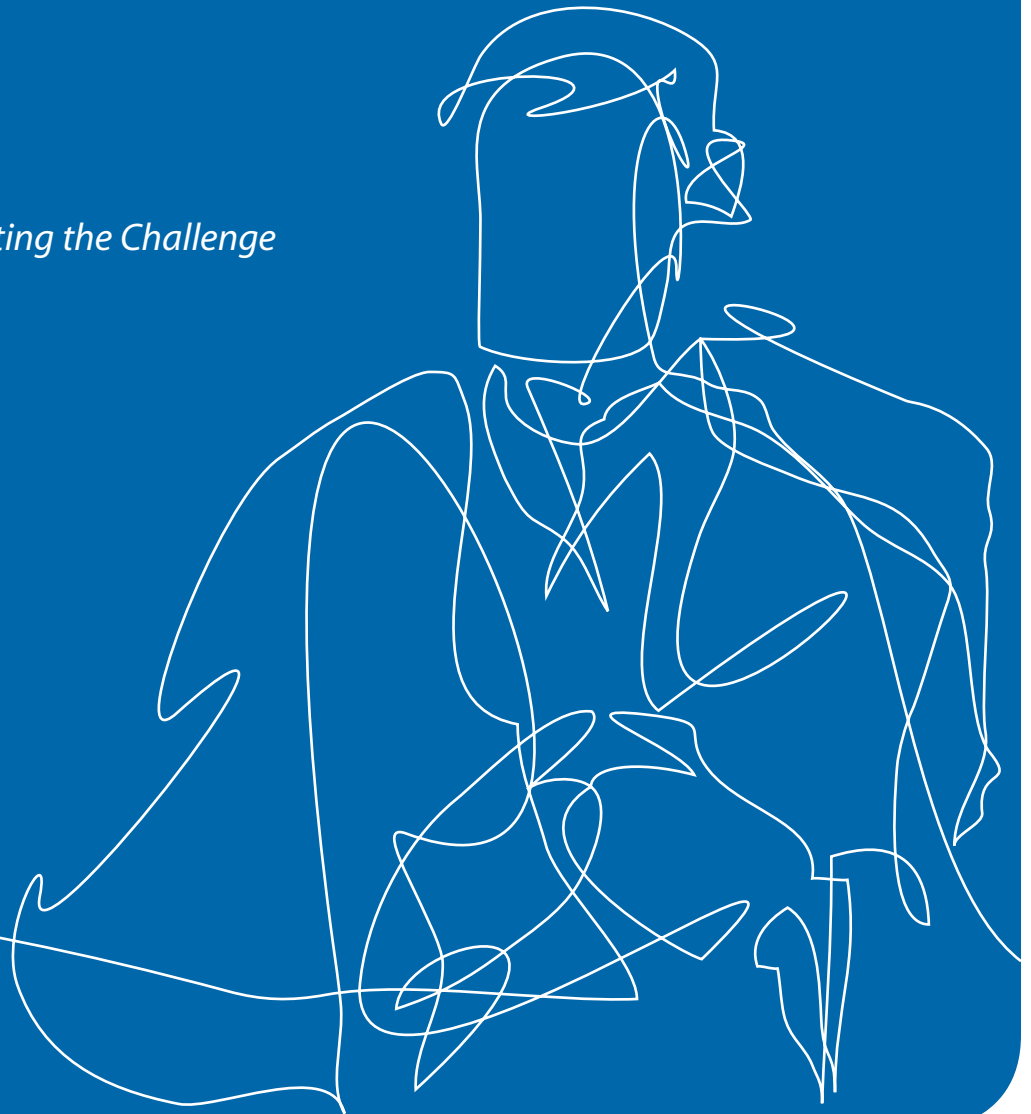


Access to Justice: *Meeting the Challenge*



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Canadian Judicial Council
Ottawa, Ontario
Canada K1A 0W8

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

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

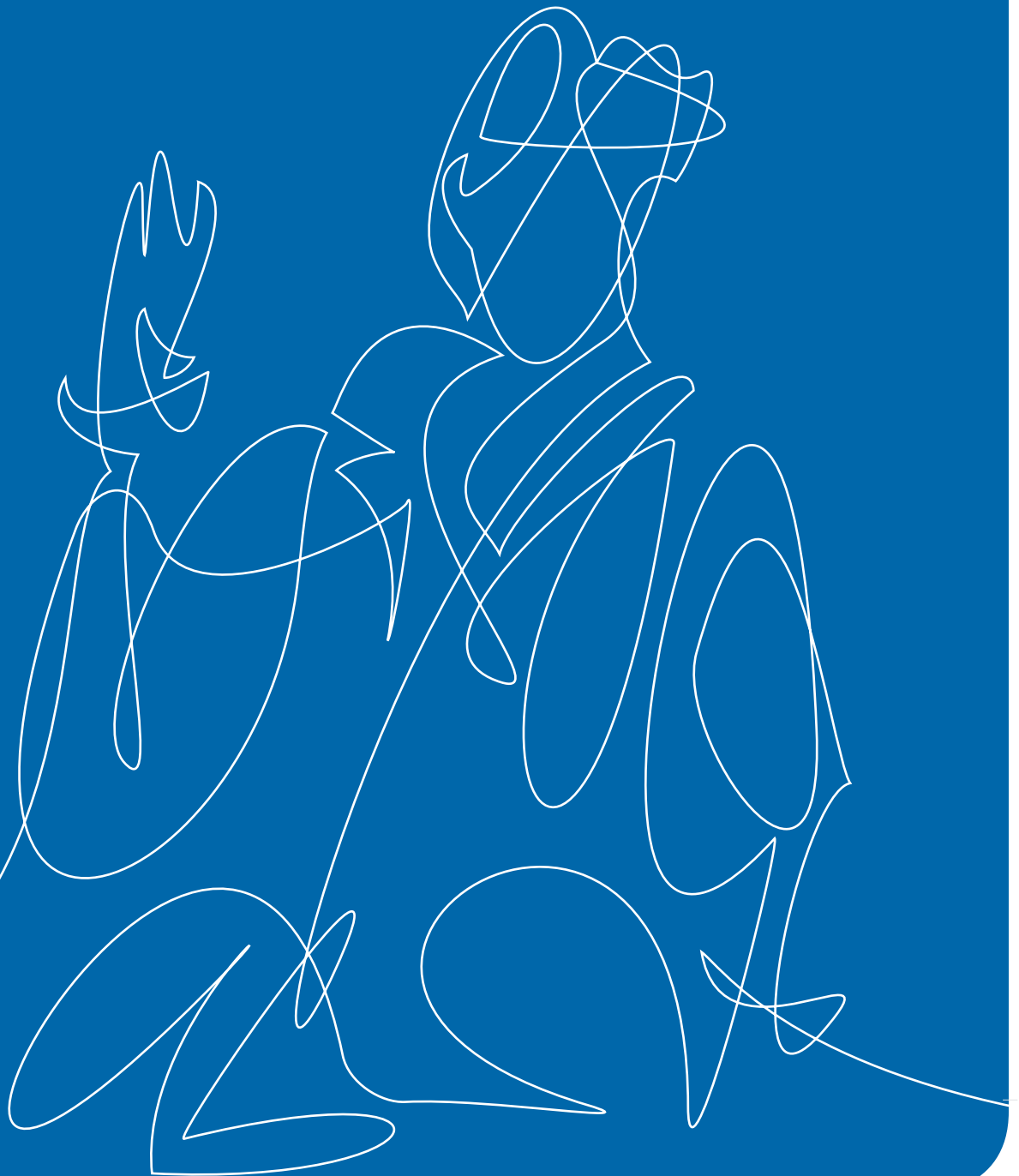


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The challenges we face

Canada has a strong and healthy justice system. Indeed, our courts and justice system are looked to by many countries as exemplary. We have well-appointed courtrooms, presided over by highly qualified judges. Our judges are independent and deliver impartial justice, free of fear and favour. Canadians can be proud of their justice system.

Yet, as in every other human institutional endeavour, the provision of justice is an ongoing process. It is never done, never fully achieved. Each decade, each year, each month, indeed each day, brings new challenges. Canadian society is changing more rapidly than ever before. So is the technology by which we manage these changes. Thus it should come as no surprise that Canada's justice system, in 2007, faces challenges.

One of the most pressing problems is access to justice. The most advanced justice system in the world is a failure if it is not able to provide justice to the people it is meant to serve. Access to justice is therefore critical. Unfortunately, many Canadian men and women find themselves unable, mainly for financial reasons, to access the Canadian justice system. My colleagues on the Canadian Judicial Council are concerned about this problem and are committed to address it through their work on self-represented litigants, court administration and other initiatives aimed at improving access to the justice system.



The Right Honourable Beverley McLachlin
Chief Justice of Canada and Chairperson of the Canadian Judicial Council

The Canadian Judicial Council's committee work

The Chief Justice of the Supreme Court of Canada, the Right Honourable Beverley McLachlin, chairs the Canadian Judicial Council. The Council consists of 39 chief justices and associate chief justices who oversee the work of more than 1,050 federally appointed judges in Canada.

The Council's mandate, as set by the *Judges Act*, is to promote efficiency and uniformity in the courts and to improve the quality of judicial service. The Council has a vision for a just society, and its objectives are met through the hard work and dedication of its committee members.

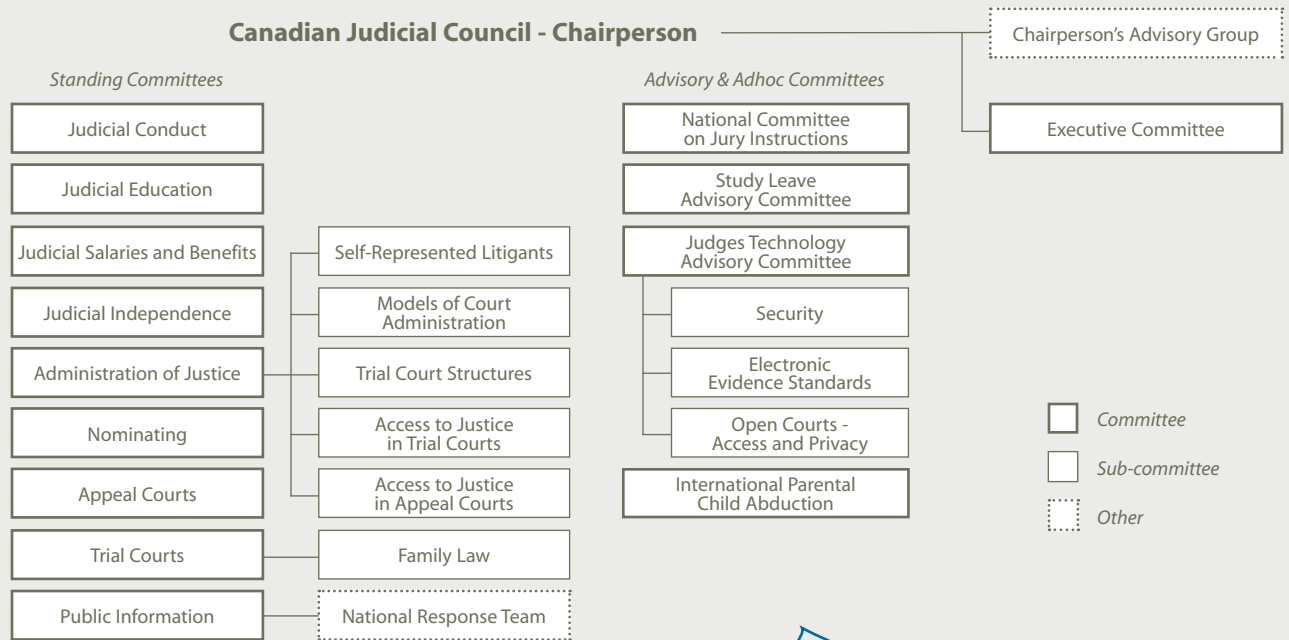
The Council does many things to meet that vision. With an overall mandate to enhance the quality of judicial service in Canada, it is responsible for investigating complaints from the public and the government about the conduct (not the decisions) of federally appointed judges. Its review process acknowledges the public's right to voice concerns about judges who they believe have fallen short of the high standard we expect, while giving judges accused of misconduct an opportunity to respond to the complaint.

The Council also considers issues of principle, sets policy and provides tools to help judges and the judicial system remain efficient, uniform, and accountable. The work is done by various committees, supported by Canadian Judicial Council staff.

The chief justices of each province are responsible for the day-to-day administration of justice within their own jurisdictions across Canada. As the Council is unable to meet as often as it would like, its committee system allows members to work on a regular basis in smaller groups that focus on the issues that affect Canada's justice system. Some committees are permanent, standing committees; others are formed from time to time to deal with specific issues or projects.

Most committees conduct research and deliver tools for enhancing the quality, uniformity, and efficiency of the Canadian judicial system. They often work in consultation with experts and partners in the legal, private, and media sectors. The result of their research is presented to the Council at its two annual meetings for consideration and approval, and often takes the form of studies, guidelines, model policies, and other key documentation that is distributed to the wider justice community and, in most cases, to the general public.

The Executive Committee is composed of 11 members, and takes authority on behalf of the Council. It includes the chairs of most standing committees. It plays an important role in setting the Council's priorities. The structure of the Council and its committees is set out in this chart:



How the Canadian Judicial Council is supporting access to justice

The Administration of Justice Committee plays an important role in Canada's justice system. Its focus is to ensure equal access to justice in courts across the country. It does this by consulting on changes to court structure and providing information and tools that judges can use to respond to new issues.

While access to justice is, in fact, the general mandate of the Committee, their priority this year was ensuring that self-represented persons who appear in the court system have fair access and equal treatment in the courts. How are they working on this?

After extensive work by the Committee, a statement of principles on self-represented persons was issued in December 2006. The Committee's work began with a detailed examination of the issues facing self-represented persons in court. They concluded that self-represented persons are generally uninformed about their legal rights and about the consequences of the options they choose. They find court procedures complex, confusing, and intimidating and they generally do not have the knowledge to effectively participate in their own litigation.

The statement of principles is advisory, not a rigid code. Nevertheless, it states that judges and others in the justice system have a responsibility to promote opportunities for every litigant to understand and present their case in a meaningful way, whether or not they have legal representation.

Here is a summary of the principles:

1. We must promote rights of access to justice for those who represent themselves. This means that all aspects of the court process must be open, simple, and accommodating. The court process should be supplemented by alternate dispute resolution procedures and self-help support.
2. We must promote equal justice. Judges and courts should do everything possible to prevent unfair disadvantage to self-represented persons.
3. Judges and court administrators have a responsibility to meet the needs of self-represented litigants for simple information and referrals.
4. Self-represented litigants are expected to prepare their own case and make themselves familiar with court practices and procedures. They must be respectful of the court process and its officials. Vexatious litigants cannot abuse the process.

The full statement of principles can be found on the Council's website at www.cjc.gc.ca.

In conjunction with the statement of principles, other helpful working tools were developed to help judges assist people who represent themselves in court. These tools provide:

- o information for judges about the needs of self-represented litigants;
- o case law and annotations on issues that have impacted on those representing themselves in court;
- o advice and suggested plain language words to explain legal procedures to self-represented litigants in family, civil, and criminal cases; and
- o references for local resources for self-represented litigants.

Making information about our justice system more accessible

While the Administration of Justice Committee has focused on enhancing access to justice in the courtroom, the Public Information Committee has put its energy into making information about our justice and judicial systems more accessible by the public.

A Communication Guide for Judges was written and will be published in 2007. It is a practical guide for judges wanting to improve their communication skills – with litigants in the courtroom, with the public, and with the media.

The Committee is reviewing the publication titled *The Canadian Justice System and the Media*, originally published in 2001. It will be posted on the new Canadian Judicial Council website and used in regional seminars on media and the courts.

There are many ways to enhance access to justice. One is by providing judges with tools to help them assist unrepresented people appearing in their courtrooms. Another is by offering education and resources about our justice system to the public. The Public Information Committee is overseeing development of a new website for the Canadian Judicial Council. The new website will be a portal to educational resources and information about our courts and judges, the expected conduct of judges, news and publications, legal resources and, of course, the Canadian Judicial Council. Launch of the new website is scheduled for fall 2007.

Addressing family law issues

Many people within the Canadian justice system have expressed concerns about the needs of families involved in legal disputes. The problem of parental child abduction has become a topic of public and judicial debate, particularly as the mobility of parents increases.

As a result of recommendations from 2001 and 2006 Special Commissions held in the Hague on the civil aspects of international child abduction, the Council established the Special Committee on International Parental Child Abduction to act as a point of contact for judges involved in cases of international parental child abduction. In addition, the Trial Courts Committee's Family Law Sub-Committee has established a Canadian Network of Contact Judges to deal with issues of inter-jurisdictional parental child abduction and inter-jurisdictional cases of child custody.

The network is comprised of representatives from every province and territory. Its primary role is to improve and expedite the handling of cases. It recognizes the importance of judicial involvement and creates opportunities for judicial networking, collaboration, and education to deal with this serious problem.

Meeting the public's expectations

Canadians have a right to expect the highest standard of integrity and personal conduct from our judges, both inside and outside the courtroom. In short, they must have confidence in our justice system.

If a judge is not fit to be a member of the judiciary, the justice system – through the Canadian Judicial Council's Judicial Conduct Committee – provides a way for the government and the public to voice its concerns about a federally appointed judge's conduct (not a judge's court decision), to investigate the judge's alleged inappropriate behaviour, and to remove them from office. At the same time, the system allows judges to respond to allegations of misconduct in a fair manner.

All complaints are taken seriously. Some are dismissed upon initial review because they do not meet the criteria for review. For example, the complaint may be about a judge's decision in a case, not about the judge's conduct. Some complaints require further investigation by independent counsel or by a panel. Self-represented litigants continue to make up a large percentage of complaints received by the Council. The Public Information Committee is working on the Council's new website which will have enhanced information about the Canadian judicial system and the Council's role in handling complaints about judicial conduct.

Courtroom proceedings are challenging. They are demanding for judges and lawyers, and always difficult for litigants. Emotions often run high, particularly in family law cases. The issues become even more complex and poignant when a self-represented litigant is faced with the intricacies of a trial. It is unfortunate but expected that difficulties will arise, and that the participants will feel that matters were handled in an unsatisfactory way.

In some complaint cases, the judge's communication skills were less than ideal and the complainant alleged that the judge was disrespectful or biased. A significant number of complaints from self-represented litigants arise from their perception that the judge who heard their case was biased in some particular way – against self-represented litigants, against their gender, or against themselves. It is important to understand that while judicial impartiality is presumed, it is not always perceived that way by those in the courtroom.

Judges must take care in balancing the needs of the self-represented litigant to be guided through the proceeding without it appearing that either party is being treated unfairly. It requires a great deal of judicial skill and patience, and sometimes the public's expectations are not fully met. The Council is aware that these complexities exist and it is working towards its mandate to foster a justice system that allows everyone to be treated with courtesy and respect.

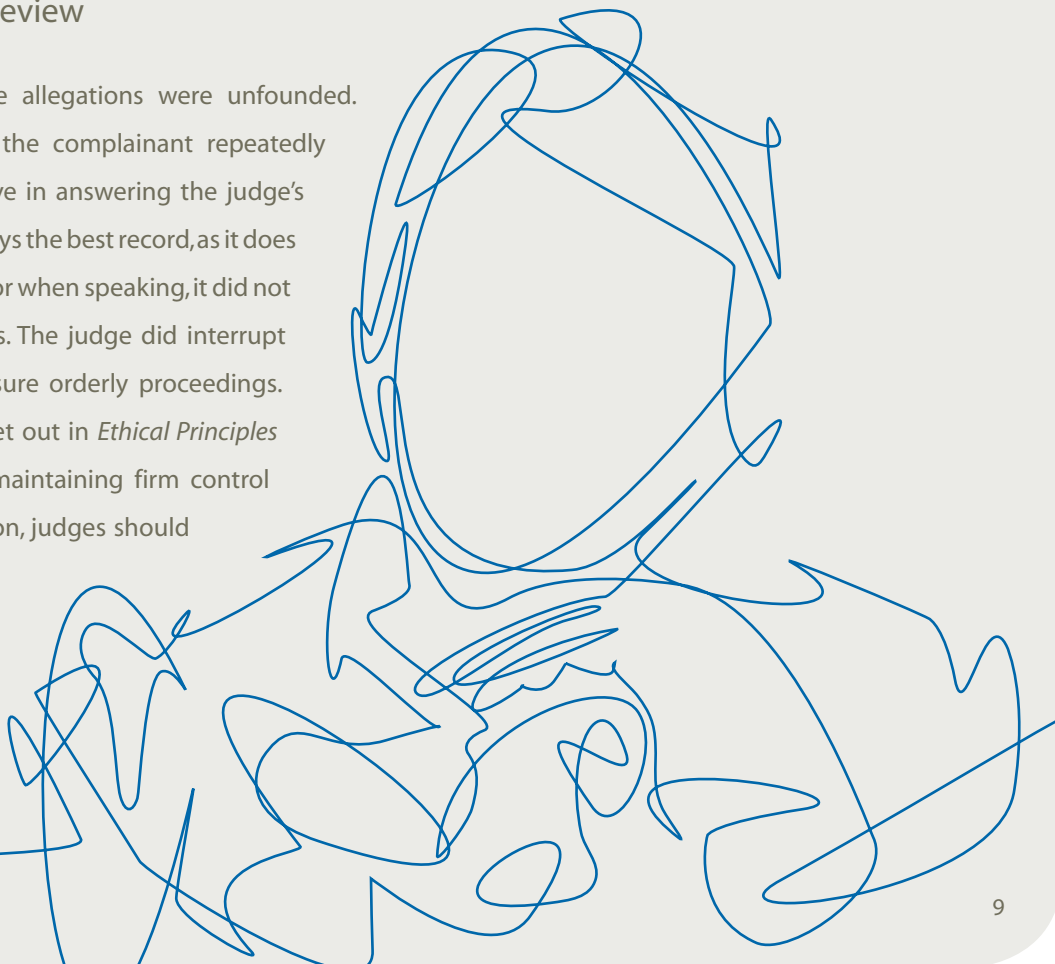
The following three complaints illustrate the type of difficulties that arise in the courtroom when a self-represented litigant believes that the judge has not handled the case fairly.

Complaint

The complainant, a self-represented party in a family law matter, alleged that the judge was rude, disrespectful, verbally abusive, and discriminated against her because she was a self-represented litigant.

Review

The matter was closed because the allegations were unfounded. A review of the case showed that the complainant repeatedly interrupted the judge and was evasive in answering the judge's questions. While a transcript is not always the best record, as it does not show a person's tone and demeanor when speaking, it did not support the complainant's allegations. The judge did interrupt at times, but it was necessary to ensure orderly proceedings. The judge adhered to the principle set out in *Ethical Principles for Judges*: "While acting decisively, maintaining firm control of the process and ensuring expedition, judges should treat everyone before the court with appropriate courtesy."



Complaint

The complainant was a self-represented party in an assault trial. The complainant alleged that the judge interrupted the complainant during closing arguments, did not want to listen to case law authorities, and was biased against self-represented litigants.

Review

The matter was closed because no further action was required. The judge did say that the case law was not important. These comments were not ideal, but they were not serious enough to warrant further investigation. Judges have a duty to maintain firm control of the proceedings before them. The judge's comments were intended to focus the complainant's submissions on the relevant point then being argued, and were not intended to suggest that he was not interested in the complainant's arguments about the law.

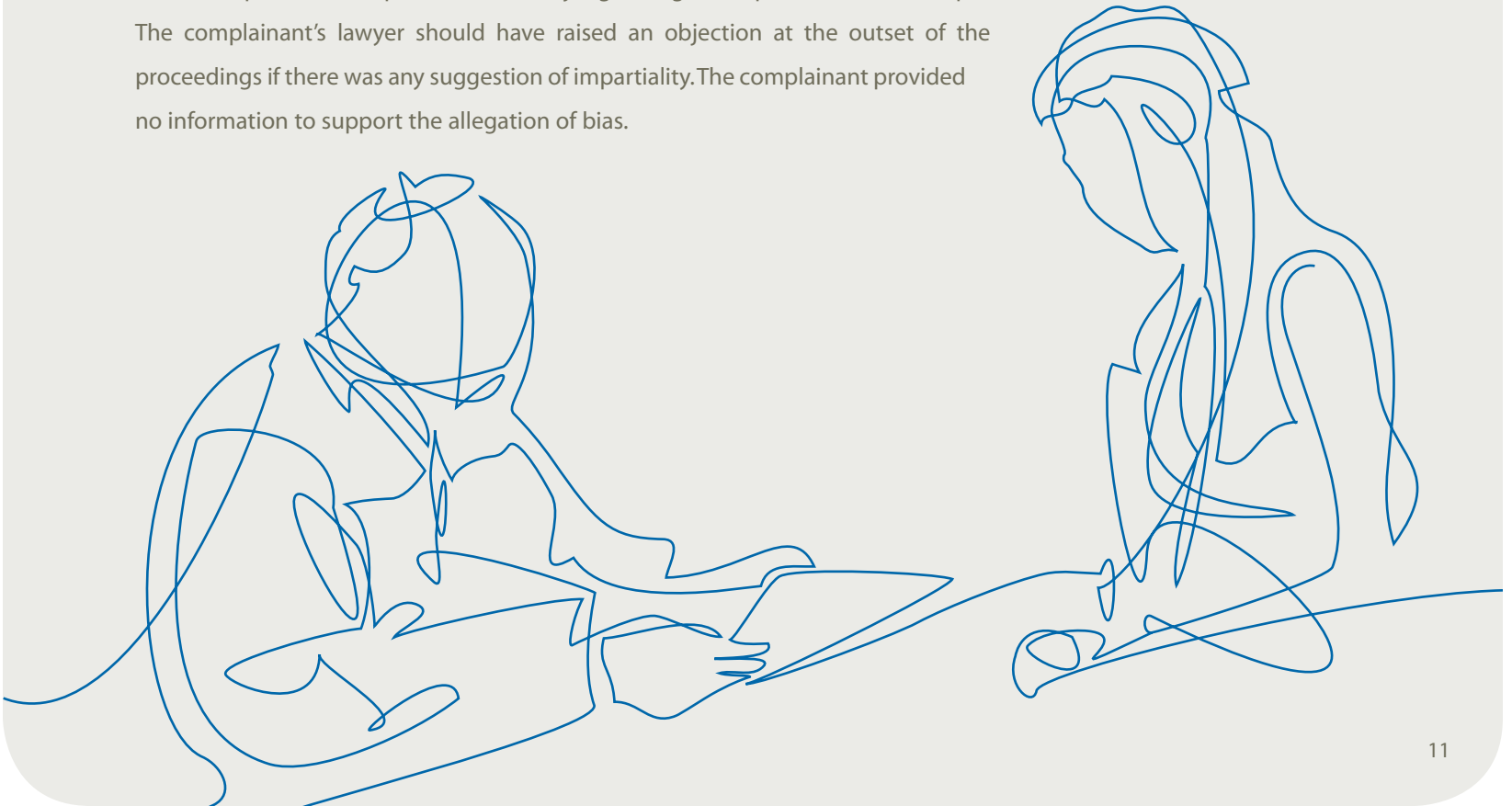
Complaint

The complainant was a represented party in a family law (custody) case. He alleged that the judge discriminated against him on the basis of gender and was overly sympathetic to his spouse because she was without counsel. The complainant further alleged that the judge was personally acquainted with his counsel and was biased against him.

Review

The Council reviewed the reasons for judgment and the matter was closed. A key factor in the proceedings was the credibility of the parties, and after the judge heard all the evidence, the complainant's testimony was not accepted. Review of the judge's decision was only available by way of appeal. As to the allegation of conflict of interest, the Council cannot respond to a request to recuse a judge. Judges are presumed to be impartial.

The complainant's lawyer should have raised an objection at the outset of the proceedings if there was any suggestion of impartiality. The complainant provided no information to support the allegation of bias.



An allegation of bias against disabled persons was made in one case where the complainant believed that his mental health was unreasonably called into question.

Complaint

The complainant was a party (the applicant) in a civil litigation matter. The complainant alleged that the judge shouted, used insulting language, was biased against disabled persons, and referred to the complainant as “mental.”

Review

The matter was closed after court transcripts and tapes were reviewed. In referring to letters written to an elderly lady by the complainant using derogatory and inappropriate language, the judge had said, “My concern was for the applicant’s mental health.” The comment was deemed relevant in light of the judge’s review of the complainant’s actions and his motives in the context of the court proceedings. The court transcripts and tapes also revealed that the judge spent a lot of time patiently explaining different procedures to the complainant, and the allegation of bias against people with disabilities was unfounded.



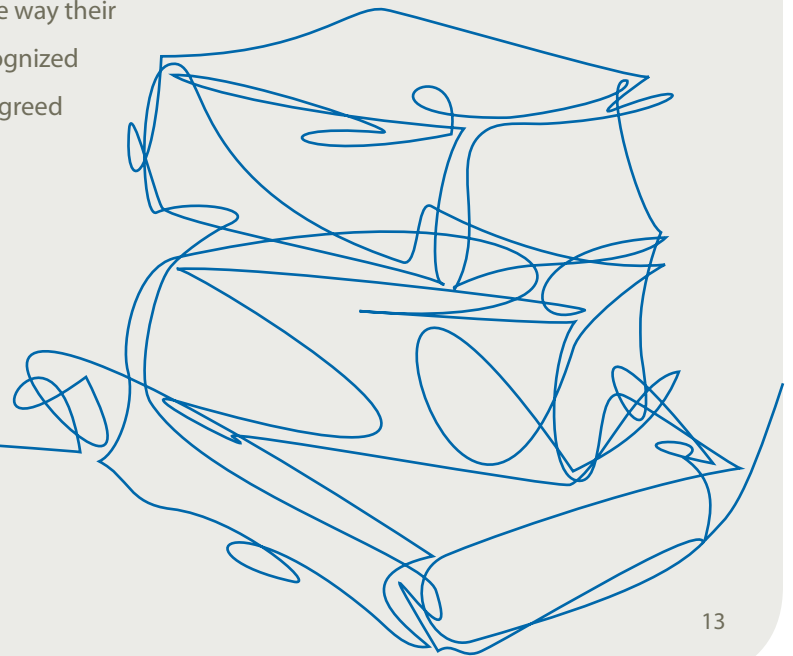
Some complaints raise serious allegations about a judge and must be investigated with the assistance of outside counsel. Counsel are chosen for their expertise and reputation in the legal community. Counsel may interview the judge, the complainant, and sometimes observers in the courtroom. Outside counsel were retained in the following two cases.

Complaint

Observers at a civil trial for breach of contract complained that the judge acted outrageously and made prejudicial statements against the defendant. They further alleged that the judge shouted at the participants, made discourteous and rude gestures and comments to counsel and litigants, and exhibited favouritism to the plaintiff.

Review

Outside counsel interviewed the complainants, the judge, and other observers at the trial. Counsel concluded that there was no basis to refer the matter to a Council panel for further review because there was no suggestion that the judge did not have the legal skills required to perform the judicial function. The complainants did, however, raise concerns about the judge's communication skills. Judges owe a duty of courtesy and respect to every person in the courtroom, and they must be sensitive to the way their words and gestures are perceived. The judge in question recognized occasional impatience and irritation with trial participants and agreed to attend a course on communication skills for judges.

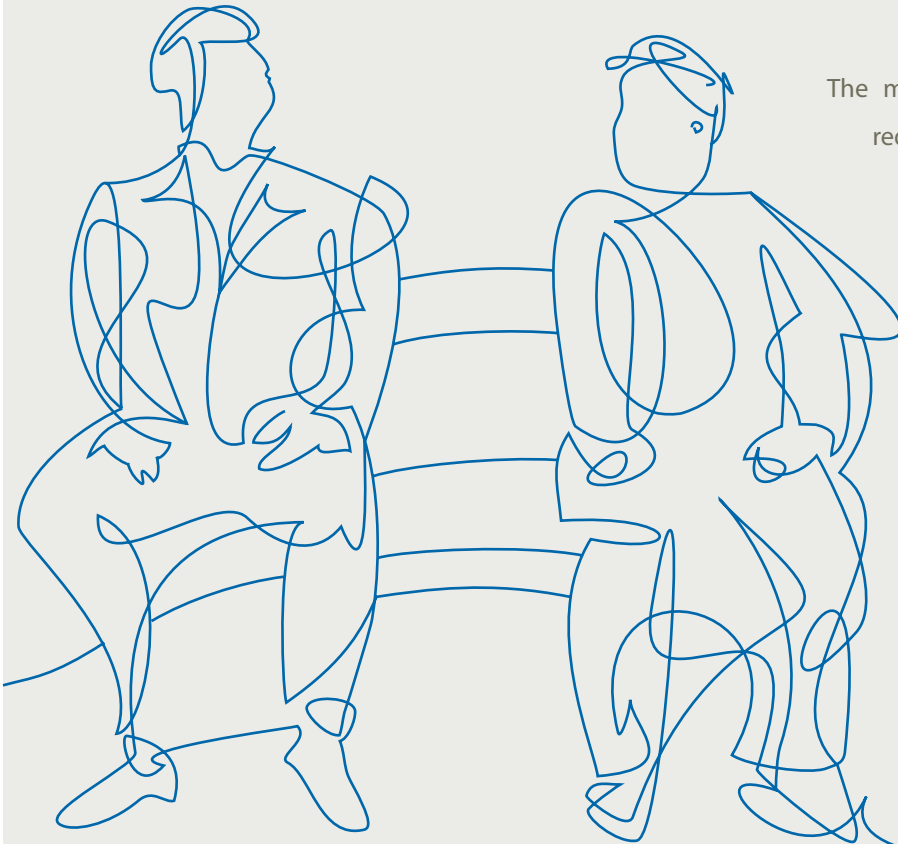


Complaint

A complaint was made by an interest group in an appeal of a same-sex family law matter. They believed that the chief justice had a conflict of interest in the case because his daughter was involved in a same-sex union and he therefore had a personal interest in the outcome of the case. They felt that the chief justice should have disclosed his interest and recused himself from the case. There were further allegations that the chief justice picked the other judges to hear the appeal in an effort to advance his personal views. In other words, the complainant alleged that the judge's personal views and conduct undermined his fundamental obligation to remain impartial.

Review

The matter was closed because no further action was required. The judge had no obligation to disclose his daughter's sexual orientation and the fact that he failed to do so did not indicate bias or a conflict of interest. True impartiality does not require that a judge have no opinions; it requires that the judge be free to entertain or act upon different points of view with an open mind. There was no basis for the allegation that the judge had assigned particular judges to the appeal panel. Because the complaint involved a member of the Council, the Council's decision was reviewed by an outside lawyer, who fully endorsed the Council's reasoning and decision.



The Council sometimes receives complaints from vexatious litigants. These are people who repeatedly go before the courts and abuse the process. Following the receipt of numerous unfounded complaints, the complainant can be informed that future complaints regarding the same issues will not be reviewed by the Council. The following case is an illustration.

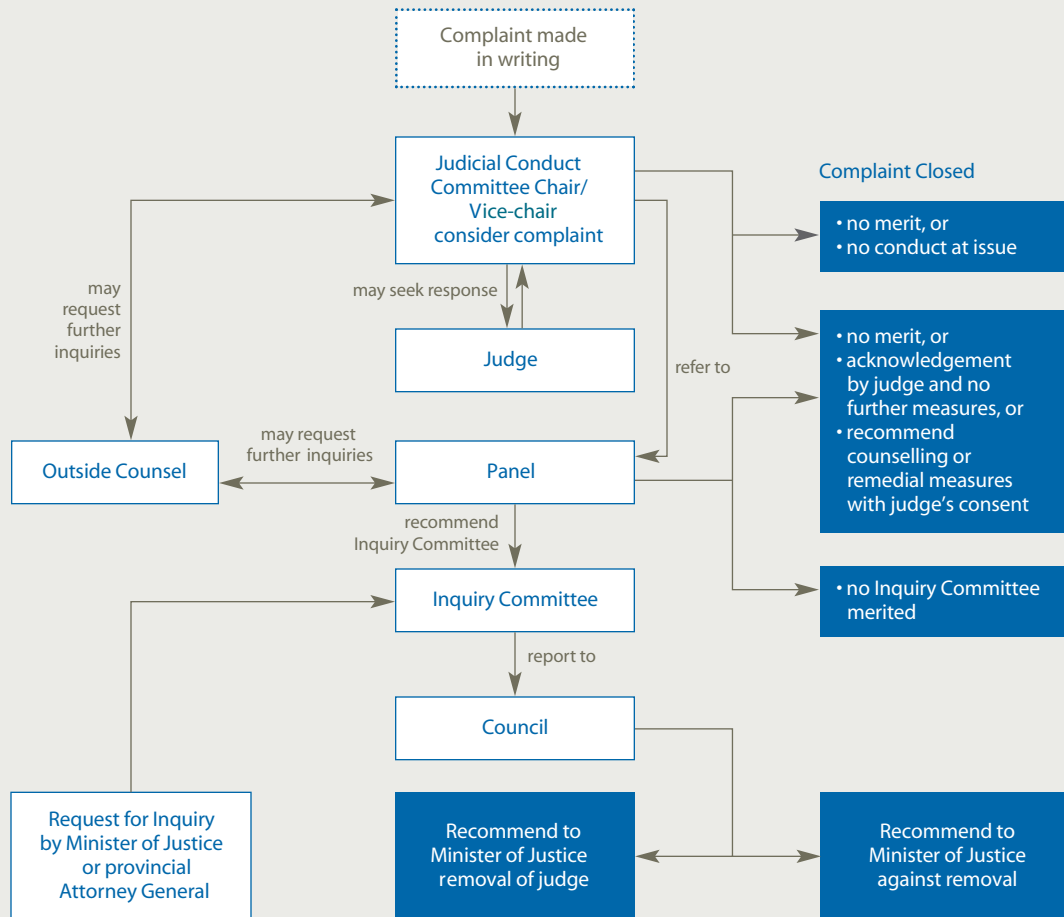
Complaint

The complainant was a party in a family law matter, and had appeared in court several times before different judges. He had filed previous complaints about the conduct of several different judges. He was not satisfied with a decision of the Conduct Committee on one of his complaints, and asked the Council to reconsider that complaint. He had alleged that one judge was discourteous, acted in a “criminal” manner by refusing to respect his rights under the Charter, that there was a general bias against men in the justice system, that judges collude to render decisions to avenge the filing of complaints against other judges or to make good for political favours, or to harass him.

Review

The Council reviewed a recording of the court proceedings. The complaint was reconsidered and dismissed by the Vice-Chair of the Judicial Conduct Committee. It was noted that the complainant was argumentative in court, repeatedly interrupted the judge, and challenged his authority. Although this made it very difficult for the judge to communicate with the complainant, the judge remained calm throughout the proceedings. Given that the complainant had filed six similar and unsupported complaints in one year, he was informed that future complaints relating to the same issues would not be given consideration in future.

COMPLAINTS PROCESS



COMPLAINTS CASELOAD – 10-Year Overview

	New files created	Carried over from previous year	Total caseload	Closed	Carried into new year
1997-98	202	46	248	195	53
1998-99	145	53	198	162	36
1999-00	169	36	205	171	34
2000-01	150	34	184	155	29
2001-02	180	29	209	174	35
2002-03	170	35	205	173	32
2003-04	138	32	170	122	45
2004-05	149	45	194	145	49
2005-06	176	49	225	155	70
2006-07	193	70	263	219	44

CANADIAN JUDICIAL COUNCIL STATEMENT OF EXPENDITURES FISCAL YEAR 2006-2007

Salaries and Benefits	\$ 717,171
Transportation and Communications	\$ 139,275
Information	\$ 33,248
Professional and Special Services	\$ 673,085
Rentals	\$ 9,129
Purchased Repair and Upkeep	\$ 5,730
Utilities, Materials and Supplies	\$ 17,369
Construction and Acquisition of Machinery and Equipment	\$ 34,974
TOTAL	\$ 1,629,981