

A MATTER OF
TRUST
ANNUAL REPORT 2009-2010

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MESSAGE FROM THE CHAIR



In September 2009, the Canadian Judicial Council had the esteemed pleasure of holding its Annual Meeting in Iqaluit to mark Nunavut's 10th year as Canada's newest territory. This was a memorable occasion and provided members who are not based in Canada's Northern regions with the opportunity to celebrate this milestone in Canadian history and to take stock of the beauty of the landscape and the friendliness of its people.

Underscoring the work of the Canadian Judicial Council is a fervent belief that a strong and independent judiciary is a pre-condition for good governance and democracy. In recent years, Council has focused its activities in sustaining public confidence in Canada's judiciary by:

- managing a fair and transparent complaints process;
- fostering the ongoing professional development of judges;
- preserving and enhancing judicial independence; and
- engaging in targeted public education and outreach activities.

Canada has a strong and healthy justice system. Our judges are independent and deliver impartial judgements, free of fear or favour. Canadians can have confidence that judges are committed to delivering judgements that are fair, balanced and just.

Yet, the effective administration of an efficient justice system is an ongoing process. New challenges come to the surface virtually every day. Canadian society is changing and so too must the justice system adapt to new and emerging realities.

In presenting the 2009-2010 year in review, I am pleased with the gains achieved by Council and remain committed to the work that remains to be done.

The Right Honourable **Beverley McLachlin**
Chairperson

ADMINISTRATION OF JUSTICE

Better Access to Justice for Canadians

Access to justice is a basic good, to which every member of society is entitled.

A key objective of Council is to facilitate the exchange of information and the development of policies and practices that may lead to a more uniform and efficient administration of justice by courts across the country

While Canada's justice system is, by many accounts, very effective, there are still too many Canadians who have difficulty bringing their case to court. There are no "quick fixes" to improving access to justice – change will require an array of solutions.

In this context, Council is pleased to participate in the work of the **Action Committee on Access to Justice in Civil and Family Matters** by supporting its efforts to identify and advance innovative projects across the country that will ultimately result in a renewed sense of momentum on an issue of importance for Council – access to justice.

Future Annual Reports will include a discussion on the Action Committee's activities.

JUDGES TECHNOLOGY ADVISORY COMMITTEE

Making Effective Use of Technology by the Courts

Through the *Blueprint* judges across Canada have access to a model for the development of effective information technology security policies that take judicial needs into account.

Recent articles published by the Canadian Judicial Council include:

As in most areas of modern life, technology issues have continued to emerge in recent years within the courts. The Canadian Judicial Council is taking a leadership role in actively monitoring technical issues that may have an impact on access to justice. Activities range from supporting the development of standards for court filings, evidence and judgements that are presented in electronic form to raising awareness of the need for judges and their courts to ensure the security of all electronic judicial data.

Council has recently issued the Third Edition of the *Blueprint for the Security of Judicial Information*. This *Blueprint* is intended to provide guidelines to improve the security, accessibility and integrity of computer systems containing judicial information; define the roles and responsibilities of judges and administrators when it comes to information technology security; and to offer a model for the development of effective information technology security policies that take judicial needs into account.

Since the publication of the first edition of the *Blueprint* in 2004, many improvements have been made to enhance the level of security of judicial information. Council believes that courts and judges should continue to work towards standardizing the approach taken to the security of judicial information as much as possible among all courts. The *Blueprint* will continue to be helpful in that regard.

Standards for the Preparation, Citation and Distribution of Canadian Decisions

Learning from the experience of courts, the media and publishers, Council worked to update the *Standards for the Preparation, Citation and Distribution of Canadian Decisions* to ensure they better reflect current practices and address emerging issues. These Standards aim to ensure that decisions are presented in a standardized format which can be disseminated more quickly and at lower cost.

JURY INSTRUCTIONS

Council's National Committee on Jury Instructions and its affiliated Working Groups, review and periodically update model jury instructions for criminal cases. These jury instructions provide a reference for judges when informing juries about the nature of the criminal charge and the issues that are specific to the case.

The purpose of jury instructions is to reduce case dismissals resulting from errors in instructing the jury, making the court system more efficient.

Current *model jury instructions* include:

- Preliminary, Mid-Trial and Final Instructions
- Criminal Negligence
- Homicide
- Assaults and other Non-Fatal Offences Against the Person
- Sexual Offences
- Provocation
- Intoxication
- Self-Defence
- Duress
- Necessity



PUBLIC INFORMATION

Reaching out to Canadians

Improving the level of public understanding about the role played by courts and judges in the Canadian justice system is an important objective of the Canadian Judicial Council. There is little doubt that improved communication between the judiciary and the media will lead to improved reporting about the justice system. Canadians deserve to be fully informed about cases before the courts.

Under the leadership of the Public Information Committee, Council recently updated *The Canadian Justice System and the Media* discussion paper to ensure that it reflected recent developments and the most up-to-date information. It is the Council's hope that this discussion paper will continue to foster dialogue between judges, lawyers and journalists.

JUDICIAL EDUCATION

Lifelong Learning

Lifelong learning is essential to maintaining judicial excellence. Ongoing technological, environmental and socioeconomic changes continue to have an impact on cases before the courts. It is with this landscape in mind that judges commit to career-long education. The Judicial Education Committee of Council, along with our partners at the *National Judicial Institute (NJI)* and other learning organizations, continue to encourage judges to participate in education and training opportunities as tangible ways of fostering excellence in our courts.



JUDICIAL CONDUCT

A Fair, Respectful and Credible Process

At the core of Council's mandate is sustaining public confidence in a fair and transparent complaints process. Council takes seriously its duty to deal with all complaints about the conduct of federally appointed judges in a manner that is fair to the judges subject of the complaints, sensitive to the complainants, respectful of judicial independence, and credible both to the judiciary and to the public.



UPDATING THE COMPLAINTS PROCEDURES

It is Council's view that proposed updates to the complaints procedures – reflecting an appropriate balance between judicial independence and judicial accountability – are important to maintaining public confidence in Canada's judiciary.

Importantly this year, Council has proposed some amendments to the procedures for dealing with complaints. While the complaints procedures have proven adequate since 1971, Council's recent experiences with public inquiries raised questions about whether current steps and processes were the most efficient ways to determine specific conduct issues.

In an effort to bring greater efficiency to the inquiry process while protecting the public interest and being fair to the judge, Council has proposed some changes to the complaints procedures. These changes – specifically to allow a Review Panel to exercise the authority to constitute an Inquiry and to allow for a judge and/or Independent Counsel to make a full and complete written submission – will improve the efficiency of the process without jeopardizing fairness or transparency.

Readers are encouraged to become acquainted with the current *complaints procedures*.

A FAIR AND BALANCED COMPLAINTS PROCESS

The number of complaints opened in 2009-2010 is comparable to previous years. The total number of files opened this year was 161 with 35 complaints carried over from the last fiscal year. The number of complaint files closed was 167, leaving 29 complaint files under review at various stages of the process.

CJC Fiscal Year Report 2009-2010 Complaints

Complaints carried over
from fiscal 2008-09:

35

Complaints received
during fiscal 2009-10:

161

Total:

196

Complaints closed
during fiscal 2009-10:

167

Open Complaints:

29



SAMPLE OF COMPLAINTS

The mandate of the Council in matters of judicial conduct is to determine whether a recommendation should be made to the Minister of Justice, after a formal investigation, that a judge be removed from office by Parliament. The *Judges Act* lists reasons for which a judge can be removed from office.

Complaints this year included concerns over a judge's comments made public in the media; concerns expressed by a self-represented litigant over a judge's perceived impatience towards him; complaints over issues of language rights. A total of 161 complaints were received.

The Canadian Judicial Council takes all complaints seriously. When Council receives a complaint, it reviews the complaint promptly and determines what course of action should be taken. In responding to complainants this year, Council took the opportunity to better explain complex issues such as judicial responsibility, judicial discretion and judicial decision-making. Judges, for their part, were given a number of reminders: the importance of treating everyone with courtesy; always maintaining firm control of the proceedings; avoiding criticism of other judges (unless it is necessary to rule on the issues before the Court); giving reasons for judgement as soon as possible; avoiding inappropriate humour.

Below are examples of the types of complaints Council worked on this year and how Council approached their resolution.



COMPLAINT

1

The Canadian Judicial Council received complaints about one of its members following media reports which highlighted the judge's comments about the weight and relevance given to the testimony of a woman. Complainants objected to what were perceived as being the judge's comments on the witness' gender and work demands as the causes for discounting her testimony. Media reports suggested the judge had made "insensitive, derogatory and sexist" comments on the basis that the witness was a woman and mother pursuing a demanding career.

In reviewing this complaint, the entirety of the judge's comments were taken into account – not just the fragmented elements covered in selected media stories. A comprehensive review of all the publicly available records revealed a different picture from what the complainants had assumed. The judge, as was his duty, assessed all the evidence before the Court in order to decide what weight and relevance to give to testimony. In this particular case, there were gaps and inconsistencies in the testimony of the witness, who admitted to not recalling certain events. The witness agreed that family and work pressures were factors that distracted her at that particular point in time. The judge was not making any value judgement or drawing any conclusions about the witness' lifestyle, but was rather assessing the weight of the testimony.

As the complaint was against a Council member, it was sent to an outside lawyer for review. The lawyer was chosen for her expertise in education and human rights. She agreed that there was no substance to the complaints.

One complainant wrote back to Council saying it was obvious the media had not given the whole story, and thanking Council for its thorough review.

COMPLAINT

2

A complainant wrote to the Canadian Judicial Council to express concern about a judge's inappropriate tone of voice and body language, suggesting the judge came to court angry and acted unprofessionally towards her.

It was clear, upon review, that there was no evidence of anger or lack of professionalism by the judge. The judge's comments, during the hearings, did reflect a firm, decisive and authoritative tone. All judges have a duty to firmly control the proceedings, and intervene when one party is preventing the orderly and efficient conduct of a trial.

The complainant further suggested that, as a member of a visible minority, she was a victim of discrimination. She also alleged discrimination on the basis of her mental health status. She also complained that a letter of support she obtained from a social worker was disregarded.

In reviewing these elements of the complaint, it was shown that while the complainant's minority status was briefly raised by her own counsel, the judge in this case clearly noted that this was not an issue and the complainant's heritage was not further discussed.

Further, when making assessments of testimony and relevant facts in a case, a judge is sometimes required to consider the behaviour of certain individuals. This can include mental health status, especially when making decisions related to family matters, as was the case here. The judge's comments with regard to the letter of support were related to the admissibility of the letter and the weight it should be given. This was part of the judge's responsibility in deciding whether a document presented to the court as evidence is admissible or not. In brief, these were not issues of judicial conduct; rather, all fell within the ambit of judicial discretion and decision-making.

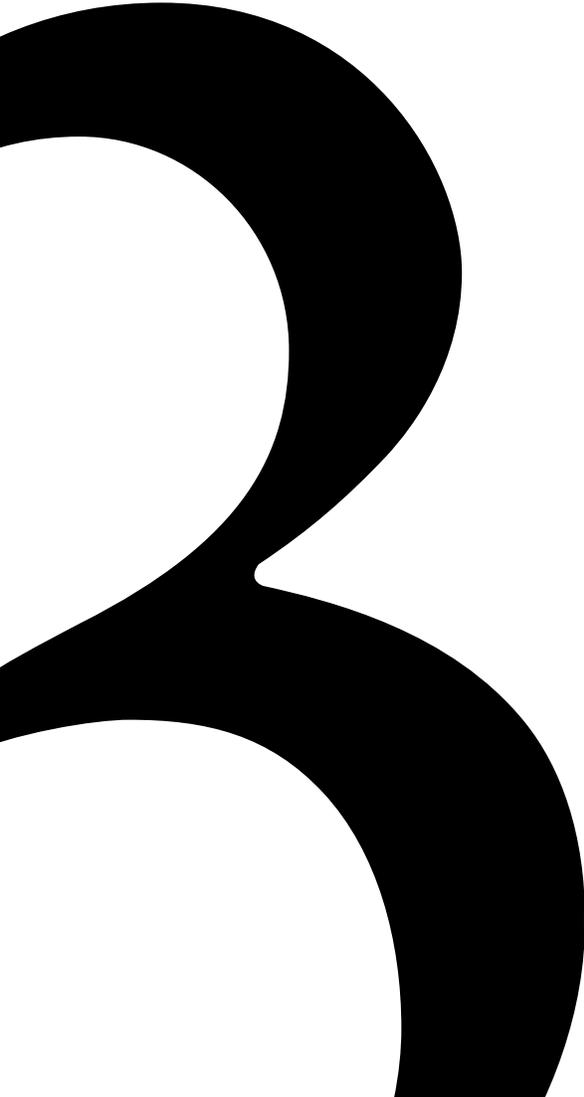


COMPLAINT

3

In a family law matter, a complainant was critical of procedural errors and suggested that the judge erred in his decision and should be held accountable for his actions.

While court proceedings can be very stressful for the parties involved, a legal error by a judge is not considered misconduct. A judge must be able to rule as he or she determines appropriate without fear of punishment. So long as the judge makes a ruling in good faith and applies the law as the judge understands it, any remedy against perceived error is by way of appeal. A review of this case indicated that there was no indication whatsoever of any improper motives in the judge's determination of the matter before him.



COMPLAINT

4

Another complainant in an emotionally-charged custody battle alleged that the judge was “negligent, reckless and biased” and the complainant was generally not satisfied with the judge’s comments throughout the case. In a wide-ranging complaint, the complainant suggested the judge offered her own medical opinion; that she manufactured evidence; that she acted as the other party’s counsel; that she gave precedence to the other party’s views; and that she abused her powers by ordering the complainant to undergo a psychiatric examination.

Council carefully reviewed each of the complainant’s assertions. In assessing this complaint, it was made clear that often in family cases, a judge’s decision is at times made difficult by the parents’ presenting contradictory evidence, making various allegations and expressing largely different views of facts. Judges arrive at decisions based on their consideration of the evidence and in family matters, are governed by the best interests of the child. A family court judge may, at times, use strong language to warn parents about potentially destructive behaviour and about its effects on children. While the judge expressed her concerns in a firm way to ensure a full understanding by all parties, this did not constitute an issue of conduct. The complainant was reminded that if he had concerns about any of the judicial decisions in his case, an appeal could be the appropriate recourse.

COMPLAINT

5

A self-represented litigant wrote to the Canadian Judicial Council to raise several issues, including, in part: that she was not permitted to address the court in the language of her choice; that the judge used overly forceful and abrupt language when speaking to her; and that the judge misused the Court's contempt powers in response to the complainant's request to be heard in French.

After initial review, the matter was referred to a three-member Panel who examined all the circumstances. In regard to the complainant's language rights, the Panel noted that this is primarily a matter of law. However, the judge's apparent insensitivity to the complainant's language preference was of concern to the Panel. This was based on the fact that the judge had been argumentative with the complainant in regard to the language issue.

In commenting on the complaint, the judge admitted having made legal errors. The judge agreed that the matter could have been handled more sensitively. The judge also indicated that, shortly after the hearing took place and the error was noted, immediate steps were taken to correct the negative impressions that had been left. An unequivocal apology was made to the complainant both verbally and in writing. The judge took steps to focus on better communication in the courtroom. The judge's Chief Justice noted the need for enhanced training for judges on this issue.

While the Panel agreed that the complaint had merit, it determined that the matter did not warrant additional steps to the ones already taken. Since the matter was not serious to the point that it could warrant the judge's removal, and given that the judge had acknowledged the errors and taken steps to address them, the file was closed.

COMPLAINT

6

Another complaint centred on the claim that a litigant was denied by a Québec judge his fundamental right as protected by the *Canadian Charter of Rights and Freedoms* to a fair hearing because the judge and opposing counsel discussed procedural matters between them in French, despite the complainant's preferred choice of English. The complainant was concerned that the testimony of witnesses was provided in French and that his request for an interpreter was denied.

The response noted that under our Constitution, and more particularly section 133 of the *Constitution Act 1867*, either French or English may be used by any person in any pleadings or process in the Courts of the Province of Québec: parties may file their documents in court, express themselves and have their witnesses testify in either French or English in that province. However, the administration of justice in each province is within the jurisdiction of the provincial government. The Québec *Charter of the French Language* provides that French is the language of the legislature and the Courts in Québec.

The litigant in this case was given the opportunity to present evidence in English and his counsel explained in English any objections made in French during testimony. The *Charter of the French Language* provides that any party can request a translation into English or French of any judgement that was received in the other language. Moreover, requests for interpreters are usually identified prior to the commencement of a trial. To request an interpreter in the middle of a trial would have jeopardized the ability of that trial to be completed in the allotted time. As such, this was not deemed to be a conduct matter and the complaint was closed accordingly.



COMPLAINT

A complainant raised a concern about the judge not releasing her decision in a timely manner.

The judge in this case agreed and expressed regret and embarrassment that the release of her decision was delayed. Moreover, the judge said that the delay in issuing her decision was due in part to personal difficulties that may have had an impact on her ability to fully attend to her duties. The judge offered sincere apologies, and took the necessary steps to seek help to prevent such delays from occurring in the future. Given the judge's apology and commitment to learn from this experience, and given this judge's excellent record, no further action was deemed necessary and the complainant was advised accordingly.



COMPLAINT



8

The Canadian Judicial Council receives, on occasion, complaints that judges may be in a position of conflict of interest because of a previous professional relationship with a given law firm. Complainants may, at times, express concern about a given judges' refusal to recuse from a case despite past professional associations.

While Council assesses each complaint individually, it refers to its *Ethical Principles for Judges* publication which discusses the relationship between appointed judges and their former legal colleagues and recommends a "cooling off period" of 2, 3, or 5 years between a judge and his or her formal law partners or associates and former clients. This recommendation builds on the understanding that a reasonable person would not expect that a situation of conflict exists simply because a judge has had an association with a law firm in the distant past.


COMPLAINT

A complainant expressed concern about the testimony of a judge at the trial of a lawsuit he was pursuing and alleged that the judge “lied under oath.” This same complainant had made several previous complaints including various allegations of conspiracies and deceptions, all seemingly based on various speculations.

These allegations were deemed manifestly without substance and were found to be based on speculation and conjecture alone. As such, the Canadian Judicial Council’s *Complaints Procedures* provides for dismissal of complaints that are considered to be clearly irrational or an obvious abuse of the complaints process. The complainant was informed accordingly that no further action would be taken.

COMPLAINT

10

In a letter of complaint, an individual alleged that by not having the related documentation before him, the judge was not adequately prepared for a Case Conference and that the Case Conference consequently took longer than expected which resulted in undue stress on the complainant. The complainant also alleged that the judge verbally assaulted her and that she was discriminated against.

In reviewing this complaint, Council carefully explained to the complainant that the role of a judge at a Case Conference is different from a trial in that the judge attempts to identify the issues that are in dispute and offer a resolution in order to reduce the time of trial. Case Conferences are handled in a more informal manner than a trial and the judge may be required to provide candid comments on the expected result if an issue goes to trial. It is not unusual for a judge, when acting as a mediator, to attempt to point out the strengths and weaknesses of each party's case and to sometimes be blunt with lawyers about the positions being taken. It is part of a judge's function in Case Conferences to encourage parties to focus on rational, achievable dispute resolutions.

BUDGET

Statement of Expenditures for Fiscal Year 2009-2010

(report dated April 26, 2010)

Salaries and Benefits	\$ 1,055,207
Transportation and Communications	\$ 144,459
Information	\$ 8,636
Professional and Special Services	\$ 269,997
Rentals	\$ 26,590
Purchased Repair and Upkeep	\$ 104,221
Utilities, Materials and Supplies	\$ 27,557
Construction and Acquisition of Machinery and Equipment	\$ 61,655
Total	\$ 1,698,321

