committee**

Chief Justice David D. Smith (*Chairperson*)  
 Associate Chief Judge Donald G.H. Bowman  
 Madam Justice Beverley Browne  
 Associate Chief Justice André Deslongchamps  
 Senior Associate Chief Justice René W. Dionne  
 Associate Chief Justice Patrick D. Dohm  
 Associate Chief Justice Robert F. Ferguson  
 Chief Judge Alban Garon  
 Chief Justice Benjamin Hewak  
 Chief Justice T. Alex Hickman  
 Mr. Justice Ralph E. Hudson  
 Chief Justice Joseph P. Kennedy  
 Chief Justice Lyse Lemieux  
 Chief Justice Patrick J. LeSage  
 Associate Chief Justice Allan F. Lutfy  
 Associate Chief Justice J. Michael MacDonald  
 Chief Justice Kenneth R. MacDonald  
 Chief Justice Donald K. MacPherson  
 Associate Chief Justice Gerald Mercier  
 Chief Justice W. Kenneth Moore  
 Associate Chief Justice Jeffrey J. Oliphant  
 Mr. Justice J. Edward Richard  
 Associate Chief Justice Heather J. Smith  
 Associate Chief Justice Allan H.J. Wachowich  
 Chief Justice Bryan Williams

**Nominating Committee**

Chief Justice Pierre A. Michaud (*Chairperson*)  
 Associate Chief Justice Heather J. Smith  
 Associate Chief Justice Allan H.J. Wachowich

**AD HOC OR SPECIAL COMMITTEES**

**Judges Technology Advisory Committee**

Mr. Justice John McQuaid (*Chairperson*)  
Madam Justice Marion Allan  
Mr. Justice Michel Bastarache  
Madam Justice Margaret Cameron  
Mr. Justice John Evans  
Mr. Justice Morris Fish  
Mr. Justice E. J. (Ted) Flinn  
Madam Justice Adelle Fruman  
Madam Justice Ellen Gunn  
Madam Justice Fran Kiteley  
Associate Chief Justice Jeffrey J. Oliphant  
Mr. Justice Thomas Riordon

**Advisors:**

Dr. Martin Felsky  
Ms. Jennifer Jordan  
Professor Daniel Poulin

**Study Leave Committee**

Chief Justice Edward D. Bayda (*Chairperson*)  
Chief Justice Benjamin Hewak  
Associate Chief Justice Heather J. Smith  
Dean Louis Perret  
Dean Jamie Cassels

**Special Committee on Public Information**

Chief Justice Pierre A. Michaud (*Chairperson*)  
Chief Justice Edward D. Bayda  
Chief Justice Joseph R. Kennedy  
Chief Justice R. Roy McMurtry  
Associate Chief Justice Jeffrey J. Oliphant



## 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 1997 Office Consolidation of the Act and subsequent amendments.

#### **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; S.C. 1999, c. 3;
- (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) [Repealed, S.C., 1999, c. 3].

(3) [Repealed, S.C., 1999, c. 3].

##### *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.

##### *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 BY-LAWS

(effective April 1, 1998)

### INTERPRETATION

Interpretation **1.** The definitions in this section apply in these by-laws.

Act  
« Loi » “Act” means the Judges Act.

Chief Justice  
« juge en chef » “Chief Justice” includes the Chief Judge of the Tax Court of Canada and the Senior Judge of the Northwest Territories and the Yukon Territory.

complaint  
« plainte » “complaint” means a complaint or an allegation.

Council  
« Conseil » “Council” means the Canadian Judicial Council established by section 59 of the Act.

First Vice-Chairperson  
« premier vice-président » “First Vice-Chairperson” means the Vice-Chairperson who has been a member of the Council longer than the other Vice-Chairperson.

Second Vice-Chairperson  
« second vice-président » “Second Vice-Chairperson” means the Vice-Chairperson who is not the First Vice-Chairperson.

### PART 1

### ORGANIZATION OF THE COUNCIL

#### Officers

Chairperson **2.** The Chief Justice of Canada, designated by paragraph 59(a) of the Act as the Chairperson, shall be the Chief Executive Officer of the Council.

Vice-Chairpersons **3.** (1) The Chairperson may designate two members of the Council to be Vice-Chairpersons of the Council, at least one of whom shall be an elected member of the Executive Committee.

Term of Vice-Chairperson (2) The Vice-Chairpersons shall hold office at the pleasure of the Chairperson.

Duties of Vice-Chairpersons **4.** The First Vice-Chairperson or, in the absence of the First Vice-Chairperson, the Second Vice-Chairperson, shall act in the absence or incapacity of the Chairperson.

#### Office of Council

Office of Council **5.** The office of the Council shall be in the National Capital Region.

Appointment of Executive Director **6.** The Chairperson shall appoint an Executive Director who is not a member of the Council.

Duties of Executive Director **7.** (1) The Executive Director shall have charge of the office of the Council, be responsible for all matters generally ascribed to the position and perform all duties required by the Chairperson, by the Council or by any of its committees.

Acting Executive Director (2) If for any reason the Executive Director is unable to act, the Chairperson may appoint an Acting Executive Director.

**Council Meetings**

Annual meeting **8.** (1) There shall be an annual meeting of the Council. Unless the Executive Committee directs otherwise, the meeting shall be held in September.

Mid-year meeting (2) Unless the Executive Committee directs otherwise, there shall be a mid-year meeting of the Council in the National Capital Region in March.

Date and place (3) The Executive Committee shall fix the dates of the meetings and, for the annual meeting, the place, but if it fails to do so, the date and place shall be fixed by the Chairperson.

Notice of meeting **9.** The Executive Director shall give each member of the Council at least 30 days notice of the date, time and place of any annual or mid-year meeting of the Council.

Special meetings **10.** (1) Special meetings of the Council may also be called by the Chairperson, by the Executive Committee or at the written request of not fewer than 10 members of the Council.

Date and place (2) The date and place for any special meeting shall be fixed by the Executive Committee, except a meeting called by the Chairperson for which the Chairperson shall fix the date and place.

Notice of special meeting (3) Notice of the date, time, place and purpose of any such special meeting shall be communicated to every member of the Council in any manner that the Executive Director, in consultation with the Chairperson, considers expedient taking into account the importance or urgency of the meeting.

Adjournment **11.** A meeting of the Council may be adjourned to any date and place that the Council may decide.

Presiding officer of Council **12.** The presiding officer at all meetings of the Council shall be  
 (a) the Chairperson;  
 (b) in the absence of the Chairperson, the First Vice-Chairperson;  
 (c) in the absence of the Chairperson and the First Vice-Chairperson, the Second Vice-Chairperson; or  
 (d) in the absence of the Chairperson and the Vice-Chairpersons, the senior member of the Council present at the meeting.

Quorum **13.** A majority of the members of the Council constitutes a quorum.

Voting **14.** Voting at meetings of the Council shall be by a show of hands unless a vote by secret ballot is requested by at least 10 members.

Attendance of non-members at Council meetings **15.** The Council may authorize any person who is not a member of the Council to attend, but not to vote, at a meeting of the Council.

**Amendment of By-Laws**

Amendments **16.** (1) Subject to section 17, these by-laws may be amended by a majority vote of all the members of the Council on notice in writing of the proposed amendment being given to the Executive Director not less than 30 days before the meeting of the Council at which the amendment will be considered.

Notice (2) On receiving the notice the Executive Director shall, not less than 10 days before the meeting, cause a copy of the notice to be communicated to every member of the Council.

## APPENDICES

Waiving of notice period **17.** The notice period for a change to these by-laws can be waived by agreement of two thirds of the members present at a meeting of the Council.

### Committees

#### *Executive Committee*

Composition **18.** (1) There shall be an Executive Committee of the Council consisting, in addition to the Chairperson, of nine members of the Council who shall be elected by the Council from among its members.

Additional member (2) If the Chairperson appoints as one of the Vice-Chairpersons a Council member who is not elected to the Executive Committee, that Vice-Chairperson shall be an additional member of the Executive Committee.

Chairperson **19.** (1) The Chairperson shall preside over all meetings of the Executive Committee.

Vice-Chairperson (2) The Chairperson may from time to time designate a Vice-Chairperson to act as Chairperson of the Executive Committee, and the Vice-Chairperson so designated shall have the authority and responsibility of the Chairperson of the Committee subject to the right of the Chairperson of the Council to resume the chairmanship at any time.

Members **20.** (1) Three members of the Council shall be elected to the Executive Committee at each annual meeting and shall hold office for three years.

Eligibility (2) A member of the Executive Committee whose term expires at an annual meeting shall not be eligible for re-election until the following annual meeting.

Vacancy **21.** (1) When a member of the Executive Committee ceases to be a member of the Council before the expiry of his or her term, the Executive Committee may appoint another member of the Council as a replacement member of the Committee until the next annual meeting of the Council.

Replacement (2) In the case described in subsection (1), the Council shall elect one of its members as a replacement at its next annual meeting.

Duration of term (3) A member of the Executive Committee elected under subsection (2) shall hold office until the expiry of the term of office of the person being replaced.

Powers and duties of the Executive Committee **22.** 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) the appointment of members of the Executive Committee and standing committees other than as provided in these by-laws; and
- (c) the powers of the Council referred to in Part 2.

Quorum **23.** A majority of the members of the Executive Committee constitutes a quorum.

Functioning of the Committee **24.** (1) Subject to subsection (2), meetings of the Executive Committee shall be held at the intervals, in the manner, at the place and on the notice that the Executive Committee may from time to time determine.

Special meetings (2) The Chairperson, a Vice-Chairperson or any three members of the Council may, at any time, call a special meeting of the Executive Committee.

Resolution **25.** (1) A resolution consented to in writing or by any electronic method, by all members of the Executive Committee, shall be as valid and effectual as if it had been passed at a meeting of the Executive Committee duly called and held.

Minutes (2) The resolution shall be filed with the minutes of the Executive Committee and shall be effective on the date stated on it or, if no date is specified, when it is filed.

*Standing Committees*

Standing Committees **26.** There shall be a standing committee of the Council on each of the following subjects:

- (a) judicial conduct;
- (b) judicial education;
- (c) judicial salaries and benefits;
- (d) judicial independence;
- (e) administration of justice;
- (f) finance;
- (g) appeal courts;
- (h) trial courts; and
- (i) nominations.

Membership **27.** Subject to sections 28 to 30, each standing committee shall have a minimum of five members who shall be elected at each annual meeting. The Chairperson of each such committee shall be elected annually by the members of the committee from among their number.

Membership of Judicial Conduct Committee **28.** (1) The members of the Executive Committee shall constitute the Judicial Conduct Committee.

Chairperson of the Judicial Conduct Committee (2) The Chairperson of the Council shall designate one of the Vice-Chairpersons of the Council to be the Chairperson of the Committee, who shall hold office at the pleasure of the Chairperson of the Council.

Vice-chairperson of the Judicial Conduct Committee (3) The Chairperson may, after consultation with the Chairperson of the Committee, designate one or more Vice-Chairpersons of the Committee.

Appeal Court and Trial Court Committees **29.** (1) The members of the Appeal Courts Committee and the Trial Courts Committee shall, respectively, consist of the Council members who are members of those courts.

Chairperson (2) The Chairperson of each of those Committees, respectively, shall be the Chief Justices of the Appeal Court and the Trial Court of the province or territory in which the next annual meeting of the Council is to be held.

Election of Nominating Committee **30.** At every annual meeting the members of the Council shall elect a three-member Nominating Committee.

Vacancy **31.** Any vacancy in a standing committee arising between annual meetings of the Council may be filled by appointment made by the Executive Committee.

Necessary modifications **32.** Section 23, subsection 24(1) and section 25 apply, with any modifications that are necessary, to any Committee of the Council.

*Mandate of Standing Committees*

Mandate **33.** Each standing Committee shall define its mandate and be responsible for the achievement of its objectives.

Duties of Nominating Committee **34.** (1) The Nominating Committee shall nominate candidates for membership of the Executive Committee and of all standing committees.

Representation (2) The Nominating Committee shall consider and, if possible, nominate candidates who will furnish regional and jurisdictional representation.

Report of Nominating Committee **35.** A written report of the nominations proposed by the Nominating Committee shall be sent to the members of the Council at least 30 days before each annual meeting of the Council.

Other candidates **36.** Despite the report of the Nominating Committee, any member of the Council may nominate at the annual meeting any eligible member of the Council for election to the Executive Committee or to a standing committee.

Finance Committee **37.** The Finance Committee shall prepare for the Executive Committee the Council's annual budget for presentation to the Commissioner for Federal Judicial Affairs.

Report **38.** (1) At each meeting of the Council, the Finance Committee shall present a current report on the financial affairs of the Council.

Supervision of financial affairs (2) The Finance Committee shall supervise the financial affairs and operations of the Council and its committees, and undertake any further financial assignments that the Council or its Executive Committee may direct.

***Ad Hoc Committees***

Ad hoc committees **39.** (1) The Chairperson, the Executive Committee or the Council may establish ad hoc committees and prescribe their powers and duties.

Membership (2) The Chairperson, the Executive Committee or the Council shall designate the members of ad hoc committees and may include in the membership puisne judges.

**Participation at Seminars and Meetings**

Seminars and meetings **40.** For the purpose of subsection 41(1) of the Act

- (a) the Council may authorize judges to attend seminars and conferences for their continuing education; and
- (b) the Chairperson may authorize judges to attend meetings, including seminars, conferences or Council committee meetings, relating to the administration of justice.

**PART 2  
COMPLAINTS**

**Review of Complaints**

Duties of the Chairperson of the Judicial Conduct **41.** (1) The Chairperson of the Judicial Conduct Committee shall carry out the duties set out in this Part with respect to complaints against judges.

Duties of Vice-Chairperson (2) The Chairperson of the Committee may assign to a Vice-Chairperson of the Committee complaints for which the Vice-Chairperson shall be responsible.

Precision (3) For greater certainty, in this Part, "Chairperson of the Committee" means the Chairperson of the Judicial Conduct Committee, or a Vice-Chairperson of that Committee with respect to the complaints assigned to the Vice-Chairperson.

**Non-Participation**

Non-participation **42.** The Chairperson of the Council, and any member of the Council who is a judge of the Federal Court, shall not participate in the consideration of any complaint under this Part unless the Chairperson considers that the public interest and the due administration of justice require it.

**Receipt of Complaint**

Complaints to be in writing

**43.** Complaints made to the Council against a judge shall be in writing.

Communication by Council member

**44.** (1) A Council member shall draw to the attention of the Executive Director in writing any conduct of a judge — whether or not the member received a complaint about the judge — that, in the view of the member, may require the attention of the Council.

Letter same as complaint

(2) If the Council member has not received a written complaint about the judge, the member's letter shall be treated in the same manner as any other complaint received by the Council.

Referral to Executive Director

**45.** Every complaint received by the Council shall be referred to the Executive Director who will send a copy of it to the Chairperson of the Committee for review.

Withdrawal

**46.** After a complaint file has been opened, upon receipt of a letter from the complainant asking for the withdrawal of his or her complaint, the Chairperson of the Committee may:

- (a) close the file; or
- (b) proceed with consideration of the file in question, on the basis that the public interest and the due administration of justice require it.

**Review by Chairperson of the Judicial Conduct Committee**

Review by Chairperson and request for comments

**47.** The Chairperson of the Committee shall review the complaint and may inquire into the matter by requesting comments from the judge concerned and from his or her chief justice.

Further inquiries

**48.** The Chairperson of the Committee may cause further inquiries to be made if more information is required for the review or if the matter is likely to be referred to a Panel under section 53 and more information appears to be necessary for the Panel to fulfil its function.

Opportunity to respond

**49.** If further inquiries are caused to be made, the judge concerned shall be provided with an opportunity to respond to the gist of the allegations and of any evidence against him or her and the judge's response shall be included in the report of the further inquiries.

Closing of the file by Chairperson

**50.** (1) Subject to section 51, the Chairperson of the Committee, having reviewed the complaint and any report of inquiries, may close the file and shall advise the complainant with an appropriate reply in writing if

- (a) the matter is trivial, vexatious or without substance; or
- (b) the conduct of the judge is inappropriate or improper but the matter is not serious enough to warrant removal.

Expression of disapproval

(2) If a judge recognizes that his or her conduct is inappropriate or improper, the Chairperson of the Committee who closes the file under paragraph (1)(b) may, when the circumstances so require, express disapproval of the judge's conduct.



Complaint involving a member of the Council

**51.** When the Chairperson of the Committee proposes to close a file that involves a member of the Council, the Executive Director shall refer the complaint and the reply to an independent counsel who will provide his or her views on the matter, and either incorporate his or her comments into the reply or request that the Chairperson of the Committee give the complaint further consideration.

Copy of complaint and reply sent to judge

**52.** The Executive Director shall provide to the judge concerned and to his or her chief justice, a copy of the complaint, together with a copy of the reply to the complainant.

**Review by Panel**

Referral to Panel

**53.** The Chairperson of the Committee shall refer any file that is not closed under subsection 50(1) to a Panel designated under section 54, together with the report of further inquiries, if any, and any recommendation that the Chairperson may make.

Composition of Panel

**54.** (1) The Chairperson of the Committee shall designate a Panel of up to five members selected from the Council, excluding judges who are members of the court of which the judge who is the subject of the complaint is a member.

Puisne judges

(2) Despite subsection (1), the Chairperson of the Committee may select some members for a Panel from among puisne judges, excluding judges who are members of the court of which the judge who is the subject of the complaint is a member.

Majority of Panel

(3) The Chairperson of the Committee shall select the majority of Panel members from the Council whenever possible.

Chairperson of Panel

(4) The Chairperson of the Committee shall designate a member of the Panel as Chairperson of the Panel.

Review by Panel

**55.** (1) The Panel shall review the matter and the report of the further inquiries, if any, and may cause further inquiries to be made. The Panel shall

- (a) decide that no investigation under subsection 63(2) of the Act is warranted, close the file and advise the complainant and the judge concerned, with an appropriate reply in writing if
  - (i) the matter is trivial, vexatious or without substance, or
  - (ii) the conduct of the judge is inappropriate or improper but the matter is not serious enough to warrant removal; or
- (b) recommend to the Council that an investigation under subsection 63(2) of the Act should be undertaken, and provide a report to the Council and to the judge concerned that specifies the grounds set out in subsection 65(2) of the Act that may be applicable.

Expression of disapproval

(2) In closing the file under subparagraph (1)(a)(ii), the Panel may, when the circumstances so require, express disapproval of the judge's conduct.

Non-participation

**56.** After the Panel has completed its review of a complaint, the members of the Panel and the Chairperson of the Committee who has reviewed the complaint shall not participate in any further consideration of the same complaint by the Council.

**Review of the Panel’s Report by the Council to Determine if an Investigation under subsection 63(2) of the Act is Required**

Review by Council

57. (1) The Council shall consider the Panel’s report to determine if an investigation under subsection 63(2) of the Act is warranted.

Designation of subsequent Inquiry Committee

(2) Before the Council considers a Panel’s report, the Chairperson of the Committee shall designate up to five members of the Council, excluding members of the court of which the judge who is the subject of the complaint is a member, to serve on any subsequent Inquiry Committee that may be constituted under subsection 63(3) of the Act.

Chairperson of the Inquiry Committee

(3) The Chairperson of the Committee shall designate a member of the Inquiry Committee as Chairperson of the Inquiry Committee.

Non-participation

(4) The members so designated shall not participate in any deliberations of the Council in relation to the matter in question.

Written submissions

58. The judge who is the subject of the complaint 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.

Review by Council

59. After considering the Panel’s report and any submissions of the judge concerned, 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 advise the complainant and the judge with an

appropriate reply in writing, including an expression of disapproval of the judge’s conduct when the circumstances so require; 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 advise the judge concerned accordingly.

**Inquiries**

*Investigation Conducted by an Inquiry Committee under subsection 63(2) of the Act*

Members of Inquiry Committee

60. The Inquiry Committee that conducts an investigation under subsection 63(2) of the Act shall be composed of the members designated by the Chairperson of the Committee under subsection 57(2) together with any additional members appointed by the Minister under subsection 63(3) of the Act.

Appointment of independent counsel

61. (1) The Chairperson of the Committee shall appoint an independent counsel in relation to the investigation who shall act at arm’s length from both the Council and the Inquiry Committee.

Duties of independent counsel

(2) The independent counsel shall have carriage of the complaint before the Inquiry Committee, acting in accordance with the law and counsel’s best judgment of what is required in the public interest.

Additional complaints against judge

62. The Inquiry Committee may consider other complaints about the judge that are brought to its attention during the course of its investigation, subject to the judge’s being given notice of the additional complaints and having an opportunity to respond to them.

Public investigation

**63.** Subject to subsection 63(6) of the Act, the Inquiry Committee shall conduct its hearing in public except that, in exceptional circumstances, it may hold all or any part of the hearing in private if it considers that the public interest and the due administration of justice require it.

Inquiry Procedures

**64.** The Inquiry Committee shall conduct its investigation in accordance with sections 63 and 64 of the Act, these by-laws and any fair procedures that it may adopt.

Report of Inquiry Committee

**65.** The Inquiry Committee shall report its findings and conclusions to the Council and may express its opinion on whether a recommendation should be made for the removal of the judge from office.

Copies of report

**66.** As soon as possible after the Inquiry Committee has completed its report, the Executive Director shall:

- (a) provide a copy of the report to the judge concerned, the independent counsel and any other persons who were given standing in the proceedings by the Inquiry Committee; and
- (b) when the hearing has been conducted in public under section 63, make the report public.

***Review of the Inquiry Committee Report by Council***

Judge's submission to or appearance before Council

**67.** A judge who is the subject of an investigation pursuant to subsection 63(2) of the Act may make written submissions to the Council regarding the report of the Inquiry Committee or may appear in person before the Council for the purpose of making a statement to the Council.

Appearance of Independent counsel

**68.** If the judge advises that he or she intends to appear before the Council, with or without counsel, the Council shall invite the independent counsel to appear.

Public hearing

**69.** The hearing of the Council shall be held in public unless the investigation under subsection 63(2) of the Act was held in private.

Referral back to Inquiry Committee

**70.** The Council may refer the matter or any part of it back to the Inquiry Committee with directions.

Council's report to the Minister

**71.** In reporting its conclusions to the Minister under section 65 of the Act, the Council shall also provide the Minister with a copy of the report of the Inquiry Committee.

***Inquiry Requested under Subsection 63(1) or 69(1) of the Act***

Request from Minister or an Attorney General with respect to a judge

**72.** (1) If the Council receives a request from the Minister, or from the Attorney General of a province, under subsection 63(1) of the Act to conduct an inquiry as to whether a judge should be removed from office, the Chairperson of the Committee shall appoint up to five members of the Council to serve on the Inquiry Committee, excluding members of the court of which the judge concerned is a member.

Chairperson of the Inquiry Committee

(2) The Chairperson of the Committee shall designate a member of the Inquiry Committee as Chairperson of the Inquiry Committee.

Request from  
Minister about  
other persons

**73.** (1) If the Council receives a request from the Minister under subsection 69(1) of the Act to conduct an inquiry as to whether a person appointed under an enactment of Parliament should be removed from office, the Chairperson of the Committee shall appoint up to five members of the Council to serve on the Inquiry Committee.

Chairperson  
of the Inquiry  
Committee

(2) The Chairperson of the Committee shall designate a member of the Inquiry Committee as Chairperson on the Inquiry Committee.

Rules for  
inquiry  
directed by  
Minister or an  
Attorney General

**74.** An inquiry referred to in section 72 and 73 shall be conducted in accordance with sections 60 to 71, with any modifications that are necessary, as though it were an investigation under subsection 63(2) of the Act.

## Appendix E

### ***HUMAN AND FINANCIAL RESOURCES, 1999-2000***

The Council is served by an executive director, a legal counsel and two support staff located at the Council office in Ottawa.

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***1999-2000 Expenditures of the Canadian Judicial Council***

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Salaries and Benefits	300,343
Transportation and Communications	76,466
Professional and Special Services	479,432
Rentals	21,189
Purchase, Repair and Upkeep	1,134
Utilities, Materials and Supplies	24,015
Other	164
Internal Government Expenditures	42,950
<b>TOTAL</b>	<b>\$945,693*</b>

\* This amount is considerably higher than the expenditures in 1998-99 because supplementary funds were required to cover costs associated with the ss. 63(1) *Judges Act* Inquiry which ended early in the year.