



CANADIAN
JUDICIAL
COUNCIL

Annual Report

2000-01



Canadian Judicial Council

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Preface

Throughout their careers on the bench, Canada's judges continue to study the law and seek to keep abreast of change in our society.

As Chapter 2 of this report states, it falls ultimately to individual judges to further their education. While the demands of the bench can place extraordinary demands on their time and energies, they are encouraged to reserve up to 10 sitting days a year for their continuing education. The Canadian Judicial 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.

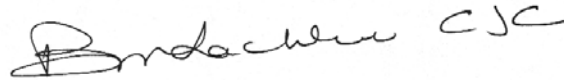
In the year under review, more than 400 judges attended NJI seminars on subjects as diverse as civil, criminal and family law, genetics, ethics and property issues, social context education, and pre-trial settlements. Other learning opportunities were provided by individual courts and the Canadian Institute for the Administration of Justice. The growing importance of the Internet as an instrument of judicial education and communication was recognized in training sessions across Canada on the use of computers.

Everywhere in the world, people are recognizing that the rule of law and justice is impossible without highly trained judges. Governments and international organizations like the World Bank are funding programs to train judges in Europe, Asia and Africa. Through these programs, public agencies, law firms and judges themselves are at work in a global effort to upgrade the qualifications of judges. And Canada plays an important part. For many years, Canadian judges have supported judicial reforms in many countries by helping set up model courts and training centres,

participating in seminars and providing institutional support.

My experience since my appointment as Chief Justice of Canada in January 2000 has underlined for me just how much Canada's judicial system is admired universally for our laws and institutions, and for the excellence of our judiciary. I have visited India, Morocco, China, Korea, Singapore and Israel. We have also welcomed to the Supreme Court of Canada the Chief Justices of Australia, India, New Zealand, South Africa, Hong Kong and France, and we played host to study groups of judges from China, Russia and Croatia. Jurists and lawyers from many countries have visited our Court and other Canadian courts in order to learn more about our judicial system.

These people are determined to improve the legal and judicial systems in their own countries. They admire the Canadian system of justice and look to us for ideas and assistance. Canadian judges will continue to help where we can. And I recognize a special personal responsibility to promote judicial excellence as Chairperson of the Canadian Judicial Council and of the Board of Governors of the National Judicial Institute.



The Right Honourable Beverley McLachlin
Chairperson
Canadian Judicial Council
February 2002

PREFACE

Annual Report 2000-01



Members of the Canadian Judicial Council at the September 2000 Annual Meeting in Fredericton.

CHAPTER 1

THE CANADIAN JUDICIAL COUNCIL

1. The Canadian Judicial Council

GENERAL OVERVIEW

This report covers the activities of the Canadian Judicial Council for the period April 1, 2000, to March 31, 2001. It is the 14th annual report published by the Council.

The 39-member 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. Members serving during 2000-01 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 general 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 Superior Courts Judges Association, 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, 2001, is found in Appendix B.

Canadian Judicial Council

CHAPTER 1

THE CANADIAN JUDICIAL COUNCIL

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 2000 meeting was held in Fredericton.

The Council is served by an Executive Director, a Legal 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 the Council Secretariat responds to many requests for information and documentation arising from Canada's role in supporting judicial training and judicial reforms around the world. The Executive Director meets representatives of courts from other countries during their visits to Canada. During the past year the Executive Director met with Belgium and Chinese judges and presented a paper on the Council's complaints role to a conference in Dublin for Irish judges.

COUNCIL MEMBERS' SEMINAR: CONSIDERING THE FUTURE

Every year since 1992 the Council has held seminars to examine subjects important to the work of the organization and its members.

The March 2001 seminar coincided with the early work of the Council's Special Committee on Future Directions, established to review the Council's role, operations and priorities.

The seminar offered an opportunity to discuss three subjects highly relevant to the Special Committee's work — the important position of the Commissioner for Federal Judicial Affairs, the structure and mandates of other judicial governing organizations in Canada and abroad, and the Council's relationship with federally appointed puisne judges across Canada.

Seminar Participants

The Honourable Richard J. Scott, Chief Justice of Manitoba.

Mr. James R. Mitchell, Partner, Sussex Circle

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

Professor Philip Bryden, Faculty of Law,
University of British Columbia

Mr. Justice Jamie Saunders, Nova Scotia Court
of Appeal

Madam Justice Carol Cohen, Superior Court of
Quebec

Mr. Justice Robert Sharpe, Ontario Court of
Appeal

The Role and Accountability of the Commissioner for Federal Judicial Affairs

James R. Mitchell, a former senior advisor in many areas of government policy and organization, reported on his study of the Commissioner's mandate and relationship with the Council. At the time of the seminar the Commissioner's position was vacant.

Mr. Mitchell said the people he interviewed in government tended to see the Commissioner as performing a vital and essentially administrative function in support of federally appointed judges. People associated with the judiciary see a larger role in administering judicial pay and benefits, in helping federal judges "in a wide range of hard-to-define ways" and in liaison with the federal government.

He concluded that the Commissioner's existing statutory mandate and reporting relationship to the Minister of Justice were appropriate, but could usefully be confirmed and articulated with the appointment of the next Commissioner. He recommended some adjustments to the Commissioner's program activities and efforts to build working relationships within government.

Judicial Governing Bodies

The seminar included a review by Professor Elliot and Professor Bryden of the results of their respective studies of Canadian and foreign judicial governing bodies. They compared and contrasted their findings with the Council's own model, which consisted of 22 chief justices at its creation in 1972. It has since expanded to a total membership of 39.

Professor Elliot said he encountered a variety of mandates, compositions, resource levels and structures among the 11 Canadian organizations he examined. However, all had memberships that included lay persons, and almost all included puisne judges and lawyers. He said that in looking at its future the Council may wish to consider changes in its role in relation to judicial appointments, in conducting research into issues of administration of justice, and in involving puisne judges, lawyers and lay persons in the Council or its committees.

Professor Bryden found an extraordinarily varied mix of policy, operational and disciplinary roles among foreign judicial bodies. The Canadian Judicial Council's combination of policy, education and complaints review roles was "relatively unusual but not unique." It was unusual for a judicial governing body to be made up only of chief justices, and there were few other judge-only disciplinary bodies. He commented on the striking differences in resources between the Canadian council and its counterparts elsewhere. For example, the Judicial Conference of the United States, which has policy, adjudicative and executive functions, is served by an Executive Secretariat of seven people, including five professionals and two support staff. The Administrative Office of the United States Courts also provides staff for the Conference's various committees. The Judicial Commission of New South Wales, whose functions are continuing

education, assisting courts in achieving consistency in sentences for criminal offences and examining complaints, has a staff of 28 and an annual budget of almost \$3 million. By comparison, the total budget of the Canadian Judicial Council for 2000-01 was \$706,160 and it employs four persons.

The Council and Puisne Judges

Mr. Justice Jamie Saunders spoke as President of the Canadian Superior Courts Judges Association, previously known as the Canadian Judges Conference. He noted that the two organizations had celebrated notable successes together in their joint representations to the Judicial Compensation and Benefits Commission, in a continuing dialogue on the Council's complaints process and in work on judicial ethics.

Mr. Justice Saunders added that the relationship between the Council and Association on these projects had featured cooperation, mutual respect and open, candid and regular communications.

Chafing points and elements of tension existed on other issues, including the need to extend educational initiatives such as social context education to every jurisdiction across Canada, and a disparity from court to court over the treatment of time off for judges attending educational conferences. He said there is a natural tension to be expected over judicial conduct and discipline. Better ways were needed to explain the Council's mandate and process for complaints to puisne judges. Judges' concerns were due in part to their lack of representation in the process. The Association would like to see one lay person and two puisne judges included in seven-person Panels when Panels are required to consider complaints. Puisne judges would also like to contribute their energy and ideas as members of Council committees, Mr. Justice Saunders said.

Canadian Judicial Council

CHAPTER 1

THE CANADIAN JUDICIAL COUNCIL

Madam Justice Carol Cohen said she found that most judges in her informal survey were at first unclear or unconcerned about the Council but once made aware of its role “provided a litany of complaints, opinions and comments.” Most of these concerns were local in nature, but included issues that the Council could address as a body responsible for efficiency and uniformity in superior courts.

Courts everywhere lacked the resources to permit judges to apply what they learn in continuing education courses and to conduct adequate research, said Madam Justice Cohen. Better provision should be made for feedback on the results of educational programs. Education in computer technology should be made mandatory and all-encompassing for judges.

The Council could assist by providing a forum to discuss the concerns of puisne judges; perhaps there could be a formal way to include them in the Council’s deliberations, said Madam Justice Cohen. The easiest way for the Council to help judges feel it is acting in their interests would be to tell them more about what it is doing.

Mr. Justice Robert Sharpe said the resource-strapped Council could improve its work by tapping the enormous pool of talent among puisne judges, who are public-spirited and energetic individuals with ideas to share. The Council could identify judges to contribute to policy decisions about judicial education, to special projects on the administration of justice, and to the Council’s complaints process.

2. Judicial Education

OVERVIEW OF RESPONSIBILITIES

Under paragraph 60(2)(b) of the *Judges Act*, Parliament provides the Canadian Judicial Council with authority to “establish seminars for the continuing education of judges.” It has thus been recognized from its inception that the Council has a role to play in helping the judiciary keep abreast of the dynamic changes in Canadian society.

The Council makes educational opportunities available for judges through its Judicial Education Committee, which recommends attendance at conferences and seminars with reimbursement of expenses under s. 41(1) of the *Judges Act*.¹

Other opportunities are also provided for continuing education and training. As authorized or required through provincial judicature acts, individual courts can undertake educational programs, and under s. 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

Subsection 41(1) of the *Judges Act* provides for payment of the expenses of judges attending designated educational 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 them.

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 contribute to the improvement of the administration of justice, achieve personal growth, obtain high standards of official conduct and social awareness, and perform judicial duties fairly, correctly and efficiently.

During 2000-01, the Council authorized the following NJI seminars under s. 41(1) of the *Judges Act*. Attendance of federally appointed judges varied depending on the format and topic of the seminar.

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.”

Canadian Judicial Council

CHAPTER 2

JUDICIAL EDUCATION

SEMINAR	LOCATION	DATES	ATTENDANCE
Pre-Trial Settlement Skills	Ottawa	April 5-7, 2000	14
Appellate Courts Seminar	Ottawa	April 9-12, 2000	25
Civil Law Seminar	Montreal	May 17-19, 2000	46
Social Context Education			
Faculty Development	Montreal	Sept. 6, 2000	20
Phase II Faculty Development	Lake Louise	Feb. 13-15, 2001	21
Phase II Community Consultation	Aylmer, Que.	June 20-21, 2000	8
Genetics, Ethics and Property	Kananaskis, Alta.	June 23-25, 2000	14
Managing Successful Settlement Conferences			
Level I	Toronto	Nov. 1-3, 2000	19
Level II	Toronto	Dec. 6-8, 2000	22
Criminal Jury Trials Seminar	Ottawa	Nov. 15-17, 2000	78
Early Orientation for New Judges	Ottawa	Nov. 27-Dec. 1, 2000	32
Family Law Seminar	Halifax	Feb. 14-17, 2001	54
Retirement Planning for Judges Seminar	Toronto	March 1-3, 2001	27
Criminal Law Seminar	Toronto	March 21-23, 2001	60

JUDICOM Training by the Office of the Commissioner for Federal Judicial Affairs

During the year some 365 federally appointed judges from courts across Canada participated in group and private training sessions, distance learning sessions on computer applications and use of the judges' own Judicom computer network. The courses were delivered 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 l'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 11-15, 2000, with 55 judges plus judicial organizers and faculty authorized to attend;
- Newly Appointed Judges Seminar, Château Mont Tremblant, Quebec, March 3-9, 2001.

The Council also authorized reimbursement of expenses for 95 participating judges at the CIAJ conference "Science, Truth and Justice" in Victoria, October 11-14, 2000.

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JUDICIAL EDUCATION

Other Seminars Authorized under the *Judges Act*

The Council authorized judges to be reimbursed for their expenses in attending a variety of other seminars, meetings and conferences during the year, including the following.

EVENT	LOCATION	DATES	AUTHORIZED ATTENDANCE
Fourth Biennial Conference of the International Association of Women Judges	Buenos Aires	May 2000	15
Annual Conference of the Association of Family and Conciliation Courts	New Orleans	May 31-June 3, 2000	30
Strasbourg Lectures organized by the Canadian Institute for Advanced Legal Studies	Strasbourg	July 2-7, 2000	56
National Family Law Program of the Federation of Law Societies of Canada	St. John's	July 9-13, 2000	62
National Criminal Law Program of the Federation of Law Societies of Canada	Calgary	July 17-21, 2000	62
Symposium "The Supreme Court of Canada: its Legacy and its Challenges"	Ottawa	Sept. 27-29, 2000	27
Meeting of family law judges organized by the Canadian Judicial Council to discuss procedures, recent development and services associated with family law	Ottawa	Nov. 30-Dec. 1, 2000	22
Annual Conference of the Canadian Bar Association	Halifax	Aug. 20-23, 2000	27

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 in the program by the Study Leave Committee, composed of three Council members and two members of the CCLD, representing common law and civil law jurisdictions. (Members of the Committee in 2000-01 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*.²

Programs are tailored to the needs of each judge and to those of the host institution.

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."

Canadian Judicial Council

CHAPTER 2

JUDICIAL EDUCATION

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.

Five judges participated in the Study Leave Program in the period September 1, 2000, to March 31, 2001, as follows:

During his study leave at l'Université de Montréal, Mr. Justice Jean-Louis Baudouin of the Court of Appeal of Quebec participated in several conferences related to science and the law and attended meetings on international civil code reform. He chaired a committee of experts on genetic testing, participated in two radio broadcasts on Radio-Canada, taught first-year students a course on Aggravated Damages, wrote an article for a book on the Quebec Civil Code and addressed the University of Ottawa's Faculty of Law spring convocation upon receiving an honorary doctorate from the university.

As judge in residence at Osgoode Hall Law School, Madam Justice Sandra Chapnik of the Ontario Superior Court of Justice acted as guest lecturer, instructor in trial advocacy, judge of student exercises, speaker at several events, and resource person and mentor to students. She undertook a major research project on the experiences of adult learners in the law school environment.

Mr. Justice Ernest A. Marshall of the Court of Queen's Bench of Alberta researched the legal history of the Judicial District of Peace River in anticipation of later publication and also researched the royal prerogative of mercy in the commutation of the death penalty. He lectured classes at the University of Alberta on ethics in litigation and ethical standards expected by the court, acted as judge and panelist in moot competitions, and participated in a practice moot for the University of Alberta team which went on to win the national championship.

As Judge in Residence with the Faculty of Law at the University of Calgary, Mr. Justice D. Blair Mason of the Alberta Court of Queen's Bench helped prepare for the moot competition of the Canada Law Student Games, participated in an advocacy course for second-year law students, and lectured on criminal and civil procedures. He also reviewed alternate dispute resolution procedures in English courts.

Madam Justice Ginette Piché of the Quebec Superior Court took a number of computer courses at l'Université du Québec à Montréal, *SOQUIJ* and the National Judicial Institute. She also pursued masters-level studies in biotechnology and philosophy of the law, including sociology of the law and international law on economic and social rights at l'Université de Montréal and l'Université du Québec à Montréal. She acted on several occasions as judge in moot competitions.

3. Complaints

OVERVIEW OF RESPONSIBILITIES

Canada's *Constitution Act 1867*, in language borrowed from legislation adopted three centuries ago by the Parliament of Great Britain, says that judges shall hold office during good behaviour, that their salaries and benefits shall be fixed by Parliament, and that they shall be removable only by the Governor General on Address of the Senate and House of Commons.

These undertakings are the guarantees of judicial independence, a cornerstone of liberal democracy and fundamental justice.

Canada's Parliament has never made a decision for removal of a judge, 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.

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

Trust in the judiciary is not automatic. Canadians expect judges to earn it and to demonstrate that they deserve it. In the words of *Ethical Principles for Judges*, the Council's ethical handbook for judges:

Given the independence accorded judges, they share a collective responsibility to promote high standards of conduct. The rule of law and the independence of the judiciary depend primarily upon public confidence. Lapses and questionable conduct by judges tend to erode that confidence. . . .

Public acceptance of and support for court decisions depends upon public confidence in the integrity and independence of the bench. This, in turn, depends upon the judiciary upholding high standards of conduct.³

The principle of judicial independence does not mean that judges are unaccountable. Canada's Parliament has set in place a process to assess alleged breaches of conduct 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 normally 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."

Where conduct is involved, 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 make a further recommendation to Parliament.

³ *Ethical Principles for Judges*, Canadian Judicial Council, November 1998, p. 9.

Canadian Judicial Council

CHAPTER 3

COMPLAINTS

Under s. 63(1) of the *Judges Act*, the Council must undertake a formal inquiry into a judge's conduct if requested to do so by the Minister of Justice of Canada or a provincial attorney general. 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 federally appointed judge before a complaint file will be opened. The Council has no authority to investigate generalized complaints about the courts or the judiciary as a whole, or about judges whom complainants have not named. 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 to the Council even though redress for such complaints must be found elsewhere.

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 precluded by their office from refuting such accusations publicly, since to do so could detract from the perception of their impartiality.

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 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.

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. Out of respect for the privacy of both the complainant and the judge, the Council will not make the fact of a complaint or its disposition public on its own initiative.

As part of its ongoing efforts to ensure accessibility, fairness and openness, Council members decided in March 2000 to publish brochures explaining the complaints process and distribute them widely to the public and judges. *The Conduct of Judges and the role of the Canadian Judicial Council* is available from the Council office, on its Web site, and has been distributed to courts across the country.

THE COMPLAINTS PROCESS

The initial responsibility for dealing with complaints rests with the Chairperson or one of three 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-Chairperson⁴ reviews each complaint and decides on any further action required. 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. By far the largest proportion of complaints are without foundation, and are dealt with in this way. At this stage, or subsequently, a lawyer may be asked to make further inquiries on an informal basis.

In some circumstances, the Chairperson may refer a complaint to a Panel which can consist 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. Such references take place where the issues involved may be particularly sensitive, where they may benefit from review by more than a single Council member, or it may be necessary to express concern about the conduct of the judge in question.

A Panel may conclude that no further action by the Council is warranted and direct that the file be closed. Or it may conclude that there should be an inquiry with a formal hearing, to decide whether or not a recommendation for removal is warranted. Even where a recommendation for removal is clearly not warranted, a Panel may express disapproval of the judge's conduct. 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. Such expressions are considered to be remedial. They are intended to assist the judge in avoiding inappropriate conduct in future.

Only the full Council may recommend removal. Its recommendation follows a hearing by an Inquiry Committee established under s. 63(3) of the *Judges Act*. An Inquiry Committee is made up of members of the Council and 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 Inquiry Committees. In addition, in five instances there have been formal inquiries directed by a Minister. Only once since 1971 has the Council recommended to the Minister of Justice that a judge be removed from the bench. However, a few judges have resigned following the decision to establish an Inquiry Committee, but before a recommendation was adopted by the Council.

Grounds for a recommendation for removal are set out in s. 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 2000-01 COMPLAINTS

In 2000-01, the Canadian Judicial Council closed 155 files dealing with complaints against federally appointed judges.

⁴ Throughout the remainder of this chapter "Chairperson" can include "Vice-Chairperson."

Canadian Judicial Council

CHAPTER 3

COMPLAINTS

Table 1
Complaint Files

	New files opened	Carried over from previous year	Total caseload	Closed	Carried into the new year
1991-92	115	16	131	117	14
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
2000-01	150	34	184	155	29

During the year 150 new files were opened, which compares with 169 the previous year and an average of 172 over the previous three years.

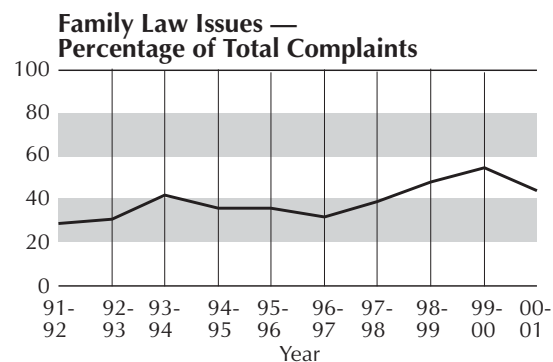
Three files were referred to Panels. Outside counsel was asked to undertake fact-finding inquiries in two files, one of which was referred to a Panel and the other dealt with by the Chairperson managing the file.

Of the 155 files closed during the year, 45 percent were closed within 60 days of receipt, and 63 percent within 90 days.

The profile of complainants and their concerns may well reflect much about the changing nature of conflicts being brought before Canada's superior courts.

Males accounted for 72 percent of complainants compared with 63 percent in 1999-2000. Custody, divorce and other disputes related to family law accounted for 44 percent of complaints, a decline from 55 percent the previous

year and a break from a pattern of steady increases in recent years. This compares with 18 percent related to contracts, 10 percent to torts, six percent to criminal matters, six percent to property matters and five percent to wills and trusts.



Parties to litigation were the source of 83 percent of files closed. In 64 files, the complainants were not represented by counsel; in 60 files they were represented. Of the 155 files closed, 95 percent related to judges' conduct "on the bench," that is, in their judicial capacity.

Files Closed by the Committee Chairperson

The Chairperson of the Judicial Conduct Committee may be able to make a decision about a complaint on the basis of the information contained in the complainant's letter, or may seek comments and documentation from the judge concerned.

Of the 155 complaint files closed during the year 2000-01, 152 were closed by the Chairperson, including 73 closed without the necessity of seeking comments from the judge. Replies from the judge and his or her chief justice were requested in 79 of these 152 files. Two of these files gave rise to letters to the judge from the Chairperson expressing disapproval of the conduct in question. In one case a fact-finding investigation was undertaken after receipt of comments from the judge; on the basis of the information received the Chairperson closed the file.

Table 2
Complaint Files Closed in 2000-01

	Closed by Chairperson or Vice-Chairperson	Closed by Panels
After response from the judge	79*	3*
Without requesting response from the judge	73**	-
Total	152	3

* Including one file closed after a further inquiries by outside counsel

** Including two files closed as withdrawn/discontinued

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.

The Council has no power to deal with these requests. The files are closed with a letter to the complainant, in most cases advising that the appropriate recourse, if any, is to appeal the decisions. A copy of the letter is provided to the judge and his or her chief justice along with the letter of complaint.

When the nature of the proceeding giving rise to the complaint is not clear, when information is required from the judge in order to respond appropriately to the complaint, or when it appears that there may be substance to the 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 a perception of bias might arise if Council members deal with such complaints, the Council's by-laws require that an outside lawyer review the files before they are closed. During the year, there were seven complaints dealt with involving Council members.

Examples follow of complaint files closed in 2000-01 by the Chairperson or one of the three Vice-Chairpersons of the Judicial Conduct Committee.

Alleged bias

Bias in some form was alleged in a number of files closed — against the complainant, against men, against women, on the basis of race, or in some other form. Examples follow.

- The complainant was the mother of a child who was allegedly assaulted by the accused. She alleged that the trial judge, who acquitted the accused, was biased in favour of the defence. She also alleged that the judge had

counselled defence counsel to re-elect to be tried by judge alone, rather than by a judge and jury, because this would be favourable to the defence. The complainant alleged that the judge had previously been reprimanded for making comments against women. The judge stated that he had not counselled either counsel regarding the advisability of trial before judge and jury. He stated that the change in the mode of the trial had come about as a result of a written request to a court official that was consented to by Crown counsel. A transcript of the trial proceedings revealed no bias on the part of the judge.

The complainant was advised that the judge did not tell defence counsel that trial by judge alone was preferable, and even if the judge had done so, it would not be improper. She was informed that the judge had not previously been reprimanded as alleged.

- The complainant in a family law matter alleged that the judge had wrongly made an interim order allowing both parties to remain in the home pending completion of a custody evaluation and that she and the children had suffered as a consequence, due to the time it took for the evaluation to be completed and in view of the fact that the parties did not get along. The complainant also alleged that the property division was inequitable, that the judge had misapplied the child support guidelines and had erred in making his decision. She further alleged that the judge was biased against women.

The complainant was told that her remedy would have been to appeal the order permitting both parties to remain in the home or to appeal the final decision. She could have returned to the court for interim relief on the grounds of the length of time required to complete the evaluation and the conditions she described. In his decision, the judge had pointed out that had the complainant

requested a trial date earlier, the matter could have been completed more than a year earlier. He said the division of matrimonial property had been agreed to between the parties prior to his final decision. It was explained that any errors in this regard could not be imputed to the judge's decision. The complainant was advised that a review of the evidence, including the complete recording of the proceedings, had revealed nothing that could support her allegation of gender bias on the part of the judge and that, as such, the allegation was completely unfounded.

- An appellant in family law proceedings alleged that only one of the three appeal judges "reviewed" his case, the other two judges having "just agreed with his conclusions, probably without even looking at the evidence." The one appeal court judge who had "reviewed" his case, "overlooked" and "cunningly changed evidence to make him look bad for no reason other than gender-bias." The appeal court overlooked five trial court exhibits because they "clashed" with the trial court judge's "biased conclusions and premeditated intention to issue an order that would be favourable to the defendant/respondent, a woman" and "unfair, unjust and unequitable" to the male complainant. The complainant alleged that the appeal court erred in fact and in law on the parties' respective financial positions and the trial judge's findings of credibility and in agreeing with the trial judge who "categorically set aside" a pre-existing written agreement between the parties "for the senseless reason that it was 'not done with independent legal advice'." He further alleged that the appeal court was wrong to have cited the findings of the trial judge, which he alleged suggested that he may have contributed to his ex-spouse's deteriorating psychological condition and attempted suicide. Finally, the complainant alleged that the judges "did not subscribe

or follow the principles of integrity, diligence, equality and impartiality, as set out and explained in the Council's publication *Ethical Principles for Judges*." The complainant had indicated that he was pursuing an appeal of his case to the Supreme Court of Canada.

The complainant was advised that an appeal was his proper recourse in view of his allegations of error of fact and of law, which could not be equated to allegations of misconduct on the part of the judges. He was advised that it was common practice for one of the judges in a panel of appeal court judges to write the decision, and for the others to adopt the judgment as written by signing their agreement. This did not mean that they had not reviewed the evidence, or not decided the matter. The complainant was also advised that he had not provided any evidence in support of his allegation of gender bias, which could not be presumed simply because the court dismissed his appeal. He was further advised that there was nothing in his complaint that could support his conclusion that the panel of judges did not "subscribe or follow the principles of integrity, diligence and equality."

- Two complaints were received from associations regarding comments made by Mr. Justice Michel Bastarache of the Supreme Court of Canada to a member of the media and subsequently published in major newspapers. The complainants alleged that in expressing his personal view that judges should defer to the will of Parliament and in criticizing prior judicial decisions, the judge was biased and had created a reasonable apprehension of bias regarding legal issues which would likely re-appear before him. One of the associations also alleged that the negative language used by the judge to describe other judges undermined public confidence in the judiciary and may damage collegiality and respect among judges. Mr. Justice Bastarache and Chief Justice Beverley

McLachlin were asked to comment. The judge stated that in responding as he did in the interview, he was attempting to provide frank and open insights into the decided opinions of members of the Court and that he did not take issue with many of the points made by the association about extra-judicial comment on the part of judges. The judge stated that he was able to and would judge objectively in future cases. Chief Justice McLachlin stated categorically that the judge had invariably approached all appeals and all aspects of the decision-making process in a completely impartial manner. The Chief Justice stated she had confidence that the judge would continue to accord a fair hearing to all litigants before him and decide each case with impartiality.

In a letter to the judge, the Chairperson said he was satisfied that the judge's statements were made honestly and in good faith to encourage a better understanding of the differences in judicial approach which gave rise to divisions of opinion in the Court. He said the judge's purpose was not to proselytize or to act as a public advocate for his views, but only to explain why he held them. While these motives were laudable, some of the comments "were of a nature that could be expected to cause controversy." The Chairperson accepted the judge's assurance that he could and would judge objectively in future cases. Because of the considerable publicity about the complaint, the Council issued a news release about the disposition of the matter.

- A complainant in divorce proceedings alleged that the judge had made inappropriate remarks in a meeting in the judge's chambers with the lawyers. He alleged that the judge's decisions, which were "financially disastrous" for him, "were tied to the essence" of the remarks. The complainant further alleged that the judge had exhibited "anger" towards

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him during the proceedings and that he concluded that the judge was biased toward men and in particular toward him as evidenced by her conduct during the proceedings and in her decisions. Comments were sought from the judge. The judge, both lawyers and the complainant were interviewed by outside counsel.

The complainant was advised that although there were conflicting versions as to what comments were made, the preponderance of evidence appeared not to support his allegations. The judge adamantly denied having made the remarks and the recollection of the other lawyer, present at the meeting in chambers, supported the judge's denial.

The complainant was informed that his lawyer had made it very clear that she had not perceived any bias against men on the part of the judge. The Chairperson was unable to conclude that his allegations concerning inappropriate remarks and bias had been substantiated. Nor had the review revealed any basis for his allegation of "apparent anger" on the part of the judge, who advised that these proceedings had been particularly difficult and emotional because the parties had not been on speaking terms for some time and because they had difficulty accepting the fact that in a family law trial where custody was not in issue, the conduct of the parties was not relevant. The complainant was further informed that the judge stated that she had to make frequent and firm rulings on evidentiary matters during the testimony of both parties in order to maintain control of the proceedings.

Alleged conflict of interest

In 17 files, the Council was asked to look into allegations that judges had placed themselves in a conflict of interest. Examples follow.

- The complainants, who represented themselves as plaintiffs in a medical malpractice suit, disagreed with the trial judge's decisions rejecting the evidence of their witnesses and finding against them at trial. They also complained that the case management judge was in a conflict of interest because, as a lawyer some years before, she had acted for the hospital. The case management judge stated that she had disclosed to the parties at one of the early case conferences that she had acted both for and against the hospital. Both parties had agreed that she should continue as case management judge. Some time later, when one of the complainants raised the issue again, she gave them an opportunity to bring an application to have her step down. The complainants again said they were content that she continue to act as case management judge. The judge provided copies of the transcript of the relevant proceedings and her notes of the dates when this issue arose.

The complainants were informed that the trial judge's decision was not open to review by the Council. The case management judge had acted both for and against the hospital, and this had occurred some years before the issue arose in this case. In addition, the complainants had been informed by the judge of her previous involvement both for and against the hospital and they had consented that she could continue to act. There was no basis for a finding of misconduct against either judge.

- The complainant, a lawyer, alleged the judge should not have presided at a passing of accounts where he was involved because she was in a conflict of interest. The allegation was based on the fact that she knew him or knew of him because he was a local counsel appearing before her as a local judge. He stated that at an earlier hearing in the same matter she had agreed that an out-of-town judge should preside. The judge stated that the distinction between the passing of

accounts and the previous hearing was that the earlier hearing required an assessment of the credibility of two local lawyers based on their personal affidavits. She had therefore ordered that the motion be heard by an out-of-town judge. This was not the case at the passing of accounts. The judge stated that she did not know the complainant socially or professionally and that she had never had any personal or professional relationship with him.

The complainant was informed that there was no basis for a finding of judicial misconduct.

- The complainant in a divorce proceeding alleged he had been the victim of prejudice by the judge because the latter was well acquainted with the father of his ex-wife, the plaintiff, and had said so aloud before the parties, who were represented by counsel. He complained that for this reason the judge was not capable of rendering impartial judgments about him. Although he said that counsel had told him that the judgment contained several errors, he said he did not have the financial means to appeal the judgment. The complainant also complained of the plaintiff's conduct and said he only wanted a "peaceful life."

The complainant was informed that the judge had said that he did not know the parties and that after checking the name of the plaintiff's father in the court record said he did not recall knowing him. The judge explained that the parties had only appeared before him twice, the first time on a motion to amend the order for support and the second for the trial on the merits. The complainant was told that the judge had not presided at the hearing he had mentioned in support of his allegation that the judge had said aloud that he was well acquainted with the plaintiff's father. The complainant was informed of his right to appeal.

- The complainant, who represented himself in a breach of contract case, alleged that the judge was biased against him because he represented himself at a pre-trial conference and is not a lawyer. He based this allegation on the fact that the judge did not set the complainant's action down for trial. He also alleged that the judge had denied him natural justice because he had not allowed the complainant to present evidence at the pre-trial conference. Finally, he alleged bias because the judge had allowed opposing counsel in another action brought by the complainant to appear at the pre-trial conference to make submissions relating to issues in that action. In a subsequent letter, the complainant alleged that he had again been denied natural justice because his case in another action had not been set down by the judge, whom he alleged had violated the rules of court and the judicial ethical principles of "independence, integrity, equality." He further alleged that the judge had violated the principle of impartiality because he had refused to remove himself as case management judge when the complainant had informed him of his prior complaint against him in another action.

The complainant was advised that he had provided no evidence of bias or misconduct. It was within the presiding judge's discretion to defer setting the matter down for trial. It was also within the presiding judge's discretion to hear from counsel in a related case brought by the complainant. He was informed that his allegations of violation of judicial ethical principles did not arise on the evidence and that the rules of court could not be said to have been "deliberately and maliciously violated" because his actions had not been set down or because he alleged having been denied natural justice. The complainant was advised that the fact that the judge did not remove himself as case management judge — because the complainant informed

him of his previously filed complaint against him in another related action — did not lead to an automatic presumption that the judge was “biased or lacked impartiality.” In the instance complained about, the judge had been acting as case management judge dealing with matters of procedure rather than the merits of the case.

- The complainant in a divorce matter alleged that two judges were corrupt and had conspired to deny him his “civil rights” by issuing particular orders in his family law matter. He had maintained he could not attend the proceedings because of outstanding warrants for his arrest, which his wife had obtained against him in his absence from the country.

The complainant was advised of the importance of exercising his right to appeal any order he alleged was made in error. He was further advised that in the absence of a party in court and in the absence of any contrary evidence, a judge could make an order granting the request of the applicant. While a judge had the discretion to adjourn a matter, as he had done more than once when the complainant had not appeared, family law matters could not be postponed indefinitely. The complainant was advised that in an adversarial system, the prerogative belonged to the parties to contest orders and to set the record straight. Furthermore, in cases where there may be outstanding warrants, the absent party could present his case through legal counsel. The fact that the complainant’s first representative had not been accepted to speak on his behalf by the court, as he was not a lawyer and did not have sufficient knowledge or experience, did not stop the complainant from pursuing and obtaining legal representation.

- A self-represented complainant alleged that the judge had unjustly dismissed his claim in negligence because the judge had refused to allow him to examine witnesses and medical

articles that he wished to rely upon. He said the judge had exhibited bias because he knew an expert witness for the defence. The complainant alleged that the judge had yelled at him in anger and that he had felt intimidated and embarrassed during the hearing. He also alleged that the judge had ignored or misapprehended evidence and had erred in awarding costs against him.

The complainant was advised of his right to appeal and reminded that the court of appeal had not only dismissed his application for an extension of time to appeal, but had also addressed the merits and concluded that there was no merit to the appeal. The complainant was informed that the hearing he complained of was a summary trial which had been brought on by the defendants by way of application to the court, in accordance with the rules of court. He was advised that such a hearing is conducted only on affidavit evidence and that the judge had so informed him at the time of the hearing. A review of the judgment showed that the judge had dismissed the complainant’s claim in negligence at the summary trial stage as he had concluded that the evidence the complainant relied upon and intended to rely upon at trial did not meet the onus of proof required of a plaintiff in a medical negligence claim, since a plaintiff cannot rely upon the defendants’ medical experts to prove his or her case. The complainant was further advised that a review of the transcripts and of the audio tapes of the hearing had not revealed any hostility, anger or intimidation on the part of the judge. He was also advised that the evidence showed that as plaintiff, he had been given every opportunity to present his case. The complainant was reminded that the issue of the judge’s acquaintance with the doctor had been raised in the court of appeal, which had found that ground of appeal had no chance of success.

- The complainant represented himself in proceedings against the Crown. He alleged that the judge should have disqualified himself from hearing the trial of the action because he had previously made an order staying the decision of another judge to strike the Crown's statement of defence pending an appeal of that judge's decision. He also alleged the judge made errors during the course of the trial.

The complainant was advised that the judge's earlier order was procedural and not determinative of any of the issues raised in the action. Any objection to the judge presiding at trial should have been placed before the court by way of motion at the outset of the trial or could be raised on appeal. The complainant was advised he had provided no evidence of misconduct requiring further action by the Council.

Alleged delay in rendering judgment

In eight instances complainants argued that they had been unjustly treated due to judges' delay in rendering decisions. Examples follow.

- The complainant, who had been represented by counsel in family law proceedings, complained about the length of time taken by the judge to reach a decision in a jurisdictional motion brought at the pre-trial conference. He also alleged that the judge decided the motion against him because he was male, from outside the province and an Aboriginal. The judge stated that the court staff had filed the submissions of the complainant's counsel instead of placing them before him. He had rendered his judgment within five weeks of receipt of the briefs. The total lapse of time between the hearing and the release of his decision was four months. The judge denied any bias and explained the reasons for his decision.

The complainant was advised that the time taken to release reasons was not unreasonable given the six-month Council guideline. He was also advised that there was no evidence of bias.

- The complainant in a breach of contract case alleged that the judge based his decision on the wrong evidence and reached a wrong decision. He also stated that the judge had not continued the trial because of his vacation plans and did not deliver his reasons until 11 months after the trial. The judge stated that the trial was adjourned due to scheduling conflicts with counsel. He stated that he would have changed his vacation plans if that had been necessary. He stated that the evidence was completed in November 1998. He agreed to accept written submissions from counsel. The final submission from counsel was dated February 1999 and he issued his decision in October 1999, eight months later. He stated that the delay was due to another reserved decision following a long civil trial and a full schedule of trial and case management work. The judge stated that he sincerely regretted and apologized for the delay in delivering the decision.

The complainant was informed that the delay in issuing reasons was unfortunate, but in the circumstances the delay did not constitute misconduct.

Complaints involving Council members

During the year, seven files implicated Council members. In a number of these a Council member was one of two or more judges named in the complaint. Because these complaints require the Council member managing the file to deal with allegations against a fellow member, the by-laws require that outside counsel reviews the proposed disposition before the file is closed. Examples of two of these files follow.

- The complainant alleged that Judge A had abused his power by refusing to allow the complainant's application to amend his action. He also argued that the judge had "prevented him from saying anything" in opposition to the defendants, who said that a settlement had been reached between the parties. He maintained that the judge favoured the defendants, who were represented by counsel, whereas he was defending himself unaided. The complainant further alleged that Judge B had behaved in an intimidating way at a hearing in chambers.

The complainant was told of his right to appeal a decision. Judge A indicated that he had been previously informed by the defendants, when he was making up the roll for lengthy cases, that there was an out-of-court settlement and that the complainant had twice confirmed with the judge's secretary that his case had been settled. The judge indicated that he therefore had not assigned a judge to the complainant's case, in view of the settlement. However, despite this the claimant had appeared in court pressing his claim. The judge said he had explained to him that his case had been struck from the list because of the settlement, but the complainant had continued to argue and became so agitated that the Registrar of his own accord had thought it best to tell the complainant that he must leave the hearing room. A settlement statement was signed a week later and the release and settlement statement filed with the court registry. The complainant was informed that the allegations against Judge B could not be accepted as there was no evidence in support of his arguments.

- The complainant alleged that the judge at first instance breached his legal obligations and erred in not allowing the complainant to appear at a dangerous offender application hearing. He also alleged the judges who

heard his appeal neglected their duty, erred in their decision and were engaged in a conspiracy against him.

The complainant was advised that he had provided no evidence to substantiate his allegations of misconduct by the various judges. He was advised that his only recourse was to appeal.

Other allegations

In other instances, individuals complained about abuse of judicial power, undue impatience, harsh treatment of their concerns, unprofessional conduct, or other matters. Examples follow.

- The complainant, a lawyer, alleged that the judge had "harangued" him the moment he walked into the courtroom for being three minutes late at the beginning of a trial. He alleged that on another occasion the judge had "screamed" at him "in a rage" when he had asked him a question regarding the scheduled hearing for the next day and which he had previously advised the judge he could not attend. The judge had subsequently called the complainant and his colleague into his office and screamed again at the complainant saying he had inappropriately questioned him in court. The complainant further alleged that the judge had "incessantly berated, insulted and screamed at all the attorneys, without exception, while they were pleading their motions."

The complainant was advised that the judge denied "haranguing" him and described his reproach as a short remark. The judge advised that he had no knowledge of the fact that the clerk may have given permission to the complainant to absent himself from the courtroom prior to the judge's arrival. The complainant was also advised that a careful review of the judge's response and of the tape of the hearing in the second matter revealed that there appeared to have been a genuine

misunderstanding between the complainant and the judge with regard to the lawyer's question concerning the scheduled motion for the next day and that the judge appeared to have perceived his questions as a challenge to his authority. The judge indicated in his letter that although the complainant was of the opinion that he had acted correctly, the judge had taken a different view of events. The complainant was advised, however, that the judge recognized that the complainant may have been offended and indicated that although he had thought it important to intervene and tell the lawyer what he thought of his behaviour, he had not wished to ostracize anyone. The judge admitted it was possible that there had been mutual misunderstanding between himself and the lawyer, that he had not wanted to offend him and if the complainant had been offended, he regretted it.

A careful review of the tapes did not support allegations of improper behaviour by the judge. Although the judge intervened frequently while the lawyers pleaded their motions, there was no evidence of screaming or berating and the judge's interventions appeared to have been made with a view to encouraging the lawyers to simplify and clarify their arguments in accordance with the issues that the judge perceived as pertinent.

- In a motion to adjourn the trial in her "divorce/matrimonial property action," the unrepresented complainant alleged that the judge had "stated the trial will proceed in September even if they have to bring you into court in a straight jacket" and had then ordered costs of \$500 against her even though the other counsel had not asked for costs. She alleged that the remark was "completely inappropriate and demonstrated a lack of appreciation of the stress caused by a divorce action." The complainant also questioned "whether the judges have a direct pipeline" to the opposing lawyer's office,

since the lawyer allegedly knew and had made a comment about a previous complaint she had made against another judge. The judge pointed out that the action scheduled for trial in May 2000, which the complainant was asking to be adjourned, had been started in one province in 1998 and had been transferred to another province in January 1999. A number of delays had already occurred. The judge stated that he had initially said that he would not adjourn the matter but relented when the complainant agreed that she would not come back and ask for another adjournment if he set the matter for trial in September 2000. The judge said that his reference to a "straight jacket" was made in an effort to indicate that the trial was proceeding, no matter what, but apologized to the complainant as he did not mean to embarrass or demean her.

The complainant was advised of her right to appeal an alleged error with regard to the awarding of costs.

- The complainant objected to the judge's "high-handed attitude, insults and complaints." She alleged she had been the victim of a "monologue" by the judge. In particular, she objected that the judge said to her at the hearing "Are you dense?" She asked for the Council's intervention "so it does not happen again in the future." The judge said that he had wanted to "limit the debate before him" and that subsequently, after hearing the complainant "at length," he had tried to get her to understand "certain unavoidable realities" resulting from actions she had taken that were "somewhat contradictory." However, the judge admitted that the words objected to might seem harsh and that the circumstances provided no excuse. He said he regretted them.

The judge's apologies were conveyed to the complainant. The Chairperson expressed disapproval of the conduct in a letter to the judge.

- A member of the Council alleged that a judge had electronically disseminated, via a computer network, a document requiring the Council's attention. In addition, the court's name appeared as the organization on the letterhead of the message. The judge had relied on the fact that the network was confidential. The judge said he regretted his thoughtless action and made his apologies.

The complainant and the judge were informed that even if the network was confidential, private judicial reserve was essential and any judge who was part of it had a duty to ensure that the integrity and reputation of the court were protected. The Chairperson expressed disapproval of the conduct in a letter to the judge.

Files Closed by Panels

Three files were considered by three-member Panels. A Panel may be designated to deal with a particular file when the Chairperson managing it concludes that it is particularly sensitive and might benefit from review by more than a single Council member, or that an expression of disapproval might be warranted, or in more serious cases, that there might be reason for a Panel to recommend to the Council that a formal investigation be undertaken under subsection 63(2) of the *Judges Act*.

Two of the files considered by Panels were closed after considering comments of the judge and the judge's chief justice. The third was closed after considering comments together with the report of further inquiries undertaken by outside counsel at the request of the Committee Chairperson. Descriptions of the three files referred to Panels follow.

- The complainant appeared on various motions relating to bankruptcy proceedings against a corporation in which he was a shareholder. He complained about two judges, one of whom he alleged exhibited prejudice and bias, failed to "recognize and honour" an existing order of the court and acted with "legal malice." In addition to complaining about erroneous findings of fact with regard to a second judge, he alleged the judge had delayed rendering judgment on a motion for a period of 11 months. The Chairperson referred the matter for the consideration of a Panel strictly with respect to the issue of delay. In his comments the judge had explained that the matter was on reserve for 11 months due to more pressing judicial matters. The judge's chief justice wrote that the judge had one of the heaviest case loads in the court and a number of other time-consuming duties, but he was a hard-working, thorough and thoughtful judge.
- In view of the explanations provided to the Panel, it concluded there was no basis for any action by the Council and the file was closed with a letter to the complainant dealing with each of his allegations.
- The complainant, a lawyer, filed a detailed and lengthy complaint outlining various allegations against the judge that could be summarized as (i) bias against her on the part of the judge with the result that he interfered with cases she argued on behalf of clients and cases where she was a litigant; (ii) conflict of interest on the part of the judge for hearing matters or interfering with matters that involved his friends and former law partners; (iii) attempts by the judge to discredit her in the eyes of her peers and other judges, with the result that she suffered financial loss and had costs awarded against her based solely on the judge's negative interference; (iv) negatively influencing judges who would hear her various cases by discussing her with those judges; (v) continuing to act in an administrative capacity, setting court dates, etc. when he had given an undertaking not to hear any matters in which she was a party litigant. The judge's detailed response was

given to the complainant. She replied further and an outside counsel was retained to make further inquiries.

After a great deal of difficulty and delay caused largely by volumes of further documents and information furnished by the complainant, the counsel submitted a lengthy report to the Chairperson. While the Chairperson concluded that the vast majority of the complaints were groundless, he referred two aspects of the report to a Panel. The Panel decided that there was no evidence of bias or judicial misconduct in the two matters referred to it. The complainant was sent a lengthy letter responding to her complaints, and she was advised that no further action would be taken by the Council.

- Complainant A, a former lawyer who was disbarred, filed a complaint because the judge had described him in his absence as a “charlatan” at a hearing involving a party other than himself. He also objected to the fact that the judge had made “an all-out attack” on the association he had founded and against him personally. Complainant B, a party to the case before the judge, objected to the fact that the judge had blamed him for receiving assistance from Complainant A’s association, and from Complainant A himself, in preparing his case. He also complained that the judge had described the person whom he said helped him as a “charlatan.” Complainant B said he “suffered systemic harassment” because he admitted he was helped by Complainant A. He alleged he had “suffered the harmful effects” of the judge’s “prejudice.”

The complaints were referred to a Panel consisting of three members. The complainants were informed that after reviewing the file the Panel had concluded that the use of the word “charlatan” by the judge in respect of Complainant A was improper and out of

place, despite the fact that a judge ordinarily has considerable freedom of expression in carrying out his duties, as such remarks could lead to allegations of bias or apparent bias. Complainant B was told that, as he had appealed the judge’s decision, it was for the Court of Appeal to deal with his allegations of bias.

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 complaint arose from a decision of Mr. Justice A.C. Whealy of the (former) Ontario Court of Justice (General Division) to exclude persons from the courtroom during the trial of an accused person because they would not remove head coverings. The complainant was advised that the judge had taken the steps he thought necessary to maintain order in the courtroom. The complainant was also informed that “[the judge’s] authority to make these rulings was the subject of a substantive motion which involved legal rights that cannot be decided or reviewed by this Council.” The Court of Appeal subsequently held unanimously that “the rulings by the trial judge as to headdress did not deprive the accused of a public trial. However, the trial judge by his rulings may well have inadvertently created the impression of an insensitivity to the rights of minority groups.” The Court of Appeal held that the judge’s exclusion of certain members of the public from the courtroom “may well have resulted in creating an atmosphere that undermined the appearance of a fair trial.” However, it was unnecessary (in view of the other bases for the appeal) to form a concluded view on whether this was in itself sufficient to constitute a reversible error.

After the decision of the Court of Appeal was released, the complainant wrote again and requested that the complaint be reconsidered.

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The file was re-opened. The judge was asked for further comments. In his reply he stated, "I sincerely regret if the impression was created that I am insensitive to the rights of minority groups. This is not the case and was never my intent." The Chairperson re-closed the file with an expression of disapproval on the basis that the judge had demonstrated insensitivity to minority rights.

In January 1999, one of the persons who was excluded from the courtroom by the judge filed an application in the Federal Court of Canada (Trial Division), seeking a review of the decision of the Council not to proceed with a full investigation. An order granting the Council leave to intervene was made on consent of the parties in May 2000. The hearing of the application was scheduled for shortly after the period covered by this report.

4. Issues

COMMUNICATING COURTS

Since 1999, the Council has supported judges across Canada in explaining their work to students, public groups and the media.

The Council has created a Special Committee on Public Information and approved a national framework for initiatives by individual courts and judges who wish to take more active roles in public education and information.

A survey of courts in 2000 revealed that courts had set up communications or media relations committees in nine jurisdictions, of which six included representatives of provincial courts. There was some movement to expand media relations committees to reflect broader mandates embracing education and communications.

Many educational programs were taking shape. Following the creation of an umbrella committee of judges, legal educators, teachers, lawyers and provincial ministries, Ontario superior and provincial courts are collaborating with others to establish local liaison committees across the province to promote courthouse and classroom visits. Judicial "lead hands" are tapping volunteers among Crown attorneys, local lawyers and representatives of legal clinics and legal aid to speak about the legal system and the role of judges with high school students. More than 200 judges volunteered to participate, and a structured process was created for teachers to request a class visit to a courthouse, where students would be met by a lawyer or judge, or a visit by a lawyer or judge to a classroom.

In Quebec, the courts, the Bar and the Justice Department are organizing open houses at regional courthouses, mock courts for youths, career days in schools and information days for victims of criminal acts. Information is being

provided to the general public with the cooperation of local media.

In Manitoba, all 100 first-year law students at the University of Manitoba participated in the "shadowing project" with 25 volunteer members of the Manitoba Court of Queen's Bench. In groups of four, students spent two days with a judge following civil, criminal and family trials, motions, pre-trials and case conferences, bail hearings, small claims and summary conviction appeals.

In Saskatchewan, an all-courts committee was developing proposals for educational initiatives, a forum for constructive discussion with the media, and public initiatives. Proposals addressed such matters as media training for judges, access to judicial and legal information including the Internet, cooperation with educational efforts of other groups, and a process for rapid response to inaccurate reporting.

A committee of judges from the Alberta Court of Appeal, Court of Queen's Bench and Provincial Court was developing recommendations on the feasibility of providing educational institutions with speakers from the three Courts; arranging public information initiatives aimed at explaining the role of the judiciary and courts, for example in the form of courthouse tours for students and adults; and communicating with the media in their coverage of the courts.

In British Columbia, working with the Law Courts Education Society, judges participated in almost 600 school visits and public sessions across the province and two Judges Outreach programs with the Provincial Court Judges Equality Committee. They held meetings with Strathcona Community Workers, Chinatown Police Community Services, the Chinese Community Service Organization, the Downtown Eastside Outreach, and Youth and Mentally Challenged Service Workers.

Canadian Judicial Council

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Celebrating the 300th Anniversary of the *Act of Settlement*, the Society worked with the Supreme Court of British Columbia to develop a Curriculum and Judges Outreach program for social studies classes. Judges were involved in piloting the program in 15 schools early in 2001.

Most courts were planning or upgrading Internet Web sites, recognizing their value to litigants, the legal community, the general public and the media. Web sites were in operation at the Supreme Court of Canada, Federal Court of Canada, Tax Court of Canada, Prince Edward Island, Quebec, Ontario, Alberta, British Columbia and Nunavut. Site launches were planned in Nova Scotia, Manitoba and Saskatchewan and were in various stages of planning in the Court Martial Appeal Court of Canada, and the superior courts of Newfoundland, New Brunswick and the Yukon.

Courts carried out a range of media activities and planned more. The Ontario Court of Appeal set up a Media Committee and made significant changes in its practices for releasing decisions. Officers of the court provided information to media on operations, procedures, scheduling and other matters prior to the release of decisions, and responded to questions about specific judgments after their release. Arrangements were made to provide notice of significant judgments and to post them on the Ontario Courts Web site on the day of release, accompanied by a summary.

The Nova Scotia Media-Courts Liaison Committee devised an electronic notice regime regarding publication bans using the Internet and e-mail.

TELEVISION IN THE COURTROOM

The Canadian Judicial Council has wrestled for many years with the issue of introducing television into the courtroom. Debates have always found its members deeply divided.

The Council's formal position was stated in September 1983, when it resolved that televising court proceedings "would not be in the best interests of the administration of justice. . ." In September 1994, the Council affirmed this position, adding that its resolution is a recommendation, and does not apply to the Supreme Court of Canada (which introduced television on a taped basis in October 1992).

At both the Council's September 1999 and March 2000 meetings, the subject was discussed again, and in each case deferred. At the September 2000 meeting, the Council agreed to strike a sub-committee to examine recent developments and studies and to consider the results of consultations by chief justices with members of their respective courts. The sub-committee's specific mandate was to recommend whether the Council should formally reconsider its position.

At the end of the year under review, the sub-committee was continuing its review.

JUDICIAL ETHICS

On December 1, 1998, the Council released *Ethical Principles for Judges*, a comprehensive statement of principles designed to help federally appointed judges make decisions about ethical issues that confront them in their work and community life. The publication has since come to international attention and gone to a second printing. The text may be found on the Council Web site at www.cjc-ccm.gc.ca.

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In approving the *Principles*, the Council agreed to the establishment of an Advisory Committee to offer advice to judges seeking advice on applying the *Principles* to specific problems. A committee of 10 puisne judges was chosen from across Canada to work independently of the Council and of the Canadian Superior Courts Judges Association.

Mr. Justice James K. Hugessen of the Federal Court of Canada, Chair of the Advisory Committee, reviewed the Committee's experience over its first year of operation when he met the Judicial Independence Committee in March 2001.

TECHNOLOGY AND THE COURTS

The Council has long recognized the potential for computer technology to contribute to the efficiency of the courts and the work of judges. An advisory committee on technology, made up almost entirely of puisne judges, has worked on these issues since its establishment in 1987, resulting most notably in publication of *Standards for the Preparation, Distribution and Citation of Canadian Judgments in Electronic Form* in 1996 and the *Neutral Citation Standard for Case Law* in 1999. The Judges Technology Advisory Committee reported that one of its goals is to combine the two standards into a single document.

A sub-committee was established to examine computer technology security in courts throughout Canada. It carried out a detailed electronically administered survey to ascertain existing security levels, knowledge about security among judges and administrators, and areas where security might be at risk and precautions advisable. One objective was to identify those issues that appear purely technical but which raise concerns about judicial independence. One example cited by the Committee was the issue of security of encryption keys used for

judicial signatures. Another was the situation where members of the judiciary share servers with Crown attorneys. While many issues may yield to technological solutions, others may require national standards in order to ensure that technological innovation does not threaten judicial independence. At the end of the year under review, the sub-committee was analyzing responses to the survey.

Computer News for Judges

Two issues of the Advisory Committee's newsletter, *Computer News for Judges*, were published in 2000-01. These issues, as well as back issues to 1993-94, are accessible on the Council Web site at www.cjc-ccm.gc.ca.

Issue No. 29

- Committee advisor Martin Felsky reported that as of September 1999, 20 of 28 federal courts were using paragraph numbering in 90 percent or more of their judgments, as recommended in the *Standards for the Preparation, Distribution and Citation of Canadian Judgments in Electronic Form*. Most of the other courts were using paragraph numbers for a substantial portion of their decisions. Mr. Felsky wrote that work on standards is international in scope and countries publishing judgments on the Web are considering development of an international standard to facilitate inter-jurisdictional research. Canada was well-positioned to be an active participant in this domain.
- Justice John McQuaid of the Appeal Division, Supreme Court of Prince Edward Island, reported on a comprehensive technology solution in administration of the Supreme Court and Provincial Court, embracing case management, interfaces with related agencies, publication of judgments and, ultimately, introduction of electronic filing.

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Canadian Judicial Council

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- Jennifer Jordan, Registrar of the British Columbia Court of Appeal, provided a progress report on the Court's work toward electronic filing of civil documents. To fully realize the benefits of e-filing, it must be integrated with other court-related applications, including case tracking, management and scheduling.
- Madam Justice Fran Kiteley of the Ontario Superior Court of Justice reported on the status of electronic filing in Ontario. One of the recommendations of the province's Civil Justice Review recommends changes to the technological infrastructure of the courts which would, among other things, allow for electronic filing of court documents. Between August 1997 and the spring of 1999, 84 law firms participated in a pilot e-filing program, which was favourably evaluated and led the Ministry of the Attorney General to assume responsibility for e-filing in a step toward creation of the Integrated Justice Project (IJP). As part of IJP, a group is examining issues such as digital signature and encryption that must be resolved to ensure that court rules are functional in the technological environment.

Issue No. 30

- Mr. Justice McQuaid and Professor Daniel Poulin of the Faculty of Law, Université de Montréal, reported that the Canadian Legal Information Institute, on behalf of the Federation of Law Societies of Canada, is working to consolidate all decisions of courts across the country on one Web site — www.canlii.org. As of the winter of 2000-01, the site contained the Federal Statutes and Regulations, as well as written decisions from 15 courts and tribunals, with plans for the remainder of the courts to post their decisions.
- The National Judicial Institute outlined its computer-related education projects, including:
 - Reference tools — on-line library of NJI papers, prototype electronic bench book;
 - Quick learning tools — e-broadcasts in family law and criminal law, training modules in sentencing and child support;
 - Instructor-led courses — moderated discussions of problems in areas of the law;
 - Combination technologies — Web-based course and face-to-face seminar in genetics and the law, and a video-conference mini-course in family law.
- Danielle Beaulieu, Director of Registry Automation Projects for the Supreme Court of Canada, reported on the Court's progress toward a system permitting counsel and unrepresented litigants to file documents electronically with the Court. Like other courts, the Supreme Court is considering issues of format, fees, document signatures, voluntary versus mandatory filing, and the position of users lacking access to electronic technology.

FAMILY LAW

The September 2000 meeting of the Council approved a special meeting of 22 judges "interested, active and knowledgeable in family law" to discuss procedures, recent developments and services associated with family law.

The meeting, held in Ottawa on November 30 and December 1, 2000, and attended by judges from each province and territory, led to a resolution approved by Council at its March 2001 meeting. The resolution asked the Council Chairperson to write to Ministers of Justice and

Attorneys General of the federal, provincial and territorial governments asking for improved funding for family law services. The objective of the request, said the resolution, was a uniform standard of operational efficiency

which is required for a fully serviced family law court and which includes the establishment of on-site or contiguously located independent Family Law/Justice Centres which provide access to family law support services, including: the provision of legal aid, assistance for self-represented litigants, duty counsel, family assessments, mediation, conciliation, supervised access, parenting and childrens' programs, child support guidelines, information and assistance with calculations and counsel or *amicus curiae* for children.

Judges attending the Family Law Meeting expressed the unanimous view that the existing *Reciprocal Enforcement of Maintenance Orders Act* (REMO) should be amended to allow for a single hearing by video-conference in REMO applications in order to eliminate recurrent frustration and delays.

Council's March 2001 meeting also approved a second national Family Law Meeting to be held in November 2001.

JURY INSTRUCTIONS

A National Committee on Jury Instructions continued work during the year toward national plain-language specimen jury instructions, a potentially far-reaching law reform project. Working from draft instructions prepared by an Ontario Committee chaired by Mr. Justice David Watt of the Superior Court of Justice, the National Committee circulated a version of generic preliminary, mid-trial and final instructions for comment, and embarked on instructions on specific offences and defences.

The project promises to deliver standardized, nationally accepted instructions, available to all trial judges across the country, with benefits not only for judges, but defence counsel, prosecutors and jurors. Standardized instructions could reduce the extent to which disputes about the merits of particular jury charges form the basis of appeals.

CHAPTER 4

ISSUES

5. Judicial Salaries and Benefits

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

Members of the new “Quadrennial Commission,” appointed for four-year terms, were Richard Drouin, O.C., Q.C., Chairperson, Eleanore A. Cronk and Fred Gorbet.

The legislation provided 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 Commission must conduct an inquiry every four years and make recommendations on the adequacy of judicial compensation within nine months of commencing its work. While recommendations of the Commission are not binding, a rational and public justification for not accepting its recommendations must be provided.

The Commission held public hearings on February 14 and March 20, 2000. Major submissions were made by the Government of Canada, and jointly by the Canadian Judges Conference (since renamed the Canadian Superior Courts Judges Association) and the Canadian Judicial Council. The Council also made separate submissions on representational expenses and differentials between salaries of puisne judges and those of their chief justices and associate

chief justices. The Commission’s report was required by May 31, 2000, and the government’s response by November 30, 2000.

In its May 31, 2000, report the Commission made 22 recommendations, including a proposal for a salary increase of 11.2 percent, which would raise the salaries of puisne judges to \$198,000 from \$178,100, effective April 1, 2000, with an increase of \$2,000 in addition to statutory indexing for each of the following years until 2003.

On December 13, 2000, the government responded to the Commission’s report, accepting the proposed salary increase and all but two of its other recommendations. On February 21, 2001, the government introduced amendments to the *Judges Act* incorporating the changes announced in its December response.

In addition to the salary increases for puisne judges, equivalent adjustments were recommended and accepted for the salaries of chief justices, associate chief justices and judges of the Supreme Court of Canada. Bill C-12 also included amendments implementing Commission recommendations for increases in incidental, Northern and representational allowances, which had been unchanged since the 1980s.

In speaking to Bill C-12 in the Commons, Justice Minister Anne McLellan said financial security is one of three constitutionally required elements of judicial independence, along with security of tenure and independence of administration of matters relating to the judicial function. She said it is the responsibility of all parliamentarians “to ensure that our judges are compensated fairly and appropriately in order to maintain the quality and independence of our benches.” She complimented the Commission on the “quality and thoroughness” of its report.

CHAPTER 5

JUDICIAL SALARIES AND BENEFITS

Canadian Judicial Council

CHAPTER 5

JUDICIAL SALARIES AND BENEFITS

The government rejected the Commission's recommendation that a judge be entitled to elect supernumerary status when the judge's combined age and years of service add up to 80. Currently, at 65 a judge may elect supernumerary status, working about 50 percent of the time of a regular judge and receiving the equivalent of a full pension (2/3 of salary) plus 1/3 of salary — a result cost-neutral to the federal government.

The government said the supernumerary recommendation would have implications for the provinces and territories as well as the federal government. There was a need for better information on the contribution supernumerary judges make to court workloads, and supernumerary status should be one element of a broader issue of judicial annuity reform which the government intended to refer to the Commission.

The government also declined a Commission recommendation that the government pay 80 percent of representational costs incurred by the judiciary in participating in the Commission process, substituting a 50-50 sharing between government and the approximately 1,000 federally appointed judges subject to the *Judges Act*.

The government commented that in arriving at its salary recommendations the Commission had to make the best of a largely unsatisfactory information base. Information available to the Commission in future should address "quality of life" factors including hours of work, vacation and leave benefits, tenure considerations, early retirement and supernumerary options, and the collegial context that allows for intellectual reflection on important issues of legal principle. Such an analysis would not be easy, and it would be difficult to develop an objective measure against which private sector and judicial salaries and workloads could be compared.

Other major Commission recommendations incorporated in Bill C-12:

- Entitle a judge to take early retirement with a pro-rated pension after 10 years on the bench;
- Reduce the pension contribution rate to one percent from seven percent when a judge becomes eligible to retire;
- Reinstate a judge's entitlement to Registered Retirement Savings Plans at the time the judge becomes eligible to retire;
- Make a number of improvements to survivor benefits.

The government pledged to take whatever steps proved necessary to implement a recommendation for a separate life insurance plan for the judiciary equivalent to the public service executive plan.

By March 31, 2001, the period covered by this annual report, the legislation had received second reading in the House of Commons and hearings before the Standing Committee on Justice and Human Rights had commenced.

APPENDIX A

MEMBERS OF THE CANADIAN JUDICIAL COUNCIL, 2000-01

The Right Honourable Beverley McLachlin, P.C.
Chief Justice of Canada
Chairperson

The Honourable Allan McEachern
Chief Justice of British Columbia
First Vice-Chairperson (to September 2000)

The Honourable Richard J. Scott
Chief Justice of Manitoba
First Vice-Chairperson (from October 2000)

The Honourable Pierre A. Michaud
Chief Justice of Quebec
Second Vice-Chairperson

The Honourable Edward D. Bayda
Chief Justice of Saskatchewan

The Honourable Donald G.H. Bowman
Associate Chief Judge of the Tax Court of Canada

The Honourable Donald I. Brenner
Chief Justice of the Supreme Court of British
Columbia
(from May 2000)

The Honourable Beverley Browne
Senior Judge of the Nunavut Court of Justice

The Honourable Norman H. Carruthers
Chief Justice of Prince Edward Island
(to December 2000)

The Honourable Joseph Z. Daigle
Chief Justice of New Brunswick

The Honourable André Deslongchamps
Associate Chief Justice of the Superior Court
of Quebec

The Honourable René W. Dionne
Senior Associate Chief Justice of the Superior
Court of Quebec

The Honourable Patrick D. Dohm
Associate Chief Justice of the Supreme Court
of British Columbia

The Honourable Robert F. Ferguson
Associate Chief Justice of the Supreme Court
of Nova Scotia, Family Division

The Honourable Catherine A. Fraser
Chief Justice of Alberta

The Honourable Alban Garon
Chief Judge of the Tax Court of Canada

The Honourable W. Frank Gerein
Chief Justice of the Court of Queen's Bench
for Saskatchewan
(from August 2000)

The Honourable Constance R. Glube
Chief Justice of Nova Scotia

The Honourable J. Derek Green
Chief Justice of the Trial Division of the Supreme
Court of Newfoundland
(from October 2000)

The Honourable Benjamin Hewak
Chief Justice of the Court of Queen's Bench
for Manitoba

The Honourable T. Alex Hickman
Chief Justice of the Trial Division of the Supreme
Court of Newfoundland
(to October 2000)

APPENDIX A

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

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The Honourable Ralph E. Hudson
Senior Judge of the Supreme Court of the Yukon
Territory

The Honourable Joseph P. Kennedy
Chief Justice of the Supreme Court of Nova Scotia

The Honourable Lyse Lemieux
Chief Justice of the Superior Court of Quebec

The Honourable Patrick J. LeSage
Chief Justice of the [Ontario] Superior Court
of Justice

The Honourable Allan Lutfy
Associate Chief Justice of the Federal Court
of Canada

The Honourable J. Michael MacDonald
Associate Chief Justice of the Supreme Court
of Nova Scotia

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
(to August 2000)

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 Gerard E. Mitchell
Chief Justice of Prince Edward Island
(from January 2001)

The Honourable W. Kenneth Moore
Chief Justice of the Court of Queen's Bench of
Alberta
(to December 2000)

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

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

The Honourable John D. Richard
Chief Justice of the Federal Court of Canada

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] Superior
Court of Justice

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

The Honourable Allen B. Sulatycky
Associate Chief Justice of the Court of Queen's
Bench of Alberta
(from December 2000)

The Honourable Allan H.J. Wachowich
Associate Chief Justice of the Court of Queen's
Bench of Alberta
(to December 2000)
Chief Justice of the Court of Queen's Bench
of Alberta
(from December 2000)

The Honourable Clyde K. Wells
Chief Justice of Newfoundland

The Honourable Bryan Williams
Chief Justice of the Supreme Court of British
Columbia
(to May 2000)

APPENDIX B
COMMITTEE MEMBERS

EXECUTIVE COMMITTEE

Chief Justice Beverley McLachlin (*Chairperson*)
Chief Justice Edward D. Bayda
Associate Chief Justice André Deslongchamps
Chief Justice Joseph P. Kennedy
Chief Justice Pierre A. Michaud
Associate Chief Justice Coulter A. Osborne
Chief Justice John D. Richard
Mr. Justice J. Edward Richard
Chief Justice Richard J. Scott
Chief Justice David D. Smith

STANDING COMMITTEES

Administration of Justice Committee

Chief Justice Clyde K. Wells (*Chairperson*)
Chief Justice Edward D. Bayda
Chief Justice Donald I. Brenner
Senior Associate Chief Justice René W. Dionne
Associate Chief Justice Robert F. Ferguson
Mr. Justice Ralph E. Hudson
Associate Chief Justice Coulter A. Osborne
Chief Justice John D. Richard
Chief Justice Barry L. Strayer

Finance Committee

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

Judicial Conduct Committee

Chief Justice Richard J. Scott (*Chairperson*)
Chief Justice Pierre A. Michaud (*Vice-Chairperson*)
Associate Chief Justice Coulter A. Osborne (*Vice-Chairperson*)
Chief Justice John D. Richard (*Vice-Chairperson*)
Chief Justice Edward D. Bayda
Associate Chief Justice André Deslongchamps
Chief Justice Joseph P. Kennedy
Chief Justice Beverley McLachlin
Mr. Justice J. Edward Richard
Chief Justice David D. Smith

Judicial Education Committee

Chief Justice Constance R. Glube (*Chairperson*)
Associate Chief Judge Donald G.H. Bowman
Madam Justice Beverley Browne
Associate Chief Justice Patrick D. Dohm
Chief Justice W. Frank Gerein
Chief Justice Joseph P. Kennedy
Chief Justice Lyse Lemieux
Chief Justice Richard J. Scott
Chief Justice David D. Smith
Associate Chief Justice Heather J. Smith

Judicial Independence Committee

Associate Chief Justice Gerald Mercier (*Chairperson*)
Chief Justice Joseph Z. Daigle
Chief Judge Alban Garon
Chief Justice Patrick J. LeSage
Associate Chief Justice J. Michael MacDonald
Mr. Justice J.E. (Ted) Richard
Chief Justice Allan H.J. Wachowich

Notes:

1. These lists show Committee membership as at March 31, 2001.
2. Membership of Standing Committees is established at the Council's annual meeting, held in the autumn.
3. All members of the Council, except the Council Chairperson, are members of either the Appeal Courts Committee or the Trial Courts Committee.

Canadian Judicial Council

APPENDIX B

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
Mr. Justice Ralph E. Hudson
Chief Justice Kenneth R. MacDonald
Associate Chief Justice Coulter A. Osborne

Appeal Courts Committee

Chief Justice R. Roy McMurtry *(Chairperson)*
Chief Justice Edward D. Bayda
Chief Justice Joseph Z. Daigle
Chief Justice Catherine A. Fraser
Chief Justice Constance R. Glube
Chief Justice Allan McEachern
Chief Justice Pierre A. Michaud
Chief Justice Gerard E. Mitchell
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 Patrick J. LeSage *(Chairperson)*
Associate Chief Judge Donald G.H. Bowman
Chief Justice Donald I. Brenner
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 W. Frank Gerein
Chief Justice J. Derek Green
Chief Justice Benjamin Hewak
Mr. Justice Ralph E. Hudson
Chief Justice Joseph P. Kennedy
Chief Justice Lyse Lemieux
Associate Chief Justice Allan F. Lutfy

Associate Chief Justice J. Michael MacDonald
Chief Justice Kenneth R. MacDonald
Associate Chief Justice Gerald Mercier
Associate Chief Justice Jeffrey J. Oliphant
Mr. Justice J. Edward Richard
Chief Justice David D. Smith
Associate Chief Justice Heather J. Smith
Associate Chief Justice Allen B. Sulatycky
Chief Justice Allan H.J. Wachowich

Nominating Committee

Associate Chief Justice Heather J. Smith
(Chairperson)
Chief Justice Constance R. Glube
Chief Justice Allan H.J. Wachowich

AD HOC OR SPECIAL COMMITTEES

Judges Technology Advisory Committee

Madam Justice Margaret Cameron *(Chairperson)*
Madam Justice Marion Allan
Mr. Justice Michel Bastarache
Madam Justice Nicole Duval-Hesler
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 Denis Pelletier
Mr. Justice Thomas Riordon
Madam Justice Linda Webber

Advisors:

Dr. Martin Felsky
Ms. Jennifer Jordan
Professor Daniel Poulin

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Study Leave Committee

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

Special Committee on Public Information

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

Special Committee on Future Directions

Chief Justice Richard J. Scott (*Chairperson*)
Associate Chief Justice Allan F. Lutfy
Associate Chief Justice J. Michael MacDonald
Chief Justice Allan McEachern (*ex officio*)
Chief Justice Pierre A. Michaud (*ex officio*)
Associate Chief Justice Heather J. Smith

Special Committee on Trial Court Structures

Chief Justice Clyde K. Wells (*Chairperson*)
Madam Justice Beverley Browne
Associate Chief Justice Patrick D. Dohm
Chief Justice Joseph P. Kennedy
Chief Justice Patrick J. LeSage

National Committee on Jury Instructions

Chief Justice Constance R. Glube (*Chairperson*)
Mr. Justice Ronald Barclay
Mr. Justice Leo Barry
Madam Justice Elizabeth Bennett
Mr. Louis Belleau
Ms. Louise Charbonneau
Madam Justice Louise Charron
Madam Justice Lise Côté
Mr. Justice Armand Des Roches
Mr. Justice David Doherty
Mr. Justice Ernest Drapeau
Mr. William Ehrcke
Mr. Alan Gold
Professor Patrick Healy
Madam Justice Ruth Krindle
Mr. Justice Peter Martin
Ms. Hélène Morin
Mr. Justice Wally Oppal
Mr. James O'Reilly
Mr. Richard Peck
Ms. Renée Pomerance
Mr. Justice Michel Proulx
Mr. Justice J.E. (Ted) Richard
Chief Justice Richard J. Scott
Chief Justice Allan H.J. Wachowich
Mr. Justice David Watt

APPENDIX B

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 2001 Office Consolidation of the Act.

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;
- (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, 1999, c. 3, s. 77].

(3) [Repealed, 1999, c. 3, s. 77].

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; 1999, c. 3, s. 77.

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.

Canadian Judicial Council

APPENDIX C

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.

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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]

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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 <i>Judges Act</i> .
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. (2) The Vice-Chairpersons shall hold office at the pleasure of the Chairperson.
Term of Vice-Chairperson	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.
Duties of Vice-Chairpersons	

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.

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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.	Date and place	request of not fewer than 10 members of the Council. (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.
Acting Executive Director	(2) If for any reason the Executive Director is unable to act, the Chairperson may appoint an Acting Executive Director.	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.
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.	Adjournment	11. A meeting of the Council may be adjourned to any date and place that the Council may decide.
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.	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.
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.	Quorum	13. A majority of the members of the Council constitutes a quorum.
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		

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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.		of the Council who shall be elected by the Council from among its 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.	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.
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.	Chairperson	19. (1) The Chairperson shall preside over all meetings of the Executive Committee.
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.	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.
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.	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.
Committees			
Executive Committee			
Composition	18. (1) There shall be an Executive Committee of the Council consisting, in addition to the Chairperson, of nine members	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

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	another member of the Council as a replacement member of the Committee until the next annual meeting of the Council.	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.
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.	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.
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.	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.
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.	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.
Quorum	23. A majority of the members of the Executive Committee constitutes a quorum.	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.
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.		

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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.

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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 Committee **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.

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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
and request
for comments

Review by Chairperson of the Judicial Conduct Committee

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.

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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.	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.
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.	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.
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.	Majority of Panel	(3) The Chairperson of the Committee shall select the majority of Panel members from the Council whenever possible.
	Review by Panel	Chairperson of Panel	(4) The Chairperson of the Committee shall designate a member of the Panel as Chairperson of the 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.	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

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	(ii) the conduct of the judge is inappropriate or improper but the matter is not serious enough to warrant removal; or	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.
	(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.	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.
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	(4) The members so designated shall not participate in any deliberations of the Council in relation to the matter in question.
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.	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 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	59. After considering the Panel's report and any submissions of the judge concerned, the Council shall decide
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.		(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

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(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

Public investigation

judge's being given notice of the additional complaints and having an opportunity to respond to them.

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

Chairperson
of the Inquiry
Committee

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.

(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, 2000-01

The Council is served by an Executive Director, a Legal Counsel and two support staff located at the Council office in Ottawa.

2000-01 Expenditures of the Canadian Judicial Council

Salaries and Benefits	\$316,066
Transportation and Communications	24,722
Professional and Special Services	243,669
Rentals	13,358
Purchased Repair and Upkeep	1,992
Utilities, Materials and Supplies	46,282
Construction and Acquisition of Machinery and Equipment	13,283
Other	263
Internal Government Expenditures	25,046
TOTAL	\$684,681

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